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COSMOPOLIS OF LAW

ISLAMIC LEGAL IDEAS AND TEXTS ACROSS THE INDIAN OCEAN AND EASTERN MEDITERRANEAN WORLDS

MAHMOOD KOORIA

Cosmopolis of Law

Islamic Legal Ideas and Texts across the Indian Ocean and Eastern Mediterranean Worlds

PROEFSCHRIFT

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de graad van Doctor aan de Universiteit Leiden
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Prof. Dr. Ronit Ricci (Hebrew University of Jerusalem and Australia National University)

Prof. Dr. Petra Sijpesteijn (Leiden University)

To my mother

❈

قُل لَّوْ كَانَ الْبَحْرُ مِدَادًا لِّكَلِمَاتِ رَبِّي لَنَفِدَ الْبَحْرُ قَبْلَ أَن تَنفَدَ كَلِمَاتُ رَبِّي وَلَوْ جِئْنَا بِمِثْلِهِ مَدَدًا.

❈

Say, "If the ocean was ink for [writing] the words of my Lord, the ocean would
be exhausted before the words of my Lord were exhausted, even if We brought
another ocean like it as a supplement."

"How many seas must a white dove sail
Before she sleeps in the sand?
How many years can a mountain exist
Before it's washed to the sea?
The answer, my friend, is blowin' in the wind."

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Note on Transliteration and Dates

In translating Arabic words, mostly I have followed Brill's simple Arabic transliteration system, with an exception of *jīm* (ج), *khāʾ* (خ), *shīn* (ش), and *ghayn* (غ). For a few Persian and Ottoman Turkish words, I have followed the system of the *International Journal of Middle Eastern Studies*. For Malayalam, and Tamil words, I have followed the schemes of *ALA-LC Romanization Tables,* except for the Malayalam *ra* (ന) and *tta* (ഇ). For Arabic-Malayalam, Arabic-Tamil (Arwī) and Jāwī I have mixed the Brill's style for Arabic with the ones of *ALA-LC* identifying the root-language of the words. I have given only Common Era years, and avoided the Hijri era for the sake of smooth readability and comprehension. All dates I converted thus have been cross-checked with the Hijri months and years. For a few dates, I have depended on the secondary sources. If the month of the year is not known, and thus not convertible into a single year, I have chosen the year with certainty and mentioned "d. on or after".

Acknowledgments

Finally, composing the text of these pages has been one of the most difficult tasks in the writing of this dissertation for it has obliged me to introduce many anecdotal remarks. The pages that follow are also a journal of my intellectual journey, uncovering unexplored historical moments, over thousands of miles and a thousand years, in which many themes, approaches, concepts, people and places are embedded. Therefore they are no doubt presented with a few unavoidable defects.

MAP 1. Major places mentioned in the book from the Indian Ocean and Mediterranean worlds.

Introduction

General Statement of the Problem

This dissertation is concerned with the circulation of Islamic legal texts and ideas across the worlds of the Indian Ocean and the Eastern Mediterranean. It identifies the "textual *longue durée*" of Islamic law through chronological and geographical boundaries.

Earlier I had a very ambitious project in mind, and law was only one of three themes to be explored. I wrote a pilot study as well as two others on the themes of mysticism and militarism. The historical dissemination of traditional Islamic scholarship across the Muslim world, which continues even today, always clings on particular texts first written as much as a millennium ago. It is essentially curious that so ancient a text from so distant a place should matter so much, when so many academics say it lacks originality and novelty. Their religious life was influenced not just by the Qurʾān or *ḥadīth* (Prophetic Traditions) but also by "medieval" legal and mystical works. Although most people did not know these texts, they retained a guiding power as *kitāb*s through the mediation of *ʿulamāʾ*. That was the starting point for my enquiry, something that I have come to identify as the "Islamic textual *longue durée*". Instead of depending on foundational scriptures, like the Qurʾān and *ḥadīth*, Sunnī scholarship paid high attention to later interpretations of them by classical scholars of two disciplines, *fiqh* (law) and *taṣawwuf* (mysticism). Consequently, they mostly affiliated themselves in their everyday life to one of four legal schools, and perhaps infrequently to a Sufi order. They often distanced themselves from the militaristic tradition and its scholarship, although it was very much alive among a particular section of them throughout history. For practical reasons, this dissertation will limit itself to legal aspects, and within those to one particular school, Shāfiʿism.

The prime focus will on *Minhāj al-ṭālibīn* of Yaḥyā bin Sharaf al-Nawawī, a thirteenth-century legal manual of Shāfiʿism, and then by extension on some texts which function as a commentary, supercommentary or summary: *Tuḥfat al-muḥtāj* of Ibn Ḥajar al-Haytamī; *Fatḥ al-muʿīn* of Zayn al-Dīn al-Malaybārī; *Nihāyat al-zayn* of Nawawī al-Bantanī; *Iʿānat al-ṭālibīn* of Sayyid Bakrī. Using *Minhāj* as a base, I go back and forth in time of a millennium and I shall examine how the interconnected texts with a long tradition help us answer some important questions. To what extent was there continuity and discontinuity within Shāfiʿīte law? Why did certain textual genealogies become more significant in the traditional legalists' synthesis of texts for both the everyday religious lives of laypersons and the legal arguments of the *fuqahā*? How did Shāfiʿism spread across the Indian Ocean and the Eastern Mediterranean worlds to become itself a standard form of legal practice in premodern times? How did it develop into a fully-fledged legal culture in the "peripheral" regions where Muslims were remarkably active? To answer these questions, I intend to read this textual corpus within the context of scholarly, political, economic and social connections at some nodal points of scholarship: Damascus, Cairo, Zanzibar, Mecca, Ḥaḍramawt, Malabar, Aceh and Java.

Throughout this research I try to solve some conventional academic dilemmas: (a) Islamic legal history that mostly is Middle-East-centric; (b) legal histories of the Indian Ocean and the Mediterranean worlds which admit the roles of Islam and Muslims there but never analyse what made them "Islamic" or "Muslim"; (c) the examinations of Islamic legal traditions on the rims of these oceans have since colonial times overemphasized indigenous customary law against Islamic law and disregarded the role of traditional intellectuals in their respective communities.

The majority of Muslims living in the arenas of the Indian Ocean and the Eastern Mediterranean follow the Shāfiʿī school of Islamic law. There has been a burgeoning academic interest in this oceanic terrain in transregional connections and mobility of people and ideas. There have been a few studies on the presence and influence of Islam on local cultures and ideas. But no one has attempted to ask how "Islamic" were the Muslims who lived there or travelled and traded to and fro. The works of K.N. Chaudhuri are a good example of this.[1] He discusses the presence and development of Islamic mercantile networks, but hardly mentions what was so Islamic about them in terms of religious affiliation or ideas. Chaudhuri's concepts follow his predecessor Fernand Braudel in the context of Mediterranean, who also takes the religious identity of Muslim traders into account very loosely.[2] Braudel puts forward a clear conceptual framework and advances ground-breaking suggestions in his historical analysis of the connection between the sea and the people who lived on the coasts, but he does not map out how Islamic were the "Muslim Mediterraneans", as he calls them, in terms of their religious frontiers or gradual diffusion of their ideas, objects and customs. He does engage with the trans-societal interactions between Christian and Muslim Mediterraneans with certain rejections and projections, but beyond this point he does not inform us how any intellectual accomplishments of Muslims formed a network of Islamic culture that gradually spilled over the ocean boundaries. Shelomo Goitein attempted to fill this gap on the basis of Cairo Geniza records.[3] His prime focus was on the Jewish communities of the Mediterranean, but he shed some light on the Muslim communities with their maritime practices, networks, rituals and customs. His works continue to be the foremost reference on the premodern Muslim communities in the Mediterranean.

Scholars like G.R. Tibbetts, George Hourani and Dionisius Agius have explained Arab-Muslim navigational practices, and stressed the role of religion in particular maritime aspects.[4] But they were more interested in technical aspects like navigation, trade routes and shipping and less on religious connotations. This was taken up by Michael Pearson and Patricia Risso who concentrated on the Indian Ocean as an arena of Islam, yet their focus was

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[1] K.N. Choudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1985).

[2] Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, trans. Siân Reynolds (London: Collins, 1972-73).

[3] Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkley: University of California Press 1967).

[4] Gerald R. Tibbetts, *Arab Navigation in the Indian Ocean before the Coming of the Portuguese being a Translation of* Kitāb al-fawāʾid fī uṣūl al-baḥr wa-l-qawāʿid *of Aḥmad b. Mājid al-Najdī*, trans. with notes. (London: Royal Asiatic Society, 1971); George Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times* (Princeton: Princeton University Press, 1995); Dionisius Agius, *Classic Ships of Islam: From Mesopotamia to the Indian Ocean* (Leiden: Brill, 2008).

on trade rather than faith.[5] They do not explain when and how religion, let alone its law, came to matter in maritime mercantile enterprises, despite their constant use of categories that connote religion. One attempt to trace "Islam-ness" in this area came from Hassan Khalilieh, who combined Islamic law with the maritime world.[6] In his two works, he explored how Muslim jurists approached maritime engagements, and he unearthed much hitherto unknown relevant literature in the process. The problem with his studies is that he only attributes a legal aspect to the Arab-Muslim navigational and maritime ventures that scholars like Hourani have explored, and he hardly goes on to the legal-religious lives of Muslims who lived across the seas. Nevertheless, his devoted efforts stand out in the less studied Islamic maritime laws.

Scholars continue to make cursory references to Islam in these arenas, and one recurrent theme is the commonality of Shāfiʿīsm among coastal Muslims.[7] Shāfiʿīsm is certainly more important for the residents of the maritime region of the Indian Ocean than of the Mediterranean. But no one has explained how and why this particular school came to dominate the rim, especially from the sixteenth century onwards. Some scholars have attempted to look into the later periods, but they lack any broader historical perspective in their narrative.[8] Usual historiographical rhetoric credits it exclusively to the Ḥaḍramī migrations, but that is not quite true, as I shall argue in this study. Against the background of a historiography of Islamic law I shall investigate how the Shāfiʿī school emerged as the standard form of law in Indian Ocean coastal townships in premodern times, and how it developed into the fully-fledged legal practice of those regions. By surveying the simultaneous progress of a legal text on an intellectual level with the dissemination of a school of thought on a contextual level I shall demonstrate how Shāfiʿīsm spread and developed around the rims of the Indian Ocean and the Eastern Mediterranean.

Another major problem arises when looking into the historiographies of Shāfiʿīsm or Islamic law in general. Studies of law within Islam expanded considerably in the second half of the twentieth century, especially after Joseph Schacht's seminal studies.[9] All these later studies are very much centred on the broadly conceived areas of the Middle East and North Africa, as can be seen from a quick look at the contents of *Journal of Islamic Law and Society*

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[5] Patricia Risso, *Merchants and Faith: Muslim Commerce and Culture in the Indian Ocean* (Boulder: Westview Press, 1995); Michael Pearson, "Consolidating the Faith: Muslim Travellers in the Indian Ocean World," *UTS Quarterly: Cultural Studies and New Writing* 6, no. 2 (2000): 6–13; idem, *The Indian Ocean* (New York: Routledge, 2003); idem, *Pious Passengers: Hajj in Earlier Times* (London: Hurst, 1994).

[6] Hassan S. Khalilieh, *Islamic Maritime Law: An Introduction* (Leiden: Brill, 1998); idem, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050): The* Kitāb Akiriyat al-Sufun *vis-a-vis the* Nomos Rhodion Nautikos (Leiden: Brill, 2006).

[7] For example, see Andre Wink, *Al Hind: The Making of the Indo-Islamic World,* vol. 3: *Indo-Islamic Society: 14th-15th Centuries* (Leiden: Brill, 2004); M.H. Ilias, "Mappila Muslims and the Cultural Content of Trading Arab Diaspora on the Malabar Coast," *Asian Journal of Social Science* 35, no. 4-5 (2007): 4-5.

[8] See for example: ʿAbd al-Ghafūr ʿAbd Allāh al-Qāsimī, *al-Muslimūn fī Kayralā* (Malappuram: Akmal Book Centre, 2000); Zafarul Islam, *Socio Economic Dimension of Fiqh Literature in Medieval India* (Lahore: Dyal Sing Trust Library, 1990); Omar Khalidi, "Sayyids of Hadramawt in the Medieval and Modern India," *Journal of The Gulf and Arabian Peninsula Studies*, 33, no. 127 (2007); idem, "Sayyids of Hadramawt in Medieval and Early Modern India," *Asian Journal of Social Science* 32, no. 2 (2004): 329-351; Abdul Latif, *The Concise History of Kayalpatnam* (Kayalpatnam: Shamsuddin Appa Publication, 2004); Sayed Sulaiman Nadwi, "The Muslim Colonies in India before the Muslim Conquest." *Islamic Culture VIII* (1934): 478.

[9] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford, Clarendon Press, 1950); idem, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964).

and *Islamic Law and Society* book series published by Brill over the last two decades. Historiographical investigations into Islamic law acknowledge the presence of the Muslim communities in South and Southeast Asia and East Africa only when dealing with the European experimentation with Islamic law. This approach entails two significant drawbacks. Spatially, there is the question of Islamic law *in these regions*; and temporally, the question of their existence *before* European colonialism. Joseph Schacht and those who followed him have always concentrated on the origin and early development of Islamic law. They hardly escaped from this "search for origins" in historical studies, even though Marc Bloch named it as a dangerous trend of historians as early as the 1930s. They became stuck in chronological shackles stretching until the tenth century at the most. It is almost needless to say that they also did not think about Islamic law beyond the Middle Eastern regions. This narrow vision still prevails, despite the fact that the majority of Muslims lives in these so-called "peripheries" and have been practising *aḥkām al-Islam* as early as 850 CE or even earlier.[10]

The same trend is also seen in the studies by Muslim scholars. They often limit themselves to literature in Arabic or the local language of a Muslim author. They usually adopt the methods and style of Ibn Khaldūn's extensive analyses of the history of legal thoughts in Islam. This is a discipline called *tārīkh al-tashrīʿ al-Islāmī*, "the history of Islamic law-making", but one which barely covers anywhere except the central Islamic lands or any time except the early periods. It usually divides legalistic developments into periods, such as the era of the Prophet Muḥammad, the era of the Companions, the early legal thoughts in the Hijaz and Iraq, the later emergence of four schools of law (*maḏāhib*), and finally the era of imitation (*taqlīd*).[11] Whatever comes afterwards is less interesting in *tārīkh al-tashrīʿ*. A few authors take into account vast spheres of geography or chronology, yet none note any reminiscence of *fiqh* in the regions of South, Southeast Asia or East Africa. We should also note that *tārīkh al-tashrīʿ* has been the focus of less study in traditional circles with only a few publications compared to what is available for Islamic history or fiqh as such.

For Shāfiʿīsm the story is not particularly different. Its history after the tenth century and outside the Middle East is still an understudied area. Ahmed El Shamsy has recently followed the early formation of the school, and he stops at the tenth century.[12] Three studies, of Fachrizal Halim on Yaḥyā al-Nawawī, of Mathew Ingalls on Zakariyā al-Anṣārī, of Aaron Spevack on Ibrāhīm al-Bājūrī, do go beyond the "golden age" of Shāfiʿīsm and trace how it is trajected into the thirteenth, fifteenth and nineteenth centuries respectively.[13] Yet, it is all an

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[10] See the account by the ninth-century Muslim traveller, Sulaymān al-Tājir in Eusèbe Renaudot, *Ancient accounts of India and China by Two Mohammedan Travellers who Went to those Parts in the 9th Century* (London: S. Harding, 1733), 7-8. For the Arabic original, see Jean Sauvaget, *'Ahbār aṣ-ṣīn wa l-hind. Relation de la Chine et de l'Inde, rédigée en 851* (Paris : Belles Lettres, 1948), 7.

[11] For example, see Muḥammad Khuḍarī, *Tārīkh al-tashrīʿ al-Islāmī* (Cairo: Dār al-Fārūq li all-Istithmārāt al-Thaqāfiyat, 2009); Mannāʿ Khalīl al-Qaṭṭān, *al-Tashrīʿ wa al-fiqh fi al-Islam: Tārīkh wa manhaj,* and ʿIddat Jalūl Muḥammad, *Madkhal lī dirāsat al-tashrīʿ al-Islāmī* (Wahrān : Dār al-Gharb lī al-Nashr wa al-Tawzīʿ, 2005); ʿAbd al-Raḥmān Ṣābūnī, Khalīfah Bābikr and Maḥmūd Muḥammad Ṭanṭāwī, *al-Madkhal al-fiqhī wa tārīkh al-tashrīʿ al-Islāmī* (Cairo: Maktabat Wahbah, 1985).

[12] Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013).

[13] Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (New York: Routledge, 2015); Aaron Spevack, *The Archetypal Sunnī Scholar: Law, Theology, and Mysticism in the Synthesis of al-Bājūrī* (Albany: SUNY Press, 2014); Matthew B. Ingalls, "Subtle Innovation

Egyptian or Syrian story. Four decades ago Heinz Halm analysed the spread of the school into the Iraqi, Egyptian, Central and Southeast Asian regions. In his study South, Southeast Asia and East Africa received only some marginal discussion, with just one sentence on Malabar.[14] There are two doctoral dissertations submitted at Indian universities which look into the history of the school on the subcontinent: C.S. Hussain emphasizes the contributions of Kerala scholars to Shāfiʿīte fiqh, while K. Mohammed Bahauddeen discusses contributions from the whole of India.[15] Through a descriptive approach both these dissertations survey many Shāfiʿī legal texts produced locally, mainly on the Malabar Coast. They are disconnected from the existing academic discourses on Islamic law in general or on Shāfiʿīte law in particular and they resemble the style of the archaic *ṭabaqāt*-literature of the school. Indeed, there are three proper ṭabaqāts, two from Indonesia and one from East Africa, that provide excellent details to our investigation. All these three biographical dictionaries have hardly been studied by scholars of Islamic law.[16] Still, both studies function as a good starting point and help us understand many biographical and bibliographical details of Indian Shāfiʿīte texts. However, we should be extremely careful when using them to note inconsistencies in dates and names.

A closer examination of premodern "Islamic" legal traditions from South and Southeast Asia and East Africa is thus long overdue. In this study I trace the connections and disjunctions between "central" and "peripheral" Islamic lands from the circulation of legal texts, from the textual traditions differently developed with continuities and ruptures in the Islamic world, and from their respective impacts on the contrasting intellectual landscapes of Muslims. All these historical processes depended on the maritime highways of the Indian Ocean and the Mediterranean, not just as passive routes for intellectual interaction but rather as active participants.

Islamic Legal Texts and the Oceanic World

The parallels between the history of these oceans and that of Islamic legal texts can be seen as the *longue durée*. The long and complex history of such geographical structures as oceans has been conceptualized by Braudel in his ground-breaking work on the Mediterranean. In contrast to the dramatic and continual changes of politics and society, he argued that geographical structures have a long-term and sustained history, one that is "almost silent and always discreet, virtually unsuspected either by its observers or its participants, which is little touched by the obstinate erosion of time".[17] The history of traditional Islamic texts is not

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within Networks of Convention: The Life, Thought, and Intellectual Legacy of Zakariyā al-Anṣārī (d. 926/1520)" (PhD diss., Yale University, 2011).

[14] Heinz Halm, *Die Ausbreitung der safiʿitischen Rechtsschule von den Anfangen bis zum 8./14. Jahrhundert* (Wiesbaden: Luwig Reichert, 1974).

[15] Ḥusayn C.S., "*Musāhamāt ʿulamāʾ Kayralā fī al-adab al-fiqh bī al-lughat al-ʿArabiyyat*" (PhD diss., University of Calicut, 2004); K. Mohammed Bahauddeen, "The Development and Impact of Shāfiʿī School of Jurisprudence in India" (PhD diss., Jamia Millia Islamia, 2011).

[16] Aboe Bakar Djajadiningrat, *Tarājim ʿUlamāʾ Jāwa*, Leiden University Special Collections, Or. 7111; K.H. Siradjuddin Abbas, *Ulama Syafiʿi dan Kitab-Kitabnya* (Jakarta: Pustaka Tarbiyah Baru, 2012 [1975]); Abdallah Salih Farsy, *The Shafʿi Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans. ed. and annotated by Randall L. Pouwels (Madison: University of Wisconsin, 1989).

[17] Braudel, *Mediterranean*, 1: 16

different. For example, *Minhāj* of Nawawī from the thirteenth-century belonged to an earlier tradition of Islamic legal texts. That tradition started in the early-ninth century with al-Shāfiʿī's *al-Umm* and has been sustained until the late-twentieth century. Any changes can also be described as "almost silent and always discreet, virtually unsuspected either by its observers or its participants". My point of departure however from the geographical *longue durée* of Braudel to the *textual longue durée* concerns the minor but influential changes embodied in the texts. The core and corpus of the texts remain concrete across geography and chronology, but their meanings and rulings change almost imperceptibly. Those changes might remain unnoticed in their immediate contexts, but they have the potential to create a tornado of changes in the longer run. Such changes within the geographical longue durée and unavoidable cross-cutting of regional and transregional contexts, politics and economy are two significant elements missing in Braudel's conceptualizations.

A network of Islamic texts connected nodal points, geographically and chronologically distant, through a single textual cord. A text was continuously being debated and discussed in minute detail, which produced a supplementary set of works which in turn led to another corpus. All of them not merely displayed an intellectual debt but showed genealogical dependence. The participants in this history interestingly have an urge to ensure their connectivity with the intellectual world of the past. The scholarly writings demonstrate their direct links with their predecessors with personal contacts, books and certificates. The structure of the ocean facilitated a continuity with the structure of intellectualism which becomes clear once we consider the connections of South, Southeast and East Asia and East Africa with the Middle East. Around 850 CE a traveller visiting Guangzhou in China noted that the Muslims there lived according to the laws of Islam.[18] So we have to wonder what, how, and why.

Two issues become very significant: the genre of Islamic law and the maritime intellectual networks. The maritime networks depended on traders, scholars, travellers, texts and ideas. The circulation of ideas is innate in Islam as it is in other religions. But maritime journeys *for trade* raise problems in Islamic dogma because it was prohibited by the Prophet Muḥammad. That aspect has been overlooked in previous studies. The coastal towns for Mecca and Medina were Jeddah, Ayla and Banafa and we do not know whether the Prophet Muḥammad undertook any overseas voyages. But in a *ḥadīth* he prohibited his followers from undertaking any oceanic voyages except for holy-war (*jihād*) and obligatory pilgrimage (*ḥajj*).[19] This paranoia of the ocean was theoretical, for in practice it was not observed by Muslims. On the contrary there was an upsurge in sea-travel for trade (and education), as much as they went for war and pilgrimage.[20] Details of educational travel from the earliest Islamic sources are sparse and hard to trace. While we do not know of actual events, it is clear

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[18] Renaudot, *Ancient accounts*, 7-8; Sauvaget, *'Ahbār aṣ-ṣīn*, 7.

[19] Abū Dāwūd Sulaymān ibn al-Ashʿath al-Sijistānī, *Sunan*, ed. Shuʿayb al-Arnaʾūt and Muḥammad Kāmil Qurah Balalī (Beirut: Dār al-Risālat al-ʿĀlamiyyat, 1994), 4: 145-146, no. 2489.

[20] On the early Muslim engagements with the ocean, see the excellent studies by Christophe Picard, *La Mer des Califes. Une histoire de la Méditerranée musulmane (VIIe-XIIe siècle)* (Paris : Presses Universitaires de France, 2015); idem, *La mer et les Musulmans d'Occident au Moyen Age: VIIIe-XIIIe Siècle* (Paris: Presses Universitaires de France, 1997). I owe my knowledge of these works to Petra Sijpesteijn. However, in both studies Picard does not address the aforementioned ḥadīth and proscription of non-war and non-pilgrimage voyages by Muḥammad.

from an oft-quoted saying that China was a fartherst destination for this purpose among early Muslims. In the course of time we see Muslim scholars legitimizing voyages for trade and education, something not allowed in the above *ḥadīth*.

The genre of Islamic law is crucial for explaining the *longue durée* of Islamic intellectual tradition, but also for understanding the *longue durée* of "legitimate" maritime connections to distant lands. There are other major genres of Islamic knowledge: the Qurʾān and its exegesis (*tafsīr*); *ḥadīth* and related sciences (*ʿulūm al-ḥadīth*); theology (*al-kalām*); mysticism (*taṣawwuf*). The Qurʾān *per se* is not helpful for any historical discourse unless it is interpreted in *tafsīr*. On the Indian Ocean rim, even up to the sixteenth century, we have no exegetical text. The same goes more or less for *ḥadīth*s and theology. For *taṣawwuf* the case is slightly better, and for fiqh is even more telling. We have legal texts written by the "peripheral" scholars from as early as the thirteenth century. As for Shāfiʿīsm we have materials dating from at least the early fourteenth century or even earlier.

Fiqh is primarily the product of attempts to regulate the everyday life of a believer. The fuqahā, the Islamic legal scholars, placed themselves in the long tradition of the production and dissemination of the knowledge of Islam to communicate with everyday issues facing him or her. Most of the Shāfiʿīte fiqh texts deal with four legal concerns about social and religious life: rituals; commerce; marriage; crime.[21] The scholars and the texts discussed those themes referring to the past, the present and the future.[22]

References to the past revealed their attempts to place themselves in the tradition of discourses of earlier scholars and texts. This helps them acquire legitimacy for their arguments, as most of the previous scholars or texts were well respected in the community. Contemporary contexts and references to a particular space and time constitute the present, and a vision of the future is embedded in their idea of constructing an ideal society. In that case, the question of whether or not those texts reflect historical reality arises. But historians look to another sort of future, how to trace out the future progress of a particular idea or text in later centuries after its being accepted and then stimulating the production of commentaries, glosses, and marginalia. Since almost all fiqh texts engage with the aforesaid four legal areas and interconnect past, present and future, they provide a wonderful opportunity to understand how attitudes and mentalities of scholars changed on issues or themes over centuries. They not only exhibit a continuity from the past to the future, but also enable us to identify discontinuities which had clear influences in a specific place and at a specific time, the present of a text. Hence, it is imperative to enquire how and why local contexts are reflected in such works at particular times.

Intellectual Discontinuity in an Age of Commentaries
Commenting on Sayyid Bakrī's *Iʿānat al-ṭālibīn*, the Dutch professor of Arabic Snouck Hurgronje wrote in the late nineteenth century, "Such books differ from one another only in

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[21] ʿAbd al-Wahhāb Ibrāhīm Abū Sulaymān, *Tartīb al-mauḍūʿāt al-fiqhiyyat wa munāsabatuh fi al-maḏahib al-arbaʿt* (Mecca: Jāmiʿat Umm al-Qurā, 1988), 59-69.

[22] Talal Asad, *The Idea of an Anthropology of Islam* (Washington, D.C.: Centre for Contemporary Arab Studies, Georgetown University, 1986).

amount of detail and in small externals, and call for no further notice from us."[23] His student Schacht and most of the early scholars of Islamic law followed him, believing that legal thought in the Islamic world was "dead" after its classical phase (around 900 CE) and whatever was written after that were just imitations and repetitions. This attitude is well expressed by H.A.R. Gibb who wrote, "Since the formal legal doctrines and the definitions of these schools [of law] remained substantially unchanged through all the late centuries, there is little to be gained by tracing down and discussing their formidable output of juristic works."[24] A major justification of this approach was rooted in the question of allowing freedom for *ijtihād*, "independent investigation". Most early Islamicists and traditional Muslims believed that this freedom ended roughly around 900 CE with *insidād bāb al-ijtihād*, "the closure of the gate of *ijtihād*". Also, after this time the major Sunnī legal schools were restricted to four and all other legal streams were disqualified, arguably by a consensus of the fuqahā. So later scholars had to choose one school or other and had the freedom to investigate only if standing within a school. This general idea is what motivated many European and traditional scholars to believe that "original" and "independent" legal thoughts ceased for ever, and a "sterile commentarial literature" represented the increasing "decline of knowledge in our age".[25]

In the last few decades, however, this approach has been questioned and scholars have argued convincingly that Islamic law indeed continued to be more dynamic and flexible in the later centuries.[26] In his ground-breaking article of 1984, Wael Hallaq substantiated that "the gate of *ijtihād*" was not closed and the Muslim jurists continued to investigate within or outside their schools up to the sixteenth century.[27] Consequently, many scholars researched the legal opinions of a number of scholars, texts, and institutions from the second millennium. In the Sunnī tradition, different legal schools provided avenues for research. Ḥanafīsm took the lead in this line of enquiries because of its prominence in the Ottoman Empire and in Central and South Asia. Looking into the attempts at codification in Ottoman Ḥanafīsm since the sixteenth century, Guy Burak has recently identified the process as a second formation of Islamic law.[28] On the basis of fatwa collections, Haim Gerber has also examined Ottoman legal practices between the sixteenth and early-nineteenth centuries, arguing that Islamic law remained flexible and open by accommodating possibilities in jurisprudence of *ijtihād*, *istiḥsān* (juristic equity) and *ʿurf* (local custom). A number of biographical studies have also authenticated this argument on the "originality" of post-classical Islamic law. Sherman Jackson's study on the Mālikīte Shihāb al-Dīn al-Qarāfī (1228-1285) and Abdul Hakim I. Al-

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[23] C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning* (Leiden: Brill, 2007), 205.

[24] H.A.R. Gibb, *Mohammedanism*: *A Historical Survey* (Oxford: Oxford University Press, 1949), 71.

[25] The phrases quoted in the last part of the sentence are from Muhammad Qasim Zaman, "Transmitters of Authority and Ideas across Cultural Boundaries, Eleventh to Eighteenth Centuries," in *The New Cambridge History of Islam*, vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, ed. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 582-83.

[26] Haim Gerber. *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999).

[27] Wael Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16, no. 1 (1984): 3-41.

[28] Guy Burak, *Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015).

Matroudi's work on the Ḥanbalīte Ibn Taymiyyah (1263-1328) are worthy of note in this regard.[29]

With regard to Shāfiʿīsm, the works of Fachrizal Halim, Mathew Ingalls, Aaron Spevack, and Alex Wijoyo represent this same trend.[30] Looking at the lives and careers of four eminent figures of the Shāfiʿīte tradition in the thirteenth, fifteenth and nineteenth centuries, they explained how the individual legacies of particular scholars became crucial to the practices in believing communities. Halim's work was the only one dedicated to legal history; the others placed law together with the theology and/or the mysticism of their figures. The argumentation of all four studies has been applicable to this study since I too focus on the works and ideas written after the so-called "classical phase". Yet I differ from their approaches in a number of ways. Another remarkable study in the later history of the school is by R. Kevin Jaques on the genre of Shāfiʿīte biographical dictionaries from the Mamlūk era.[31] Although it has little to say on the legal thoughts of the school and its continuities and ruptures, it certainly sheds light on how the followers perceived the school in the early fifteenth century. His focus is on the *Ṭabaqāt* of Taqī al-Dīn Abū Bakr Ibn Qāḍī Shuhbah (1377-1448), a Shāfiʿīte judge in Mamlūk Damascus.

The increasing interest in biographical studies of the later scholars shows that a remark of Sherman Jackson is relevant for our further analysis. He noted that, since all Muslim jurists had to follow one of the schools and that school became the context of their interpretative activity, their freedom of investigation was limited. He writes, "Under such circumstances, even if it could be claimed, or proved, that the gate of *ijtihād* remained open, it would remain, in my judgement, counterproductive to continue to speak as if this had the same meaning in the thirteenth century as it had in the ninth [sic]."[32] Studies on later developments in Islamic law stress the stability and continuity of thoughts, institutions and values. The unbroken chains of scholars and students over centuries as much as the chains of their books and commentaries are the obvious evidence of this continuity. The links make the continuity of intellectual enquiry permanent and show the ways through which each participant asserted themselves to the tradition. They always stretch back to the founders of the school, and through them to the Prophet and ultimately to God. Yet within this unbroken chain of transmission there are frequent ruptures of legal ideas and thoughts. Indeed, at times discontinuity dominates the discussions and makes one particular scholar or text tower above the line of the longer tradition and dominates its more vivacious course across time and space. Analogies for these ruptures can be found in the very early phases of Islamic law, when students often "stood against" the legal regimes of their teachers. Often points of disagreements erupted about rationality and traditionalism, a predicament that would remain enigmatic throughout Islamic legal history.

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[29] Abdul Hakim I. Al-Matroudi, *The Ḥanbalī School of Law and Ibn Taymiyyah* (London: Routledge, 2006); Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī*. (Leiden: Brill, 1996).

[30] Halim, *Legal Authority*; Spevack, *Archetypal Sunnī Scholar*; Ingalls, "Subtle Innovation"; Alex Wijoyo, "Shaykh Nawawī of Banten: Texts, Authority, and the Gloss Tradition," (PhD diss. Columbia University, 1997).

[31] R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden: Brill, 2006).

[32] Jackson, *Islamic Law and the State*, 77.

In the eighth century the Islamic jurists were divided broadly into two groups. There were "the guardians of traditions" (*ahl al-ḥadīth*), who valued the traditions of Prophet Muḥammad and customs of Medina more than reason, and the "the guardians of reasoning" (*ahl al-raʾy*), who preferred legal rationality and a context-based analogical deduction (*qiyās*), juristic preference or equity (*istiḥsān*), consensus of opinion (*ijmāʿ*) and local custom (*ʿurf*). Attempts to categorize exclusively the former as the Hijazi school and the latter as the Iraqi school have faced ardent criticisms, yet the adherents of each view were predominantly to be found living in these two separate regions. The "traditionists" would eventually evolve as the Mālikī school, named after its founder Mālik bin Anas (711–795), and the "rationalists" as the Ḥanafī school, named after its founder Abū Ḥanīfa (699-767). In an attempt to reconcile this legalistic division, al-Shāfiʿī (767-820) took both approaches into consideration. He accommodated Mālik's standpoint of *istidlāl* (legal reasoning beyond *qiyās*) as a source of law, but refuted Abū Ḥanīfa's idea of *istiḥsān*. His approach led the school of Shāfiʿīsm, but there emerged against it the more traditional legal thought of Aḥmad bin Ḥanbal (780-855).[33] In these entanglements between tradition and reason, what is interesting is that all the four "founders" of their schools were known to one another as students or teachers. In fact, their relationships go beyond the Sunnī tradition. Jaʿfar al-Ṣādiq (*c.* 702–765), the founder of Shīʿīte Jaʿfarīsm, was a teacher of Abū Ḥanīfa; al-Shāfiʿī was a student of Mālik bin Anas; Aḥmad bin Ḥanbal was a student of al-Shāfiʿī. Such connections and disconnections mirror the pattern of the later tradition of Islamic law, and particularly of Shāfiʿīsm: as much as every scholar belonged to his teacher, they formulate their own independent ideas.

A compulsion to subscribe to one school of thought did not force jurists to accept blindly the legal ideas of their eponymous founders. In later centuries scholars continued to engage with each issue critically, treating it as something new and providing a new perspective, outlook, and juridical ruling. Sometimes this opposed what the founding figures of a school thought. An argument that by subscribing to one *maḏhab* the adherent scholars were restrained from intellectual activity resonates as a shallow argument, just as setting up one national constitution does not restrain politicians, jurists, legislators, or the like in later centuries from critical engagement. Standing within the nation with its constitution, they sometimes even bring paradigm shifts into the whole framework of the nation itself. Similarly, suppressing independent investigation, if that actually ever happened, and standardizing the four legal schools did not lead to intellectual inertia in later centuries. Hallaq has demonstrated well how a number of follower-jurists of a particular *maḏhab* openly contradicted some specific rules of the *mujtahid-imām* in terms of concrete rules.[34] Sometimes jurists contradicted the eponymous fathers of their own *maḏhab* or of other *maḏhab*s as much as they criticized other older scholars.

In the case of Shāfiʿī school, the legal opinions of al-Rāfiʿī and Nawawī were regarded as the most valid after the thirteenth century. Al-Shāfiʿī was a distant reference-point for authenticity among later jurists if compared to their contemporaries Nawawī or al-Rāfiʿī and their works. At times they diminished the importance of or even disagreed with the views of al-Shāfiʿī. Such an evolution of this discursive tradition made Islamic legal thought more

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[33] Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī* Uṣūl al-Fiqh (Cambridge: Cambridge University Press, 1997), 23-24, 107-113.

[34] Hallaq, "the Gate of Ijtihad," 11; Jackson, *Islamic Law and the State*, xxx

vibrant in the later centuries and generated intellectual continuity and discontinuity in equal measure in legal theories and practices. The practice of writing commentaries is one emblem of this evolution.

Although by the thirteenth century the commentaries (as broadly defined) had become a mark of intellectual activity, the Islamicists we have mentioned argued that any originality in intellectual engagement had died out by this time. They disdained the genre, thinking that the commentaries were just elaborations of a prior text and added nothing to independent investigation or original research in general or to legal thought in particular. I prefer to turn the tables round, and argue that the commentaries are exactly what revived Islamic legal thought as intellectually vibrant and popular. Writing a commentary to, or even a summary of, a previous work had been practised in the Islamic legal circles as early as the ninth century. In the tenth-century bibliographical survey of Ibn al-Nadīm we find many summaries and commentaries of legal texts from various schools.[35] For the Shāfiʿīte school, he mentions around ten summaries or commentaries on al-Shāfiʿī's works. When considering the amount of legal texts available to him at that time it is remarkable that he mentions so many. From three to four centuries later the practice reached its zenith, when it was normal to write a commentary, and to write anything other than a commentary was exceptional. Subsequently this practice has dominated Muslim legal scholarship until the twentieth century. Even today it continues in different shapes and forms.

Most commentaries do not limit themselves to one category of subjects, approaches or themes. Instead, taking a text as their starting point, they give a comprehensive insight into the discursive traditions surrounding each legal issue and at the same time adding something very new according to the needs and priorities of the commentator. This comprehensiveness varies according to time and place. Many are "veritable encyclopaedias" or "veritable museums" for they record whole documents or quotations from works which may otherwise have been lost.[36]

The practice of writing commentaries (*sharḥ*, pl. *shurūḥ*) and super-commentaries (*ḥāshiyat*, pl. *ḥawāshī*) was to a large extent the consequence of the establishment of religious educational centres (*madrasa*s) in the tenth century. This development runs in parallel to the rise of glossators and commentators in the European legal tradition, in the twelfth and fourteenth centuries respectively. While teaching texts the jurists added material, such as the opinions of other scholars, solutions to new legal issues, disagreements with the author, or corrections to the original text. These are the essential characteristics of commentary-writing. While commentaries provide interpretations for specific legal texts, super-commentaries or ḥāshiyats exhibit "an established scholarly practice reflecting the cumulative nature of Muslim scholarship".[37] The margins of manuscripts had thus by the thirteenth century become a space for the expression of intellectual opinion at various length and strength. Ibn Jamāʿat (1241-1333), a thirteenth-century Shāfiʿīte scholar, wrote about this practice:

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[35] Ibn al-Nadīm, *al-Fihrist*, ed. Ibrāhīm Ramaḍān (Dar al-Maʿrifat, 1994), 247-292 on legal texts of all schools; on the Shāfiʿīte texts, 259-265; cf. idem, *Kitāb al-fihrist*, ed. Ayman Fuʾād Sayyid (London: Al-Furqan Islamic Heritage Foundation, 2009).

[36] Cl. Gilliot, "Sharḥ," *Encyclopaedia of Islam*, 2nd ed.

[37] John L. Esposito, "Sharḥ" and "Ḥāshiya," *The Oxford Dictionary of Islam*.

There is nothing wrong with writing important notes (*ḥawāshī*, *fawāʾid*, *tanbīhāt*) in the margins of a book one owns.... Only important notes that pertain to the contents of the book in question should be given, such as notes that call attention to difficult or doubtful passages, allusions, mistakes, and the like. Problems and details that are alien to the contents should not be allowed to deface the book, nor should there be so many marginal notes that it becomes disfigured or the student is at a loss to find out where they belong.[38]

Some commentaries were written by less famous scholars in order to gain entry into the intellectual world. Jackson put it nicely when he wrote that those were often products of less known scholars wanting "to identify themselves with superstars in order to entice people into reading their works, even, or perhaps especially, when their ideas differed from those of the original author."[39] Such authors aimed to enter the hall of fame in the arms of a "godfather-text". The commentaries which many less established scholars wrote in their early careers were surveys of literature on particular legal issues. Basing themselves on a particular text, they attempted to record what all other jurists from the same school of law, and sometimes even from other schools, had to say on possibly controversial issues. These commentaries became crucial referential points later in their career, not only in writing but also in teaching, law-giving and personal behaviour.

But such commentaries are comparatively few. Most were written by already established scholars who had an urge to engage critically with the standpoints and approaches of a particular text and its author or from a genuine admiration for particular scholars. They clearly expound this fact when they state their social, political, and/or intellectual purposes of in the introductory chapter. More than a century ago an Indian legal historian Abdur Rahim stated: "it is only in writings of these commentators that it is possible to find the doctrines of the different schools expounded in their fullness."[40] As for Shāfiʿīsm, Fachrizal Halim has recently demonstrated that canonization of the school actually happened only in the thirteenth century through the works of Nawawī, who is otherwise labelled as a commentator.[41] When surveying the Shāfiʿīte *ḥawāshī*, Ahmed El Shamsy demonstrated the importance of this genre to understand trends and evolutions in Islamic legal scholarship.[42]

The commentaries, supercommentaries, and glossaries both interdependently and independently give us an opportunity to understand the varied approaches of different scholars from a number of different geographical and chronological contexts on a particular issue. As Ahmad Atif Ahmad put it, even a later summarising is typical of a commentary on a particular textbook (*matn*), which has "the advantage of exposing students who study that work to two intellects, that of the author of the *matn* and that of the author of the

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[38] Cited in Franz Rosenthal, "Ḥāshiya," *Encyclopaedia of Islam*, 2nd ed.. The original quote can be found in Muḥammad ibn Ibrāhīm Ibn Jamāʿat, *Taḏkirat al-sāmiʿ wa al-mutakallim fī adab al-ʿālim wa al-mutaʿallim* (Beirut: Dār al-Bashāʾir al-Islāmīyah, 2012), 133-34.

[39] Jackson, *Islamic Law and the State*, 7.

[40] Abdur Rahim, *The Principles of Muhammadan Jurisprudence according to the Hanafi, Maliki, Shafiʿi and Hanbali Schools* (London: Lucaz, 1911), p. 33.

[41] Halim, *Legal Authority*.

[42] Ahmed El Shamsy, "The Ḥāshiya in Islamic Law: A Sketch of the Shāfiʿī Literature," *Oriens* 41, no. 3-4 (2013) 289–315.

commentary".[43] For our purposes, the number of intellects increases as the number of commentaries increases. Against this background, I shall attempts to answer several questions: How did one particular text circulate intellectually across time and space and influence a whole group of learned legal elites of Islam? Why were more and more commentaries on a text produced even when there were dozens of commentaries on it already? What made some commentaries more celebrated than others? What were the social, political and economic functions of commentaries? I also investigate how these texts revived legal thought in the different places and at the different times they were written, and equally how they contributed to the intellectual development of the Shāfiʿī school as a whole. How did the juridical rulings on a particular issue change over time and space? To what extent did the legal discourses reflect changing socio-political conditions so that multiple meanings were applied to the same text? What do these texts tell us about the intensive discursive tradition of the Muslim communities?

Beyond the "Centre" and the "Peripheries": the Oceanic Rims

At first sight in the present time it would appear that no aspect of Islamic law has remained untouched or inadequately studied in academic scholarship. So many works deal with so many topics from the origin of Islamic law to more minor topics.[44] But even this copious literature quickly disappoints a non-Western or non-Middle Eastern student of Islamic legal history. Apart from some anthropological or religious studies, the works on the implications of Islamic law in the Muslim worlds outside the Middle East, such as in Africa or South and Southeast Asia, and the histories of Islamic law in those regions have been almost completely ignored. Despite the great influence Islamic law has held among the Muslim communities of the Indian Ocean coastal belts, from East Africa to East Asia, differing since premodern times from the hinterland-worlds, and despite the direct historical intellectual connections between these regions in terms of legal theories and practices, no one has ever asked how similarities occurred and how connections functioned.[45] More precisely, we need to know how Islamic law of one school (Shāfiʿīsm) spread and developed along the coastal belts over centuries, and to what extent those regions differ in praxis from the heartlands of Islamic law.

In parallel to the development of the tradition of writing commentaries, Islamic legal ideas have been spreading over borders. I shall investigate the circulation of the ideas of Shāfiʿīsm alongside textual transmission. How did a school of legal thought, one born in Iraq, developed in Egypt, institutionalized in the Levant and the Caspian, attract followers in Malabar, Aceh, Sumatra, Java, Zanzibar, Mombasa, Johor, Guangzhou and Cape Town? Tracing the movement of scholars and legal commentaries is crucial for such an investigation. I shall map out the historical advance of this school from biographical literature for the related

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[43] Ahmad Atif Ahmad, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden: Brill, 2006), 16.

[44] For example, see Brannon Wheeler, "Touching the Penis in Islamic Law," *History of Religions*, 44, no. 2 (2004), 89-119.

[45] The only exceptions would be a few commentaries written by Joseph Schacht, in the vanguard of Islamic legal historians, to explore the precolonial and premodern aspects of Muslim laws in the "peripheries". See, for example, his, "Notes on Islam in East Africa" *Studia Islamica*, no. 23 (1965): 91-136; Joseph Schacht, "On the Title of the *Fatāwā al-ʿĀlamgīriyya*," in *Iran and Islam: In Memory of the Late Vladimir Minorsky,* ed. C.E. Boswoerth (Edinburgh: Edinburgh University Press, 1971), 475-478

scholars, merchants and brokers, from trade records, travel accounts and memoirs which tell us about cultural networks of scholars, and the texts and ideas that were involved in this transoceanic exchange. One of my main arguments is that the main centres of Islamic learning changed over time according to shifts in political and economic scenarios. By the late-fifteenth and sixteenth century what we see in the contexts of East Africa and South and Southeast Asia is a surge in local centres for religious education, far from the prominent institutions at Mecca, Medina, Cairo or Damascus. Whether or not those famous centres had lost some of their prominence at this time, Muslims from "the peripheries" had clearly established their own institutes which attracted a significant group of students. Gradually these peripheral centres became famous in their respective subcontinents, not only as centres of education but also for progressive legal ideas and related textual production. They incorporated themselves into the wider sphere of Islamic intellectual discourse by generating commentaries, super-commentaries, abridgments of famous works of Islamic jurists, as well as independent works. There was more and more transmission of texts and ideas to and from the "central" and the "peripheral" lands of Islam and an active textual network developed which contributed to the spread of the Shāfiʿī school around the rim of the Indian Ocean and in its hinterland.

Even so, the Islamic culture of the "peripheries" has hardly been acknowledged. Most available material on Islamic law for these regions comes from anthropologists, sociologists, specialists in religion; hardly any from historians. The historians who deal with Islamic ideas and practices there tend to label them as less Islamic and more syncretic (whatever they mean by those terms). They take refuge in new terms like "Islamicate" and "deviations", as if the Muslims in Mecca or the Middle East are untainted reflections of "pure Islam".[46] In the last few years, however, a few attempts have been made against this trend, including the remarkable contributions of Ronit Ricci, Sebastian Prange, Azyumardi Azra, and very recently Iza Hussin. They deal with the premodern and modern Islamic features of the Indian Ocean world in relation to the social, cultural and economic norms of the Middle Eastern world, without falling into old traps.

Ricci "refashioned" Pollock's conceptual framework of a Sanskrit cosmopolis as an Arabic cosmopolis into which the Tamil, Malay, Javanese literature of South and Southeast Asia infused Islamic ideas and ideals for the local context and prevailing needs.[47] Sebastian Prange also studied premodern Arab-Islamic networks of the Indian Ocean, but with a focus on Malabar, a micro region.[48] Azra mapped scholarly networks of the Malay world in the seventeenth and eighteenth centuries focusing on the contributions of Acehnese and Makassari scholars.[49] Hussin has compared the Islamic legal reforms in the nineteenth- and

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[46] Mashal Hodgson, *The Venture of Islam: Conscience and History in a World Civilization* (Chicago: University of Chicago Press, 1974); Wink, *al-Hind*; Francis Robinson, "Islam and Muslim Society in South Asia," *Contributions to Indian Sociology* 17 (1983): 185-203.

[47] Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011).

[48] Sebastian Prange, "The Social and Economic Organization of Muslim Trading Communities on the Malabar Coast, Twelfth to Sixteenth Centuries" (PhD diss., University of London, 2008).

[49] Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern Ulama in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawai'i Press, 2004).

twentieth-century British India, Malaya and Egypt.[50] Her work is primarily concerned with the encounters between Islamic and European legal and political systems. My study has greatly benefited from all of these authors, although a few loopholes remain. Save Hussin, they hardly dealt with Islamic law as such but rather with religion in general, with a focus on literature and conversion (Ricci), mysticism and reform (Azra) and connections (Prange). Moreover, they tried their best to *contextualize* the literature produced in the "peripheries". The resulting sort of context-determinism becomes problematic since they do not relate these "peripheral texts" to the longer textual traditions of Islam intellectually, geographically, or chronologically.

I shall argue that the Islamic literary productions from South and Southeast Asia and East Africa were part of a longer textual tradition which had always been part of a lengthy and widespread discursive intellectual tradition. The particular contexts in space and time in which those authors found themselves were not their primary concern. Rather they aimed to be part of the long Islamic intellectual tradition, relating their writing to earlier texts, scholars and ideas. I intend to shed light on the consequent decentralization of Islamic knowledge in this intellectual *longue durée* across space and time, and as a consequence the collapse of an intellectual centre of Islam. By the sixteenth century local significant centres were emerging together with learned elite Islamic scholars in a world without a centre, interacting with each other as adherents to the textual tradition of their religion.

The Butterfly Effect and the *longue-durée*: the Cosmopolis of Law
This dissertation involves ambitious concerns that cut across time and space, so there is a coherent theoretical *métissage* interlacing my approach. I will briefly elaborate how otherwise the task of engaging with texts and authors from such distant times, places, cultures and outfits would have been unmanageable. I mainly combine the ideas of Edward Lorenz and Fernand Braudel, together with a few others.

It was in 1961 that the mathematician-*cum*-meteorologist Edward Lorenz discovered serendipitously the so-called butterfly effect, a concept which has had immense impact on a number of areas in natural and social scientific research. But historians have hardly applied the idea, even though it seems to me to be a convincing mechanism to analyse long-term changes in human history. The butterfly effect (or the Lorenz attractor), to put it simply, supposes that small events in a place or at a time can produce dramatic shifts subsequently or elsewhere through non-linear impacts. An example would be that the flapping wings of a butterfly in Brazil cause a tornado in Texas.[51] Lorenz's idea catalyzed the chaos theory of mathematics, which accounts for patterns standing outside the usual rules of equilibrium, symmetry and period. The butterfly effect rejects the notion usually taken-for-granted that only large events produce effective change.[52] If we leave aside the mathematical algorithm, it

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[50] Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016).

[51] Edward Lorenz, "Deterministic Nonperiodic Flow," *Journal of the Atmospheric Sciences* 20, no. 2 (1963): 130–141; idem, "Predictability: Does the Flap of a Butterfly's Wings in Brazil Set Off a Tornado in Texas?". Presentation at the American Association for the Advancement of Science, 139th Meeting, 1972.

[52] James Gleick, *Chaos: Making a New Science* (London: Viking Press, 1987); Mark C. Taylor, *The Moment of Complexity: Emerging Network Culture* (Chicago: University of Chicago Press, 2003); Duncan J. Watts, *Small Worlds: The Dynamics of Networks between Order and Randomness* (Princeton: Princeton University Press,

is sufficient to say that this theory is vital for identifying miniscule changes that caused massive impacts through a complex network of non-linear processes over space and time.

Predictability and patterns have been major concerns for natural scientists. But for historians I would say that the roots of apparent chaos (not just their origins but also their ways of development) are especially important as we look into the past. The ideas seen through that prism prove very useful for analysing historical changes of wide geographical structures and of societal and economic conjunctures in a *longue-durée*, as the influential French historian Fernand Braudel put it. He introduced the concept of a *longue-durée* to analyse long histories of geographical structures, such as seas and mountains, which take a long time for ruptures to occur, in contrast to societies, economies and polities where changes are comparatively rapid. I shall take this notion of longevity beyond geography, and endeavour to apply it to the development of the legal texts of Islam. As the age-old scriptures of most religions travel across time and place believers apply them in their changing contexts. In the Islamic context the foundational scriptures and also the writings of Muslim jurists and theologians circulated during more than a millennium. The same text was subject to rephrasing, commentary, summarizing, and additional commentary. Changes, according to Braudel, were "virtually unsuspected either by its observers or its participants" in their immediate context. Lorenz recognises a proper empirical happenstance of chaos in which "the present determines the future, but the approximate present does not approximately determine the future". Over a long period of time, however, the changes became more noticeable, and then divisive, as miniscule changes began to divide the community into multiple groups or subgroups, all which were bound together around one or more texts. In other words, it is accumulation of future "anomalies", which is the past for historians in any system of knowledge.[53]

These long processes of continuity and minuscule changes which have large future impacts have been analysed by Talal Asad form an anthropological viewpoint. He identifies discourses and everyday debates of Muslims across time and space as decisive components of an "Islamic discursive tradition". The practice of commentary-writing is the best example of this tradition, as Muslim jurists engaged with a core text approved by tradition, yet through it cater for their own needs and priorities in a rather subtle way. As I said, these discourses or commentaries addressed a past, a present and a future: the *past* is the source of "proper performance [that] has been transmitted"; the *present* is the way it is "linked to other practices, institutions, and social conditions"; and the *future* is a point at which the practice will be secured in the short or long term with the motivation for modifying or abandoning it.[54] Although the future was an ideal state for the participants of the discourses, their present did not determine it. As historians we see the ways in which the future deviated from an ideal

1999); idem, *Six Degrees: The Science of a Connected Age* (London: Heinemann, 2003). For a brief survey of the earlier literature and its applicability to the social scientific research, see John Urry, "The Complexity Turn," *Theory, Culture and Society*, 22 no. 5 (2005): 1-14.

[53] This concept arises from Thomas Kuhn, *The Structure of Scientific Revolution* (Chicago: University of Chicago Press, 1970). I am not aware if any scholar has combined the Lorenz attractor with the Kuhnian idea of paradigm shifts through anomalies, although both positions stand very close to each other foundationally. A good application of Kuhn's idea to historical contexts relevant to this study is by Abu-Lughod, *Before European Hegemony*.

[54] Asad, *Anthropology of Islam*, 14-15.

form drastically, and produced many unpredicted changes. Yet often these changes were patterned, as I shall elaborate from the example of repeated divisions within Shāfiʿīsm.

A rather intriguing aspect with which this dissertation becomes entangled is the amalgamation of law, politics and religion. For a long time legal historiographical research placed the state at the centre of its investigation. It was overshadowed by an increase in studies from the perspective of legal pluralism. Among their other objectives they endeavoured to avoid the "ideology of legal centralism", in which the state is more important than anything else.[55] It was as if legal pluralists questioned the taken-for-granted view that state-law is central to all legal orders and they came up with arguments entangling state law, "non-state law" or "unofficial law". The notions about interactions between two or more legal orders, semi-autonomous social fields, etc. dominated the discourses, which varied in the different fields of History, Law and Anthropology. In any field it carries both advantages and disadvantages, but offers a few significant problems.

Firstly, the *longue-durée* of legal systems, as I have elaborated above, has hardly been addressed in legal-pluralism discourses. Most of them start with the European expansions into Asian, African or American lands, and when European legal systems began to interact with the ones in their newly colonized lands. But Islamic law existed in theory and practice before the arrival of the Europeans, and it has continued to be relevant after the Europeans left. Particular textual corpuses and their textual genealogy are our best examples for this. The legal texts of the *longue-durée* are important indicators of discontinuities and ruptures in the Islamic legal traditions and the diversity they embodied over long periods of time. Secondly, despite repeated attempts to do away with the state, legal-pluralism literature still very much centres on the state. The contributions to a recent specially important volume, Lauren Benton and Richard Ross (eds.), *Legal Pluralism and Empires 1500-1850*, confirm this. The editors themselves state that "The chapters contribute to a new narrative of world history that places empires at its center". In my discussion of longer Islamic legal discourses, an empires or a state are not central, as I shall elaborate in Chapter 2. Empire is a social structure that mostly stands outside or alongside the legalistic traditions. This is clear once we look into the discursive traditions of my subject. I propose a tripartite division of society, consisting of a fuqahā-estate, a state, and communities. The role and presence of God is very much at the centre of Islamic concepts of law which are not presented in legal pluralism. Finally, the internal dynamics of legalistic discourses have been marginalized in comparison to the attention paid to the external dynamics of two completely distinct legal systems and their interactions. Islamic legal systems have internalized so that many internal discourses now carry a number of remarkable divisions (visible from a long-term perspective) which in themselves try to accommodate one other.

Against this backdrop I advance the idea of a cosmopolis of law, a framework that accommodates deep continuities, chaotic formulations which are not anarchic, and a *longue-durée* of Islamic legal texts. Before moving on, the word *cosmopolis* needs some elaboration. Etymologically it combines Greek *kosmos* (world) and *polis* (city); usually it means a city inhabited by people, more precisely free males, from different regions. In philosophical discourses however it represents interaction between the *cosmos* and the *polis*, between the

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[55] John Griffiths, "What is Legal Pluralism," *Journal of Legal Pluralism and Unofficial Law* 24 (1986): 1–55.

Orders of Nature and Society. It is differently conceptualized in Greek, Chinese, Roman, Islamic, Hindu and Christian traditions in their attempts to elucidate interactions between these Orders; the gist of all their arguments is that they seek a more orderly structure for society and for the world at large. An aim to arrest chaos in respective legal systems undoubtedly conforms to this goal. That aims for an ideal state, but history shows us that mostly the opposite is achieved. Chaos remains, not just in terms of social and cultural practices, but even the idea of law itself seemed inevitably to display the nature of chaos. The internal dynamics of an idea targeted at terminating the chaos are embodied with conflicts and cohesions, invisible in the immediate present, but inflammable in the long run.

In his influential book *Cosmopolis: The Hidden Agenda of Modernity*, Stephen Toulmin has demonstrated how the rationalist trend within the Renaissance (and its humanism) produced the Enlightenment that searched for certainty. He calls that the "Politics of Certainty" in the seventeenth century.[56] This "Counter-Renaissance" was entangled with the ideas of *cosmopolis*, as reflected in one particular poem of John Donne (1572-1631) in which he laments the loss of order and the ways in which anarchy has taken over:

> 'Tis all in pieces, all Cohaerance gone;
> All just supply, and all Relation:
> Things fall apart; the centre cannot hold;
> Mere anarchy is loosed upon the world…;
> The best lack all conviction, while the worst
> Are full of passionate intensity…[57]

John Donne's poem reflects one of the earliest thoughts of the Enlightenment. Toulmin writes that he is no longer talking about physics and astronomy in his lines. What he feels is now lost to the World, with the organic unity that used to characterize the *cosmos*, is people's sense of family cohesion and political obligation. He describes "his sorrow and alarm at the apparent fact that all these different things are happening at the same time."[58] Although this was a phenomenal development in the century through a prism of rationality, the underlying call for a definite order was reflected in other places and times. A scrutiny of legal cultures across the globe sheds light on this idea. Theoretically longing for order remained the core aim of legalistic discourses, either by projecting the tradition or downplaying it in favour of rationality. In practice the final outcome varied, and particular systems of law in particular cultures achieved their goals more than others. Chaos was condemned, but it existed and at times it even prevailed. It may not have led to such anarchy that law was eliminated, yet it maintained an "orderly disorder" within or against the tradition of discourses. That explains the idea of a cosmopolis of law.

Finally, in literary and cultural studies, the concept of a "cosmopolis" has been analysed well by scholars like Sheldon Pollock, whose work on the "Sanskrit Cosmopolis" was beautifully entitled *The Language of the Gods in the World of Men*, evoking the Orders of Nature and Society in Sanskrit literature and that I also borrow for the title of my second

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[56] Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: Chicago University Press, 1992).

[57] Cited in Toulmin, *Cosmopolis*, 66

[58] Toulmin, *Cosmopolis*, 67.

chapter.[59] Ronit Ricci adapted Pollock's approach. She suggested an Arabic Cosmopolis, arguing that Arabic replaced Sanskrit in South and Southeast Asia. The existence of similar language-based cosmopoleis around the rim of the Indian Ocean has been recently been surveyed by Jos Gommans.[60] My idea of a legal cosmopolis corresponds closely to such conceptions. But it differs from them in that my emphasis is on legal cultures rather than on literary and linguistic parameters. Pollock's suggestion of a cosmopolis with regard to Sanskrit centres on universal ideas that Sanskrit was "never objectified, let alone enforced." It implicates three additional aspects: a supraregional dimension; a prominence of political dimension; an actual qualification of Sanskrit.[61]

In the cosmopolis of law, universalism, local contexts, supraregionality and the very question of law play crucial roles. Political structures, although indispensable for legal systems within or outside the parameters of legal pluralism, do not play a vital part in the Shāfiʿīte cosmopolis that I shall analyse. That cosmopolis stood for a universal, divine law free from political interventions; it stretched from the Eastern Mediterranean to the eastern end of the Indian Ocean; it practically disengaged with states in local contexts; it simultaneously sustained a tradition of internal political conflicts inherent to the Shāfiʿīte school and the fuqahā-estate it associated with. What I see in this long-term historical journey of a legal cosmopolis is a "disorderly order" that subsists across time and space. Toulmin's idea of a cosmopolis promulgates the urge of European intellectuals to bring order into the society, whereas Pollock's conception stands for a more open, flexible, and aesthetic world. I combine them both into a legal cosmopolis, precisely because the law wanted to arrest disorder, which was sustained across time, bringing about minuscule changes capable of leading to dramatic ruptures far away in place and/or time.

Histories of Education and Books

Apart from the spatial and temporal concerns related to Islamic law, this study also briefly deals with two other major histories, of education and books.

With regard to the education, the whole genre of the social history of the premodern Middle East has shed light on the ways in which knowledge was transmitted at centres such as Damascus, Baghdad and Cairo. These works are crucial to this study, since I shall look into the texts produced as part of the knowledge-transmission process across the Middle East and the Indian Ocean rim. The works of George Makdisi on the rise of colleges in the Islamic world, the study of Daphna Ephrat on the Sunnī ʿulamāʾ of eleventh-century Baghdad, Jonathan Berkey's monograph on knowledge-transmission in medieval Cairo, Richard Bulliet's work on Nishapur and Michael Chamberlain's study on Damascus display a clear understanding about how the ʿulamāʾ dealt with knowledge-production in those lands.[62]

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[59] Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006); Ricci, *Islam Translated.*

[60] Jos Gommans, "Continuity and Change in the Indian Ocean Basin," in *The Cambridge World History,* vol.6: *The Construction of a Global World, 1400-1800 CE*, ed. Jerry H Bentley, Sanjay Subrahmanyam and Merry E Wiesner (Cambridge : Cambridge University Press, 2015), 182-209.

[61] Pollock, *Language of the Gods*, 12.

[62] George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981); Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994); Jonathan Berkey, *The Transmission of Knowledge in*

Notwithstanding the presence of similar practices in the rest of the premodern Muslim world, these studies deal exclusively with the "conventional centres" of Islam, both geographically and chronologically. Even so, they have motivated me to deal with some essential questions related to the implementation of knowledge, the economic base of the fuqahā, and their relationship with political and social entities. Chamberlain's suggestions on the dependency of the *mansab* and the *ʿulamāʾ-aʿyān* have provided particular insights for a broader understanding of the pattern, although the individuals in my focus are outside this, as I explain in Chapter 2.

These extensive histories of education in the premodern Middle East rarely interconnect with what was actually taught and produced there, the texts and the commentaries. How, when and why particular texts were produced, taught, circulated, and commented upon during the process of transmitting knowledge needs further study, especially related to book history.

My earlier descriptions on commentary-writing and *ḥāshiyat*s make it clear that textual transmission stands very close to the concerns of book history. I shall explore not only intellectual transmission through Shāfiʿīte texts, but also the physical transmission of books, seeing them as part of a wider phenomenon in the Islamic world, traversing the premodern rims of the Eastern Mediterranean and Indian Ocean. This is a tiny attempt to engage critically with a highly Eurocentric field of study from the perspective of the Indian Ocean.[63] I am concerned with some basic questions. How did people write commentaries again and again on a same text? If people from the "peripheries" wrote commentaries or abridgements on texts from the "centres", how did they access them? The pioneering study of J. Pedersen on Arabic books, and later contributions of such scholars as George N. Atiyeh, Adam Gacek, Judith Pfeiffer and Konrad Hirschler, answer many of our questions.[64] Pedersen deals with the history of Arabic texts from a pre-Islamic stage until the twentieth century, how they were written, reproduced, and circulated. Franz Rosenthal elaborated on the "Muslim attitudes toward fundamental problems" of the writing, reading, collecting, teaching and studying of

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Medieval Cairo: A Social History of Islamic Education (Princeton: Princeton University Press, 1992); Richard W. Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972); Daphna Ephrat, *A Learned Society in a Period of Transition: The Sunni Ulama of Eleventh Century Baghdad* (Albany: State University of New York Press, 2000).

[63] For a survey of African book history, see Elizabeth le Roux, "Book History in the African World: The State of the Discipline," *Book History* 15 (2012): 248-300, most of the literature she surveys covers only the book history of Africa after the introduction of printing press.

[64] Johannes Pedersen, *The Arabic Book*, trans. Geoffrey French, ed. with an intro. Robert Hillenbrand, (Princeton: Princeton University Press, 1984); George N. Atiyeh, ed. *The Book in the Islamic World: The Written Word and Communication in the Middle East* (Albany: State University of New York Press, 1995); Adam Gacek, *The Arabic Manuscript Tradition: A Glossary of Technical Terms and Bibliography* (Leiden: Brill, 2001); idem, *Arabic Manuscripts: A Vademecum for Readers* (Leiden: Brill, 2009); Judith Pfeiffer, *Transmission of Knowledge in 13th-15th Century Tabriz* (Leiden: Brill, 2014). Konrad Hirschler, *Written Word in the Medieval Arabic Lands: A Social and Cultural History of Reading Practices* (Edinburgh: Edinburgh University Press, 2012). Also on the early history of Arabic book transmission, see Stefan Leder. "Authorship and Transmission in Unauthored Literature: The Akhbār Attributed to al-Haytham ibn ʿAdī," *Oriens* 31 (1988): 67-81; Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993); Seyyed Hossein Nasr, "Oral Transmission and the Book in Islamic Education: The Spoken and the Written Word," *Journal of Islamic Studies* 3, no.1 (1992): 1-14; Judith Pfeiffer and Manfred Kropp, eds. *Theoretical Approaches to the Transmission and Edition of Oriental Manuscripts* (Würzburg: Ergon Verlag, 2007).

manuscripts.[65] Hirschler looked into the writing and reading cultures of Ayyūbid and Mamlūk Egypt and Syria around the thirteenth century. Also, his latest study takes us to the breadths and depths of book circulation in the Middle East by exploring a remarkable thirteenth-century catalogue of the Ashrarafīya Library in Damascus.[66] Pfeiffer enlightens us on the transmission of manuscripts and circulation of knowledge in and between the Middle East and Central Asia. The volume by George Atiyeh takes into account many genres of Islamic books and identifies various levels of production, content, impact, etc. We have not been surprised to see that they all neglect the South and Southeast Asian contexts of Islamic texts, even though for centuries regions such as India have been some of the main conservators, producers and distributers of Arabic texts; Omar Khalidi explained this well in his guide to the Arabic and Persian manuscript-collections in India.[67] Furthermore, those studies rarely deal with transregional oceanic transmission or long journeys of Arabic texts, except for the works of Pfeiffer and Finbarr Flood, who look into the wider travels of manuscripts and materials in the Middle East, Central and/or South Asia.[68]

A volume edited by Graziano Krätli and Ghislaine Lydon on the Muslim African book-trade and manuscript cultures explains several aspects of how a text functions in a market, educational institution, mosque, house, etc. It includes interesting narratives about bibliophiles who made trans-Saharan journeys themselves or with the help of scholars, students or pilgrims to acquire books which were used by a large network of aspirants to knowledge.[69] It sets out a perfect framework for a historical analysis of the circulation of Islamic books in the worlds of the Indian Ocean and the Mediterranean. Along with Muslim merchants who travelled between the Middle East and the Far East, scholars and missionaries moved carrying many books and ideas. It contributed to the growth of a travelling network of Islamic texts. People became influenced by these books as they were copied, sold and bought along coastal belts. Even after the emergence of the printing press in Europe and Asia, this manuscript-culture continued at various levels and forms. But it seems that only S.D. Goitein, with his passing references to the Jewish book traders of the Mediterranean and the Indian

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[65] Franz Rosenthal, *The Technique and Approach of Muslim Scholarship* (Rome: Pontificium Institutum Biblicum, 1947).

[66] Konrad Hirschler, *Medieval Damascus: Plurality and Diversity in an Arabic Library: The Ashrafiya Library Catalogue* (Edinburgh: Edinburgh University Press, 2016).

[67] Omar Khalidi, "A Guide to Arabic, Persian, Turkish, and Urdu Manuscript Libraries in India," *MELA Notes* 75–76 (2002-2003): 1-59.

[68] In Pfeiffer's works the references to South Asia are mostly in passing, wheras Finbarr Flood's references to manuscripts are fleeting. See, Finbarr Barry Flood, *Objects of Translation: Material Culture and Medieval "Hindu-Muslim" Encounter* (Princeton: Princeton University Press, 2009), 6-7, 21, 68, 96, 124, *passim*.

[69] Graziano Krätli and Ghislaine Lydon, *The Trans-Saharan Book Trade: Manuscript Culture, Arabic Literacy and Intellectual History in Muslim Africa* (Leiden: Brill, 2011). This volume, together with another work by Ghislaine Lydon on the interconnections between the overland trade-networks and Islamic legal institutions in Western African contexts, have suggested to me a perfect outline for my research into the Mediterranean and the Indian Ocean context of Islamic texts related to law, mysticism and holy-war. Though the latter work is significantly on nineteenth-century interactions of mercantile and legal institutions, Chapters 6-8 have had a clear influence on Chapters 2-3 of this dissertation; see Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks and Cross-Cultural Exchange in Nineteenth Century Western Africa* (Cambridge: Cambridge University Press, 2009).

Ocean, offers the only discussion on premodern book transmission along the ocean rims.[70] I shall attempt to trace some aspects of this maritime movement of texts, particularly of Shāfiʿīte legal texts. In the course of my analyses, the works on editorial theory and textual criticism have been very beneficial and from time to time I adapt their methods that intertwine between philology, bibliography and literary theory.[71]

Sources

Finding sources for such a large scale study on the Islamic legal history of the Indian Ocean and Mediterranean rims with a focus on Shāfiʿīsm leads to contradictory situations. On the one hand materials are almost non-existent. But on the other there is an unmanageable amount. The abundance consists of actual texts written as Shāfiʿīte legal manuals, commentaries, glossaries and marginalia in the Middle East, East Africa, South and Southeast Asia. In those vast corpuses, my prime source of study has been the *Minhāj* of al-Nawawī (thirteenth-century, Damascus) and by extension *Tuḥfat* of Ibn Ḥajar al-Haytamī (sixteenth-century, Cairo and Mecca), *Fatḥ* of Zayn al-Dīn al-Malaybārī (sixteenth-century, Malabar), *Iʿānat* of Sayyid Bakrī (nineteenth-century Mecca), and *Nihāyat* of Nawawī al-Bantanī (nineteenth-century, Java and Mecca). These five texts are supplemented by other works from the same authors and their contemporaries, their commentaries or marginalia produced in different contexts. The most useful among them are Nawawī's *Majmūʿ*, Ibn Ḥajar's *Fatāwā*, al-Malaybārī's *Ajwibat al-ʿajībat*, Shams al-Ramlī's *Nihāyat al-muḥtāj*, Khaṭīb al-Sharbīnī's *Mughnī* (both from sixteenth-century Cairo), Nūr al-Dīn al-Ranīrī's *Ṣirāṭ al-mustaqīm* (seventeenth-century Aceh), and Muḥammad Arshad al-Banjarī's *Sabīl al-muhtadīn*.

All of these are actual legal texts, and the general consensus among legal historians of Islam is that such legal texts do not provide extensive historical data relevant to their contexts and authors. Although I have tried to question this consensus, identifying a particular text with a specific author based on a manuscript itself, or its social, economic, intellectual, cultural and political contexts, remains a problem. Fatwa-collections are, however, less problematic; they open new vistas for social and cultural historical analyses.[72] Against that background, my work utilizes different biographical or hagiographical literatures, giving preference to the contemporary writings. When those are missing I depend on later writings. For contextual stories I have looked into contemporary materials, of which there are very rich sources for the medieval Middle East. The *ṭabaqāt*, *tarjamat*, *tārīkh*, *tahḏīb* were my major literary sources, and of those I made significant use of Nawawī's *Tahḏīb al-asmāʾ wa al-lughāt*, Ibn ʿAṭṭār's *Tarjmat al-Nawawī*, the *Ṭabaqāt*s of Shāfiʿīte jurists written by Ibn Ṣalāḥ, Tāj al-Dīn ʿAbd al-Wahhāb bin ʿAlī al-Subkī, Ibn Qāḍī Shuhbah and Abū Bakr al-Muṣannif. The *ṭabaqāt*s with regional specializations have also been useful, such as the one on Yemen

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[70] S.D. Goitein, *India Traders of the Middle Ages: Documents from the Cairo Geniza: India Book* (Leiden: Brill, 2008); idem, "Mediterranean Trade Preceding the Crusades: Some Facts and Problems," *Diogenes* 15, no. 59 (1967), 47-62.

[71] Although many studies have appeared in the field, a seminal introduction useful for historians is Jerome J. McGann, *A Critique of Modern Textual Criticism* (Chicago: University of Chicago Press, 1983).

[72] David S Powers, "Fatwas as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez," *Al-Qantara*, 11, no. 2 (1990), 295-341; Nico Kaptein, "Meccan Fatwas from the End of the Nineteenth Century on Indonesian Affairs," *Studia Islamika: Indonesian Journal for Islamic Studies* 2, no. 4 (1995): 141-159.

by Ibn Samurat al-Jaʿdī. The sixteenth-century accounts of Mecca *Bulūgh al-qirāʾ* and *Ghāyat al-marām* of ʿIzz al-Dīn ʿAbd al-ʿAzīz, *Nayl al-munā* of Jār Allāh ibn Fahd, and the many works of Quṭub al-Dīn al-Nahrawālī were useful for understanding the regional as well as transregional connections of the city that functioned as a connecting point between the "centres" and "peripheries". The same roles were played three centuries later in the accounts of Snouck Hurgronje and ʿUmar ʿAbd al-Jabbār for nineteenth-century Mecca. From this textual complexity, I have partially but carefully utilized all the possibilities they provide for a better understanding of a Shāfiʿīte network of texts and ideas.

While these rich materials open a convoluted web of evidence, there is real scarcity for the "peripheral" communities. We have a few premodern legal texts from the non-Middle Eastern Indian Ocean rim (mainly from Sumatra and Malabar), but almost nothing on legalistic practice, biography or textual history. Therefore, I shall make use of whatever is available on the theme from a wide range of materials, including inscriptions (such as the one at Terengganu), Hikayat literature, commands of the Sultans, travel accounts, and customs house records. The situation becomes slightly better once we come to the nineteenth century, when we have more biographical dictionaries from Southeast Asia and East Africa. Aboe Bakar Djajadiningrat's *Tarājim ʿUlamāʾ Jāwa*, Ali Hasjmy's *Ulama Aceh*, K.H. Siradjuddin Abbas' *Ulama Syafi'i dan kitab-kitabnya*, Abdallah Salih Farsy's *The Shafi'i ulama of East Africa*, and two descriptive doctoral dissertations on Indian Shāfiʿīsm mentioned earlier all include useful details. These materials can be supplemented with biographical information and popular writings available in translations or adaptations of *Minhāj, Tuḥfat, Fatḥ, Nihāyat* and *Iʿānat* in Tamil, Malayalam, Malay, Dutch, Urdu and Bahasa Indonesia.

I have tried my best to track down the original manuscripts of the principal works I focus on, which is so important for analysing commentaries. J. Pedersen has noted that in the culture of copying Islamic manuscripts copyists often included their own additions or corrections. A multi-copied text is thus a multi-distorted text. This increases the need for revising our approach to source-criticism for the legal texts of Islam. Most scholars who work on the Islamic legal history take the published versions for granted and make confident arguments from them. Having said this, I do not wish to deny sweepingly the authenticity of these published legal texts, which often are the best critical editions that resolve a long-standing bibliographical crisis between *relatively corrupted* texts and *relatively reliable* texts.[73] But I do wish to pinpoint the dangers engendered in that methodology, especially since traditional scholars point out mistakes in "critical editions".[74] I shall also gently emphasize that different manuscripts have different appearances and contents reflecting different approaches to the text. If we largely depend on published materials as our primary sources, we have to take into account that "the author's original manuscript" is hardly accessible. An earlier manuscript is better than a later one, and even that is often better than a printed edition.[75]

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[73] Taking cue from McGann, *Modern Textual Criticism*, 4-5.

[74] See for example the list of errors pointed out in the printed version of *Minhāj*, "Corrections to Dar al-Minhāj's Minhaj al-Talibin", http://islamclass.wordpress.com/2013/03/29/corrections-to-dar-al-minhajs-minhaj-al-talibin/ (accessed 05 March 2016).

[75] This is not to invalidate the published versions of Islamic legal texts. Many scholars have painstakingly attempted to come up with critical editions to many legal texts encompassing variations in different manuscripts. If such critical editions are available, I have included the printed version, but with caution.

Terms, Times and Terrains

Studies of Islam's legal history use terms such as law, jurisprudence, and legal codices interchangeably. It is confusing for a non-specialist to differentiate these terms for a cursory reading, especially since authors mean different things by the same term. Some reserve a term like "Islamic law" for *fiqh*, and "Islamic jurisprudence" for *uṣūl al-fiqh*, but that has not been widely accepted.[76] In Western references "jurisprudence" is a problematic term, and one loosely defined. While R.W. Dias characterizes it as "the nature of the subject is such that no distinction of its scope and content can be clearly determined," Julius Stone calls it "a chaos of approaches to a chaos of topics, chaotically delimited." So translating *fiqh* or *uṣūl* as simply "law" and "jurisprudence" respectively becomes a meaningless exercise.

When referring directly to Islamic terminology and generic categorization, we find three dominant terms that appear concurrently: *uṣūl al-fiqh* connotes theoretical legal reasoning; *furūʿ al-fiqh* refers to positive legal reasoning; and *takhrīj* denotes to the process of interrelating them. These terms developed into independent genres of Sunnī Islamic legal writing, especially *uṣūl al-fiqh* and *furūʿ al-fiqh*, and of course there are studies from the so-called classical stage of Islamic legal literature itself which are "transgeneric" in nature. Here I shall discuss only the *furūʿ al-fiqh.* All the texts and the commentaries I focus on belong to this genre, unless stated otherwise. For the sake of convenience I use terms fiqh, Islamic law and legal codes/practices interchangeably, and by those I always mean *furūʿ al-fiqh.*

The concept of the "fuqahā-estate" stands at the centre of this dissertation. In the long discursive tradition focusing on particular texts, this collective of Muslim jurists comprises a number of individuals, institutions, ideas and texts across time and space. In many ways this concept is an indirect adaptation of George Dube's seminal tripartite conception of the medieval European society into three *l'imaginaire* "orders" — just as the fuqahā in their estate are not a broad order like the clergy and they are not *those who pray*.[77] They are more of an "estate", like the jurists or journalists who formed the third or fourth estates; a term that again owes its origin to the "estates of the realm" of medieval and early modern Europe. Primarily, my fuqahā-estate has two levels: a formative micro-level and a developed macro-level. In the early centuries of Islamic legal thought, knowledge was transmitted from persons to persons through small "circles", as we shall see in Chapter 1. These personal circles eventually developed into doctrinal "schools". People were moving through these circles up to the mid-ninth century, yet most of their journeys remained within parts of the Arab/Arabized lands. This is the formative stage, the "micro-level" of the fuqahā-estate. By the late ninth century, mobility increased and in many other parts of the Muslim world conflicting doctrinal schools began to arise. The collectivity of members of those different schools as a single body of jurists formed the fuqahā-estate. Every place may have its own estate, either with members of Sunnī, Shīʿīte and Ibāḍī schools, or only with members of one particular school. If there were many schools, I call them a "cluster", such as the Shāfiʿīte cluster of Khurasan opposing the Ḥanafīte cluster while both belong to a Khurasani fuqahā-estate. Each cluster might have had its own institutions, like madrasas and mosques, but it is quite possible that most clusters

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[76] See for example: Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), who gives those quotations of Dias and Julius Stone.

[77] Georges Duby, *The Three Orders: Feudal Society Imagined*, trans. Arthur Goldhammer (Chicago: University of Chicago Press, 1980).

shared the same institution. The interaction between the fuqahā of distant lands, as when the Shāfiʿītes of Khurasan arrived in Damascus, marked the beginning of the "macro-level" in the evolution of the estate. This increased mobility arose from a macro-network of scholars, across which texts, ideas, and people moved beyond borders. To put these organizational terms simply, we see that a circle evolved into a school, whose *members* formulated a cluster in *a region*.[78] A cluster is a *community of ideas*, to rephrase Pollock's "community of sentiments", in which *ideas* indicate what distinguishes a school. Members of one or more clusters in one place formulate a single body of jurists called fuqahā-estate, which were able to share values, norms, etiquettes, and institutions. The micro-macro distinction is about the widening scale of interactions between and among the circles and schools in the formative stage of the estate, and then among and between the clusters in its developed stage. The evolution of micro-networks into macro-networks should not be taken as a process of elimination. Even after the expansions, the micro-level circles and regional networks existed both in the central Islamic lands and beyond, feeding the necessities of macro-mobilities.

A significant problem remains unresolved in this study, my geographical categories. The broad categories of the Eastern Mediterranean and Indian Ocean provide a spectrum to look at the influences of Shāfiʿīsm across national, continental and even oceanic borders. Yet the differences within this "Shāfiʿīte cosmopolis" present a dilemma for this study. The main issue arises with regard to the Middle Eastern and non-Middle Eastern parts of this cosmopolis, especially when the people, ideas and texts from the coasts of the latter began to travel back to the native land of the school. Existing categorizations do not cater for these nuances. The Indian Ocean can be divided between its eastern and western parts. At first sight this demarcation is convincing, but on closer inspection it does not help. For example, Malabar and East Africa belong as much to the western Indian Ocean as regions of Southern Arabia, yet they are outside the heartlands of Islam in general and of Shāfiʿīsm in particular. The problem still arises if we resort to smaller areas like the Red Sea, Arabian Sea and Bay of Bengal. I have found some temporary shelter in terms like "central" and "peripheral" Islamic/Shāfiʿīte lands, fully aware of the problem they incur. We find the same predicament with the subcontinental terms I use, such as "East Africa", "Middle East"/"West Asia", "South and Southeast Asia". A recent attempt was made to interconnect studies of the Indian Ocean and the Middle East in a published roundtable discussion, which seemed to be a promising step towards solving some problems of geographical terminology, but it turned out to be disappointing in reaffirming monolithic categories like the "western" Indian Ocean.[79] I am even sceptical about keeping the category of a single ocean with definite boundaries. Although the maritime highway of the Indian Ocean promises to be a useful framework for outlining a transregional history with specific focuses, we know that many ideas, cultures, systems and people at times crossed the boundaries in the east to the Pacific and in the west to the Mediterranean. Shāfiʿīsm is the best example for the continuum between the Eastern

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[78] Here the word "cluster" is close to the existing usage of "school", but differs in its emphasis in two ways: a) on the agency of people, institutions and everyday nuances; a school denotes intellectual engagements; b) on the region in which the people and institutions were based; a school is more universalistic in appearance.

[79] Michael Low, "Introduction: The Indian Ocean and Other Middle Easts" and Nile Green, "Rethinking the "Middle East" after the Oceanic Turn," *Comparative Studies of South Asia, Africa and the Middle East* 34, no. 3 (2014): 549-555 and 556-564 (respectively).

Mediterranean and the Indian Ocean.[80] The predicament of geographical borders adds another possible vista for my proposed analysis of the legal cosmopolis.

Chronology was a comparatively easier matter. While dealing with a *longue durée* from the ninth till the nineteenth century I decided not to use broader terms such as "Late Antiquity", "Early (or Late) Medieval", "Middle Ages", "Early Modern" or "Modern". Instead I made the centuries delineate periods of time, for it is objective and avoids loaded terms like modernity. Only in three contexts do I occasionally deviate from this: a) when referring to trends in the historiography of particular communities, places or themes; b) when using "modernists" to refer to a particular tendency in Islamic intellectual history; c) when using "premodern" as an abstract chronological unit to denote a period before the nineteenth century.

Finally, a comment on the term "commentary", a core term in this dissertation, will be apposite. I shall explain in Chapter 1 that the texts of Shāfiʿītes were multi-layered and multi-formed in their engagements. I identify thirteen forms found around the Indian Ocean rim, both at "the centre" and "the peripheries". Yet, unless I state otherwise, I use "commentary" for any sort of textual engagement with an earlier exemplar, whether it be a summary, super-commentary, or poetic rendering.

Organization of the Chapters

All my chapters are involved with three broader concerns: following the contents and form of a text at its formation and its reception within the tradition of Shāfiʿīsm; tracing regional contexts that could have influenced the text and its author; connecting the texts with wider networks of mobility, economy, and intellectual developments in the school. I tend to follow an emic approach for the first concern, but an etic method for the other two. Traditional narratives circulated within or around the school and its texts form the basis of emic analysis, for they provide "internal" or "insider" perspectives. The primary and secondary sources on the regional and transregional contexts of the school and the texts in focus form the basis of the etic approach, in that they are "external" or "outsider" accounts on wider historical developments.

Section I has three chapters. Chapter 1 examines the backgrounds of Islamic legal historical developments that facilitated the production and reception of particular textual traditions. Following the existing historiography of early Islamic law, I introduce the concept of the "fuqahā-estate", which becomes crucial to my further analysis. The spread of Islamic legal networks and their local and regional influences by the tenth century encouraged the evolution of a scholarly order ("fuqahā-estate") for whom the texts were a central component of their intellectual engagements. The legal texts enabled its members to communicate within different clusters of this estate and the estates at large, as well as within their contemporary socio-political, cultural, and economic contexts. In Shāfiʿīsm this resulted in the production and dissemination of multiple textual families, of which *Minhāj* is the most important. Chapter 2 looks into the ways in which the fuqahā-estate and their texts communicated with the regional polity and society. On the one hand, the fuqahā had a complex relationship with

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[80] On the continuum between the Mediterranean and the Indian Ocean worlds, see Gommans, "Continuity and Change"; André Wink, "From the Mediterranean to the Indian Ocean: Medieval History in Geographic Perspective," *Comparative Studies in Society and History* 44, no. 3 (2002): 416-445.

the state and they always idolized the jurists who distanced themselves from the political entities. On the other hand, they could not escape the influences of normative orders and customs of the time which developed routes to their legal texts, which ideally had to have a universal value and vision. Chapter 3 explores the transregional networks that enabled the transmission of legal textual ideas across borders. The intellectual conflicts and cohesions on the one side and the mercantile-scholarly interconnections on the other contributed to the spread of Shāfiʿīte ideas from the Eastern Mediterranean to the eastern rim of the Indian Ocean. Micro and macro maritime communities, such as the Kārimīs, Ḥaḍramīs, non-Ḥaḍramī Yemenis, Persians, al-Hindīs, Swahilis and Malays, participated in this transmission of texts and ideas.

All these three chapters provide the analytical kit and background information for my closer examination in the following section. Section II (Chapters 4-7) with similar concerns but with different aspects of time and space. Each chapter follows one text (two in Chapter 7) that belong to the "*Minhāj*-family", raising the same questions about i) internal dynamics, ii) regional settings and iii) transregional contexts as in Section I. All four chapters in this section accordingly have three parts besides the introductions and concluding remarks.

Chapter 4 examines the trajectories of the central text of my study, *Minhāj al-ṭālibīn* of Nawawī. Although it is an abridgement of an earlier text, it sets a trend in the whole of Shāfiʿīte legal thought by institutionalizing, codifying and canonizing the doctrine of the school. The recalcitrant attitudes of Nawawī towards the ruling entity and the ongoing crusades were also reflected in the text, as well as his location not far away from the Mediterranean. I identify the politics and economies of citations found in *Minhāj*'s legal articulations. I also explain how and why the text became so important for the later generations of Shāfiʿīte jurists across the globe.

Chapter 5 traces the formation and reception of the one commentary of *Minhāj*, *Tuḥfat al-muḥtāj* of Ibn Ḥajar al-Haytamī, written in sixteenth-century Mecca. I argue that Ibn Ḥajar's migration to Mecca and his subsequent life in the city had an enormous impact on the future course of the school. The city was Shāfiʿīzed as much as the school was Meccanized, raising protests from a Cairene Shāfiʿīte cluster. The school became divided, with a Meccan version against a Cairene one. The Shāfiʿītes in the Hijaz, Yemen, Central, South and Southeast Asia adhered to the Meccan version.

This is reflected in a Malabari text I discuss in Chapter 6, *Fatḥ al-muʿīn* of Zayn al-Dīn al-Malaybārī. He was arguably a student of Ibn Ḥajar, and through this text he wanted to place himself within the longer tradition of the school through the texts of Ibn Ḥajar. He was successful in this end, and also in asserting his regional approach to the legal discussions. Such an assertion of regional issues by a "peripheral" jurist was unprecedented in the history of Shāfiʿīsm. This factor also contributed to its successful reception among the later Shāfiʿītes.

Two works written after Zayn a-Dīn's work represent its success: *Nihāyat al-zayn* by Nawawī al-Bantanī al-Jāwī and *Iʿānat al-ṭālibīn* by Sayyid Bakrī. Both these texts are covered in Chapter 7 in order to argue that they mirrored a larger trend in the traditionalist Islamic world which had become the target of constant criticism. It was a time of many syntheses in Shāfiʿīsm. Cultural, intellectual and geographical divisions were to be reconciled, and the *Nihāyat* and the *Iʿānat* both worked towards this goal.

In the wake of the journeys of these texts, I demonstrate how a text from the thirteenth century claiming to belong to the ninth-century tradition was frequently revived until the twentieth century by numerous scholars according to the needs of their own localities and in their own times. On the basis of this textual *longue durée*, it becomes clear that the legal tradition of Islam, which has mostly been stamped as having lost its originality and individuality by the end of so-called classical era, in fact continued to be discussed more thoroughly in the "post-classical era" than in the early centuries of Islam. It produced rigorous works in Shāfiʿism that set the frameworks of legal discourses for centuries to come. Commentary writing functioned as an effective intellectual exercise, and communities throughout the worlds of the Eastern Mediterranean and the Indian Ocean participated in this tradition with their own additions and versions. In the course of time the "central" and "peripheral" Islamic lands came to work together and synthesized an advance in the legal tradition, although those were neglected in the existing historiographies of Islamic law, the Indian Ocean, and the areas of South and Southeast Asia and East and South Africa.

Section One
The Frameworks
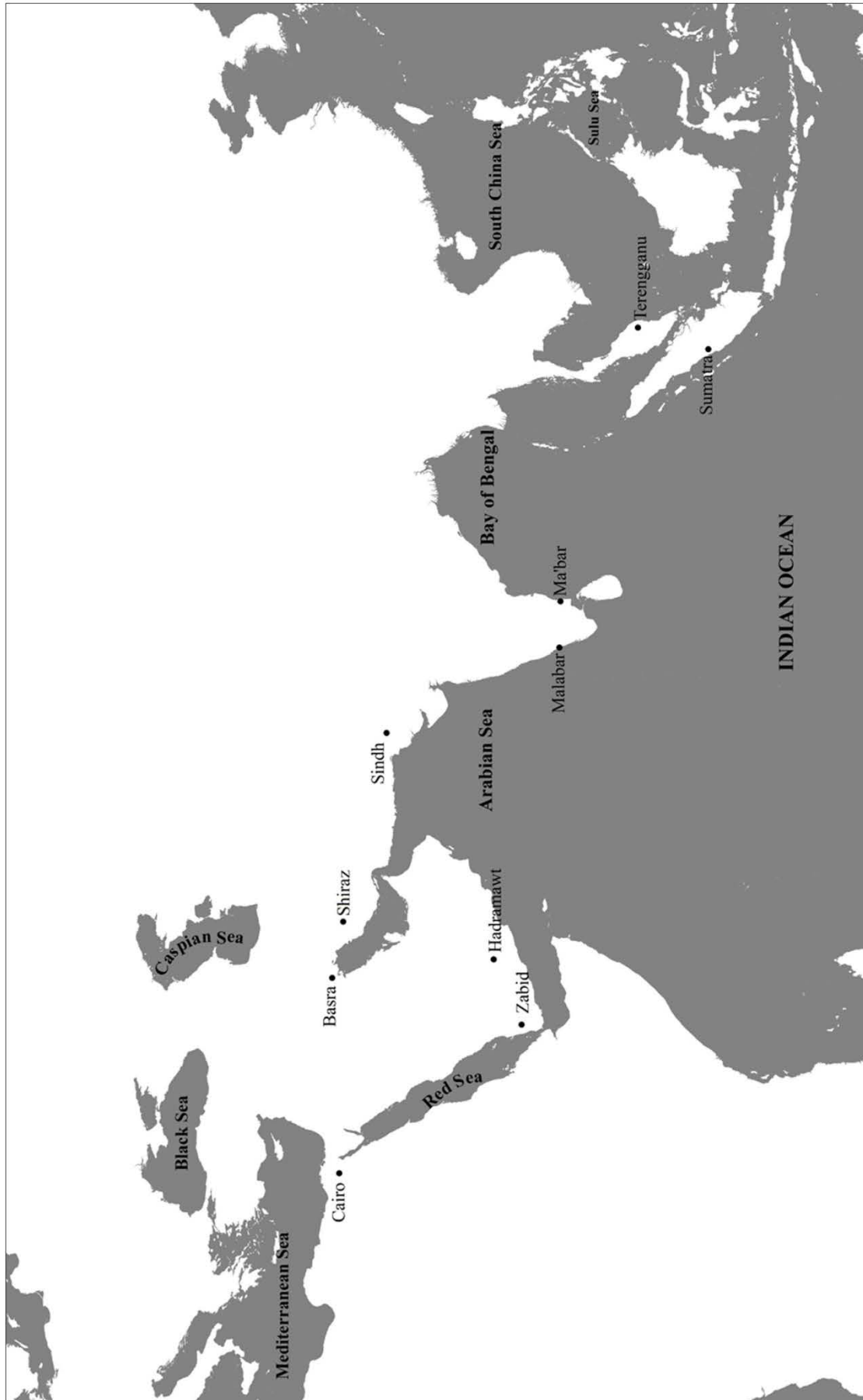
MAP 2. Major Shāfiʿīte hubs around the Indian Ocean before the sixteenth century.

Introductory Remarks

Drawing on primary and secondary sources, this section sets frameworks to explore the histories of the Shāfiʿī school from several angles. It calls into question the validity of many narratives on the spread of Islamic legal ideas, and endeavours to shed light on the historical forces that shaped the trajectories of Shāfiʿīsm. In doing this it unravels its roots and traces its routes through time over more than a millennium and across thousands of miles of territories.

The first chapter concentrates on the historiography of Islamic law with a special focus on Shāfiʿīsm. Those who are already familiar with the subject could proceed directly to the second chapter, but glancing through it would be worthwhile because in it I explain my conception of the fuqahā-estate and survey of Shāfiʿīte textual families. Both these facets recur throughout the dissertation. A major suggestion in this chapter concerns the ways in which earlier micro-communities of jurists developed into a text-centric scholarly order that I identify as the fuqahā-estate. Since texts were fundamental to their juridical discourses, huge corpuses of law books were developed within each school. I follow the ones particularly related to the Shāfiʿīte school. In the last section of the chapter, I describe the major textual families and pay detailed attention to one of them.

In the second and third chapters I elaborate further on the concept of the fuqahā-estate by exploring the ways in which they fashioned themselves and defined their connections and disconnections with other sections of society, particularly political and economic sectors. The second chapter is essentially about the regional contexts in which the fuqahā-estate operated, while the third is about its transregional potential. In the second chapter I analyse how they organized themselves, what elements constituted an estate, what they did after they became organized, and to what extent they influenced the contexts in which they worked and were in turn influenced by external contexts. The third chapter takes up almost the same questions but in a transregional framework, broadly covering an area from the Eastern Mediterranean to the Indian Ocean. The reason for stretching so big a canvas is that Shāfiʿīte ideas are explicitly present, historically and in the present time, across these regions. It has been seen as a Shāfiʿīte cosmopolis, a kind of *terra firma* that shares the same texts, ideas, vocabularies, conflicts and contradictions. I examine how the legal cosmopolis evolved in it, what actually constituted a Shāfiʿīte sphere, and who, when and what contributed to its formation.

The three chapters in this section can be described as ones that discuss text, contingency and dissemination respectively, moving from a micro, to a meso and to a macro level. It is in the following section that I shall bring all three levels together into one single microsite for each text. A word of caution is necessary regarding my approach to chronology. The chapters in this section in particular and the dissertation in general do not narrate events in a linear chronological sequence. I follow particular themes, including law, or more precisely law books, examining regional contexts and transregional dissemination. In these themes time flashes in and out, backward and forward, depending on what particular aspect, place or group is under discussion. Where I do refer to time, mostly counted in centuries, I have tried my best to be extremely careful. If confusions should arise, a cautious reading will eradicate doubts.

Chapter 1

Textual *Longue-durée* of Islamic Law

Where there is no text, there is no object of study, and no object of thought either.

—M.M. Bakhtin, *Speech Genres and Other Late Essays*: 103.

There is no progress, no revolution of ages, in the history of knowledge, but at most a continuous and sublime recapitulation.

—Umberto Eco, *The Name of the Rose*: 236.

All schools of law must have a text that sets the framework of their legal thought. In the case of Shāfiʿīsm, such a text was written four centuries after the life of its founder. It is known as *Minhāj al-ṭālibīn* (henceforth *Minhāj*), a text that started a remarkable intellectual trend in the legal writing of that school. The *Minhāj* has been commented on and discussed most intensively within the school across the Islamic world more than the works ascribed to the eponymous founder of the school. The abundance of commentaries, super-commentaries and abridgements related to *Minhāj* is the matter of the historical inquiry I shall undertake. Before delving into it, it is necessary to appreciate the historical background that made *Minhāj* significant in the Shāfiʿīte textual tradition. Thus, this chapter looks into the continuities and ruptures in the "intellectual" history of Islamic law that facilitated the production and reception of such a text,[1] and I shall deal with several questions: Why are the texts so central and authoritative for the legal tradition of Islam in general and for Shāfiʿīsm in particular? What lays the ground for a text like *Minhāj* to be functional and foundational in Islamic law? I take an emic approach to answer these questions, but only after giving due consideration to some basic questions: What forms a school in the Islamic legal tradition? How and when were the schools, especially the Shāfiʿīte school, formed and did they begin to acquire a wider following?

The historiography on the formation of Islamic law in general, though not of Shāfiʿīsm in particular, is broad and rich. I shall briefly engage with those studies, but I will put them into a new framework to analyse the interconnections of legal scholars with each other and with wider social, political and cultural spheres, and to understand the modes and functions of legal schools that venerate texts as authoritative for their existence and for their expansion. I identify their collective as a "fuqahā-estate", also called a "parallel society", that had operated autonomously in the Islamic world since the tenth century. In the first part of this Chapter I address the formation of the schools of Islamic law (particularly of Shāfiʿīsm), the micro- and macro-networks of scholars, and the emergence of institutions and practices. Then I analyse a few special features of the fuqahā-estate, the centrality of legal texts for their authority, and

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[1] I use the term "intellectual" in relation to legal texts and scholars, following the concepts of Thomas Sowell. He took a person as "intellectual" if his/her professional engagements solely involved the production and dissemination of ideas with creativity, objectivity, authenticated knowledge, or penetrating intelligence; see Thomas Sowell, *Knowledge and Decisions* (N.Y: Basic Books, 1980).

the selective validation of certain texts. This leads me to the final part of the Chapter in which I look into the textual tradition and scholarly genealogy of Shāfiʿīsm, that arises from *al-Umm* and expands into a bigger family in which *Minhāj* also has (or is) a part. I suggest that we should take the horizontal expansion and vertical intensification of fuqahā-estates to set the background for the production, circulation, and dissection of such textual families.

Islamic Law, Micro-Networks and Schools

Can we actually date the formation of Islamic law? The answer to this seemingly simple question has been the subject of many long debates, placing the time of birth at different points in first three centuries of Islam (the seventh to the tenth centuries CE). Primary sources are more problematic than enlightening, and answers become more obscure the more one goes back through the centuries.

Joseph Schacht, an undisputed authority on Islamic legal history, observed that law stood outside the sphere of Islam until the middle of the eighth century CE, and it was only in the second century of Hijra that it was brought into the orbit of religion, and that Islamic jurisprudence began to assume a position of significance.[2] S.D. Goitein, like many other traditional scholars, disagrees and dates it to the time of Muḥammad himself.[3] John Burton, in a more or less similar vein to Schacht, argued that it was only in the second century Hijri that Islamic jurists began to infer rulings from the Qurʾān and that there was a hiatus between the formation of Islam and Islamic law.[4] John Wansbrough argued against the existence of the Qurʾān before 800 CE, since we cannot say there was a *ne varietur* version before then. That was in addition to his essential argument that neither the Qurʾān or Islam originated in Arabia.[5] That idea was revised and expressed more mildly by Patricia Crone. She argued that the Qurʾān existed before 800 and that variant versions survived up to the tenth century, but that there was a serious gap between what the Qurʾān presented as law and what is seen later as Islamic law.[6] Arguments setting the Qurʾān against Islamic law in the formative and later periods have also been made by Franz Rosenthal, David Powers, Meïr Bravmann, among others.[7]

Despite their disagreements, apart from Goitein, scholars in general agree that there is a clear gap between the origins of Islam and Islamic law. For most of them, it is in the 800s that the law was born, and developed further through different schools (*maḏhabs*). Unfortunately

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[2] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950).

[3] S.D. Goitein, "The Birth-Hour of Muslim Law? An Essay in Exegesis," *Muslim World* 50, no.1 (1960): 23-29.

[4] John Burton, *The Collection of the Qurʾān* (Cambridge: Cambridge University Press, 1977).

[5] John Wansbrough, *Quranic Studies: Sources and Methods of Scriptural Interpretation* (Oxford: Oxford University Press, 1977); idem, *The Sectarian Milieu: Content and Composition of Islamic Salvation History* (Oxford: Oxford University Press, 1978).

[6] Patricia Crone, "Two Legal Problems Bearing on the Early History of the Qurʾān," *Jerusalem Studies in Arabic and Islam* 18 (1994): 1-37.

[7] Franz Rosenthal, "Some Minor Problems in the Qurʾān," *The Joshua Starr Memorial Volume* (New York 1953): 67-84; Meïr Max Bravmann, "The Ancient Arab Background of the Qurʾanic Concept *al-Gizyatu 'an Yadin*," in his *The Spiritual Background of Early Islam: Studies in Ancient Arab Concepts* (Leiden: Brill, 2009), 199-212; David Powers, "The Islamic Law of Inheritance Reconsidered: A New Reading of Q. 4:12B", *Stadia Islamica* 55 (1982): 61-94. For a detailed list of readings on this, see Crone, "Two Legal Problems": 1-2, notes 3, 5.

the question of *when* the schools formed is not a point of historiographical disputes, thanks to Schacht's sketch of the situation. According to him, by the 860s, around the middle of the third century Hijri, the schools began to take shape. Traditional Muslim scholarship mostly agrees to this.[8] But questions about *how* they took shape give rise to a series of serious debates.

In Schacht's view, the ancient regional schools of law existed at prime centres of Islam, such as Medina and in Iraq, and they "transformed themselves into the later type of school". The regional schools were led by towering jurists, such as Abū Ḥanīfa in Kūfa and Mālik bin Anas in Medina. Their students and followers transformed them into what he calls personal schools.[9] For half a century his thesis remained unquestioned. Eventually Nimrod Hurvitz and Wael Hallaq denied that any schools existed distinguishable by their geographical location.[10] Hurvitz wrote, "Although there were many masters in these localities, none of them was a towering figure who united all the other scholars behind him and created a single *maḏhab*."[11] Though the Hurvitz-Hallaq argument gained some currency among legal historians, scholars like Christopher Melchert still adhered to the ideas of Schacht.[12] Schacht had proposed a chronological progression for the schools to move from regional to personal, and to this George Makdisi added a third stage which he called the "guild school" which appeared in the tenth century.[13] Melchert identified this as a "classical school". The debate goes on, but for the moment suffice it to say that all the three scholars agree that by the end of the first millennium CE, Islamic legal debates were more institutional, organized and professional.

The timeframe becomes more controversial regarding the question about the origin of the followers of the schools: some claim that only by the tenth century had *maḏhab*s managed to mobilize followers widely; others demonstrate that in the ninth century some schools were accepted; and there are others who argue that since the eighth century every Muslim "had to choose which madhhab he would follow unless he were a great enough scholar to work out his own way" by raising a separate school.[14]

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[8] For the traditional Muslim narratives, see for example: Muḥammad Khuḍarī, *Tārīkh al-tashrīʿ al-Islāmī* (Cairo: Dār al-Fārūq li all-Istithmārāt al-Thaqāfīyat, 2009); Shāh Walī Allāh, *al-Inṣāf fī bayān asbāb al-ikhtilāf*, ed. ʿAbd al-Fattāḥ Abū Ghudda (Beirut: Dar al-Nafa'is, 1984).

[9] Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 28-36.

[10] Nimrod Hurvitz "Schools of Law and Historical Context: Re-Examining the Formation of the Hanbali Madhhab," *Islamic Law and Society* 7, no. 1 (2000): 37-64; Wael Hallaq, "From Regional to Personal Schools of Law? A Re-evaluation," *Islamic Law and Society* 8, no. 1 (2001): 1-26.

[11] Hurvitz "Schools of Law," 44.

[12] Christopher Melchert, "The Formation of the Sunnī Schools of Law", in *The Formation of Islamic Law*, ed. Wael B. Hallaq (Aldershot: Ashgate, 2004), 351-66.

[13] George Makdisi, "*Ṭabaqāt*-Biography: Law and Orthodoxy in Classical Islam," *Islamic Studies* 32 (1993): 371-396.

[14] For the tenth-century view, see Roy Mottahedeh, *Loyalty and Leadership in an Early Islamic Society* (Princeton: Princeton University Press, 1980), 25; Richard Bulliet, *Patricians of Nishapur* (Cambridge: Harvard University Press, 1972), 31; Ira Lapidus, *A History of Islamic Societies* (Cambridge: Cambridge University Press, 1988), 167. On the ninth century, see Nurit Tsafrir, "The Beginnings of the Hanafi School in Isfahan," *Islamic Law and Society* 5, no. 1 (1998), 1. For the eighth-century view, see Wilferd Madelung, *Religious Trends in Early Islamic Iran* (Albany: State University of New York, 1988), 18, 26; M.G.S. Hodgson, *The Venture of Islam*, (Chicago: The University of Chicago Press, 1974), 1, 535—the citation is from him.

Out of this plethora of historiographical debates on the birth of Islamic law, the formation of schools, and attracting followers, we have to ask what makes sense for a student of Islamic legal history. We can disregard the revisionist line momentarily, for it leads to more confusion than clarity, more questions than answers. What is generally agreed among historians is that by the mid-seventh century there were certain special "scholars" for "Islamic knowledge".[15] Islamic knowledge included transmitting *ḥadīth*, learning and interpreting the Qurʾān, and narrating the stories of Muḥammad's companions, all of which would later develop into independent disciplines. These discussions took place at gatherings in the mosques, houses and other places. By the mid-eighth century, such groups led by a specialist became the prototype for a network of scholars and students, something which Hurvitz calls "circles of masters and disciples". Although geography must have played a role in such a micro-network for different reasons of convenience, it was not decisive in forming a school of thought. This is different to the opinions of Schacht and those who followed him.

In these micro-networks Islamic law was a serious matter of discourse by the mid-eighth and the ninth century, provoked by reasons such as crises of identity and authority. In the still expanding regions of Islam numerous communities and subcultures from outside the initial "heartlands" were integrated into the *ummat* (Islamic community) through political conquest and massive conversion. The many ensuing social, cultural, and political challenges generated multi-layered predicaments to the Muslim leadership of the time. Consequently, individual experts moved towards canonizing Islamic teachings, in which law naturally played the central role.[16]

The movement of individual specialists and students through these circles facilitated the transmission of legal ideas and consequent interconnection between micro-networks. There are certain circles which led to a spatial expansion of the micro-networks of legalists: Abū Ḥanīfa; his two prominent disciples, Abū Yūsuf (d. 798) and al-Shaybānī (d. 805); ʿAbd al-Raḥmān al-Awzāʿī (d. 774); Sufyān al-Thawrī (d. 778); al-Layth ibn Saʿd (d. 791); Mālik ibn Anas; and al-Shāfiʿī. Most of them flocked directly or by criss-cross ways into the circles of different masters. That led to intensifying legalistic disagreements, both in methodology and outcomes, which became canonical. Some scholars went outside the conventions of their time in the ninth century with new approaches and devices, such as Aḥmad ibn Ḥanbal, Dāwūd ibn ʿAlī al-Iṣfahānī (d. 884) and Muḥammad ibn Jarīr al-Ṭabarī (d. 923).

These micro-networks spread over place and time to become explicitly founded legal schools. By the end of ninth and early tenth centuries, there were more than ten prominent schools in the Islamic world: among Sunnīs there was Ḥanafīsm, named after Abū Ḥanīfa; Mālikīsm, after Mālik ibn Anas; Shāfiʿīsm, after al-Shāfiʿī; Ḥanbalīsm, after Aḥmad ibn Ḥanbal; Thawrīsm, after Sufyān al-Thawrī; Zāhirīsm/Dāwūdīsm, after Dāwūd al-Iṣfahānī; Awzāʿīism, after ʿAbd al-Raḥmān al-Awzāʿī; Laythīsm, after al-Layth ibn Saʿd; Jarīrism, after Muḥammad ibn Jarīr al-Ṭabarī. There were two schools, nominally prominent, among the Shīʿites: Zaydīsm, named after Zayd ibn ʿAlī (d. 740); Jaʿfarīsm, after Jaʿfar al-Ṣādiq (d. 765). The one among the Khārijīs was Ibāḍism, after ʿAbd Allāh ibn ʾIbāḍ al-Tamīmī (d.

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[15] These terms are all problematic for this period. However, we identity the people and their concerns for gatherings with these terms as prototypes of scholarship for the transmission of knowledge.

[16] Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013).

708). Of these, only four survived among the Sunnīs (Ḥanafīsm, Mālikīsm, Shāfiʿīsm and Ḥanbalīsm) in the course of time.

For the expansion and survival of the schools the evolution of legalist micro-networks played a crucial role. By the end of ninth century the four Sunnī schools had gained a strong doctrinal foundation that bound all their followers. This led to the birth of macro-networks.

The case of al-Shāfiʿī,[17] the eponymous founder of Shāfiʿīsm, offers a convincing example for the interconnections between micro-networks, the formation of an independent micro-network, and its gradual evolution to macro-networks. He participated in the micro-networks of many scholars, including Mālik bin Anas, whose legal thoughts have survived as Mālikīsm. Al-Shāfiʿī may have been born in Palestine (Gaza or Ashkelon) or in Yemen;[18] his mother took him when he was two years old to Mecca, where he grew up. After studies there and in Medina he went to Baghdad. For unclear reasons he then went to Cairo and lived there until his death at the age of fifty-two. During this latter part of his life he is said to have dictated (*imlāʾ*) his work to his students, as was the practice of the time.[19] Through his prominent circle, earlier in Baghdad and later in Cairo, a distinctive and strong Shāfiʿīte micro-network evolved. Many students, such as al-Zaʿfarānī in Baghdad, Abū al-Walīd Aḥmad bin Muḥammad al-Makkī (d. 846) in Mecca, and Abū Ibrāhīm Ismāʿīl Yaḥyā al-Muzanī (d. 878) and al-Rabīʿ bin Sulaymān al-Murādī (d. 884) in Cairo, and their students contributed to the strengthening of al-Shāfiʿī's legal thoughts in their respective regions. This led to the development of a "doctrinal" school of law by the ninth century in which numerous scholars collectively engaged with texts and followed the teaching of their master.[20]

Internal conflicts within the micro-networks of Shāfiʿīsm caused another stream to rise at a lower level that contributed to expansion. For example, though al-Muzanī and al-Buwayṭī of Cairo were colleagues under al-Shāfiʿī, they despised each other. Al-Muzanī was said to have joined Ḥarmalat (d. 858) and al-Shāfiʿī's son Abū ʿUthmān (d. on or after 854) in a conspiracy against al-Buwayṭī that led to the latter being imprisoned by the ʿAbbāsids until his death in Baghdad. It was said that al-Buwayṭī made a dismissive remark about al-Muzanī's understanding of al-Shāfiʿī: "He was a weak boy (*kāna ṣabiyan ḍaʿīfan*)" poorly

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[17] Not many detailed primary sources for the life of Shāfiʿī are available to us. The earliest biography of Shāfiʿī is said to have been written by Dāwūd al-Zahiri, but that text has not survived. Ibn Abi Hatim al-Rāzī's (d. 939) and Aḥmad Bayhaqī's (d. 1066) biographical writings are therefore our earliest detailed sources, even though they were written almost one and two centuries respectively after Shāfiʿī's lifetime; see E. Chaumont, "al-Shāfiʿī," *Encyclopaedia of Islam*, 2nd ed.; Joseph Schacht, "Shāfiʿī's Life and Personality," *Studia Orientalia Ioanni Pedersen* (Copenhagen: Einar Munksgaard, 1953): 318–326; Wadad al-Qadi, "Riḥlat al-Shāfiʿī ilā al-Yamen bayna al-ustūrat wa al-wāqiʿat," in *Studies in Honour of Mahmoud Ghul*, ed. M.M. Ibrahim (Wiesbaden: Otto Harrossowitz, 1989), 127–41; Kecia Ali, *Imam Shafi'i: Scholar and Saint* (Oxford: Oneworld, 2011); El Shamsy, *Canonization.*

[18] El Shamsy, *Canonization*, 17-18.

[19] Pedersen says: "The oral path was followed in publishing. A work was published by being recited and written down to dictation, *imlāʾ*, usually in a mosque. This was the only method by which the Muslims of former days could conceive of a work being made public and brought before a wider public." Though this might appear a simple process, in reality it was a very complex procedure with many layers of dictation, annotation, cross-reading, hearing, cross-checking all of which lead to the final authorized publication, see Johannes Pedersen, *The Arabic Book* (Princeton: Princeton University Press, 1984), 20-34.

[20] This argument of El Shamsy opposed the existing claim of Wael Hallaq on the "personal schools". Hallaq himself advanced the questioning of Schacht's view of "regional schools"; see Wael Hallaq, "From Regional to Personal Schools," 1-26; Ahmed El Shamsy, "The First Shāfiʿī: The Traditionalist Legal Thought of Abū Yaʿqūb al-Buwayti (d. 231/846)," *Islamic Law and Society* 14, no. 3 (2007): 301-341.

digesting the teachings.[21] This personal conflict is noticeable in the aloofness shown by the different legal hermeneutical paths they chose, as I explain later. Both of them attracted students and followers who contributed to micro-networks expanding into macro levels through their constructive divisions (see Chapter 3).

Even though Shāfiʿīsm could not maintain a stronghold over Egypt in the ninth century, as it was strongly influenced by the Mālikīsm, the political structures gave favourable conditions for its expansion. For example, the then semi-independent ruler in Cairo, Aḥmad bin Ṭūlūn (d. 884), encouraged members of his household to study al-Shāfiʿī's teachings by attending the lectures of al-Rabīʿ al-Murādī, to whom he even gave financial support. Eventually, Ibn Ṭūlūn's sons (Aḥmad and ʿAdnān) and freedmen (Kunayz and Luʾluʾ al-Rūmī) became Shāfiʿī jurists.[22] Shāfiʿīte ideas began to expand beyond Egypt in the same century, attracting a wide audience according to historical records. By the tenth and early-eleventh centuries, Shāfiʿīte networks were very active in Iraq, Transoxiana and Khurasan, and they all in turn became new centres of Shāfiʿīsm. The Transoxiana students and teachers had mostly been educated in Egypt, but some were also educated in Baghdad by the immediate disciples of al-Shāfiʿī. Their movements and activities illustrate the development of micro-networks into macro levels within the borders of Arab and Arabized lands.

Such an expansion of Shāfiʿīte circles into macro networks with systems of organization and transferring knowledge and texts focusing on Islamic law gave rise to the phenomenon that I identify as "fuqahā-estates". The increase in the number of specialists and of large scale journeys required more organized structures with specific functions, for a perception of identity, autonomy, and etiquette. The Shāfiʿītes were only one group among many Islamic jurists who looked for a more organized structure of their professional activities. If the "school" (*maḏhab*) is about intellectual engagements belonging to a particular stream of thought, the "estate" is about having a common platform for all the specialists (*khawāṣṣ*) of law to organize, debate, assert and protect the distinctiveness of their profession from the intrusions of an ignorant public (*ʿawāmm*), including political powers. In other words, those who follow chaos theories would say that large numbers act differently from small numbers; they want to be organized and stand together — only to become disorganized.

Fuqahā-Estate: An Abode of Law
The geographical spread of Islamic legal networks with their local and regional authority by the tenth century evolved into clusters of the scholarly class in the medieval Islamic world. Individuals participating in micro-networks and moved into broader educational realms of law. They formed and made use of macro-networks and eventually tried to stand outside the existing social and political arenas through their legal engagement. They aimed to be a parallel society of legal specialists outside the dominant frameworks of society.

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[21] El Shamsy, "The First Shāfiʿī": 304, 311—on al-Muzanī's role in the conspiracy, referring to: ʿAlī bin al-Hasan Ibn ʿAsākir, *Tārīkh madīnat Dimashq*, ed. Muḥy al-Dīn al-Amrawī, 70 vols. (Beirut: Dar al-Fikr, 1995-2001), 53: 359-60; and on al-Buwayṭī's comment, al-Bayhaqī, *Manāqib*, II: 347; cf. Christopher Melchert, "The Meaning of *Qāla 'l-Shāfiʿī* in Ninth-Century Sources", in *ʿAbbasid Studies*, ed. James E. Montgomery (Louvain: Peeters, 2004), 296-297.

[22] El Shamsy, "Al-Shāfiʿī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society* 132(2012): 334 with reference to Ibn ʿAsākir, *Tārīkh madīnat Dimashq*, 40: 53-5, 50: 261 and al-Maqrīzī, *al-Muqaffa*, 1: 432-33.

Previous historiography of ʿulamāʾ in the Islamic/Muslim world has looked at their relationship with the state and polity. Many historians followed different paths. These were drastically revised by Chamberlain, who argued that a *mansab*-seeking dependency dominated the engagements of ʿulamāʾ groups.[23] Some scholars have argued that the *ʿulamāʾ* were deeply indebted to the political structures.[24] I argue that all these are overstatements or understatements of the complex interrelation between ʿulamāʾ and their society in general, and polity in particular. That is to say, I recognize the ʿulamāʾ as a more deterministic form of fuqahā, as Islamic jurists. If I follow their own perceptions about themselves, they are the *true ʿulamāʾ* and all their pursuit of knowledge is aimed at a better study of law. For this the general gradation of *fiqh* as the highest knowledge and the jurists' development of a professional distinction within the ʿulamāʾ class as experts in legal matters are good examples.[25] The other disciplines, such as Qurʾān-exegesis and *ḥadīth*, that could be seen to be at the top of Islamic subjects for study, or grammar, logic and linguistics, that might stand outside the "religious" concerns even though taught in a purely religious environment, were understood by them either as a source or a means for making legal inferences. Hence, the specialists of other disciplines and sub-disciplines, who would otherwise be identified as ʿulamāʾ, are just mediators or facilitators for *fuqahā*. In other words, this self-perception from their side helps me analyze their space and sphere as a determined fuqahā-estate rather than the generalized and abstractive ʿulamāʾ-estate.[26] I will discuss their distinctive features with regard to the state and community and the historical routes of their professional distinction in the next chapter. For the moment, I analyse how and why the texts became so important to them, especially in the Shāfiʿīte contexts.

Properly formulated legal texts and recorded pronouncements of fatwas or *qaḍāʾ* constituted the axis of the estate, around which all individuals and collectives of fuqahā circumnavigated. The works written by masters, their disciples, disciples' disciples and so on became central points of discourse in which the whole estate became active. Though this "textuality" was there in the prototype of micro-networks and its later developments, the intensification of macro networks made texts even more crucial. Earlier scholars, such as the eponymous founders of the Sunnī schools, were more concerned about the oral transmission of their juridical arguments, whereas their "doctrinal" followers in later centuries gave prominence to the texts as a starting point for their articulations. Fuqahā-estates had no other concerns except engaging with texts, especially studying, teaching, interpreting, abridging, commenting, referring, cross-referring, contextualizing, systematizing and prioritizing them. Through the texts they constituted their spheres, defended and augmented themselves and

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[23] Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994).

[24] For a typical example of this argument see E. I. J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge: Cambridge University Press, 1958).

[25] In the earlier phases, fiqh was identified as the knowledge of religion, "for its leadership, nobility, and uprightness over all other disciplines" *Lisan al-ʿArab* 2: 1119. However this perception became more constrained over time.

[26] For an example, see a sixteenth-century Shāfiʿīte text entitled *Ajwibat al-ʿajībat* in which many scholars of the time deliver the fatwa that if an endowment is made for ʿulamāʾ, only the fuqahā and one who stands close to them would be eligible for its benefits. Zayn al-Dīn al-Malaybārī, *al-Ajwibat al-ʿajībat ʿan al-asʾilat al-gharībat*, ed. ʿAbd al-Naṣīr Aḥmad al-Shāfiʿī al-Malaybārī (Kuwait: Dār al-Ḍiyāʾ, 2012), 157-158..

centred religious authority on textual knowledge. This shift approximates what Moshe Halbertal articulated as a foundational characteristic of the "text-centeredness" in the Jewish tradition: "expertise in the text is a source of power and prestige".[27] This is the point at which Makdisi identified "guild schools" as being decisive in the history of schools, and elsewhere connected religious educational institutions with the development of the schools.[28] The institutional practices and their promises gave life to the transmission of texts, and to the schools they represented.

The interconnection between a school and a fuqahā-estate was mediated through the texts. In an estate, either in its regional form that included followers of different schools or in its trans-regional form that encouraged individual and collective interactions of both the estate and its members of diverse schools, a discursive platform with particular norms and values was fixed on texts. While the schools (being a cluster within the estate) produced the texts, the texts produced the schools specifically and the estate more generally. Hermeneutical legal works drafted the common methods, rules, and regulations of both the estate and its individual clusters. Halbertal would say that such texts "provide a society or a profession with shared vocabulary."[29] The positive legal texts demonstrated a cluster's viewpoints on legal particulars. *Risālat* and *al-Umm* of al-Shāfiʿī are two examples of prototypes of such a complex process of mutual complementation in the early history of Shāfiʿīsm as well as of Islamic law as such. *Risālat* defined who is and is not entitled to be part of the juristic community, and what should be his qualifications and responsibilities.[30] This hermeneutic broadly contributed to the formation of their estate in the Sunnī tradition, as much as it led to the making of Shāfiʿīsm itself. Likewise, once the estate was empowered, the hermeneutical texts produced by its members augmented the further enlargement of the estate, as well as their respective school. *Al-Umm*, a positive legal text, contributed similarly to the development of the Shāfiʿīte cluster through its confrontational jurisprudential articulations, practical inferences and everyday applications. Such a positive text also explicates the development of the estate through applied methodologies, functional autonomies, defined rules, rights and duties.[31] Furthermore, the legal hermeneutics and their solicitations in the positive laws expressed through texts represented the personal emancipation and flourishing of a faqīh within his/her school and the estate. There are many examples, some of which I shall adduce in the course of discussion.

In Shāfiʿīsm, the formation of or absorption into such a fuqahā-estate becomes clear from the time of Abū al-ʿAbbās bin Surayj (d. 918), when the school began to have "an identifiable teacher and identifiable students" with "a normal course of advanced study

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[27] Moshe Halbertal, *People of the Book: Canon, Meaning and Authority* (Cambridge, MA: Harvard University Press, 1997), 7

[28] George Makdisi, "*Ṭabaqāt*-Biography"; idem, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981).

[29] Halbertal, *People of the Book*, 3

[30] Muḥammad bin Idrīs al-Shāfiʿī, *Risālat*, ed. Aḥmad Muḥammad Shakir, (Cairo: Mustafa al-Ḥalabī wa Awladuh, 1938) passim; for an example, see his discussion on those who are eligible to conduct *qiyās*, 478-79.

[31] Although the majority of the contents of *al-Umm* concerns positive legal issues, it also has elaborate sections on legal hermeneutics, in the printed copies available today. A number of its "treatises" discuss the hermeneutical foundations of fuqahā, their internal conflicts and differences, etc; on the identities and qualitifications of fuqahā in particular, see Muḥammad bin Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (Mansura: Dār al-Wafāʾ, 2001), 9: 5-42.

leading to the production of a *taʿlīq*, virtually a doctoral dissertation, defending the juridical opinions" of the school.[32] Most of the later Shāfiʿīte scholars attempted to demonstrate that their scholarly genealogy went back to al-Shāfiʿī through Ibn Surayj. Scholarly genealogy (*sanad* or *silsila*) became a proof of the authentic transmission of the ideas and texts of a school in the fuqahā-estate, and most importantly was the starting point for one's reputation. The chain linking distinguished teachers to one's intellectual ancestry would validate, prioritize and standardize particular rulings and opinions in the legalist estate. This resonates to the transmitter-chains that validated the circulation of *ḥadīth*s by the eighth and ninth centuries. As an example of this in the fuqahā-estate Nawawī, the author of *Minhāj* asserts his legitimacy through a line of teachers connected to al-Rāfiʿī, whose *al-Muḥarrar* is the core of *Minhāj*. He says:

> I took knowledge and preponderance from al-Imām al-ʿAllāmat al-Kamāl Sallār, he [took those] from al-Imām al-ʿAllāmat Badr al-Dīn Muḥammad, author of *al-Shāmil al-Ṣaghīr*. He says: I took from Shaykh al-Islām al-Imām ʿAbd al-Ghaffār al-Qazwīnī, the author of *al-Ḥāwī al-Ṣaghīr*, who says, I took knowledge from *al-ʿulamā ʾ al-ʿālam* Abū al-Qāsim bin ʿAbd al-Karīm bin Muḥammad al-Qazwīnī al-Rāfiʿī.[33]

Similarly al-Rāfiʿī forges a teacher-student chain of both texts and ideas back to al-Shāfiʿī, the founder of the school. He says that he took knowledge from Badr al-Dīn Muḥammad bin Faḍl, who took it from ʿIzz al-Dīn Muḥammad bin Yaḥyā, who took it from al-Ghazālī, who took it from al-Juwaynī al-Ḥaramaynī, who took it from his father Abū Muḥammad al-Juwaynī, who took it from Abū Bakr ʿAbd Allāh al-Qaffāl al-Marwazī (d. 1026), who took it from Abū Zayd Muḥammad al-Marwazī (d. 982), who took it from Ibn Surayj, who took it from Abū Saʿīd al-Anmāṭī (d. 901), who took it from al-Muzanī, who took it from al-Shāfiʿī.[34]

This scholarly genealogy mattered very much in the transmission of texts,[35] the centrality of the fuqahā-estate. That one scholar actually heard a text from another, probably through many generations, and had oral or written authorization (*ijāzat*) from the author, is an important qualification to learn, teach, comment upon or abridge a text.[36] This would also explain why Nawawī wanted to connect himself to al-Rāfiʿī, who connected himself to al-Shāfiʿī through al-Ghazālī, Ibn Surayj and al-Muzanī. Particular texts at the centre of discourses had appeared before Ibn Surayj in the Shāfiʿī school as a result of the work of al-Muzanī, as I shall explain below. Through this chain of teachers and students they could have transmitted texts, ones written by the teacher himself/herself or by someone else who gave the

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[32] Melchert, "The Formation," 355.

[33] In the actual text all these names are followed by *raḥim Allāh taʿāla* (May Allah bless him!), here removed for a smoother reading; see Aḥmad Mayqarī Shumaylat al-Ahdal, *Sullam al-Mutaʿallim al-muḥtāj ilā maʿrifat rumuz al-Minhāj*, ed. Ismāʿīl ʿUthmān Zayn (Jeddah: Dār al-Minhāj, 2005), 622.

[34] Nawawī, *Tahḏīb al-asmāʾ wa al-lughāt* (Beirut: Dār al-Kutub al-ʿIlmiyyat, n.d), 1: 18-19; even al-Shāfiʿī has a chain of teachers, and that goes back to the Prophet Muḥammad.

[35] See Pedersen, *Arabic Book*, 20-34.

[36] Although priority was given to oral transmission, written authorization was also considered to be legitimate. Asma Sayeed, *Women and the Transmission of Religious Knowledge in Islam* (New York: Cambridge University Press, 2013), 123-125.

teacher his/her authorization. A student wanting to learn a text from a teacher without authorization would have to depend on some other scholar with such authorization. That created alternative lines of teachers for students and teachers specializing in certain texts or subjects. That was the case for Nawawī and al-Rāfiʿī, for whom we see many alternative teacher-lines both within and beyond the perimeters of the school. Not only with Sallār but Nawawī also learnt law with Kamāl al-Dīn Isḥāq al-Maghribī, Shams al-Dīn ʿAbd al-Raḥmān al-Maqdisī, Abū Ḥafṣ ʿUmar al-Irbilī, Abū al-Fatḥ ʿUmar al-Taflīsī and many others.[37] In turn, these teachers had their own teacher-lines criss-crossing their way to authors such as al-Rāfiʿī, al-Ghazālī and Ibn Surayj. These genealogical lines for scholars and for text really mattered more for one's affiliation with the fuqahā-estate than for one's position in the broader society of general or political support.

Texts as the central component of the estate enabled individuals to communicate mainly within the estate, but also with wider socio-political, cultural, and economic contexts. They conversed with texts existing in the tradition, and shaped them and produced new works, just as any interpretative textual community would do. This centrality of the text in Islamic discourses in general and Sunnī juridical formulations in particular must have happened because of the simultaneous development of all the Sunnī doctrinal schools with the "book revolution" that Middle Eastern socieities experienced in the ninth and tenth centuries due to the fall in paper prices and the emergence of novel cultural practices. The book revolution led to the birth of a "reading revolution" in the following centuries.[38] If the book revolution placed the texts at the centre of legal discourses, it is quite plausible to argue that the following "reading revolution" led to the recognition of commentary-writing as a legitimate way of intellectual and legalistic engagement. The text on which I shall focus is *Minhāj*, part of an entangled textual history of the Shāfiʿīsm, on which I shall now turn my attention.

Textual Families of Shāfiʿīsm
There are very many predominant texts in the Shāfiʿī school written prior to *Minhāj* and they all claim a direct or indirect ancestry to *al-Umm* of al-Shāfiʿī. In the five centuries between *al-Umm* and *Minhāj*, the legalistic articulations of the Shāfiʿīte fuqahā have been so extensive that even brief survey would consume too much space and energy. All of these texts are shambolic in form or extensive in content, and *Minhāj* wanted to codify, prioritize and comprehend them. Even after *Minhāj* was composed it was not immediately recognized by the thirteenth-century fuqahā-estate as an outstanding text, but as only one among many. Its legacy evolved over time, as I shall argue in Chapter 4. Here I will briefly introduce some prominent texts which existed earlier, together with and/or after *Minhāj*. Understanding these large families of texts is important to my study, because: a) texts of this category will recur throughout the study; b) they help to comprehend the complexity in the textual tradition that led to the production of *Minhāj* and its successors; c) they embody some foundational characteristics of the school and the estate as such.

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[37] He gave a long list of his teachers in his own work; see Nawawī, *Tahḏīb al-asmāʾ*, 1: 18-19.

[38] Beatrice Gruendler, "Book Culture before Print: The Early History of Arabic Media" (Occasional Papers, The American University of Beirut, 2011); Maya Shatzmiller, "An Early Knowledge Economy: The Adoption of Paper, Human Capital and Economic Change in the Medieval Islamic Middle East, 700-1300 AD" (Working Paper, Utrecht University, 2015).

Despite the wide scholarly attention to the origins and initial stages of the Shāfiʿī school in the ninth century, not many studies have traced its development after the so-called "classical phase". The only limited exceptions are the works of Heinz Halm and Ahmed El Shamsy.[39] Halm does not focus on any of the historical nuances of the texts or of the individuals who played a part in the school's development, and he stops his analysis at the end of the Mamlūk-period. His approach is typically from a Middle-Eastern perspective, in which the Southeast, South Asian or East and South African Shāfiʿīte communities are marginal. El Shamsy's book and many articles deal with the early discursive tradition within the school, but hardly go beyond the eleventh century, far more limited than my timeframe.[40] For both of them a text like *Minhāj* is marginal, even though it is one which defines the course of Shāfiʿīsm after the thirteenth century. The biographical studies on the four Shāfiʿīte scholars, Nawawī, al-Anṣārī, al-Bājūrī and Nawawī al-Jāwī, by Fachrizal Halim, Mathew Ingalls, Aaron Spevack, and Alex Wijoyo respectively mentioned earlier do engage with the texts, but only Halim pays close attention to the legal texts.

Before considering the textual groups of the school, we need to have a broad understanding of the textual categories and genres of Islamic law. For the history of books in the Islamic world, such an elaboration of their contents is long overdue. Norman Calder divided Islamic legal textual practices into *mabsūṭāt*s and *mukhtaṣar*s. But this division does not tell us much about the diversity in contents and forms of the fiqh texts. I distinguish thirteen categories of Shāfiʿīte texts found along the Indian Ocean rim: 1. *Matn*: gist (close to Calder's *mukhtaṣar*); 2. *Sharḥ*: commentary, with five subdivisions: a) complete commentary, b) *mushkilāt*, linguistic and philological commentary, c) introductory commentary, d) concluding commentary, and e) commentary on selected chapters; 3. *Mukhtaṣar*: summary; 4. *Ḥāshiyat*: super-commentary; 5. *Hāmish*: marginalia and glosses; 6. *Taʿlīq*: dissertation, sometimes for a doctorate; 7. *Taḥqīq*: edited material; 8. *Taṣḥīḥ*: preparatory material; 9. *Takhrīj*: selected Qurʾānic verses, *ḥadīth*s, poems, rulings, etc.; 10. *Tanẓīm*: full or partial poetic renderings; 11. *Takmīl*: completion of an unfinished work; 12. *Iṣṭilāḥāt*: terminology; 13. *Tarjamat*: translation. Perhaps these detailed categories can be applied to other disciplines of Islam or other schools of law, but my analysis is based solely on the Shāfiʿīte textual tradition from the Lavant and East Africa to Southeast Asia.

Al-Umm and *Mukhtaṣar*: Common Ancestry

The Shāfiʿīte school of law derives from the works al-Shāfiʿī wrote towards the end of his life. Some of his works have interested legal historians, especially *Risālat*, one of the first known jurisprudence texts in the Islamic world.[41] *Al-Umm* is his only surviving legal text, which Norman Calder identifies as an organic text. He considered significant additions had

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[39] Heinz Halm, *Die Ausbreitung Der Safiitischen Rechtsschule Von Den Anfängen Bis Zum 8./14. Jahrhundert* (Wiesbaden: L. Reichert, 1974) and El Shamsy, *The Canonization of Islamic Law*.

[40] Except for one article, "The Ḥāshiya in Islamic Law: A Sketch of the Shāfiʿī Literature," *Oriens* 41, no. 3-4 (2013): 289–315.

[41] Joseph E. Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfiʿī* (Leiden: Brill, 2007).

been made by his disciples over the course of time, but this has now been questioned.[42] Disagreeing with the earlier scholars such as Schacht, who assumed that the texts like *al-Umm* were written by a single author to be authentic, Calder argued that *al-Umm* not only includes the opinions of al-Shāfiʿī, who died in the early ninth century, but also those of scholars like al-Rabīʿ al-Murādī who died six decades later. Through an extensive source-critical study, El Shamsy substantiated that *al-Umm* as available today is an authentic text written by al-Shāfiʿī himself "to the extent that a manuscript culture can reproduce a text authentically". He says that Calder's many points of argument are nothing but "an incorrect reading of the text" or "neglect of its context". According to him, the interjections of al-Rabīʿ, who was a student of al-Shāfiʿī and the compiler of *al-Umm*, are oral comments made while teaching his students, and they appended them to the text. The many quotations from *al-Umm* in many texts of the ninth and tenth centuries signify its authenticity and integrity in its modern printed form.[43]

Before *al-Umm* was compiled and became well known as a single text, there were two other compendia in circulation among scholarly circles, the *Mukhtaṣar*s of al-Buwayṭī and of al-Muzanī, two students of al-Shāfiʿī. Al-Buwayṭī's compendium was the first. It facilitated a convergence of the rival approaches of traditionalists and rationalists, and eventually disseminated the ideas of al-Shāfiʿī, not only in Egypt but also in the eastern regions. When al-Buwayṭī's student Abū Ismāʿīl al-Tirmiḏī (d. 893) arrived in Nishapur, the "traditionist-jurisprudent" Isḥāq bin Rāḥawayh (d. 853) based in that city approached him and requested him not to teach *Mukhtaṣar* there, "presumably fearing that his students would desert him for al-Tirmiḏī's superior teaching".[44] Narratives like this motivated many students to leave for Cairo to study *al-Umm* with noted scholars like al-Murādī, who was teaching and compiling the text there at that time. Meanwhile, the *Mukhtaṣar* of al-Muzanī, about whom al-Shāfiʿī is supposed to have said, "al-Muzanī is a backer of my school", had become available. His *Mukhtaṣar* focused on the juridical rationalism of al-Shāfiʿī's teaching, while al-Buwayṭī emphasised his traditionalism.

In the course of time al-Buwayṭī's *Mukhtaṣar* became outdated for several reasons: a) too great an emphasis on the *ḥadīth*s, a feature that once made it popular; b) the emergence of the Ḥanbalī school; c) its apparent disordered structure.[45] So al-Muzanī's *Mukhtaṣar* took its place. There are other works written by or ascribed to al-Muzanī, but the *Mukhtaṣar* stands out as one of the early texts of Shāfiʿīsm on which most Shāfiʿītes depend. It broadened the

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[42] The main criticism came from El Shamsy, "Al-Shāfiʿī's Written Corpus"; also see Joseph Lowry, "The Legal Hermeneutics of al-Shāfiʿī and Ibn Qutayba: A Reconsideration," *Islamic Law and Society* 11, no. 1 (2004): 1–41.

[43] El Shamsy, "Al-Shāfiʿī's Written Corpus"; al-Shāfiʿī, *al-Umm*.

[44] El Shamsy, "The First Shāfiʿī," 326 referring to Ibn Abi Hatim, *Adab al-Shāfiʿī*: 64-65. My discussion comparing al-Buwayṭī with al-Muzanī depends on this study, unless I say otherwise. On Ibn Rāḥawayh, see Christopher Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8 (2001): 393; On al-Tirmiḏī, who is buried near Aḥmad bin Ḥanbal's grave, see ʿAbd al-Ḥayy ibn Aḥmad Ibn al-ʿImād, *Shaḏarāt al-ḏahab fī akhbār man ḏahab*, ed. ʿAbd al-Qādir al-Arnaʾūt and Maḥmūd al-Arnaʾūt (Beirut: Dār Ibn Kathīr, 1988), 3: 159.

[45] In the ninth-century, people tended to follow a more *ḥadīth*-centric approach in legal articulations, and Buwayṭī's *Mukhtaṣar* catered for their needs best. But the emergence of the Ḥanbalī school with much stress on the *ḥadīth*s led to the erosion of its appeal among the *ḥadīth*-lovers. To those who tended to take a more rationalistic approach, his work was less appealing compared to that of al-Muzanī. On these aspects, see El Shamsy, "The First Shāfiʿī".

juridical reasoning that al-Shāfiʿī put forward in connection with the traditions. It avoids elaborations that we see in *al-Umm* on each and every minor issue citing the scriptures; instead it emphasizes rationalist extracts from sources which mostly agree with al-Shāfiʿī, but occasionally disagree. It usually refers to al-Shāfiʿī with the phrase "al-Shāfiʿī said" (*qāla al-Shāfiʿī*). Melchert questions whether the expression refers to al-Shāfiʿī's written works, or to what al-Muzanī has heard through oral transmissions from discussions after the classes of al-Shāfiʿī.[46] Apart from *al-Umm* it also utilized other works of al-Shāfiʿī, some well-known such as *al-Risālat* and *al-Imlāʾ ʿalā masāʾil Mālik*, and others less known such as *Ikhtilāf al-Shāfiʿī wa Mālik* and *Ikhtilāf al-aḥādīth*. But it can be argued that most of these works are different chapters of *al-Umm* which appeared separately or jointly in various manuscripts. That leads El Shamsy to assume that his personal copy of *al-Umm* was his primary source for writing the compendium.

The "architectonic design" of this *Mukhtaṣar* giving it its coherence, chapter divisions and clarity along with the "internal format" strongly based on al-Shāfiʿī's juristic reasoning led to a wider reception in contemporary micro-networks and later fuqahā-estates. In the tenth and early-eleventh centuries we see it at the centre of Shāfiʿīte circles in Iraq, Transoxiana and Khurasan. The text had a vital role in the further development of the school, producing another set of followers and many descendant texts. These evolved from the macro-networks of the chains of disciples and the expansion of fuqahā-estates. Many students of al-Muzanī or their own students wrote commentaries on his *Mukhtaṣar* in the late ninth or tenth centuries. These include works by Abū al-Ḥasan al-Jūrī (d. on or after 912), Ibn Surayj, Abū Bakr Muḥammad bin Dāwūd al-Ṣaydalānī (d. 938), Abū Isḥāq al-Marwazī (d. 951), Abū ʿAlī al-Ṭabarī (d. 961) and Abū Ḥamid al-Marwarrūḏī (d. 972).[47] We note in passing that this represented a transitional stage towards a previously mentioned "doctrinal school", which had emerged by the ninth century as a result of the *Mukhtaṣar*s and *al-Umm*, as well as such works as *Gharīb al-ḥadīth* of Ibn Quṭayba (d. 889) and *Ikhtilāf al-ʿulamāʾ* and *Sunnat* of al-Marwazī (d. 906). There was a transition into a "guild school" by the early tenth century, according to Makdisi's paradigm, a development that complements my concept of a fuqahā-estate.

Post-Classical Phase: The Rise of Textual Families

In the earlier Islamic legal historiography, the "golden age" of Islamic law was between the mid-eighth and the tenth centuries.[48] It was a period glittering with invention, independent investigation, the rise of original ideas, canonization, etc. In subsequent centuries Islamic law almost died as the gate of *ijtihād* was closed and believers were allowed only to imitate (*taqlīd*) earlier jurists. This argument has been refuted vehemently in the last three decades, and many scholars have explained how the *ijtihād* continued differently, even until the nineteenth century. This has grown into an extensive field of research. Suffice it for now to state that the separation of "classical" and "post-classical" phases has been questioned and

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[46] Melchert, "The Meaning of *Qāla ʾl-Shāfiʿī*," 291-294.

[47] ʿAbd al-ʿAẓīm al-Dayyib, Introduction to al-Juwaynī al-Ḥaramaynī, *Nihāyat al-maṭlab fī dirāyat al-maḏhab*, ed. al-Dib (Jiddah: Dar al-Minhaj, 2007): 223-224.

[48] That the tenth century closed this chronological phase is a matter of dispute among a few earlier scholars. They stretch the phase into the twelfth century.

that "originality" in legal engagements after the tenth century has been established. However, to describe the textual complexities of Shāfiʿīsm, I would like to stay with the older division of classical and post-classical phases for three reasons: Firstly, almost all the textual production of Shāfiʿīsm up to the end of the tenth century did not have much permanence or fame within the school, except for the foundational texts *al-Umm* and *Mukhtaṣar*. Other "independent" texts written within the school until then, according to the bibliographical survey of Ibn al-Nadīm, were mostly either attempts to reconcile conflicting opinions of al-Shāfiʿī within or outside the school, or were merged into a different school of law. For the latter type the works of Ibn Ḥanbal and al-Thawrī are good examples.[49] Secondly, this situation dramatically changes after the eleventh century, and many texts written after then began to be known as the founders of distinct families that survived in the school for centuries. Thirdly, simultaneous to the "classical" and "post-classical" division, there was a book revolution in the ninth and tenth centuries and a reading revolution in the following centuries. Therefore, if the book revolution pushed the texts to the centre of discourses in the "classical" period, the reading revolution in "post-classical" phase required a close understanding of the text. This latter development required and produced the commentarial culture.

Since the late nineteenth century, many Western scholars have endeavoured to categorize significant textual groups of Shāfiʿīsm. In 1886 the Dutch scholar L.W.C. van den Berg produced a list of fifty major books being taught in Javanese and Madurese *pesantren*s.[50] In that list he identified four important families of Shāfiʿīte law-books: a) al-Rāfiʿī's *al-Muḥarrar* Family, b) Abū Shujāʿ's *Taqrīb* or *Mukhtaṣar* Family, c) al-Malaybārī's *Qurrat-Fatḥ* Family, and d) Bā Faḍl's *Muqaddimat* Family. About a century later, in 1990, Martin van Bruinessen confirmed the continuing relevance of these texts in Javanese *pesantrens*, although he made slight changes in the reception and usage of a few texts from different families.[51] A decade after Van den Berg, the German Islamicist Eduard Sachau identified five major textual groups of Shāfiʿīsm based on his research in East Africa: a) the *Taḥrīr* group formed after al-Maḥāmilī's *al-Lubāb*; b) al-Shīrāzī's *Tanbīh* group, c) Abū Shujāʿ group with his *Matn/Mukhtaṣar*, d) Nawawī's *Minhāj* group based on al-Rāfiʿī's *al-Muḥarrar*, and e) al-Malaybārī's *Fatḥ* group.[52] Setting aside the different titles for the categories, the major difference between Van den Berg and Sachau is Sachau's addition of two groups (*Taḥrīr* group and *Tanbīh* group), while excluding Van den Berg's *Muqaddimat* Family.

Shāfiʿīte scholars have a different style of categorization, but most of them do not agree with one another, except for those made by Nawawī. According to this thirteenth-century scholar, there are five *mutadāvalat* or the most circulated texts in Shāfiʿīsm. He says that the Shāfiʿīte fuqahā have been teaching these five texts everywhere and writing commentaries

[49] Ibn al-Nadīm, *al-Fihrist*, ed. Ibrāhīm Ramaḍān (Dar al-Maʿrifat, 1994), 259-265.

[50] L.W.C, van den Berg, "Het Mohammedaansche godsdienstonderwijs op Java en Madoera en de daarbij gebruikte Arabische boeken," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 31 (1886): 518-55.

[51] Martin van Bruinessen, "Kitab kuning: Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen tot de Taal-, Land- en Volkenkunde* 146, nos. 2-3 (1990): 226-269. For example, only one text (*Minhāj al-qawīm*) from the fourth family was current in the late twentieth century, in contrast to three texts from the family during Van den Berg's time.

[52] Sachau, *Muhammedanisches Recht*, xix-xxiv.

and summaries on them. The texts are: a) Muzanī's *Mukhtaṣar*; b) Shīrāzī's *Tanbīh*; c) Shīrāzī's *Muhaḏḏab*; d) al-Ghazālī's *Wasīṭ*; e) al-Ghazālī's *Wajīz*.[53] The later textual history of Shāfiʿīsm clearly shows that all these texts formed their own lineages. However, we find nothing in common between the categorizations of Van den Berg, Sachau, and Nawawī, except for the fact that Shīrāzī's *Tanbīh* is listed by Sachau and by Nawawī. A major limitation of Nawawī's list is that it is from the thirteenth century, and thus does not include any textual tradition which evolved and became popular later, including his own works.

I prefer new categories, taking those of Nawawī, Sachau, and Van den Berg as my starting points. I have two main criteria for identifying a textual family. First, I ask if a text makes any explicit or inexplicit claim of independence from the earlier corpus. It would not state directly that it is a commentary or summary of an earlier text. Second, I ask if a text was renowned among Shāfiʿīte fuqahā along the Indian Ocean rim through its direct or indirect textual progenies. I must admit that these two criteria are somewhat imprecise due to the vastness and complexity of Shāfiʿīte literature produced in the last millennium. Nonetheless, I find seven major families commonly celebrated in Shāfiʿīte textual worlds:[54] 1. *Tanqīḥ* Family; 2. *Tanbīh* Family; 3. *Muhaḏḏab* Family; 4. *Wasīṭ* Family; 5. *Ghāyat* Family; 6. *Minhāj* Family; 7. *Fatḥ* Family.

I discuss below these textual families in turn, focusing briefly on their authors, styles, reception and position among the fuqahā-estate. Through an historical-anthropological evaluation of their kinship, we find further evidence of the Shāfiʿīte textual longue durée over a millennium, of the discontinuities and ruptures in the legal intellectual tradition, and of the overall precedence of some families over others. This overview also helps to situate *Minhāj* in the broader world of Shāfiʿīsm texts and to understand its complex relationship to other texts under discussion, particularly *Fatḥ*.

Tanqīḥ Family

The base text of the *Tanqīḥ*-family is *al-Lubāb fī al-fiqh al-Shāfiʿī* of Abū al-Ḥasan Aḥmad bin Muḥammad al-Maḥāmilī (d. 1024), the first group in Sachau's list. Al-Maḥāmilī was born and brought up in Baghdad and was educated with many such renowned Shāfiʿītes of the time as Abū Ḥāmid Aḥmad al-Isfarāyīnī (d. 1015). He served as a qāḍī of the Shāfiʿī school and authored many law-books, among which *al-Tajrīd fī al-furūʿ*, *al-Majmūʿ* and *al-Muqniʿ* are the best known among Shāfiʿītes, apart from his *al-Lubāb*. These works are used and cited by later scholars like Nawawī and Subkī extensively.[55] *Al-Lubāb* represents an earlier version of opinions from the Baghdadi/Iraqi group of Shāfiʿīsm against their Khurasani counterparts (on this division, see Chapters 3 and 4). Apart from it occurring in legal discourses, the text also must have been taught at least in the Iraqi centres of Shāfiʿīsm. We do find references to it in a few earlier scholarly works, but we do not find any text completely engaging with *Lubāb* until the fifteenth century. This might be one reason why Nawawī did not count it among the

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[53] Nawawī, *Tahḏīb al-asmāʾ*, 1: 3.

[54] For naming a family, I have chosen the title of the most famous text from that family; so a family name is not necessarily the name of the "founder".

[55] ʿAbd al-Karīm ibn Ṣunaytān ʿAmrī, "Ḥayat al-muṣannif" to Abū al-Ḥasan Aḥmad al-Maḥāmilī, *al-Lubāb fī al-fiqh al-Shāfiʿī*, ed. ʿAbd al-Karīm ibn Ṣunaytān ʿAmrī (Medina: Dār al- Bukhārī), 21-25.

most widely circulated texts of his time. The situation changed when *Tanqīḥ al-Lubāb*, the first known direct textual progeny of *al-Lubāb*, came out.

Tanqīḥ is a summary written by Walī al-Dīn Aḥmad bin ʿAbd al-Raḥīm Abū Zarʿa (d. 1423), an Egyptian judge of Iraqi origin, who left his position to write, teach and give fatwas. If *Tanqīḥ* had not been written, *al-Lubāb* would have just been known or unknown as one of several law-books written in the early eleventh century. Through his abridgement *al-Lubāb* received new life after four centuries, with many ensuing super-commentaries and super-abridgements.[56] That is why I have named this group *Tanqīḥ*. Among these is one remarkable super-summary, *Taḥrīr Tanqīḥ al-Lubāb*, written by Zakariyā al-Anṣārī (d. 1520), who himself wrote a commentary for his super-summary titled *Tuḥfat al-ṭullāb*. This latter text attracted at least four super-commentaries in the seventeenth century and two more in the following centuries. This proliferation of direct progenies for *Taḥrīr* must have motivated Sachau to prefer that name for the group rather than *al-Lubāb* or *Tanqīḥ*.

Tanbīh Family

The *Tanbīh* family originates from *Tanbīh*, written by Abū Isḥāq Ibrāhīm bin ʿAlī al-Shīrāzī (d. 1083), who is often identified among the Shāfiʿītes as the "Shaykh of the fuqahā of his era", and a scholar with "superabundant knowledge like an extravagant ocean".[57] He was born in Firozabad, where he received his primary education. For higher studies he went to Shiraz and studied with scholars like Abū ʿAbd al-Raḥmān al-Ghandajānī and Qāḍī Abū ʿAbd Allāh al-Jallāb.[58] After a while, he went on to Basra and Baghdad and studied with scholars like al-Qāḍī Abū al-Ṭayyib Ṭāhir al-Ṭabarī (d. 1058), where he became his favourite student. Al-Ṭabarī appointed him as his teaching assistant in 1038. Later he became an independent professor at a mosque-college in the famous al-Murātab Gate of Baghdad. When the Niẓāmiyyat Madrasa was established in 1066, he received an appointment there. The founder of that Madrasa, Niẓām al-Mulk (d. 1092), is said to have attempted to get al-Shīrāzī as the first teacher into the new institute. Although al-Shīrāzī agreed at first, he declined later, for he had doubts about the legal status of the land where the institute was established. Niẓām al-Mulk is said to have succeeded eventually in persuading him to take up the position. He taught there until his death. He became a leader of the Baghdadi fuqahā, and the caliph wanted to appoint him as the chief qāḍī after the death of Abū ʿAbd Allāh al-Ḥusayn bin Mākūlā (d. 1055). He refused that position, writing in response to the caliph, "Are you not satisfied that you are ruined? Do you want to ruin me too with you?"[59] Even at a time of ardent disputes between Khurasani and Baghdadi divisions, the Khurasani fuqahā recognized his distinguished stature. Once he came to Nishapur with a marriage-proposal (*khuṭbat*) from the then ʿAbbāsid caliph al-Muqtadī bi Amr Allāh (d. 1094) to the Seljūq princess of Malik

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[56] For a list of commentaries and summaries of *Tanqīḥ*, see ʿAmrī, "Ḥayat al-muṣannif", 34-37.

[57] Nawawī, *Tahḏīb al-asmāʾ*, 2: 173.

[58] The following *ṭabaqāt*s contain his anecdotes and biographies: Abū Isḥāq al-Shīrāzī, *Ṭabaqāt al-fuqahā*, ed. Iḥsān ʿAbbās (Beirut: Dār al-Rāʾid al-ʿArabī, 1970),119-131; Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿīyyat al-kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī), 4: 215; Aḥmad ibn Muḥammad Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿīyyat*, ed. al-Ḥāfiẓ ʿAbd al-ʿAlīm Khān (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmānīyat, 1978), 1: 251-254.

[59] "*alam yakfika an halakta ḥattā tuhlikanī maʿak?*" cited in al-Subkī, *Ṭabaqāt*, 4: 236.

Shāh (d. 1092). The leader of the Khurasani faction al-Juwaynī is said to have walked in front of him as a servant. Al-Juwaynī was asked why he was doing that, and answered that it was the only position he deserved before al-Shīrāzī. In the record of two debates between al-Shīrāzī and al-Juwaynī in Nishapur, the former is said to have beaten the latter. Al-Shīrāzī also differed with al-Juwaynī in many juridical points as is mentioned in his many works.[60]

Tanbīh refers mainly to the *Taʿlīq* of Abū Ḥāmid al-Isfarāyīnī, mentioned earlier as al-Maḥāmilī's teacher. About him al-Shīrāzī said, "the leadership of both religion and [the material] world ends at him".[61] But al-Shīrāzī does not mention any direct linkage, except for using the term *mukhtaṣar* to introduce *Tanbīh*. However, al-Isfarāyīnī's *Taʿlīq* (on Muzanī's *Mukhtaṣar*) was a usual reference for the Shāfiʿīte fuqahā of the time. Nawawī writes: "You know, the axis of works written by our Iraqi companions, or most of them, and of some Khurasani groups, is the *Taʿlīq* of Abū Ḥāmid. It has around fifty volumes, in which he has brought together many invaluable details."[62] Thus, al-Shīrāzī also must have utilized it, although he does not state that he did. *Tanbīh* was written in less than a year; the writing started in October, 1060 and was finished it by the following September.[63]

Tanbīh is a *matn*: it only discusses Shāfiʿīte opinions and does not enter into the disagreements with other schools, even though its author was an expert on differences between Ḥanafīsm and Shāfiʿīsm. Nor does it go into detailed legal analyses. It states clearly in the opening-lines that "this is a condensed work on the basics of the Shāfiʿī school".[64] What the author had in mind was writing a short text useful for both the beginners and specialists of Shāfiʿīte law. He wrote, "If a beginner reads and comprehends it, he will be informed into most of the legal issues. If an expert looks into it, he could recollect every point."

Later textual history shows that the work was successful in achieving its aim. The biographical dictionaries show that learning it by heart at the beginning of one's higher education was a normative tradition among Shāfiʿītes. A Yemeni faqīh wrote, "we used to learn *Tanbīh* as we would learn Qurʾān".[65] Also, many Shāfiʿītes wrote commentaries, summaries and other texts on *Tanbīh*, of which Nadā bint Muḥammad Kubah lists forty-two commentaries, seven summaries, six poetic renderings, four *nuktat*s, two *taṣḥīḥ*, one *taʿlīq*, and two *taḥrīr*s. One of the *taṣḥīḥ*s was written by Nawawī and entitled *al-ʿUmdat fī taṣḥīḥ al-Tanbīh*. In it he explains the most dependable viewpoints of the school. This *Taṣḥīḥ* was taken further by many later Shāfiʿītes including al-Isnawī (d. 1370) and Ibn al-Mulqin (d. 1401). All wrote commentaries or conducted other textual engagements on it.[66]

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[60] On the debates and differences of opinions among them, see al-Subkī, *Ṭabaqāt* 4: 252-256, 5: 209-218.

[61] al-Shīrāzī, *Ṭabaqāt*, 124.

[62] Nawawī, *Tahdhīb al-asmāʾ*, 2: 210.

[63] Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 1: 253.

[64] *al-Tanbīh fī al-fiqh ʿalā madhab al-Imām al-Shāfiʿī* (Beirut: Markaz al-Khidmāt wa al-Abḥāth al-Thaqāfiyyat, 1983),11.

[65] Nadā bint Muḥammad Kubah, "Kifāyat al-nabīh fī sharḥ al-Tanbīh" (MA thesis, Umm al-Qurā University, 2010), 91.

[66] For an elaboration on the progenies of *Taṣḥīḥ*, see *Taṣḥīḥ al-Tanbīh* (Beirut: al-Reslah Publishing House, 1996), 33-34.

Unlike *Lubāb*, it did not take centuries for *Tanbīh* to be well recognized by the fuqahā-estate. Its first commentary titled *Tawjīh al-Tanbīh* was written by Abū al-Ḥusayn Muḥammad bin Mubārak Ibn al-Khall (d. 1157), and at least fifteen commentaries are known to have been written in the thirteenth century and eighteen in the fourteenth century.[67] However, for a number of various reasons, including the coming of *Minhāj* (as we shall discuss later), the text began to fall into oblivion. Sachau says that it was no longer popular in the late nineteenth century.

Muhaddab Family

The *Muhaddab* Family consists of textual descendants of al-Shīrāzī's *Muhaddab fī fiqh al-Imam al-Shāfiʿī*. This base text is written by the same of author who is also the author of *Tanbīh*, which makes those two textual families siblings, but with divergent descendants. He finished writing *Muhaddab* towards the end of his life; it had taken him fourteen years, while he had completed *Tanbīh* in less than a year.[68] He himself was very proud of this text and is said to have boasted: "If this book that I wrote had been shown to the Prophet, he would have said: 'This is my Sharīʿat with which I am assigned'".[69] The supposed motivation for writing this book was an accusation from a contemporary scholar, Ibn Ṣabbāgh, who said: "If al-Shāfiʿī and Abū Ḥanīfa united [i.e. if they reconciled their disagreements], Abū Isḥāq al-Shīrāzī's knowledge would go away". By this he meant that al-Shīrāzī's expertise was only in the disagreements between both schools. Through *Muhaddab* al-Shīrāzī thus wanted to show his proficiency in all fields of the school and not just in disputed issues.[70] He performed prayers after he had finished every paragraph (*faṣl*) of the book, according to traditional accounts.[71]

Muhaddab was well received by later Shāfiʿītes and it was taught, commented on, and abridged by many of them. It was his second text among the five *mutadāvalat*-texts of the school identified by Nawawī. The first commentary on it appeared in the twelfth century in ten volumes, written by Abū Isḥāq Ibrāhīm bin Manṣūr al-ʿIrāqī (d. 1200), according to al-Yāfiʿī.[72] In the thirteenth century three more commentaries came out: a) *al-Istiqṣāʾ li maḏāhib al-ʿulamāʾ al-fuqahāʾ* by ʿUthmān bin ʿIsa al-Hadabānī al-Mārānī (d. 1244) in twenty volumes, but still incomplete; b) one by Ismāʿīl bin Muḥammad al-Ḥaḍramī (d. 1277); c) the most important and popular commentary entitled *al-Majmūʿ* by Nawawī, who had also failed to finish it even after nine volumes. The later history of *al-Majmūʿ* is illustrative for our textual longue-durée paradigm of Shāfiʿīsm: in the fourteenth century the renowned Egyptian Shāfiʿīte Taqī al-Dīn al-Subkī (d. 1355) made an attempt to complete the text. Yet he wrote only three more volumes. Later some Ḥaḍramī and Iraqi scholars resumed the project, yet

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[67] Kubah, "Kifāyat al-nabīh," 97-100.

[68] Nawawī quotes al-Shīrāzī saying: "I started writing *Muhaddab* on 455 [=1063], and completed it on the last Sunday of Rajab, 469 [= 26 February 1077]"; see Nawawī, *Tahḏīb al-asmāʾ*, 2: 174.

[69] al-Subkī, *Ṭabaqāt*, 4: 228-229.

[70] al-Subkī, *Ṭabaqāt*, 4: 222.

[71] Shams al-Dīn Muḥammad al-Ḏahabī, *Siyar aʿlām al-nubalāʾ*, 14: 11—as cited in Kubah, "Kifāyat al-nabīh," 80.

[72] Ḥajī Khalīfah Muṣṭafā Ibn ʿAbd Allāh, *Kashf al-ẓunūn ʿan asāmī al-kutub wa al-funūn* (Beirut: Dār al-Kutub al-ʿIlmīyat, 2008).

were also unsuccessful. In the twentieth century, Muḥammad Najīb al-Muṭīʿī continued from where al-Subkī had stopped and wrote five more volumes, but before he could finish he was imprisoned in Egypt. Another scholar, Ḥusayn al-Aqbī, wrote the eighteenth volume, but could not finish the project. After al-Muṭīʿī was released from prison he restarted from where he had stopped. He wrote three more volumes and published all the twenty volumes together.[73]

Apart from these commentaries many more textual progenies of the *Muhaḏḏab* Family have been written in different genres since the twelfth century. For example, Abū Saʿd bin Abū ʿIsrūn (d. 1189) wrote a *taʿlīq* with *fawāʾid*, Abū Bakr Muḥammad bin Mūsā al-Hazimī (d. 1188) wrote on its *ḥadīth*s, Jalāl al-Dīn al-Suyūṭī (d. 1505) wrote on its *zawāʾid*s in a volume entitled *al-Kāfī fī zawāʾid al-Muhaḏḏab ʿalā al-wafī*, and there are others.[74] *Muhaḏḏab* was generally identified as the sole source for Shāfiʿīte muftīs for giving legal rulings until the works of al-Rāfiʿī and Nawawī came out.

The families of *Muhaḏḏab* and *Tanbīh* together reveal a notable lineage in the Shāfiʿīte tradition, although the degree to which they were accepted fluctuated over time. Al-Shīrāzī's legalistic and intellectual charisma within the Shāfiʿī school was advanced, but in a different way, by two of his contemporaries from the Khurasani division, al-Juwaynī and his student al-Ghazālī. The textual family they produced together we will turn to later,, but before that we shall make a quick jump to another textual family from the Iraqi division, *Matn al-Ghāyat*, which started in the twelfth century.

Ghāyat Family

The *Ghāyat* Family stems from Qāḍī Abū Shujāʿ Aḥmad bin al-Ḥasan bin Aḥmad (d. Medina, 1197). The work has been given different names. Some call it *Matn* or *Mukhtaṣar Abū Shujāʿ*, others *al-Taqrīb*, and others *Ghāyat al-ikhtiṣār*. This confusion in the name has led many European scholars to identify the family as a group of Abū Shujāʿ. He was born and brought up in Basra into a family that migrated from Isfahan. He is said to have taught Shāfiʿīte law for more than forty years in Basra. He was appointed as qāḍī of Isfahan, but towards the end of his life he moved to Medina, where he served in the Holy Mosque. He is said to have lived for 160 years.[75] We do not know if he wrote any other work apart from *Ghāyat*.

In the introduction to *Ghāyat*, Abū Shujāʿ says that his colleagues asked him to write a *mukhtaṣar* for Shāfiʿīte law that would simplify legal studies and ease memorization for beginners. This is stated by many Shāfiʿīte authors as their motivation for writing. Why the text became so successful among other Shāfiʿīte works is not immediately obvious. One reason could be the time and place of a blow against the development of Shāfiʿīsm from an internal attack against Islamic law by a leading intellectual, al-Ghazālī (see below). Al-Ghazālī's dissatisfaction with the law at the end of the eleventh century must have generated a general distrust towards the discipline in scholarly circles. That may be why in the twelfth century we do not see as many scholars engaging with it as there were earlier. It must have

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[73] Muḥammad Najīb al-Muṭīʿī, Preface to Nawawī, *Majmūʿ sharḥ al-Muhaḏḏab* (Jeddah: Maktabat al-Irshād, 1980), 10-14.

[74] For a detailed list of other textual descendants of *Muhaḏḏab* in other genres, see Ḥajī Khalīfah, *Kashf*, 20: 1912-13.

[75] For his biography, see al-Subkī, *Ṭabaqāt*, 6: 15; Ibn Qāḍī Shuhbah, *Ṭabaqāt* 2: 29-30.

deterred many scholars from approaching the discipline seriously, so that very few scholars specialized in it. The fuqahā-estate was experiencing a period of fragility, especially in its Shāfiʿīte cluster. Although not for legal history, the twelfth century is relevant to Islamic history for its contemporary political and cultural landscape, with the growth of many important Islamic educational centres, the institutionalizing and amalgamation of jurisprudence with spiritualism, the outburst of jihādi sentiments in a more organized way with the counter-crusades of Saladin (Ṣalāḥ ad-Dīn Yūsuf ibn Ayyūb, d. 1193), and the establishment of his more powerful kingdom centred in Egypt and Syria. All these developments were mediated through the material of copious textual production, but not through Shāfiʿīte legal scholarship as such. Into this historical context *Ghāyat* was released and it was the only text that the contemporary Shāfiʿītes could grasp afresh at that time, one that would contribute to its popularity in the coming centuries.

Some traditional accounts relate *Ghāyat* with *al-Iqnāʾ* of al-Māwardī (d. 1058), since the former is an abridgment of the latter. In turn, *al-Iqnāʾ* itself is said to be a summary of al-Māwardī's own *al-Ḥāwī al-kabīr*, which is a commentary on *Mukhtaṣar* of al-Muzanī.[76] In *al-Ḥāwī al-kabīr*, we see a clear statement about its relationship with the *Mukhtaṣar*, on which it gives detailed notes on the wider receptivity and immense contribution to the school. It authenticates the position of *Mukhtaṣar* in the school and counters many criticisms which came against the text, its author al-Muzanī, and the school in general.[77]

Although *Ghāyat* was used and studied widely, the first known commentary came out only in the fifteenth century: *Kifāyat al-akhyār fī ḥall Ghāyat al-ikhtiṣār* by Taqī al-Dīn Abū Bakr bin Muḥammad al-Ḥusaynī al-Dimishqī (d. 1426). That century also witnessed the appearance of two more commentaries, including a most famous one by Muḥammad bin Qāsim al-Ghazzī (d. 1512) which was given two titles: *Fatḥ al-qarīb al-mujīb fī sharḥ alfāẓ al-Taqrīb* and *al-Qawl al-mukhtār fī sharḥ Ghāyat al-Ikhtiṣār*. This commentary together with the core-text *Ghāyat* became one of the most used Shāfiʿīte primers in many educational centres, and was a strong competitor against the *Fatḥ al-muʿīn* of al-Malaybārī, which we shall discuss later. The commentary also attracted more than ten super-commentators, including Aḥmad al-Qalyūbī (d. 1659), ʿAlī al-Shabrāmalsī (d. 1676), Ibrāhīm al-Birmāwī (d. 1894), Ibrāhīm al-Bājūrī (d. 1860), and Nawawī al-Jāwī (d. 1898). The commentary of Khaṭīb al-Sharbīnī (d. 1570) on *Ghāyat* entitled *al-Iqnāʾ fī ḥall alfāẓ Matn Abī Shujāʿ* also attracted more than five super-commentators between the seventeenth and nineteenth centuries.[78] On a side note, the core-text of *Ghāyat* was translated into French in the mid-nineteenth century by Solomon Keijzer; al-Ghazzī's commentary was translated into French by Van den Berg in

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[76] About the interconnection between *al-Ḥāwi* and *Iqnāʾ*, Ibn al-Jawzī says: "al-Māwardī used to say: 'I commented on (*basaṭa*) the law in four thousand pages and I summarized it into forty.'" By the commentary (*mabsūṭ*), he meant *kitāb al-Ḥāwi*, and by the summary the *kitāb Iqnāʾ*." Ibn al-Jawzī, *al-Muntaẓam fī tārīkh al-mulūk wa al-umam* (Beirut: Dār al-Kutub al-ʿIlmīyat, 1992), 8: 199.

[77] al-Māwardī, Abū al-Ḥasan ʿAlī, *al-Ḥāwī al-kabīr*, eds. ʿAlī Muhammad Maʿʿūḍ and ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyyat, 1994), 1: 7-33.

[78] For a list of commentators and super-commentators, see the Introduction of Bassām ʿAbd al-Wahhāb Jābī to Muḥammad ibn Qāsim Ghazzī, *Fatḥ al-qarīb al-mujīb fī sharḥ alfāẓ al-Taqrīb aw, al-Qawl al-mukhtār fī sharḥ Ghāyat al-ikhtiṣār* (Limassol: al-Jaffān wa al-Jābī, 2005), 10-15.

1894; and al-Bājūrī's *ḥāshiyat* was translated into German by Eduard Sachau.[79] All these translations testify to the longue durée of Islamic legal texts, to which European scholarship also contributed in consequence of the colonial enterprises in Southeast Asia and East Africa.[80]

Wasīṭ Family

The *Wasīṭ* family refers to texts based on *al-Wasīṭ* of Abū Ḥāmid al-Ghazālī (d. 1111), one of the most famous scholars in Islamic history. The base-text of this family is *al-Basīṭ*, which is assumedly al-Ghazālī's earliest work[81] written during his early career of teaching Shāfiʿī law at the colleges of Nishapur and Baghdad.[82] His major contributions in positive law are four interconnected works:[83] *al-Basīṭ*, which he himself abridged into *al-Wasīṭ*, and then again abridged into *al-Wajīz*, which was again abridged into *al-Khulāṣat*, and that was the last of his juridical writings.[84] *Basīṭ* was the outcome of his early desire to establish a career in the legal circles of the period, which later he realized would be superfluous. That is what motivated him to come up with a comparatively shorter *al-Wasīṭ*. Even then he kept a soft spot for his first book, commending it well for its "organization, abundance of beneficial information

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[79] Solomon Keijzer, *Précis de jurisprudence musulmane selon le rite Châfeite* (Leiden: Brill, 1859); L.W.C. van den Berg, *Fatḥ al-Qarîb: la révélation de l'omniprésent: commentaire sur le précis de jurisprudence musulmane d'Abou Chodjâ'* (Leiden: Brill, 1894); Eduard Sachau, *Muhammedanisches Recht nach schafiitischer Lehre* (Stuttgart, Berlin: W. Spemann, 1897).

[80] For a brief overview in the East African context, see my article "Two 'Cultural Translators' of Islamic Law and German East Africa," *Rechtsgeschichte-Legal History: Journal of the Max Planck Institute for European Legal History* 24 (2016): 190-202.

[81] Al-Ghazālī is said to have been the author of *al-Taʿlīqat fī furūʿ al-maḏhab* while he was a student of Abū Naṣr al-Ismāʿīlī in Jurjan. Thus this can be considered his first legal text. –al-Subkī, *Ṭabaqāt*, 6: 195. *Al-Taʿlīqat* is not a single work; rather "it contains books he travelled to hear, write and learn". The chronology of his other legal text, *Al-Mankhūl min Taʿlīqat al-uṣūl*'s is controversial. Some attribute it to the time of his studentship with al-Juwaynī, others to the students of al-Ghazālī who wrote it during his seclusion and transition towards Sufi thoughts.—Carl Brockelmann is of this second opinion, while many others support the first. See Aḥmad Zakī Mansur Ḥammād, "Abū Ḥāmid al-Ghazālī's Juristic Doctrine in *al-Mustaṣfā min ʿilm al-uṣūl*: with a Translation of Volume One of *al-Mustaṣfā min ʿilm al-uṣūl*," (PhD diss., University of Chicago, 1987), 1: 159-164. This thesis deals with legal theory, not with the law itself. In view of the controversies and alternative possibilities, *al-Basīṭ* could be his second work that deals with the law proper, or his third work that engages with the law in general.

[82] ʿAlī Muʿawwid and ʿĀdil ʿAbd al-Mawjūd, Introduction to al-Ghazālī, *al-Wajīz fī fiqh al-Imam al-Shāfiʿī* (Beirut: Dār al-Arqam, 1997), 65.

[83] He is said to have written more legal texts than these four, but many scholars have investigated the authenticity and chronology of such works. All those who have conducted systematic and critical evaluations for more than one-and-half centuries unanimously agree that these four works were originally written by al-Ghazālī himself, not falsely attributed to him. See the bibliographical studies on the works of al-Ghazālī: ʿAbd al-Raḥmān Badawī, *Muʾallafāt al-Ghazālī* (Cairo: al-Majlis al-Aʿlā li Riʿāyat al-Funūn wa al-Adab, 1961); and addendum to Badawī's work: Mashhad al-ʿAllāf, *Kutub al-Imam al-Ghazālī al-thābit minha wa al-manhūl*, http://www.Ghazali.org/biblio/AuthenticityofGhazaliWorks-AR.htm (accessed on 26 March, 2016); W. Montgomery Watt, "The Authenticity of the works attributed to al-Ghazālī," *Journal of the Royal Asiatic Society* 84 (1952): 24-45. Ḥammād, "al-Ghazālī's Juristic Doctrine," 1: 151-157 provides a bibliographical survey of the studies related to the authenticity of works written by or attributed to al-Ghazālī.

[84] George Hourani has provided a detailed chronology of al-Ghazālī's works in which he places *al-Khulāṣat* as the first text, but this appears to be incorrect; see his "The Chronology of Ghazālī's Writings," *Journal of the American Oriental Society* 79, no. 4 (1959): 227; idem, "A Revised Chronology of al-Ghazālī's Works," *Journal of the American Oriental Society* 104, no. 2 (1984): 292. Though Hourani criticizes an earlier scholar, M. Bouyges, for this chronology, he does not offer valid reasons; see M. Bouyges, *Essai de chronologie des œuvres de al-Ghazālī (Algazel)*, ed. M. Allard (Beirut: Imprimerie Catholique, 1959): 13-14.

(*fawāʾid*) and refinement without pleonasm and ornamentation, and its inclusion of essential significant [issues]". He says further that only those who have a "high degree of willpower and pure intention, devoid of anything other than knowledge" can read it.[85] He justified the abridgement project by saying that the pure pursuit of knowledge had decreased, laziness was dominant, and most students and scholars were seeking only shortened versions of texts.[86] He explained how he had abridged *al-Wasīṭ*, removing the difficulties, weak rulings, strange definitions, repetitions and loquaciousness of the previous text, yet adding at least one-thirtieth ("more than one-third of one-tenth") of the rulings given in *al-Basīṭ*.

Wasīṭ has been one of the favourites among the five *mutadāvalat* texts of the school, whereas *al-Basīṭ* did not attract most of the Shāfiʿites during or after al-Ghazālī's time. The first step towards making *Wasīṭ* a classical text was taken by al-Ghazālī himself by summarizing it into *al-Wajīz*, which is considered to be the magnum opus among his law-books. A well-known citation was, "If al-Ghazālī had been a prophet, his miracle would have been *al-Wajīz*", thereby comparing it with the Qurʾān that was the miracle of the Prophet Muḥammad.[87] This summary of a summary accommodates rare discourses, contrasting views and supplementary discussions which we do not see in the earlier texts. Though emphasizing Shāfiʿite viewpoints, it also analyses the approaches of the Mālikī and Ḥanafī schools when they obviously contradict the authentic views of Shāfiʿism. It also incorporates offbeat Shāfiʿite opinions, using particular technical phrases to indicate that he has adapted them from rulings in the *ḥadīth*s.

There was some opposition against the commonly agreed view that *al-Khulāṣat*[88] was an abridgement of *al-Wajīz* from some Islamic legalists. They were of the opinion, complicating the textual genealogy further, that it was not a direct abridgement of *al-Wajīz*, but rather a condensation of the *Mukhtaṣar* of al-Muzanī mentioned earlier.[89] This view appears to me to have merit if we compare the contents of *al-Khulāṣat* with that of *Mukhtaṣar* and *al-Wajīz*. I see *al-Khulāṣat* as a more precise intellectual definition in al-Ghazālī's legal thought that started with *al-Basīṭ* and advanced into *al-Wajīz* to achieve more direct intellectual influence. Al-Ghazālī himself acknowledged this progression into *al-Khulāṣat* in a different context, where he recognizes it as his "fourth text" and the "shortest among the works";[90] a processual abridgement of his own previous work as had been his practice. This replicative process in prioritizing items in one's intellectual development we shall see more clearly later for Nawawī with *Minhāj*.

It also has been said that *Basīṭ* is a summary of *Nihāyat al-maṭlab* of ʿAbd al-Malik bin ʿAbd Allāh al-Juwaynī (d. 1085),[91] who was a leading scholar of the Khurasani division of Shāfiʿism and a teacher of al-Ghazālī. *Nihāyat* is one of the most noted commentaries on

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[85] al-Ghazālī, *al-Wasīṭ fī al-maḏhab* (Cairo: Dār al-Salām, 1997), 1: 103.

[86] al-Ghazālī, *al-Wasīṭ*, 1: 103.

[87] "*Law kāna al-Ghazālī nabiyyan, la-kāna muʿjizatuh al-Wajīz*", al-Ahdal, *Sullam al-Mutaʿallim*, 631.

[88] Its full name is *Khulāṣat al-mukhtaṣar wa naqāwat al-muʿtaṣar* (Riyadh: Dār al-Minhāj, 2007).

[89] Muʿawwid and ʿAbd al-Mawjūd, Introduction, 73.

[90] al-Ghazālī, *Jawāhir al- Qurʾān wa duraruh* (Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīda, 1988): 22.

[91] al-Bābilī says: "Certainly *al-Nihāyat* is a commentary to the *al-Mukhtaṣar al-Muzanī* which has been abridged from *al-Umm*. Al-Ghazālī abridged *al-Nihāyat* into *al-Basīṭ*." –cited in Muʿawwid and ʿAbd al-Mawjūd, Introduction, 65.

Muzanī's *Mukhtaṣar*, not only in his century, when many more commentaries appeared.[92] He studied with his father Abū Muḥammad ʿAbd Allāh (d. 1046), who himself wrote a commentary on *Mukhtaṣar* and al-Shāfiʿī's *Risālat* and was renowned for his contributions to legal hermeneutics. He started to write *Nihāyat* during his stay in Mecca, but finished it while teaching at his hometown, Nishapur. It has forty volumes, according to Ibn al-Najjār, the historian of Baghdad.[93] Many specialists have expressed a strong appreciation of this work. The historian Ibn Khallikān states rhetorically, "Nothing is written in Islam equal to this".[94] However, al-Ghazālī does not state that *Basīṭ* is an abridgement of any previous work.

Al-Ghazālī eventually tired of legal writing and of the law itself and chose the path of mysticism. Of all the texts we have mentioned only *Khulāṣat* satisfied him: "I have spent a large part of my life authoring books of the school and organizing it into *Basīṭ*, *Wasīṭ*, and *Wajīz* with overstatement and exaggeration in classification and sub-classification. For the effort I invested, *Khulāṣat al-mukhtaṣar* would have been enough."[95] In his new spiritual chosen path, law had no more significance: "in the prime of my youth, I specialized in the discipline [of law] with particulars of religion and *this* world and wasted a major portion of my life […] I composed many works in positive law and legal theory. Then I came to the science of the way of the *other* world and acquaintance with the inner secrets of religion."[96] Many scholars have worked on al-Ghazālī's contributions to mysticism but this stands outside my present focus.[97]

Once he abandoned Islamic law a vacuum was generated that *Ghāyat* tried to fill in twelfth-century Baghdad and *al-Muḥarrar* in thirteenth-century Khurasan. Nevertheless, his contributions to Shāfiʿīsm were appreciated by the following generations, who utilized his texts widely over centuries. *Wasīṭ* and *Wajīz* were two favourite texts in the thirteenth century, for Nawawī counts them among the *mutadāvalat*-texts of the school. I consider both texts as one family, since *Wajīz* is clearly a summary of *Wasīṭ*. It was also summarized by another scholar called Nūr al-Dīn Ibrāhīm al-Isnawī (d. 1321). *Wasīṭ* was commented upon by many scholars, including a sixteen-volume commentary entitled *al-Muḥīṭ* by his student Muḥy al-Dīn Muḥammad al-Naysābūrī (d. 1153), and *al-Maṭlab al-ʿālī* by Ibn al-Rifʿat (d. 1310), who planned sixty volumes, but managed to pen only (!) twenty-six. Another commentary, *al-Baḥr al-muḥīṭ* by Najm al-Dīn Abū al-ʿAbbās Aḥmad al-Qamūlī (d. 1327) was abridged by himself as *Jawāhir al-Baḥr al-muḥīṭ*. This abridgement was subsequently summarized by Sirāj al-Dīn ʿUmar bin Muḥammad al-Yamanī (d. 1482) in *Jawāhir al-Jawāhir*, which also attracted many

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[92] Among those, there are five notable commentaries, written by Abū Isḥāq al-Isfarāyīnī (d. 1027), Abū ʿAlī al-Bandanījī (d. 1034), Abū ʿAlī al-Sanjī (d. 1036f.), Abū al-Ṭayyib al-Ṭabarī (d. 1058), and Abū al-Hasan al-Māwardī (d. 1058). Of these, the last one entitled *al-Ḥāwi* was also widely accepted in Shāfiʿīte circles. See al-Dib, "Muqaddimat": 223-4.

[93] al-Ahdal, *Sullam al-mutaʿallim*, 634—citing Ibn al-Najjār, *Dhayl Tārīkh Baghdad*, 16: 44

[94] Ibn Khallikān, *Wafayāt al-aʿyān* vol. 3 (Paris: Oriental Translation Fund of Great Britain and Ireland, 1868): 168.

[95] al-Ghazālī, *Jawāhir*: 22.

[96] al-Ghazālī, *al-Mustaṣfā min ʿilm al-uṣūl*, ed. Hamzat bin Zuhayr Ḥāfiẓ (Medina: Shirkat al-Madinat al-Munawwarat), 1: 4-5.

[97] A particularly helpful study, with a textual approach, on al-Ghazālī and mysticism is Kenneth Garden, "al-Ghazālī's Contested Revival: *Iḥyāʾ ʿUlūm al-Dīn* and Its Critics in Khorasan and the Maghrib (Morocco, Tunisia, Algeria, Spain)" (PhD diss., University of Chicago, 2005).

commentators. [98] *Wajīz*'s legacy was perpetuated through al-Rāfiʿī's commentary and its descendant works. Al-Rāfiʿī wrote two commentaries, an unnamed short one, and a long one in ten volumes entitled *Fatḥ al-ʿAzīz*. The latter is widely known as *al-ʿAzīz* and has many textual descendants, including *al-Rawḍat* by Nawawī. [99]

Minhāj Family

The base-text of the *Minhāj* Family is al-Rāfiʿī's *al-Muḥarrar*. It came out in the thirteenth century into a gap after the weakening of Shāfiʿī legalism and he connected himself to the textual tradition of al-Ghazālī. *Al-Muḥarrar* tried to get back to the initial phase of Ghazālīan thought, from where serious legal discourses had discontinued. It is based on *al-Wajīz*, according to a consensus, in traditional textual history. [100] Some scholars have suggested that it is based on *al-Khulāṣat*, [101] making a serial progression of abridgements without any hiatus. We do not know why al-Rāfiʿī took *al-Wajīz*, or *Khulāṣat* for that matter, to write his abridgement. He himself does not acknowledge a particular text as the base for his work, but presents it as an independent work, as *al-Basīṭ* did with *Nihāyat*. In form it stands very close to what Pedersen describes as the general pattern of classical Arabic books with no indication of an author, title, or even the purpose of writing it. [102] In a short introductory paragraph, we have standard religious expressions of praise and prayer that it be accepted as a meritorious activity.

> I pray for Your blessings on what I have embarked on to compose a *mukhtaṣar* in the commandments, edited from pleonasm and elongation, cited from what the majority has preponderated as *wajh*s and *qawl*s…. By Your great beneficence, I request You to smooth [to make comprehensible] this edition (*al-muḥarrar*) for those who utilize it and to accept it from me. You are the one who listens and knows. [103]

Al-Muḥarrar was the result of an urge to revive the school. The author found that most people of his time had lost interest in learning Islamic law. Legal thought per se had deteriorated, and the intellectual tradition which had been maintained until the time of al-Ghazālī had died out. He wanted to codify, organize, and prioritize the rich discursive tradition of the school in a meaningful way to attract a wider legalist readership. The text thus gave a new dimension to the legal thoughts by codifying multiple viewpoints of the school and by identifying the most valid legal opinion, though *Minhāj* would invalidate many of those later. For him, the twelfth century, in which he himself and all his teachers lived a major part of their life, was clearly an

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[98] al-Ahdal, *Sullam al-Mutaʿallim*, 632-33.

[99] Abū Zakariyā Muḥy al-Dīn Yaḥyā bin Sharaf bin Mury bin Ḥasan bin Ḥusayn bin Muḥammad bin Jumuʿat al-Nawawī (1233-1277), widely known as al-Nawawī.

[100] See for example: al-Ahdal, *Sullam al-mutaʿallim*: 631 who in turn refers to an eighteenth-century scholar: al-Sulaymān ibn Muḥammad Bujayrimī, *Ḥāshiyat al-Bujayrimī ʿalā Sharḥ Manhaj al-ṭullāb* (Beirut: Dār al-Kutub al-ʿIlmīyat, 2000), 1: 15.

[101] al-Ḥabīb ʿAbd Allāh bin Ḥusayn Bil-Faqīh, *Maṭlab al-īqāẓ fī al-kalām alā shayʾ min ghurar al-alfāẓ: bayān li muṣṭalaḥāt al-Shāfiʿiyyat al-fiqhīyyat* (Tarim: Dār al-Muhājir, 1995), 34.

[102] See Pedersen, *Arabic Book*: 26-31.

[103] ʿAbd al-Karim al-Qazwīnī al-Rāfiʿī, *al-Muḥarrar fī fiqh al-Imām al-Shāfiʿī*, ed. Muḥammad Ḥasan Ismāʿīl (Beirut: Dār al-Kutub al-ʿIlmiyyat, 2005): 7.

irrelevance in terms of legal tradition. His disregard for the textual corpus of his teachers and colleagues and his dependence on the works of the eleventh century demonstrate this. Within a vacuum of legal intelligentsia *al-Muḥarrar* gained popularity in scholarly circles. An immediate abridgement by al-Nawawī contributed to making it popular, but with reservations.

Al-Muḥarrar stood out as a prominent Shāfiʿīte text only for very short time. It attracted only two commentaries and three abridgements, far less than the numerous commentaries and abridgements for its successor *Minhāj*.[104] The main reason is that, although *Minhāj* expressed its appreciation for *al-Muḥarrar*, as we shall see in Chapter 4, it also expressed many severe criticisms, so much so that the ideas in *al-Muḥarrar* became matters of speculation among the Shāfiʿītes, who eventually kept a certain distance from engaging with the text. Furthermore, *Minhāj* was written just three or four decades after *al-Muḥarrar*, which gave little time for commentators or abridgers to become critically engaged. Once *Minhāj* was out, *al-Muḥarrar* lost prominence in the educational institutions and legal circles in which it had enjoyed a short-lived fame. Hardly read, referred to, or circulated, *al-Muḥarrar* was restricted to acknowledgements now and then as a textual foremother of *Minhāj*. I will return to this family and its genealogy in Chapter 4, which is fully dedicated to *Minhāj*.

Final Remarks

In the traditional accounts it is often said that *al-Muḥarrar*, the base-text of *Minhāj*, is an abridgement of *Wajīz*, a claim that makes the *Minhāj* family an offshoot of the *Wasīṭ* family. A similar statement is also made about the *Fatḥ* family, which is thus connected to the *Minhāj* family through *Tuḥfat* of Ibn Ḥajar. This makes both the *Minhāj* and *Fatḥ* families offshoots of the *Wasīṭ* family. But from what has been said about *al-Muḥarrar* and *Qurrat-Fatḥ* together, neither of them admit such a concatenation, and it gives me ground to consider them as distinct. I shall address the complexities of these two texts in Chapters 4 and 6 respectively. Nevertheless, the textual interconnectivity of Shāfiʿīsm from *al-Umm* to *Minhāj* represents an archetype of legalist textuality in which Muzanī's *Mukhtaṣar* and al-Ghazālī's *Wajīz* had crucial roles. This tradition was furthered by *Minhāj* and its descendants into an advanced legalist textual lineage, which has been portrayed in several traditional "family-trees" relating to the text.

To the fuqahā-estates in general and to the Shāfiʿīte-clusters in particular the legal texts and their legitimate transmissions were of the utmost importance. Their whole existence depended on their involvement with the nuances of the texts, which became crucial in the sequences of revolutions in book culture and reading. In the gradual evolution of personal circles of knowledge transmission into doctrinal schools and full-fledged fuqahā-estates through differing micro and macro networks, the texts of eponymous founders and their immediate students were the starting points for later scholars to embark on new projects. This certainly generated the *mutadāvalat*-texts (found in the narratives of the Shāfiʿītes like Nawawī) or the textual families (the ones enlisted here) extended through commentaries, super-commentaries, abridgements, poetic renderings and so on. The horizontal spread and

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[104] One commentary is *Kashf al-durar fī sharḥ al-Muḥarrar* by Shihāb al-Dīn Aḥmad bin Yūsuf al-Sindhī (d. 1490), and another by Sharaf al-Dīn al-Shirazi. The two abridgements, apart from the *Minhāj* of al-Nawawī, are *al-Ījāz* by Tāj Maḥmūd bin Muḥammad al-Kirmānī (d. 1404) and another by ʿAlāʾ al-Dīn ʿAlī bin Muḥammad al-Bājī (d. 1314) —al-Ahdal, *Sullam al-mutaʿallim*: 630-631.

vertical institutionalization of fuqahā-estates facilitated their birth and growth for centuries to follow constructing orthodoxy through a *longue-durée* of textual discourses. The *ijāzat* or certificate to transmit or teach a text, and *silsilat* or chain of transmitters with valid *ijāzat*s going back to the author, sanctioned the authenticity of a faqīh and his/her legalistic engagements. Such validated certificates and transmission-chains increased over time, parallel to the growth of legalistic textual corpuses. Whatever the *ijāzat* is and whoever the members in a Shāfiʿīte *silsilat* are, it all goes back to al-Shāfiʿī and his *al-Umm*, mostly through al-Muzanī and his *Mukhtaṣar*. The title *al-Umm* literally means "the mother", and indeed that text stands out as the "foremother" of subsequent texts emanating from the school.

Within the textual families of Shāfiʿīsm I have identified, some texts and their descendants became more famous over time, whereas some moved into oblivion. It was only because of the prominence of some of the descendants that a few of the base-texts were revived after centuries (as with the *Tanqīḥ* Family), only to fade away again in the textual *longue-durée*. By contrast, texts like *Minhāj* rose into the position of an exclusive authority in the school through written and unwritten textual progenies, and this spread the notion that the base-text could not be understood, learned, taught, or transmitted without depending on one or more descendants. The later *silsilat*s and *ijāzat*s in Shāfiʿīsm could not circumvent its authors or their oeuvre, as I shall explain in the next section.

Chapter 2
The Law of God in the World of Men

Is it possible somehow to convey simultaneously both that conspicuous history which holds our attention by its continual and dramatic changes—and that other, submerged, history, almost silent and always discreet, virtually unsuspected either by its observers or its participants, which is little touched by the obstinate erosion of time?

—Fernand Braudel, *The Mediterranean*, 1: 16

In the previous chapter, I dealt with the role of micro- and macro-networks of fuqahā in the rise and spread of legal schools in the central Islamic lands. Looking particularly at the case of Shāfiʿīsm, we analysed the centrality of written texts in their evolution into fully-fledged fuqahā-estates. The discussion was more on the internal dynamics of such an assumed estate following an emic approach. In this chapter, I take up an etic method to examine the external factors immediately relevant for constituting an autonomous estate of the fuqahā, if it ever did materialize. Many particular features of the still expanding, dividing, collapsing and regenerating central Islamic lands in the realms of politics, economy and community have been vital to the formation of a fuqahā-entity, one that claimed to stand beyond any regional influences. I try to sketch the ways, contexts and trajectories in which this collective asserted its distinctiveness against diverse provincial power-centres.

The questions I address in this chapter are: What factors legitimized the fuqahā's claims for particular sorts of autonomy? Why did they perceive themselves as true "custodians" of Islamic law in contrast to the existing holders of power for state or polity? How did they endeavour to bring that perception into practice and to what extent were they successful in constituting an invisible sovereignty in relation to the contemporary socio-political structures? Addressing these questions, I start with the fuqahā's self-perceptions and claims for autonomy. Then I relate those to the state and community of the time, in order to understand the establishment and erosion of their assumed sovereignty. Afterwards I analyse the visible spectrums of their power, the institutions which mattered most for the transmissions of legal texts. Finally, I show that they were never able to avoid the regionality which for long they had opposed, and what is more, it even influenced their legal articulations. This leads me to argue that regional contexts—whether economic, social, or even political—have very much controlled the engagements of the fuqahā.

Fuqahā-Estate and its Autonomy
By the expansion of macro-networks in the tenth and eleventh centuries, the fuqahā rose into a locus of power in which their notions of religious authority were invested exclusively into their own legal collectives. This period also witnessed a transition of the supremacy of caliphs on to various amirs and sultans who began to decentralize notions of ultimate power and to make the institution of a caliphate purely symbolic. Consequently, the holders of political power came to be perceived as servants of Muslim community, whereas the fuqahā thought of themselves as having "true" power over religion. In the process of developments of the fuqahā-estate, from proto-, micro-, and macro-networks during and after the Umayyad and

ʿAbbāsid caliphates, the approaches of jurists to the political powers fluctuated over time, to which I will come back below.

Since the early phases of canonization, the specialists of Islamic law had begun to believe that the fuqahā were the true champions of God's law, that is the *sharīʿat*. Even in the late-eighth century there were attempts to limit the boundaries of *fiqh* as an independent discipline and its experts were to be a particular scholarly community with extensive knowledge of scriptures. John Nawas gives the precise date of 777-778 (161 Hijri) as the year after which the process of specialization in Islamic sciences except *hadith* began, and in the ninth century (third century Hijri) these diciplines "acquired earmarks of professional endeavours".[1] According to his tabulation on jurists who exclusively practised *fiqh*, there were none until 777-778 and exclusive jurists began to bloom only after that. He counts 77 out of 1,049 ulama who lived in the first 400 years of Islam and who are evaluated in his data set. Although this number of exclusive juridical scholars would indicate the increasing importance of fiqh as a distinct discipline, it does not represent the large number of jurists who in reality specialized in many other disciplines, such as ḥadīth, *tafsīr*, and *naḥw* as well inferring legal rulings. Even if they dealt with many such disciplines they considered them as either a means to or sources for legal inferences. This development resulted from the professionalization of legal studies following the ʿAbbāsid Inquisition, the *Miḥnat* (from 833 till 848 or 851). Those attempts excluded many more people from its disciplinary realms than it included.[2] By the tenth and eleventh centuries, the definitions became more categorized, with clear distinctions being made between who is and who is not a *faqīh*, and to what extent could one of them be capable of assuming certain sorts of power, related to unconditional independent investigation, imitation, and execution of law. After the end of the supreme institutional caliphate in 1258, the fuqahā became more conscious about their centrality in controlling religion. This new awareness is well reflected in what is said in Ibn Taymiyyat's (d. 1328) treatise entitled *al-Siyāsat al-sharʿiyyat*. According to him, there is not any caliph, amir or sultan who is to hold power over religious matters or to function as an intermediary between God and His community (*ummat*).[3] He argued for the sovereignty of *sharīʿat* by advancing the communal obligation of *ummat* to follow God's law in all walks of life, including the political administration. Consequently, real power is invested in the sharīʿat, which leads to *al-siyāsat al-sharīʿat*, "the rule of the divine law". In his view, that is the ideal governmental system in which the fuqahā/ʿulamāʾ had a most commanding role. The amir had to rule according to a consensus (*ijmāʿ*) of the ummat, and the ʿulamāʾ were the custodians and interpreters of the sharīʿat. Hence, as Erwin Rosenthal puts it, although the amirs seemingly had power equal to ʿulamāʾ, in Ibn Taymiyyat's scheme, "the 'doctors of law'

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[1] John Nawas, "The Emergence of Fiqh as a Distinct Discipline and the Ethnic Identity of the Fuqahā' in Early and Classical Islam," in *Studies in Arabic and Islam: Proceedings of the 19ᵗʰ Congress, Halle 1998*, ed. S. Leder, H. Kilpatrick, B. Martel-Thoumian and H. Schonig (Leuven: Peters, 2002), 493-4.

[2] From a passage cited from al-Shāfiʿī by Muzanī, we see fiqh being counted as a separate discipline, like Qurʾānic exegesis, language studies, mathematics and ḥadīths. The eleventh-century Shāfiʿīte Khaṭīb al-Baghdādī (1002-1071) amasses many earlier opinions related to the definition and subject matter of fiqh as a clear discipline dedicated to the study of divine law; see Khaṭīb al-Baghdādī, *Ṣaḥīḥ al-faqīh wa al-mutafaqqih*, ed. ʿĀdil Ibn-Yūsuf al-ʿAzzāzī (Riyadh: Dār al-Waṭan, 1997), especially 36-37.

[3] Ibn Taymiyyat, *al-Siyāsat al-sharʿiyyat* with its *Sharḥ* by Muḥammad bin Ṣāliḥ al-ʿUthīmayn, ed. Ṣāliḥ ʿUthmān al-Laḥḥām (Beirut: Dār Ibn Hazam and Dār al-ʿUthmāniyyat, 2004)

became the heirs and guardians of the Prophet's legacy, and had been given the authority to administer the law, particularly in the capacity of being a judge."[4]

Whether or not *siyāsat al-sharīʿat* actually materialized,[5] the concept gave an opportunity for many fuqahā to claim their privilege in preserving and interpreting law in particular and religion in general. Their idea of a powerful fuqahā-estate and powerless political state was not very different from the royal-religious linkage in Europe of the time, when religious semiology made "the political sphere a province of the religious".[6] Following Ibn Taymiyyat, from the fourteenth up to the nineteenth century more jurists passionately argued for the "power of law". Some examples of works that argued for this ideal system are Ibn Qayyim al-Jawziyyat (1292-1350, his student), *Ṭuruq al-ḥikmiyyat fī al-siyāsat al-sharʿiyyat*; ʿAlā al-Dīn al-Ṭarābulsī (d. 1440-1), *Muʿīn al-ḥukkām*; Muḥammad al-Dawwānī (d. 1501), *Akhlāq-i Jalālī*; Dede Efendi (d. 1567), *Risālat al-siyāsat al-sharʿiyyat*; Mustafa Koçi Bey, *Risāle* (1631); Katip Çelebi, *Dustūr al-ʿamal lī iṣlāḥ al-khalal* (1656); Abū ʿAbd Allāh Muḥammad bin Ḥusayn Bayram (1716-1800), *Risālat al-siyāsat al-sharʿiyyat*; and Muḥammad Bayram II (d. 1831), *al-Muqaddimat fī al-siyāsat al-sharīʿat*.[7] These texts were written exclusively on the power of law and point to a larger mentality and intellectual trend, encouraged by the weakening of the supremacy of the caliphate. The fuqahā believed they enjoyed an autonomous existence, free from the hands of state and polity. Many sayings and maxims, some even attributed to the Prophet Muḥammad himself such as "the scholars are successors of the prophets", began to be widely circulated as platitudes in scholarly spheres to justify their legitimacy as a self-determining group for religious matters. Therefore, even if *siyāsat al-sharīʿat* was unable to become normative in Islamic spheres, the fuqahā could assert themselves as a parallel entity with power over religion, law, and related institutions.

The eventual progress in the assertion of the distinctiveness of the fuqahā can be located between two chronological nodal points, between the tenth and the thirteenth centuries, based on the works of George Makdisi and Sherman Jackson respectively. Makdisi talks about the formation of "guild schools" that go back to the tenth century in Baghdad and the Eastern regions. He distinguishes two guilds: a) "an unchartered institution or an eleemosynary institution based on the *waqf* or charitable trust"; b) "a charitable trust guild capped with the protective cover of incorporation". These professional guilds were developed with professional schools during the Crusades in Syria, Palestine and Egypt.[8] In the context of thirteenth-century Mamlūk Egypt, Sherman Jackson explains the existence of each school as a "corporate constitutional unit" that aimed at protecting the followers from state interventions or other dominant legal schools.[9] Jackson's formulation stands in contrast to Makdisi's statement that the "madhhabs were not corporations in the juristic sense of fictitious legal

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[4] Erwin Rosenthal, *Political Thought in Medieval Islam* (Cambridge: Cambridge University Press, 1958), 56.

[5] Rosenthal and Arnold Green argue that *siyāsat al-sharīʿat* was never actually implemented. See: Rosenthal, *Political Thought*, 58-61; Arnold H. Green, "A Comparative Historical Analysis of the Ulama and the State in Egypt and Tunisia," *Revue de l'Occident musulman et de la Méditerranée* 29 (1980): 35-36.

[6] Jacques Le Goff, "Is Politics Still the Backbone of History?," *Daedalus* 100, no. 1 (1971): 5.

[7] Green, "Comparative Historical Analysis," 36.

[8] George Makdisi, "The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court," *Cleveland State Law Review* 34, no. 3 (1985): 3-18.

[9] Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996).

persons; they did not, like Western corporations, need to apply to the State to obtain charters legitimizing their autonomy."[10] In between this gradual development from the "guilds" in the tenth century to the "corporates" in the thirteenth (both represent two phases in the histories of fuqahā-estate) the fuqahā had formed their own vocabularies appropriate to assert their distinctive power.

This development is expounded in the rise of literatures dedicated to guide the members of the estate towards a sophisticated identity which laypersons could not replicate. Rulers were also included among the laypersons unless they were educated in Islamic sciences, according to the fuqahā. Although such works were there in the "classical phase" of Islamic law itself, they increased after the eleventh century and momentously at the collapse of the institutional caliphate. The new authors drew strict lines for an estate and for what defines a member of the estate in terms of knowledge, appearance, and other etiquette. They either addressed all the members together or particular "occupational" groups. For those groups we see many works circulating specifically dedicated to etiquette for *muftī*s, *qāḍī*s, etc. For the Shāfiʿīte formulation of *muftī*-related protocols two remarkable works were written around the mid-thirteenth century: *Ādāb al-muftī wa al-mustaftī* by Ibn al-Ṣalāḥ al-Shahrazūrī (d. 1245), and *Ādāb al-fatwā wa al-muftī wa al-mustaftī* by Nawawī. Scholars from other Sunnī legal schools also produced similar texts from the same century onward.[11] Identical rules, methods, and regulations were applied also to the authors of the legal texts.

While all these texts explain some sort of explicit regulations for the members of an estate, there were also unstated ways of behaviour which contributed to a faqīh's sophistication, power, and higher position within and outside the estate. A strict adherence to legal paradigms, an appearance of *karāmat*s, a refusal of any remuneration, and an overall piety and modesty, are some of the implicit but indispensable features. In the biographical dictionaries on fuqahā or texts produced by the fuqahā, we see these qualities mentioned repeatedly. One message they all are conveying is the assumed erudition of those jurists who demonstrate these qualities, and from this their esteemed position in the estate derives. Although the qualities *alone* did not matter, they did play a significant role in establishing or refuting somone's legitimacy in the tradition.[12]

In contrast to the autonomy of political structures, that of the fuqahā-estate was acquired from below. Its members stood close to the community through a strong emphasis on the primacy of religion, its law, and their own knowledge. Through a constant process of interactions with "the below", through public events, popular preachings, fatwā-requests, treatises, judgments, etc., they could and did assert their power on the people. It was a kind of democratic power, with potential radical components, as the scholars were capable of mobilizing their "followers" against the political autonomy in the name of religion. This phenomenon stands in line with the arguments of Dale Eickleman and Jon Anderson in an anthropological framework, that the ʿulamāʾ often enjoyed a significant measure of

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[10] Makdisi, "Guilds of Law," 18.

[11] Alexandre Caeiro, "The Shifting Moral Universes of the Islamic Tradition of Iftāʾ: A Diachronic Study of Four *Adab al-fatwā* Manuals," *The Muslim World* 96 (2006): 661–85; Irene Schneider, *Das Bild des Richters in der "adab al-qāḍī"-Literatur* (Frankfurt am Main: P. Lang, 1990).

[12] R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden: Brill, 2006), 58, 100.

institutional autonomy vis-à-vis rulers and the political elite. This religious-law-based autonomy of the estate could also be understood according to the Weberian tripartite division of authority with slightly altered implications: a) traditional; b) textual; c) charismatic.[13] The majority of the fuqahā by default had a traditional authority once they had completed their studies. It was an authority conferred by normativity of Islam, for example to the popular preachers, *khaṭīb*s, and *imām*s, who were mostly found in the lower stratum of the "estate". A limited number of scholars managed to have textual authority and they chose careers either as professors at higher institutions or as independent authors. Only a few managed to have charismatic authority, especially the ones who excelled in the unstated manners of the estate.

A major part of the fuqahā-estate's power was asserted through its emphasis on orthodoxy. The application of the idea of "orthodoxy" in Islamic contexts has been a matter of constant debate among the Islamicists and many have doubted whether or not such a Christian concept would offer any parallel historical and anthropological promise of any analytical category.[14] Nevertheless, some scholars have agreed to use this term and concept, for otherwise "the existence of the concept and value of orthodoxy in Islam denies us access to an important aspect of what is at stake in Muslim theological writing."[15] Thus, different historians have tried to see Islamic orthodoxy a broadly synonymous with Sunnīsm, then with four Sunnī schools of law, and more narrowly with the Ḥanbalīsm.[16] Its application in the Ḥanbalīte context holds the promise to check whether the same could be applied to the Shāfiʿīte discursive tradition too. Unfortunately, the Ḥanbalīte setting has been put forward as exclusively a matter of Traditionalist (*ḥadīth*-centric) concern, that other Sunnī schools including Shāfiʿīsm failed to offer, according to al-Azmeh. But, I do not take this concept as one simply rooted in the framework of Traditionalism versus non-Traditionalism, nor as a simple binary opposition of orthodoxy versus heterodoxy. Rather, I prefer to follow the suggestive classification of Pierre Bourdieu who contrasted orthodoxy with heterodoxy and doxa.[17] In such a tripartite division, orthodoxy is a "system of euphemisms, of acceptable ways of thinking and speaking the natural and social world" and is a strategy of the dominant classes, in this case of the fuqahā-estate, with clear rules in order to maintain power by rejecting the heretical remarks as blasphemies. Accommodating the internal divisions while

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[13] These are taken indirectly from Max Weber's three categories of legitimate rule: traditional, legal-rational, and charismatic authorities. Since this study centres on the question of law, I have substituted for the second category a text-centric authority. See, Max Weber, "Politics as a Vocation," in *From Max Weber: Essays in Sociology*, ed. and trans. H.H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), 77-128.

[14] For an overview of such debates, see: Robert Langer and Udo Simon, "The Dynamics of Orthodoxy and Heterodoxy: Dealing with Divergence in Muslim Discourses and Islamic Studies," *Die Welt des Islams* 48, nos. 3-4 (2008): 273-288.

[15] Sherman A. Jackson, *On the Boundaries of Theological Tolerance in Islam: Abū Ḥāmid al-Ghazālī's Fayṣal al-Tafriqa Bayna al-Islam wa al-Zandaqa* (Oxford: Oxford University Press, 2002), 29.

[16] On Islamic orthodoxy as Sunnīsm: H.A.R. Gibb, "Interpretation of Islamic History," *Cahiers d'histoire mondiale*, I (1953/54): 40; on it as four schools of law: Wilferd Madelung, "Religiose Literatur in arabischer Sprache," in *Gundriß der arabischen Philologie II. Literaturwissenschaft*, ed. Helmut Gaetje (Wiesbaden: Reichert, 1987): 298-325; and as Ḥanbalīsm: Aziz Al-Azmeh, "Orthodoxy and Ḥanbalīte Fideism", *Arabica* 35, no. 3 (1988): 253-266 at 259.

[17] Pierre Bourdieu, *The Logic of Practice* (Stanford: Stanford University Press, 1990); idem, *Practical Reason: On the Theory of Action* (Stanford: Stanford University Press, 1990); idem, *Outline of a Theory of Practice* (Cambridge: Cambridge University Press, 1977); the quotations are from this volume.

rejecting the foundational questions, the Shāfiʿīte orthodoxy grew into a "superordinate compulsory organization".[18] Its two-way process of intense expansion sought further support from diverse classes and social groups: merchants, army personnel, migrants, refugees, rulers and aristocrats, and eventually managed to hold sway over the means of intellectual, religious, and legal notions by clearly articulating correct forms. Within the scholarly class, the fuqahā accordingly has asserted their intellectual superiority since the reception of al-Shāfiʿī's jurisprudential manual, *Risālat*.

Because of the estate's strict adherence to orthodox norms and traditions it mostly refuted any "reformative" steps, unless those directly internalized their own concerns and frameworks. The members of a fuqahā-estate were thus almost entirely the "archetypal scholars", as formulated by Aaron Spevack. The many "reformist" movements that sprung up in the post-classical Islamic world or later, in the eighteenth and nineteenth centuries, did not matter greatly to the scholars of the orthodox estate. Also their commitment to orthodoxy enabled them to endure the transmission of Islamic legal texts in a longue durée. We should keep these conceptions in mind while we approach the texts *Minhāj*, *Tuḥfat*, and *Fatḥ*, their respective authors from different historical contexts, and the changes and continuities they brought directly and indirectly over centuries.

The internal politics of the estate were also growing together in its autonomy, a situation that made many of its individuals seriously consider leaving the sphere. Al-Ghazālī is the best example in this regard. After his studies at the academy of Nishapur, even though he was based in Baghdad, which had possibilities of engaging with the fuqahā-estate more deeply, he was quite disappointed with its functionalities and internal concerns.[19] He comprehended that many people chose law more for worldly benefits than spiritual benefits: jurists stand out with "more fame, financial security and supremacy over anyone else including preachers, storytellers and theologians".[20] But he disliked the whole of it and eventually took refuge in an ascetic spiritual life.[21] He became a renowned Sufi in Baghdad, wrote *Ihyāʾ ʿulūm al-dīn* that became *the text* of Sufism, conducted popular preaching, and gathered a wide range of followers. In other words, he moved from the parallel society of fuqahā (traditional intellectuals) and its orthodoxy into the larger community, becoming an organic intellectual. Before his own individual philosophical transition and personal departure from the estate, he had engaged with the law extensively and was "the consummate leader of the legalists" or of the legalist-estate. Very few studies have paid attention to Ghazālī's contributions to Islamic law and his place in the fuqahā-realm. What is available for the study of Ghazālī's legal works is limited to his contributions to legal theory,[22] leaving the law

[18] Jacques Berlinerblau, "Toward a Sociology of Heresy, Orthodoxy, and Doxa", *History of Religions* 40, no. 4 (2001): 327-351.

[19] Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat al-kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī) 6: 202, 216.

[20] al-Ghazālī, *al-Ghazālī, Jawāhir al-Qurʾān wa duraruh* (Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīda, 1988): 20-21.

[21] Al-Ghazālī's oeuvre "completely ignores the existence of the caliphate", see: Patricia Crone, "Did al-Ghazālī Write a Mirror for Princes? On the Authorship of *Naṣīḥat al-Mulūk*," *Jerusalem Studies of Arabic and Islam* 10 (1987): 168.

[22] See, for example, the extensive two-volumed doctoral dissertation that analyzes the Ghazālīan conceptions of juridical theory: Aḥmad Zakī Mansur Ḥammād, "Abū Ḥāmid al-Ghazālī's Juristic Doctrine in *al-Mustaṣfā min*

proper inadequately studied.[23] We see a few others like al-Ghazālī who left the estate as they found the comfortability or prerequisites of its orthodoxy suffocating their pursuit of God or "pure" knowledge. These other scholars found the internal dynamics, personality clashes and political mudslinging disappointing, and chose to abstain from active juristic and intellectual activities.[24]

In general, the development of the fuqahā-estate with internal agreements and clashes set the stage for Muslim legalists to engage with a longer tradition. The internal clashes often led to the production of divergent sub-disciplinary streams or textual families within the school-clusters or broadly in the respective estates. A good example in this regard would be Shihāb al-Dīn al-Qarāfī's treatise *Kitāb al-iḥkām fī tamyīz al-fatāwā ʿan al-aḥkām wa taṣarrufat al-qāḍī wa al-imām*, which describes in detail the freedom of fuqahā in the Mamlūk Egypt, as much as it sheds light into the inner fights by arguing against the attempts of certain fuqahā of Shāfiʿīsm to dominate the members and leaders of other schools. His work has set some general prescriptive guidelines within the estate, and it developed into an independent sub-genre of fiqh-writings.[25]

State and Estate

In the existing historiography of Islam there are numerous studies on the connection between ʿulamāʾ and the state. Particularly in the case of fuqahā there two broad approaches are possible. The one argues about the complete dependency of fuqahā on the state, whereas the other substantiates only a partial dependence. If we look more closely into the secondary literature we find at least three phases: i) the early caliphate period, in which law and polity were invested in the same authority and thus both coexisted; ii) a period from the late-Umayyad till the fall of the ʿAbbāsids, in which we have two predominant historiographical streams, one substantiating the victory of the scholars in their power-struggle with the caliphs over religious authority,[26] and the other about the state's constant attempts to codify law, which the fuqahā resisted and asserted their power and autonomy over law;[27] iii) the post-

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ʿilm al-uṣūl: with a Translation of Volume One of *al-Mustaṣfā min ʿilm al-uṣūl*," (PhD diss., University of Chicago, 1987). Related to the juristic doctrine, it makes precisely the same complaint I have made about the negligence of Ghazālī in legal history: "Yet it is astonishing that Ghazālī the philosopher, the *sufi*, the theologian, the reviver has so fixed the attention of modern researchers, East and West, as to eclipse what must be acknowledged as his life's central endeavor, the breathing of the spirit of Islam into the corpus of the religion's jurisprudence and cogent formulation of its juristic doctrine." Cf. Iysa Ade Bello, *The Medieval Islamic Controversy of Philosophy and Orthodoxy:* Ijmāʿ *and* Taʾwīl *in the Conflict between al-Ghazālī and Ibn Rushd* (Leiden: Brill, 1989); George Makdisi, "The Non-Ashʿarite Shāfiʿīsm of Abū Ḥāmid al-Ghazzali", *Reveu des Etudes Islamiques* 54 (1986): 239-257.

[23] When compared to the studies about Ghazālī's contributions in other fields, though which are very limited; see: Ebrahim Moosa, "Abū Hamid al-Ghazālī (d. 505/1111)" in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David Powers and Susan Spectorsky (Leiden: Brill, 2013): 261-294.

[24] For the recurrent conflicts among the jurists, see: Jaques, *Authority, Conflict*, passim; Noel J. Coulson, *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1969).

[25] Jackson, *Islamic Law and the State*.

[26] Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986). For an earlier version of this argument see Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton: Princeton University Press, 1981).

Mongol period, when the states succeeded in codifying law by disregarding the existing legal diversity.[28]

The fuqahā's relationship with the state is rather too complicated to be articulated in linear terms. The fuqahā had power to negotiate with political structures: mostly with an upper hand, sometimes on equal or inferior terms because of financial liabilities and career dreams. Many individuals in the estate had their own independent sources of income through other channels, or thought collectively that it was the ruler's religious responsibility to cater for them without interfering in their domain of legal doctrines. Every individual in the estate, and the estate itself, had a bargaining power with the state, utilizing his autonomous position which he thought was equal to the power of the political entities. Nonetheless, as much as the estate or the state became empowered or weakened, there were attempts from one side to dominate the other.

Looking at the Shāfiʿīte fuqahā's approaches towards the state, mainly since the tenth century when the estate had begun to take shape, I categorize them into four groups. For the first group we have the fuqahā who stood with the state and within them there are three trends: a) Some collaborated with the state categorically, such as the qāḍīs and *muḥtasib*s.[29] They were always appointed and removed by the caliph, sultan or amīr. They were also an "occupational" group that constantly functioned as an intermediary between the state and estate. b) Others did it conditionally, such as the court-fuqahā or the fuqahā assigned with particular duties. We saw this in the case of al-Shīrāzī, who was sent to Nishapur by the ʿAbbāsid caliph with a marriage-proposal; c) The others did it institutionally, such as the fuqahā who took up positions in educational (madrasas) or religious (mosques) institutions. Whatever their intentions, for all these fuqahā the *mansab*s mattered.

The second group is the fuqahā who stood against the autonomy of the state. They were ardent believers in the autonomy of their estate, quite often in a similar vein to *siyāsat al-sharīʿat*. They considered such political spaces and institutions as palaces, forts and offices of the bureaucracy as unapproachable for a member of the estate. They advanced many rhetorical statements against the state, including a saying ascribed to the Prophet Muḥammad:

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[27] For example, see: Muḥammad Qasim Zaman, "The Caliphs, the ʿUlamaʾ and the Law: Defining the Role and Function of the Caliph in the Early ʿAbbāsid Period," *Islamic Law and Society* 4, no. 1 (1997): 1–36; Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Hanafism* (Cambridge, MA: Harvard University Press, 2004); Steven C. Judd, "Al-Awzāʿī and Sufyān al-Thawrī: The Umayyad Madhhab?," in *The Islamic School of Law: Evolution, Devolution, and Progress,* ed. Peri Baerman, Rudolph Peters, and Frank E. Vogel (Cambridge, MA: Harvard University Press, 2005): 10–25.

[28] Guy Burak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015). For more details on this eventual transition in Mamlūk Egypt, see: Yossef Rapoport, "Legal Diversity in the Age of Taqlīd: The Four Chief Qāḍīs under the Mamluks," *Islamic Law and Society* 10, no. 2 (2003): 210–28; Jackson, *Islamic Law and the State*; for an Indian Ocean perspective on this transition, see: Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016). In this last case, when the European colonial structures became predominant in the Muslim world, there was no question of freedom for and jurisdiction of Islamic jurists against the increasing powers of colonization.

[29] On the position qāḍī, see: Khalid Masud, Ruud Peters, and David Powers, "Qāḍīs and their Courts: An Historical Survey" in *Dispensing Justice in Islam*, eds. Khalid Masud, Ruud Peters, and David Powers (Leiden: Brill, 2006): 1-44. On the *muḥtasib*, see: Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Presss, 2011).

"There is a circle of Hell uniquely reserved for scholars who visit kings."[30] In a way, they could be regarded as successors of the ninth-century Islamic anarchists who mainly belonged to the Muʿtazilīite sect and claimed that the Muslims could live by the law alone without having a government or *imām* (ruler).[31] By the eleventh century, we notice similar arguments coming from the Sunnī Shāfiʿītes, who also believed in the power of law and community, especially a community of fuqahā. Al-Juwaynī is a remarkable figure in the Shāfiʿīte cluster of Nishapur, in that he tried to delegitimise the religious authority of the state. He had a strong scepticism towards the abilities of the ʿAbbāsid Caliphate in maintaining the lands and communities of Islam, had bad experiences from a Seljūq vizier who was hostile towards the Shāfiʿītes forcing him to leave his hometown for fifteen years, and disdained the Seljūq's attempts to control the political and religious spheres—a result of the power struggle between politics and scholarship that existed in the Islamic world.[32] The functioning of fuqahā-estates as an autonomous parallel society is well reflected in the legal articulation of his *Nihāyat*.[33] He disavows any state control over religious affairs, and stands with the fuqahā against attempts of the state to assume their powers. The text mostly gives power and authority to the ʿulamāʾ (including judges) in legal disputes than commending the traditional legal custom of granting the right for a final judgement to the sultan. In the interrelated legal texts of his student al-Ghazālī we also find this scepticism towards the state springing up intermittently. He had no confidence in the intermixture of estate with state, and cautioned that scholarship and politics do not match each other well, and asked scholars to keep their distance from rulers, princes and officials. His knowledge of politics came from his first-hand experiences at the court of the Seljūq vizier Niẓām al-Mulk, who had bestowed upon him honorary titles, including "Eminence among the Religious Leaders" (*sharaf al-aʾimmat*), and at the court of the the ʿAbbāsids.[34]

The third group is the fuqahā who stood outside the state. They did not necessarily oppose the state, but tried their best to avoid any encounter with political entities. Occasionally they had to countermand the rulers—as we see in a case Nawawī countering the powerful Mamlūk ruler Baybars and reminding him of the duties of a scholar—but, they did not take up any permanent positions in the palace, court, or even state-funded institutions. If they did not have state-support, how did they manage to survive, and what was their patronage? These are important questions which I will discuss later. Interestingly, authors of all the texts with which I am concerned belong to this category. The positions they adopt,

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[30] Cited in Albert Hourani, *History of the Arab Peoples* (Cambridge, MA: Harvard University Press, 2002): 145.

[31] Patricia Crone, "Ninth-Century Muslim Anarchists," *Past & Present* 167 (2000): 3-28.

[32] For the conflict between the political and religious authorities under the Saljuqs, see: Leonard Binder, "The Political Theory of Nizam al-Mulk", *Iqbal* 4 (1956): 27–59; C.E. Bosworth, "Political and Dynastic History of the Iranian World (A.D. 1000–1217)," in *Cambridge History of Iran* (Cambridge: Cambridge University Press, 1968) 5: 55–102 and 167–9; Wael Hallaq, "Caliphs, Jurists and the Seljūqs in the political thought of Juwaynī", *Muslim World* 74 (1984): 27–30.

[33] For a detailed description of such standpoints of Juwaynī's reflected in other texts than *Nihāyat*, see: Felicitas Opwis, "Shifting Legal Authority from the Ruler to the ʿUlamāʾ: Rationalizing the Punishment for Drinking Wine during the Seljūq Period," *Der Islam* 86 (2011): 65–92.

[34] Hourani, *Arab Peoples*: 144–145; Frank Griffel, *Al-Ghazālī's Philosophical Theology* (Oxford: Oxford University Press, 2009): 31-40.

however, should not be understood as distinguishing "worldly" from "otherworldly" scholars, as Zaman and Kumar have already warned.[35]

The fourth group is the fuqahā who used the state for their goals. In a way, this can be seen as the other side of coin mentioned above, of the fuqahā who associated with the state conditionally. There the state was using them, but here the fuqahā are using the state for their purpose, be it personal, ideological, communitarian, organizational or political. An earlier case in this regard is the conflict between Buwayṭī and al-Muzanī where the latter pursuaded the ruler to arrest the former as we discussed in Chapter 1.

Although the entanglements with political structures varied for each category, the prevalent view was that any association with political systems would corrupt the religious authority of the fuqahā—a stand that replicates many Sufi traditions of Islam. Nevertheless, of these four approaches, the last three are the most archetypal of the fuqahā-estate. The first one with its three varied expressions corresponds to members of an educational, occupational or societal enterprise seeking employment in state-funded projects or state-patronage. The qāḍīs and *mudaris*s (professors) who were under royal patronages were not unique in amalgamating their educational background with their profession. This not to underestimate their significant roles in administering various institutions of religion, education and law, and they have been especially crucial in Ayyūbid and Mamlūk administrations. But what makes the other three groups more distinct is precisely their reluctance towards holding such positions and those who provided them. Consequently, they demonstrate what can be seen as normative among the estate-members in their approaches towards political entities: either stand against, stand outside or exploit them. These negative approaches served to underwrite their charismatic and textual authority, as we see quite often descriptions in biographical dictionaries and hagiographical texts from the encounters their subject-figures had with different sultans, caliphs or amirs.

The normalization of the even remote anti-state attitudes of the fuqahā—as found in the arguments of al-Juwaynī, al-Ghazālī and whoever followed them from Shāfiʿīsm or elsewhere— was an outcome of the clear autonomy that the estate was acquiring, either by confronting or disowning its relationship with the state. Certainly, there were attempts from the state's side to encroach into the realms that the fuqahā thought were sacrosanct and exclusively theirs. As long as the notion prevailed that Islamic law was jurists' law and not state law, the final victory in all those conflicts belonged to the fuqahā. Whenever states or rulers made attempts to codify or prioritise one legal school, they had to encounter serious resistance from the jurists. This power-struggle resulted in victories for the jurists repeatedly across the Shāfiʿīte world up to the nineteenth century, but with a few exceptions in Southeast Asia.

This argument in no way means that the Islamic empires hardly contributed to the spread of the school. Indeed, a few empires did help the Shāfiʿītes thrive in their intellectual activities. For this the Ayyūbid sultan Saladin is the best example. After he conquered the Shīʿīte Fāṭimid Egypt and converted the entire religious stratum into Sunnīsm, he came up

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[35] Muhammad Qasim Zaman, "Transmitters of Authority and Ideas across Cultural Boundaries, Eleventh to Eighteenth Centuries," in *The New Cambridge History of Islam*, vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, ed. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 608; Sunil Kumar, *The Emergence of the Delhi Sultanates, 1192-1286* (Delhi: Permanent Black, 2007): 219-224.

with new moves that facilitated Shāfiʿīsm to make prominent headway among the fuqahā-estate and the believing communities in Egypt and Syria. This political dominance of the school was furthered after Saladin, even to the extent that many rulers themselves moved their affiliations to Shāfiʿīsm before they took office. A rhetorical statement circulating in the thirteenth century aimed to explain such a transforming move by the rulers: "No sultan ever sat on the throne of Egypt as a follower of any maḏhab other than that of al-Shāfiʿī but that he was quickly ousted or killed… And this is one of the secrets behind the legacy of Imām al-Shāfiʿī, the patron of Egypt!"[36] On a related note, an opposite trend can be seen in the sixteenth and seventeenth centuries in the Ottoman Empire where at least two prominent Shāfiʿīte scholars, Taqiyy al-Dīn bin ʿAbd al-Qādir al-Tamīmī al-Ghazzī (1543-1601) and Khayr al-Dīn Aḥmad al-Fārūqī al-Ramlī (1585-1671), converted to Ḥanafīsm and built a successful career as authors and muftīs.[37] Thus the existing regional notions on particular schools and state-support to jurists and followers of those streams did help them to spread and it did motivate people to switch their affiliations from other schools.

However, this is different from saying that law became a state-project after the post-Mongol period. Helping the spread and survival of an intellectual group is quite distinct from internalizing, patronizing and formalizing their thoughts into state policy. This obvious distinction has lost in the sweeping argument put forward by Guy Burak in his study.[38] He says that in the post-Mongol Islamic world, the political entities became more successful in canonizing law, administering justice and jurists. He substantiates this by analysing the Ottomans' attempts to form an "official" school of law within Ḥanafī school of law, and the ways in which the Turkish and Arab Ḥanafītes conflicted or made compromises with the imperial project of canonization.[39] Even though his focus is on the "early modern" period between the late fifteenth-century and the late-eighteenth century pertinent to Ḥanafīsm, he generalizes it as a whole post-Mongol phenomenon after the mid-thirteenth century, one that pertained also throughout the Islamic world. In many senses the argument becomes flawed, at least in my examination of the Shāfiʿīte history, where I see mostly legalistic disengagements from the state.

This is also not just coincidental. Out of the three general disinterested attitudes of the fuqahā towards the state mentioned above, those who stood outside the state are more important for further understanding of interrelationships between politics and state with Islamic law in general and my texts and their authors in particular. None of the authors of my five texts (Nawawī: *Minhāj*; Ibn Ḥajar: *Tuḥfat*; al-Malaybārī: *Qurrat-Fatḥ*; Nawawī al-Bantanī: *Nihāyat*; and Sayyid Bakrī: *Iʿānat*; I shall elaborate on them all in turn in Chapters 4 to 7 respectively) ever affiliated with any political structures, and never got any state-funded

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[36] Cited in Jackson, *Islamic Law and the State*, 33, 55
[37] On al-Tamīmī al-Ghazzī, see: Guy Burak, *Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015),111-118; on al-Fārūqī al-Ramlī, Burak, passim; Kenneth M. Cuno, "Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School," *Studia Islamica*, 81 (1995): 121-152
[38] Burak, *Second Formation*.
[39] A gist of Burak's argument is made earlier by Rudolph Peters in a short article, "What Does It Mean to Be an Official Madhhab? Hanafism and the Ottoman Empire," in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Baerman, Rudolph Peters, and Frank E. Vogel (Cambridge, MA: Islamic Legal Studies Programme, 2005), 147-158. But he does not generalize this as a post-Mongol development which happened all over the Islamic world, but rather confines himself to the Ottoman Ḥanafīte context.

positions. It would be silly to argue that they were unique figures in the Islamic legal world. There were many fuqahā like them—renowned regionally or across borders—who strongly believed in the autonomy of fiqh and sharīʿat over any other political or social power and they refused to attribute any unconditional notions of power to the caliphs or rulers. Those attitudes have certainly helped their followers to construct for them an aura of legacy, with references to their scholarly authority more than to their state patronage. This goes exactly opposite to the argument of Burak on the post-Mongol imperial control over law. If we look the careers of these authors and their texts from a non-Ottoman perspective and not from a single angle, things would make more sense.

All my five authors are from the post-Mongol period: one from the thirteenth century, two from the sixteenth, and another two from the nineteenth. In all these periods, we see the Shāfiʿī school becoming more and more disowned by states than receiving any particular patronage, let alone being canonized by any polity. In Egypt, despite its "patron" being al-Shāfiʿī and the rulers' constant affiliation with Shāfiʿīsm, a remarkable shift had happened during the reign of the Mamlūk sultan Baybars (d. 1277) to the cost of the school. He approved all the four Sunnī schools as equally legitimate in the kingdom, appointed judges for each school and sanctioned grants for establishing legal institutions. This move put an end to the exclusivity of Shāfiʿīsm and made it only one among the four. In the course of time, although the Shāfiʿīte cluster tried to dominate the Egyptian fuqahā-estate, there was constant resistance from other clusters. By the sixteenth-century, the Mamlūk Empire had collapsed and the Ottomans, who now dominated Egypt and other Arab lands, favoured only Ḥanafīsm, although Shāfiʿīsm was still demographically and intellectually powerful in many places. This state attitude continued up until the nineteenth century. Not only were Ḥanafītes appointed to the religious hierarchy, the Ottomans even exported jurists to spread Ḥanafīte ideas in the Shāfiʿīte territories where Shāfiʿīsm was predominant. The arrival of the Ottoman jurist Abū Bakr Effendi (d. 1880) in Cape Town and the subsequent resistance from the Cape Malays is a simple example. This can be contrasted with the Yemeni Rasūlid experiments across the Indian Ocean rim, exporting scholars, robes of honour and affiliations between the thirteenth and fifteenth centuries. Yet they hardly associated their ventures with Shāfiʿīsm, even if it was their undeclared official school.[40] Therefore, it would be erroneous to assume that Shāfiʿīsm (not Shāfiʿītes as individual subjects) had opportunities to be integrated to any state project of legal canonization. Despite technically belonging to *Tuḥfat*, *Iʿānat* and (to some extent) *Nihāyat*, their respective authors, Ibn Ḥajar, Sayyid Bakrī, Nawawī al-Bantanī of Ottoman Mecca of the sixteenth or nineteenth century, hardly had anything to do with the state. *Qurrat-Fatḥ* and al-Malaybārī do not even belong to the Ottoman Empire, or to the Mughal Empire for that matter, which makes that association impossible.

Therefore, the arguments of Burak on the making of the Ottoman Ḥanafī school of law as a bigger post-Mongol phenomenon of the success of state over law across the Islamic world is an incorrect generalization. The occurrence of an official Shāfiʿīte school would have been more accurate in the pre-Mongol period when the Ayyūbids exclusively supported the school—but even Burak would not agree to that. I argue against that outcome, saying that the

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[40] Elizabeth Lambourn, "India from Aden: Khutba and Muslim Urban Networks in Late Thirteenth-Century India" In Kenneth Hall ed., *Secondary Cities and Urban Networking in the Indian Ocean Realm, c. 1000-1800* (Lanham MD: Lexington Books, 2008): 55-97

Islamic jurists believed in and asserted their autonomous identity, and made their best resistance whenever they felt that their juridical freedom had been encroached. This brings in the question of whether this is typical for the Shāfiʿīte school. The answer is both affirmative and negative. It is positive because of the previously mentioned factors of its continuous disownment or banishment by different empires. It is negative, because we can see that the texts I pointed to earlier, written with claims of *siyāsat al-sharīʿat*, are not only by the Shāfiʿītes. Quite to the contrary, we note that among them only Muḥammad al-Dawwānī would have been a Shāfiʿīte, but scholars assume that he had converted to Shīʿīsm at the time of Ismāʿīl I's Shīʿīzation of Iran. ʿAlā al-Dīn al-Ṭarābulsī, Dede Efendi, Mustafa Koçi Bey, Katip Çelebi and Muḥammad Bayram II were all Ḥanafītes, who very often held positions under the Ottomans. The claim of autonomy thus prevailed among the fuqahā irrespective of the school; the Shāfiʿītes could and did clearly abstain from the state and curbed any political urge to intrude into the legal realms of their school. The Ḥanafītes across the Ottoman and Mughal empires were unfortunate, for they did encounter the incursion of polities into their juridical realms. Yet it is important to note that neither Burak nor Peters argue that Ḥanafīsm was completely taken over by the states. They argue that the new developments only led to the formation of a "distinctive Ottoman Ḥanafīsm" that catered for "the requirements of the bureaucratic set-up of the Ottoman state".[41] In other words, this means that there were many "Shāfiʿīte-like" Ḥanafītes who still believed in and stood for the autonomy of the fuqahā, and many of them ironically came from within the Ottoman learned hierarchy.

What I have presented so far is mostly a view of the state through the eyes of the fuqahā-estate, whereas most studies present the fuqahā through the lens of political entities. To some extent, such an approach might appeal to many, for traditional historiography always hoists politics to be the backbone of history. I argue that this is not the case for Shāfiʿīte law. I do not negate the role of the state entirely. Indeed, whenever and wherever states were more powerful than estates, rulers and their machinations encroached into the realms of the fuqahā. But that was not a one-sided process. Whenever the states were weak, the fuqahā also intruded into political spheres. For example, many qāḍīs took control of multiple regions and acted as their rulers in eleventh- and twelfth-century al-Andalus, when a crisis about the imamate intensified after the Umayyad caliphate's collapse and many competitors arrived on the scene.[42] Similar cases are found throughout the historical courses of the fuqahā-estate well into the nineteenth century. They all indicate that there have always been mutual intrusions from the state and the estate into each other's realms. But these did not motivate the fuqahā to disbelieve in their autonomy based on divine law.

Precisely for all these reasons, politics is a subordinate matter in my study and the political history of the Islamic world does not appear as prominently as might have been expected. Instead, I focus on fuqahā parallel societies that stood outside or beside the

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[41] The quoted phrases are from Peters, "What Does it Mean to Be an Official Madhhab?," 147

[42] For an elaboration, see: Maribel Fierro, "The Qāḍī as Ruler" in *Saber religioso y poder político en el Islam* (Madrid: Agencia Española de Cooperación Internacional, 1994), 71–116; and her one reference: ʿAbd al-Jalīl, "Kayfa saʿda fuqahāʾ al-Andalūsiyyūn: Yusūf bin Tashfin ʿalā khalʿ mulūk al-tawāʾif," *Actas del IV Coloquio Hispano-Tunecino (Mallorca 1978)* (Madrid: Instituto Hispano-Arabe de Cultura, 1983): 7-24.

conventional political systems.[43] Furthermore, my examination of the textual longue-durée of Shāfiʿīsm, in which the texts are analogous to the Braudelian concept of geographical structures, political events have hardly any impact on the deep structures. When snippets of the caliphates and kingdoms do appear they have different purposes: a) to set the contemporary background for my texts; b) to mark their partial roles in politicizing the spread of the school; c) to note larger regime changes that went against the exclusive imperial position of the school.

The individual spaces of scholars or the collective spaces of such institutions as madrasa, legal courts, and mosques became domains of the fuqahā, in which they discussed, interpreted, transmitted, and even executed law as a divine doctrine. Those spaces stood in sharp contrast to the political spaces, such as palaces, forts, administrative offices, and royal courts, even though they had been playing significant roles in legal productions. We see this, for example, in the case of *Fatāwā al-ʿĀlamgīriyya*, a compilation of fatwās of the Ḥanafīte fuqahā commissioned by the Mughal emperor Aurangzeb ʿĀlamgīr (r. 1658-1707).[44] But, such a royal attempt to compile fatwās is hardly found in the Shāfiʿīte context. Most of the fatwās, like any other legal text, were collected directly by its author or immediate disciples, utilizing the limited but strong possibilities of their domains. Political intrusion into the affairs of the estate succeeded in the Ḥanafīte sphere, but the Shāfiʿītes continued to compile fatwās independently, exploiting the traditional purview of the power of the estate (I shall discuss a Malay exceptional case in the Conclusion). In the following pages, I analyse the characteristics of the spaces of the estate in contrast to political venues.

Loci of Legalistic Transmissions

My emphasis in this section is on three basic components of a fuqahā-estate in their regional contexts: a) individuals; b) clusters; c) institutions. Each of these marked the very presence and functions of an estate and facilitated the textual production and dissemination so central to its survival over time.

The foremost pillar of the estate's regional space rested on the individuals. Around individual fuqahā with diverse traditional, textual, and charismatic authorities, the polity and community with their religious, legalistic, or social lives circumnavigate. The fuqahā with traditional authority asserted power from the domain where they engaged, such as podiums, niches (*miḥrāb*) or pulpits (*minbar*). A pious Muslim would encounter these spaces everyday. The traditional legitimacy ascribed to the fuqahā let them control the regularity of rituals, social and religious norms, commercial dealings, and any violations to the order of everyday life through legal means. Usually a believer came to an individual faqīh in the locality, not the other way around, unless a section of the community demanded it. The very epistemological basis of a fatwā is the *istiftāʾ* (request for fatwā) which connotes an initiation from the

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[43] While I undertake such an exercise, I get a historiographical courage from the school of *Annales d'histoire economique et sociale* which time and again denounced the role of political events have to play in the history. Nevertheless, the politics would appear in bits and pieces as part of the broader context: being a "nucleus" in it, not its "backbone".

[44] Joseph Schacht, "On the title of the *Fatāwā al-ʿĀlamgīriyya*," in *Iran and Islam: In Memory of the Late Vladimir Minorsky,* ed. C.E. Boswoerth (Edinburgh: Edinburgh University Press, 1971), 475-478; Alan N. Guenther, "Ḥanafī Fiqh in Mughal India: The *Fatāwa-i ʿĀlamgīri*," in *India's Islamic Traditions, 711-1750*, ed. Richard Eaton (Oxford: Oxford University Press, 2003), 209-30; Guy Burak, *Second Formation*, 212-213.

layperson towards the jurist. This is a self-illustrating "example" of the direction that legal rulings took in an Islamic context, from bottom to up rather than vice versa. If the issue could not be solved at lower levels, it was referred to the fuqahā which had higher expertise in texts and scholarship, and/or had more charisma, those who often presided over congregational mosques, higher institutions or legal courts.

Individuals are also the core of knowledge-transmission in Islamic cultures. Most of the successful fuqahā achieved a certain charisma, though the quality varied, that helped to mobilize their own circle of followers from the community. There were many pupils, but they were not the only ones. Members of the state, nobilities, and the community at large also surrounded fuqahā if his/her aura stretched that far. The existence of this circle formed an axis of faqīh along which text-based knowledge such as fatwās, *naṣīḥat*s, and *fawāʾid*, etc. was disseminated. The most important segement of the circle, the students, had direct and intense engagement with the texts. They were a significant factor in sustaining a faqīh's profession as *mudarris*. As part of the *tadrīs*-normativity, commentaries, summaries and other textual progenies were produced on the texts used in curricula. With the help of one's intellectual products (one's students and texts), and of constructed notions of charisma (through narratives about one's personal qualities in teaching, authorship, fatwā-giving, and piety), the micro-networks of teacher-jurist and/or author-jurist expanded into a macro-network. It should be stated, though it is partly obvious, that these local micro-communities and circles facilitated the existence of an estate as a living entity in certain localities. In our cases of five Shāfiʿīte fuqahā, we see this clearly in the circles around Nawawī in Damascus, Ibn Ḥajar and Sayyid Bakrī in Mecca, al-Malaybārī in Malabar, Nawawī al-Bantanī, both in Java and Mecca.

When there was *more than one* noteworthy faqīh attracting separate circles in the *same locality* this often resulted in the formation of a cluster for a particular school. This is the second component of an estate. If most or all members of multiple circles belonged to the same school, they together formed the estate there and controlled its various expressions. If the members followed different schools, they formed clusters, which could bring together adherents who traversed across circles and their individual affiliations. In such cases of divided clusters, the internal dynamics of a legal fraternity were at times competitive, hostile and argumentative. This was very explicit in thirteenth-century Cairo where the Shāfiʿīte cluster dominated, provoking protest from representatives of the others.[45] Nevertheless, the clusters with their internal disagreements defined the foundational characteristics of the fuqahā-estate's unity as a single body in each region. Despite their internal scuffles, they all stood together whenever they realized that the power of their estate is under threat from polity, state, or community. For example, we see many leading scholars from the Ḥanafī, Mālikī and Ḥanbalī schools co-signing a bitterly worded letter Nawawī wrote to the Mamlūk ruler Baybars (see Chapter 4).

Where there was a cluster with many jurist teachers and authors in one locality students could study prominent texts of one school in which they wanted to specialize. They could cross from one circle to another looking for professors expert on a theme or a text or with stronger *ijāzat*s to teach a text. Within the cluster, students could switch between teachers or study the same text with many different teachers with the aim of achieving blessings (*barkat*),

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[45] Jackson, *Islamic law and the state*.

listening to different interpretation, or clarifying doubts by applying the methods of linguistics, philology, and rational sciences. The clusters functioned as a pool of scholarship from which enthusiasts could master special subjects or texts available from many teachers. These possibilities were extended when multiple clusters coexisted in one estate, providing enthusiasts more opportunities for inter-school studies.

Institutions were a clear visible space of the estate and represent its third component. They include masjids, madrasas and occasionally *maḥkamat*s (legal courts). Religious, educational, and purely legalistic activities were intertwined in these places. Mosques also were centres of learning across the Islamic cultures; madrasas were often where legal procedures and judgments over a number of issues were brought in front of a teacher, who may also have been a muftī or a qāḍī. These institutional frameworks thus stood as strongholds of the fuqahā-estate for whoever associated with them. Even if one faqīh did not associate with any of these institutions professionally, s/he would never negate their importance for the existence of the estate. For example, Nawawī did not take up any position in any madrasa or masjid for a long time, yet he constantly associated with the teachers and students who moved between the institutions.

Outside the "heartlands of Islam" too the religious and educational institutions like mosques and *madrasa*s (variously identified as *pondok*s, *pasantren*s, *maktab*s, etc.) were at the same time providing a space for Shāfiʿīte ideas to be circulated and penetrate the non-Middle Eastern rims of the Indian Ocean. The educational spaces there were mostly attached to newly established or already existing mosques.[46] Many of those had been founded in the coastal belts by the twelfth and thirteenth centuries and spread in the fourteenth and the fifteenth centuries. For example, Ibn Baṭṭūṭa, who arrived on the coasts of Sumatra in the 1340s, records his visit to the Samudera Pasai sultan al-Malik al-Zāhir II (d. 1349), where he encountered Shāfiʿīsm in its different forms of practices, learning, and transmission. Ibn Baṭṭūṭa says that the sultan was a Shāfiʿīte and a lover of fuqahā, as were his subjects too.[47] He writes:

> I went to the mosque, did the Friday-prayer with his [sultan's] guard Qayrān. Then, I went in to the sultan. There I saw the *qāḍī* Amīr Sayyid and students upon his right and left. He [the sultan] shook me by the hand and I saluted him, whereupon he made me sit down upon his left and asked me about Sultan Muḥammad [Tughluq of Delhi, d. 1351] and about my travels, and I answered him accordingly. Then he resumed the discussions of Islamic law according to the school of al-Imām al-Shāfiʿī. He continued that until the afternoon prayer. After

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[46] Jonathan Berkey, "Madrasas Medieval and Modern: Politics, Education, and the Problem of Muslim Identity," in *Schooling Islam: The Culture and Politics of Modern Muslim Education*, ed. Robert Hefner and Muḥammad Qasim Zaman (Princeton: Princeton University Press, 2006), 40-60; idem, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton: Princeton University Press, 1992); cf. Salah Zaimeche, *Education in Islam: The Role of the Mosque* (Manchester: Foundation for Science Technology and Civilization, 2002).

[47] Gibb translated the term fuqahā as theologians, which is certainly inappropriate. He also avoided the sentences about the sultan and his subjects being Shāfiʿītes. See Ibn Battuta, *Travels in Asia and Africa, 1325-1354*, trans. and selected by H.A.R. Gibb (London: George Routledge & Sons, LTD, 1929), 274. For the original sentences and terms, see: Abū ʿAbd Allāh Muḥammad bin ʿAbd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-nuẓẓār fī gharāʾib al-amṣār wa-ʿajāʾib al-asfār*, ed. Muḥammad ʿAbd al-Munʿim al-ʿUryān and Muṣṭafā al-Qaṣṣāṣ (Beirut: Dār Ihyāʾ al-ʿUlūm, 1987), 631-32.

the prayer, he went into a chamber there and put off the garments he was wearing. These were robes of the kind worn by the fuqahā, which he puts on when he comes to the mosque on Fridays. Then, he dressed in his royal robes, which are mantles of silk and cotton. … [Once he goes from the mosque back to the palace], the scholars would be at his right side. … In the court, the ministers, emirs, clerks/writers (*kuttāb*), nobles and military officials all were assembled in multiple lines. The first line was of the ministers and clerks—he had four ministers. … Then, the line of emirs… then the nobles and fuqahā…[48]

In this passage, we see how a mosque functioned as the space for legal engagements in the fourteenth-century Malay world. This description also tells us how the sultan became part of a learning circle, before he switched back to his function as a ruler. What we see since the sixteenth century is a systematic utilization of those institutional spaces by the micro-communities and individuals of the Shāfiʿīte clusters to spread their orthodoxies. Both in mosques and madrasas, Shāfiʿīte law was taught and studied along with other religious and non-religious subjects; sometimes it was taught along with legal doctrines of other schools. It is striking to note how individuals, micro communities of the diaspora, and associated institutions functioned enthusiastically in support of Shāfiʿīsm at different places of the non-Middle Eastern oceanic rim.

If we place these institutions in relation to the contemporary political and social scenario of the sixteenth to eighteenth centuries, it is interesting to note the parallel development or historical continuity of powerful Muslim empires and kingdoms in South and Southeast Asia and East Africa.[49] In South Asia it was the Mughals who predominated, in Southeast Asia it was the Aceh and Mataram Sultanates, and in East Africa it was multiple coastal sultanates which rose in the fifteenth century and maintained a fluctuating legacy until the nineteenth. There were minor Muslim kingdoms too in these regions which could be understood to reflect the development of higher educational centres. Some very natural questions then arise. To what extent did such Muslim rulers contribute to the functioning of these institutes? Did they ever try to patronize both the Shāfiʿīte scholars and educational centres? What were the responses from those who established such institutions?

In South Asia, we know hardly anything about how the Mughals contributed to the establishment and functioning of these institutions in the coastal belts of the subcontinent in support of Shāfiʿīsm.[50] Though they established and patronized many academic centres in the heartlands of South Asia,[51] we do not have much evidence for them paying attention to the

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[48] Ibn Baṭṭūṭa, *Riḥlat*: 631-32; this translation is partly taken from H.A.R. Gibb: 275; but, again, we note that he has skipped a significant amount of this passage, and has mistranslated terms related to Islamic law and jurists.

[49] On the interconnections between the political structures and educational institutes, see Berkey, *Transmission of Knowledge*; on a later period: Benjamin Fortna, *Imperial Classrooms: Islam, the State and Education in the Late Ottoman Empire* (Oxford: Oxford University Press, 2000).

[50] Muzaffar Alam and Sanjay Subrahmanyam, "The Making of a Munshi", *Comparative Studies of South Asia, Africa and the Middle East* 24, no. 2 (2004): 61-72; K.A. Nizami, "Development of Muslim Educational System in Medieval India", *Islamic Culture* 70, no. 4 (1996): 27-54.

[51] S.M. Jaffar, *Education in Muslim India* (Delhi: Idarah-i Adabiyat-i Delli, 1972); cf. Kuldip Kaur, *Madrasa Education in India: A Study of its Past and Present* (Chandigarh: Center for Research in Rural and Industrial Development, 1990); Narendra Nath Law, *Promotion of Learning in Indian During Muhammadan Rule (By Muhammadans)* (Delhi: Idarah-i Adabiyat-i Delli, 1973); G.M.D. Sufi, *Al-Minhaj: Being the Evolution of Curriculum in the Muslim Educational Institutions of India* (Delhi: Idarah-i Adabiyat-i Delli, 1941).

ones on the Indian Ocean rim, except for the regnal years of Aurangzeb. Instead, such initiatives were funded by the Gujarati Sultans, Sultans of Bengal, mercantile communities, local aristocrats and non-Muslim rulers. On the other hand, many religious institutions on the coast and in the hinterland of Aceh was established and funded by the Acehnese Sultanate. In Java, the Mataram Sultanate also gave remarkable endowments for educational purposes, especially during the reign of Sultan Agung (r. 1613-1645), who is said to have always accompanied scholars.[52] In East Africa, though the Adal Sultanate gave some endowments, constant years of war with the Solomonic Empire retarded the educational aspirations of its Muslim subjects.[53]

The minor coastal kingdoms contributed towards the institutional empowerment of fuqahā and the process of Shāfiʿīzation. In this connection the Muzaffarids in Gujarat and ʿĀdil Shahis in Bijapur (especially since Ibrāhīm ʿĀdil Shāh II who converted to Sunnīsm and made it the official version of Islam in his kingdom) are worthy of mention for their passionate religious activities at various points in sixteenth-century South Asia. In Southeast Asia (the Sultanates of Ternate, Patani, since the 1530s, after the conversion of the king; of Banten; of Cirebon; of Pajang that succeeded Damak in 1568; of Banjar, since 1526; of Maguindanao; of Sulu; of Luwu, since 1605; of Johor, etc.) and in East Africa (the Sultanates of Harar and Awsa, and a number of coastal chiefdoms like Quitangonha, Sancul, Sangage, and Angoche, and multiple shaykhs of Old Shirazi, Kilifi and Malindi dynasties) minor Muslim kingdoms also provided material support for the estate. They provided lands for mosques and madrasas, paid the salaries of teachers, gave endowments for everyday expenditures, and even paid stipends to the students. They were keen on this initiative; many members of royal families were educated in such institutes and some of them later on became rulers of their respective kingdom, and introduced Shāfiʿīte legal texts as foundations of new legal codes and state constitutions.[54]

Along with all these establishments and developments in educational levels with or without the support of royal lineages, it should also be mentioned that the period from the sixteenth century has witnessed a remarkable development in material resources directly relevant to the flourishing of academic enterprise. The coastal economies of the kingdoms we have mentioned encountered or became associated with the new European entrants to the waters of the Indian Ocean. This helped these kingdoms to be part of a larger network stretching beyond previous limits, either through a network of associates or a network of enemies. The development in material resources led to the establishment of many new educational institutions and the movement of scholars between the Middle East, South

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[52] Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern ʿUlamāʾ in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawaiʻi Press, 2004), 95-96.

[53] The entanglement of Islamic education and knowledge transmission with the local political and social contexts of the sixteenth to eighteenth centuries is yet to be analyzed thoroughly. For a general idea, see: Spencer Trimingham, *Islam in East Africa* (Oxford: Clarendon Press, 1964); for later processes, see various studies of Anne K Bang, especially her *Sufis and Scholars of the Sea: Family Networks in East Africa, 1860-1925* (London: RoutledgeCurzon, 2003); cf. Jan Knappert, "The Transmission of Knowledge: A Note on the Islamic Literatures of Africa," *Sudanic Africa* 7 (1996): 159-164.

[54] A telling example comes from the Philippines. In the legal codes of the Sulu and Maguindanao Sultanates drafted in the eighteenth (and revised in the nineteenth century), the Shāfiʿīte texts, *Mirʾāt al-ṭullāb* of ʿAbd al-Raʾūf Sinkilī and *Minhāj* were primary sources.

Southeast and East Asia, and Africa. Most of these institutions and these scholars promoted more intense studies of Islamic law, theology, mysticism, and other core disciplines.

In most of these places, the institutional frameworks of the masjids, madrasas and *maḥkamat*s were infused with a strongly divine narrative, and this ensured the estate's authority over the space and its legitimacy among the community. With reference to many Qurʾānic verses and *ḥadīth*s, the masjid was identified as the "house of God", and its custodians were the professionally defined groups among the fuqahā, the imāms, *muqriʾ*, and *khaṭīb*s. Similarly, the madrasa was branded as a place where God's knowledge is exchanged. It also proclaimed a divine arbitration of the fuqahā between the *ummat* and God through their knowledge. The acceptance among the community of such dictums related to the masjids and madrasas with the intermediation of fuqahā also encouraged increased financial backing for the estate from laypersons, who perceived the giving of their offerings as a meritorious activity. [55] Incidentally, the "reformists" in Islamic cultures questioned the legitimacy of "clergy" mediating between an individual (or the community as a whole) and God.

Institutions were also spaces for contestation between individuals and clusters. Only a few mosques and madrasas had *imām*s, *muftī*s, judges and/or chairs for all the four legal schools. In Egypt, for example, the influential Sunnī-Mālikīsm and Shīʿīsm was replaced by the Sunnī-Shāfiʿīsm when Saladin took political control of Syria and Egypt. He appointed a Shāfiʿīte Ṣadr al-Dīn ʿAbd al-Malik bin Darbās al-Kurdī (d. 1209) as the chief judge, a move that had reverberations for a century during which all subsequent chief judges were Shāfiʿītes until the end of Baybars' rule. This helped in making Shāfiʿīsm the predominant legal school in Egypt, and other schools such as Mālikīsm and Ḥanafīsm were relegated to a minor status. The school-affiliations of madrasas also demonstrate this fact. Sherman Jackson writes: "Of the twenty-seven colleges listed by al-Maqrīzī and Ibn Duqmāq whose school affiliations I have been able to determine and whose dates of foundation appear to fall between 568/1172 and 663/1265, fifteen were exclusively Shāfiʿī institutions, four exclusively Mālikī, four exclusively Ḥanafī, and none exclusively Ḥanbalī; two were Shāfiʿī-Mālikī, two Shāfiʿī-Ḥanafī, none Shāfiʿī-Ḥanbalī, and one, the Ṣāliḥiyah, had a chair for each of the four schools. There were no combinations (e.g., Ḥanafī-Mālikī) that excluded the Shāfiʿītes."[56] Therefore, if a student or a believer belonging to a different school wanted to seek erudite instruction or advice or a fatwā from scholars in his/her school, s/he had to go to a place where they are available, or alternatively satisfy themselves with the expertise of an available representative of some school or other. It should be mentioned that most fuqahā had training in the basic *furūʿ* of other schools, although that was not sufficient to solve complicated issues. Only very few scholars were well-versed in all the four schools with an adherence to one. The extent to which their more general knowledge would satisfy followers of a particular school is a matter of further enquiry.

There was a concoction of individuals (a faqīh and members of his/her circle), organizations (clusters of schools), and institutions (masjids, madrasas and *maḥkamat*s) as

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[55] For a historical elaboration on this interlinkage in an Indian Ocean region, see Mahmood Kooria "Doors and Walls of the Mosques: Textual *longue-durée* in a Premodern Malabari Inscription," in *The Social Worlds of Pre-Modern Transactions: Perspectives from Epigraphy and History*, ed. Meera Vishwanathan, Digvijay Singh, Anna Varghese and Mekhola Gomes (New Delhi: Primus Books, forthcoming).

[56] Jackson, *Islamic Law and the State*, 54.

units in various places devoted as spaces where legal ideas, texts and practitioners had a collective sovereignty under the umbrella of the estate. It was this sovereign dominion which accelerated the transmission of orthodoxy through the centuries in which the Islamic legal regimes and their textual mainstays continued to appeal internally to many generations of fuqahā and externally to the community and polity associated with their traditional, scholarly/textual, and/or charismatic authority. Except when radical change occurred, the shared sovereignty of fuqahā over these domains remained unquestioned throughout the diverse regional expressions of Islamic legal cultures.

Regional Customs as Laws of Islam

Many studies have dealt with the question of what influences were exerted by regions and localities on the legal articulations of Islam's law-makers since early times. One argument, presented in a very revisionist tone, has come from Patricia Crone, claimed that the Roman and provincial legal systems definitely influenced the making of Islamic law.[57] Her argument was furthered by scholars like Mitter, Mallat and Daher, who investigated various non-Islamic, non-Arabic contributions.[58] In a broader sense, such arguments on Roman impacts on Islamic legal history are not new. There is a vast literature concerning the influences of Hellenistic, Roman Byzantine, Persian Sassanian, Jewish Talmudic and Christian canonic laws on the formation of Islamic law through recent converts.[59] Crone herself states that scholars like H. Reland as early as 1708, Domenico Gatteschi in 1865, and Sheldon Amos in 1883 were pioneers in suggesting genetic and comparative observations which were advanced further by numerous Orientalists. She distinguishes any impacts of the provincial law ("non-Roman law practised in the provinces of the Roman empire, especially the provinces formerly ruled by Greeks") from those of the Roman law, saying that this is something completely unstudied, and places her own work largely in that vacuum. Ulrike Mitter and Harold Motzki have questioned all such long-existing arguments of non-Arab influences and dominances in Islamic legal thought.[60] They both have suggested that indeed the Arabs had an equal or even a dominant role in the development of Islamic law, hence it is baseless to suggest that the non-Arab jurists introduced many foreign elements into Islamic law. Taking my cue from this debate, I would say that there is another set of influences in Islamic juridical formulations, which has been agreed by a particular regional section of traditional Muslim scholarship long ago. A few Muslim scholars have pointed to regional influences, for example, from Egypt on the legal articulations of Shāfiʿīsm, particularly in the works of its eponymous founder al-

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[57] Patricia Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press, 1987).

[58] Chibli Mallat, "From Islamic to Middle Eastern Law: A Restatement of the Field (Part I)" *The American Journal of Comparative Law* 51, no. 4 (2003): 699-750; (Part II), 52 no. 1 (2004): 209-286; Ayman Daher, "The Sharīʿa: Roman Law wearing an Islamic veil?" *Hirundo: The McGill Journal of Classical Studies*, 3 (2005): 91-108.

[59] For a survey of earlier scholarship along these lines together with a new perspective, see Joseph Schacht, "Foreign Elements in Islamic Law," *Journal of Comparative Legislation and International Law* 32, no. 3-4 (1950): 9-17.

[60] Ulrike Mitter, "Problemen van het onderzoek naar ontleningen aan niet-Arabische rechtsstelsels in het ontstaan en de ontwikkeling van het Islamitisch recht," *Sharqiyyat* 9, no. 2 (1997): 107-123; Harold Motzki, "The Role of Non-Arab Converts in the Development of Early Islamic Law," *Islamic Law and Society* 6, no. 3 (1999): 293-317.

Shāfiʿī. The very emergence of "new" legal rulings (*jadīd*) against the "old" ones (*qadīm*) during al-Shāfiʿī's stay in Egypt is related in the traditional legal-historiography to his encounters with a different socio-cultural sphere of the new land.[61] However, we admit that the predominant traditional narrative has been to claim that the divine law is devoid of any regional influences and, being directly descended from God, that it is equally applicable to all places and times. A brief elucidation of a middle-ground between the "untraditional" approaches in Islamic and Western historiography seems to be appropriate here.

There are two regional influences in Islamic law, one on the form and the other on the content. By form, I mean the impact of socio-cultural contexts in the production and dissemination of Islamic legal knowledge. This is mainly linked to the issues discussed above, such as the *temporary* political, economic and institutional settings impelling the legalistic undertakings of a faqīh. To give a simple example, a faqīh engaged in maritime trade, living in or travelling across the coastal townships, would write a legal treatise on laws of ocean or sea-trade, as did the twelfth-century Shāfiʿīte Abū Saʿd ʿAbd al-Karīm al-Samʿānī (d. 1167) in his *al-Akhṭār fī rukūb al-biḥār* and *Rukūb al-baḥr*,[62] and the seventeenth-century Meccan Ḥanafīte Aḥmad bin Muḥammad al-Ḥamawī (d. 1687) in his *al-Durar al-thamīnat fī ḥukm al-ṣalāt fī al-safīnat*.[63] It goes without saying that what a faqīh produced and disseminated, and how and why, were determined by in-conveniences of the moment. Yet it may not influence the contents of his/her book. The normative orders have a significant role in this regard. Numerous textual progenies exclusively dedicated to a particular text—in our case, *Minhāj*—is a by-product of the legal-educational normativity of the fourteenth to the sixteenth centuries in which most fuqahā chose to engage with the instructions of one particular text of the school more than anything else. Such an educational context certainly determines the decision of a faqīh in writing a commentary on *Minhāj* as his way of contributing to the legal discursive tradition. The expansion and contraction of different legal schools are also significantly affected by analogous contextual normativities. A detailed elaboration on those regional influences on the "form" of Islamic law will follow in the next section. For the moment what is more interesting is the question of how and why the regional elements influenced and even shaped the "contents" of law.

In other words, to talk about "region" in Islamic law is also to "provincialize" Islamic law. Although extra-religious customs and norms in a faqīh's articulations may be more than plausible historically as regional impressions, scholars have been reluctant to admit it.[64] Once we say that Cairo or Damascus has influenced what a faqīh from there judges as divine law,

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[61] For a few traditional narratives, see: ; Aḥmad ʿAbd al-Salām al-Indūnīsī, *al-Imām al-Shāfiʿī fī maḏhabayhi al-qadīm wa al-jadīd* (Cairo: ʿAbd al-Salām, 1988), 433-605; Limīn Nājī, *al-Qadīm wa jadīd fī al-fiqh al-Shāfiʿī* (Riyadh: Dār Ibn al-Qayyim, 2007); Muḥammad ibn Radīd Masʿūdī, *al-Muʿtamad min qadīm qawl al-Shāfiʿī ʿalā al-jadīd* (Riyadh: Dār ʿĀlam al-Kutub, 1996). Particularly in the case of *Minhāj*'s prioritization of old views over the new ones, see: Muḥammad Sumayʿī Sayyid ʿAbd al-Raḥmān Rastāqī, *al-Qadīm wa al-jadīd min aqwāl al-Imām al-Shāfiʿī min khilāl kitāb Minhāj al-ṭālibīn: dirāsah muqāranat bi-ashhar al-maḏāhib al-fiqhīyat* (Beirut: Dār Ibn Ḥazm, 2005).

[62] The first work is mentioned in al-Subkī, *Ṭabaqāt* 7: 183; Ḥajī Khalīfah Muṣṭafā Ibn ʿAbd Allāh, *Kashf al-ẓunūn ʿan asāmī al-kutub wa al-funūn* (Beirut: Dār al-Kutub al-ʿIlmīyat, 2008), 1: 35, and the second one in: Shams al-Dīn Muḥammad al-Ḏahabī, *Siyar aʿlām al-nubalāʾ*, 14: 20: 463.

[63] Abū Muḥammad ʿAbd Allāh al-Shamrānī, *Isʿāf ahl al-ʿaṣr bi-aḥkām al-baḥr: Awwal mawsūʿat fiqhīyah shāmilat li-aḥkām al-baḥr: aḥkām al-ʿibādāt* (Riyadh: Dār al-Waṭan, 1999): 11.

[64] A only exception would be Mallat, "From Islamic to Middle Eastern Law"

we attempt to identify and extract the "Middle-Eastern" synonymy of the so-called "pure" nature of Islamic law. As an exemple, we mention a Ṣīrāfī Merchant (supposedly Sulaymān the Merchant) who travelled to China in the early ninth century remarking that the Muslims in Guangzhou practised "Islamic law" (aḥkām al-Islam) based on Qurʾān and Tradition.[65] His travel-account was written in 851 CE, a period in which Islamic legal thoughts were still evolving—especially the Sunnī schools of law that would eventually dominate the Islamic world. In the course of time, various streams of Islamic legal traditions emerged and, unsurprisingly, all of them have been from the Middle-East. The ones that existed outside the Middle East, such as the one in Guangzhou, faded away from the memories of both practising Muslims and academics. Consequently, we would not see any legal thoughts and practices which had evolved or existed among non-Middle Eastern Muslim communities as being accepted as "Islamic". All of them have been categorized as "customary" or "local" practices. The "pure" Islamic law has always been depicted as the one that came from the Middle East—in other words, the customary practices of the Middle East. To what extent does the Middle East connote a predominant Islamic geographical boundary, and how has such a notion always been questioned by Muslim communities since the early histories of Islam? Is it possible to understand Islam delineated apart from Middle Eastern contexts, especially as its largest followers have been living in South and Southeast Asia? The implication of any attempt to answer these questions is to evaluate the "Islamic" legal cultures of the Muslims from the "peripheries". Although the existing literature of Crone and who followed or questioned her enlighten us on the "provinciality" or "regionality" of Islamic law, they have never attempted to relate their questions or their arguments within the wider Muslim world, one that has always been so peripheral to Islamicist imagination.

Regional legal norms have always been essential to many legal thoughts of Islam. It is more explicit in the case of the Mālikī school that argued for the legal practices of Medina being the proper "Islamic" law. For its eponymous founder Mālik bin Anas and his disciples, the customs and communal conducts of Medina represented the uncorrupted form of the prophetic tradition, and all believers ought to follow those irrespective of one's location.[66] This parochial attitude towards the legitimacy of Medina was questioned by scholars like Abū Ḥanīfa who lived much of their lives outside Medina. Among the rationalistic approaches put forward by Abū Ḥanīfa and his disciples, they pointed out that the Companions of the Prophet also lived noticeably outside Medina, and therefore claims for the exclusive legalistic legitimacy of the city is objectionable. Despite much opposition from the rationalistic streams, the regional customs of Medina and the legal theories evolved around them eventually appealed to many believers and law-makers, not only from the Hijaz but also from Egypt, North Africa and al-Andulus. Although the Shāfiʿītes negated prima facie the city's primacy as a legalistic locus for being a source of sharīʿat, they agreed that many customs of Medina do stand as law. Some Ḥanbalītes and Ḥanafītes also partially agreed to this. Yet, an inductive

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[65] See the account of Sulaymān in Eusèbe Renaudot, *Ancient Accounts of India and China by Two Mohammedan Travellers who Went to those Parts in the 9ᵗʰ Century* (London: S. Harding, 1733), 7-8. For the Arabic original, see Jean Sauvaget, *'Aḥbār aṣ-ṣīn wa l-hind. Relation de la Chine et de l'Inde, rédigée en 851* (Paris : Belles Lettres, 1948), 7.

[66] Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013), 20-21.

reasoning of Medinese law being a regional law enabling other regional laws to be taken into account when making a rule was not made explicit in Mālikīsm or other schools until very late. Eventually, once it was agreed by the fuqahā, it had a two-fold implication. First, some fuqahā from the Shāfiʿī and Ḥanafī schools agreed that customs from any region have certain implications in the legal judgments and ritual practices. This materialized in the acceptance of ʿurf and ʿādāt in legal theory.[67] In the Shāfiʿīte case, we see many fuqahā considering ʿurf as a valid source of law, something I shall explain in the next section with reference to each of the five texts under my focus.

Secondly, the late-acceptance of ʿurf as a source of law was preceded by an exclusive recognition of particular regional customs as law. Any customs from any region were not considered to be law, but only the customs of a few regions had that privilege. This is what we see in furūʿ texts and it is precisely what I identify as the "Middle Eastern regionality" of what has been identified as monolithic "Islamic law". Until the legal theorists (like Tāj al-Dīn Subkī) of Shāfiʿīsm incorporated regional customs as legitimate sources of law with much clarity, there has always been confusion in identifying which customs could be identified as authentic "divine" law, especially in the wake of increased intermixture of new races, ethnicities, and their customs into the Arab-dominated spheres of Islam. After the jurisprudential theorizations, although the fuqahā refused to accept many new regional customs, they finally incorporated those as normative. This not only happened in factual elaborations (such as measurements, place-names), exemplifications, and fatwā-requests, but also in legal practices as such. Each estate in the Islamic world contributed to this process on different levels, and the texts under my discussion in Chapters 4 to 7 provide good examples of them from the Shāfiʿīte cosmopolis of law.

Final Remarks

The regions influenced the fiqh, fuqahā, and their estate, despite their repeated claims of universality and standing aloof from local influences in legal articulations. The influences were multifaceted, with regional customs and practices becoming imperative. Although Islamic law is understood as synonymous with the "Middle Eastern" law of Arab-Persian Muslims, customary legal elements are easily identifiable in existing legal texts. This also helps me argue that Islamic law should only be understood on the basis of its regionality. That is to say, the precise place and time of its production and dissemination are vital to a faithful historical understanding. In other words, Islamic law as portrayed in existing perceptions should be given a provincial aspect.

The fuqahā managed to construct a notion around themselves that they were the true guardians of divine law in opposition to existing political entities. Idealistic concepts, such as the *siyāsat al-sharīʿat*, found firm ground among the fuqahā in their claims for autonomy over legal interpretation, transmission, authority, and even administration. Even if they were not successful in bringing such claims fully into practice, the manuals and texts they produced clung to this viewpoint and it had become normative in the thoughts of Shāfiʿīte orthodoxy. Wherever the comparative strength of state and estate wavered, it tried to intrude into the

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[67] For an elaboration on this process, see: Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of `Urf and `Adah in the Islamic Legal Tradition* (New York: Palgrave Macmillan, 2010).

other's usual territory. Yet the fuqahā did not give up their notions of autonomy. Instead, they adored those who stood outside or against the former's power-structures. Furthermore, in contrast to the Ḥanafīte trajectory in the post-Mongol era, Shāfiʿīsm lost its exclusivity, was disowned, neglected or disqualified by kingdoms like the Mamlūks, Rasūlids, Ottomans, Ṣafawids and Mughals. All these developments contributed to a strengthened disengagement of Shāfiʿīte jurists from politics. If the estate tended to alienate itself from the state like that, how did it manage to survive materialistically or economically? Was it possible for a jurist (and by extension a religious scholar) to live without any support from political agencies, if only to maintain his/her legalistic integrity? I shall address these questions, along with further concerns, in the next chapter.

MAP 3. A few major Shāfi'ite hubs around the Indian Ocean after the sixteenth century.

Chapter 3

Transregional Networks of Shāfiʿīsm

And who decides what is the level of interpretation and what is the proper context? You know, my boy, for they have taught you: it is authority, the most reliable commentator of all and the most invested with prestige, and therefore with sanctity.

—Umberto Eco, *The Name of the Rose*: 263.

I have discussed so far the functions of regional socio-political strata in the making of a distinctive identity for the fuqahā-estate and in influencing the form of what became "Islamic law". With intentional or unintentional interruptions, the polity and community of believers circumnavigated around the individuals and institutions of a local estate in their personal and public religious, legal and cultural textures. Expressly depending on an "untameable" textual tradition, the fuqahā advocated orthodoxy around the divine law, which was transmitted for centuries through the local communities as much as through the broader intellectual spectra of Islam. This regionality is a part of the historical contextualization pertinent to any schools of thought, but my prime concern here is with the Shāfiʿīsm. In this chapter, I explore further the contextual stimuluses that helped the survival and spread or caused the occasional decay and contraction of this school, focusing on the transregional contexts. Within the timespan from the eleventh to the ninteenth centuries of the so-called post-classical phase, I analyse why and how Shāfiʿīsm succeeded in becoming the sole school of thought on the Indian Ocean rim through the expansion of fuqahā's micro-communities into macro-communities.

The socio-political spread of Shāfiʿīsm in Egypt and the Levant by the twelfth century facilitated its further advancement to South Arabia, to South, Southeast and East Asia and Africa. Situating the school parallel to or inside the networks of the Indian Ocean and the Mediterranean, I ask why and how Shāfiʿīsm appealed to a wider following, and one that was predominantly around the Indian Ocean. Was it because of the internal potentials of the Shāfiʿīte legal arguments, or did external elements like politics and economy uniquely have a role to play? If Shāfiʿīsm came into these regions, how did it come, and what was the role of legal texts in this process? How did the fuqahā and their estate survive if they refused to associate themselves with the state-structures and took no financial support from the state? Answers to these questions lead me to look into the scholarly-mercantile interconnections in and around the Mediterranean and the Indian Ocean which also facilitated the spread of Shāfiʿīsm across the coastal belts. I identify a "maritime wave of Shāfiʿīsm" in the Indian Ocean arena. In the process, I question the anachronistic assertions in existing literature related to the exclusivity of the Ḥaḍramīs and argue for a cosmopolitan network of Kārimī merchants, Egyptians, Syrians, etc. along with other Arabs, Persians, Malays, Hindīs and Swahilis in a simultaneous expansion of Shāfiʿīsm.

Division and Cohesion: The Internal Story

A major component in the survival of Shāfiʿīsm, appealing to many fuqahā as well as to the wider community, was its internal dynamics. There were constant divisions and cohesions among its textual authorities, and the school was generally accommodating of contrasting viewpoints. The agreements and disagreements, revisions and refutations, and debates around law which even evolved into street-fights—an unavoidable routine occurrence in the histories of Islam, which has been wholesomely identified as the Islamic discursive tradition—have oxymoronically contributed to the development of a constructive legal tradition over time and space. Such a tradition of discoursing often originated from a remote place in the circle of an individual scholar, at a cluster, or with a treatise, and quickly spread like wildfire attracting a wider scholarly attention. It divided the members of the school into those for and against the original text/fatwā/argument, and the ensuing lively debate produced many more intellectual commentaries and treatises.

The initial phase of this division in Shāfiʿīsm (which itself originated from an intellectual unification of the "traditionalism" of Mālik bin Anas with the "rationalism" of Abū Ḥanīfa) can be seen as early as the ninth century, among the disciples of al-Shāfiʿī: Abū Yaʿqūb al-Buwayṭī and Ismāʿīl al-Muzanī. Ahmed El Shamsy has elaborated on this, as we mentioned in Chapter 1. To recollect, the former had stood for a traditionalist understanding of their teacher's doctrine, whereas the latter absorbed a rationalistic line. Despite the personal problems and political consequences involved in this divide, both approaches attracted a larger following in and around Egypt in the ninth-century. The traditionalism of al-Buwayṭī based on al-Shāfiʿī's "ḥadīth-principle" and legal hermeneutic appealed to an important section of legal enthusiasts who believed in the supremacy of ḥadīth while engaging in juristic reasoning.[1] Although this perspective lost its appeal in the course of time for a number of different reasons and was superseded by al-Muzanī's thought, it did contribute to the development of al-Shāfiʿī's teachings as a doctrinal school with distinctive identities derived from many contemporary juridical opinions.

The Buwayṭī-Muzanī dichotomy faded away in the long run as al-Muzanī's rationalistic perspective seen in his *Mukhtaṣar* dominated the Shāfiʿīte clusters. In the tenth century, therefore, we see only his *Mukhtaṣar* being taught across the eastern and western spheres of Shāfiʿīte influence. This situation changed in the eleventh century, when another division sprang up among the Shāfiʿīte fuqahā. This division has been identified in geographical terms, the one from Khurasan and the other from Baghdad in Iraq, instead of by what each sect represented. The existence of such a division has often been recognized in primary literature, but very few studies have elaborated on it.[2] Recently Fachrizal Halim attempted to explain this, yet he does not say what constituted a Khurasani Shāfiʿīsm against its Baghdadi counterpart.[3] One important argument he makes is that the Khurasanis had a more

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[1] Ahmed El Shamsy, "The First Shāfiʿī: The Traditionalist Legal Thought of Abū Yaʿqūb al-Buwayṭī (D. 231/846)", *Islamic Law and Society* 14, no. 3 (2007), 301-341.

[2] For some earlier references to this division, see Christopher Melchert, *The Formation of the Sunnī Schools of Law, 9th-10th centuries* (Leiden: Brill, 1997), 100; Eric Chaumont, "al- Shāfiʿīyyah," *Encyclopaedia of Islam*, 2nd ed.; George Makdisi, *The Rise of Colleges: Institutions of learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 116-17.

[3] Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (New York: Routledge, 2015).

rationalistic approach in contrast to the Iraqis who prioritized a traditionalist line. But then he nullifies this by saying: "… despite jurists of each *ṭarīqa* holding certain communal methods of interpretation, this did not preclude them from producing different or even conflicting legal opinions."[4] He does not give us any clear understanding on what defined this division. In the works of many Shāfiʿītes from the twelfth and thirteenth centuries, of which Halim must certainly have been aware, we see many references that put Khurasanis and Baghdadis in reflectional symmetry. For example, Nawawī writes in his *al-Majmūʿ*, a commentary on Shīrāzī's *al-Muhaḏḏab*:

> Our Iraqi companions are more reliable in transmitting al-Shāfiʿī's statements (*nuṣūṣ*), his school's principles (*qawāʿid*), and our previous companions' opinions (*wujūh*). Mostly their transmission is stronger than the one by the Khurasanis. The Khurasanis are mostly better in their behaviour (*taṣarruf*), research (*baḥth*), derivation (*tafrīʿ*), arrangement (*tartīb*) and in matters that require a determining preponderance between two *qawl*s.[5]

Although the distinct qualities he attributes to each group in this quote might appear to be a promising definition, they are neither definitive nor determinant. All the qualifications could interchange among Iraqi and Khurasani Shāfiʿītes, including the reliability of transmission that Nawawī stresses. Also, an attempt to place a towering figure of Shāfiʿīsm like al-Ghazālī, who was born, brought up and studied in Khurasan but followed a successful legal career in Baghdad, on one side or the other would be too ambitious, if not imprudent, without clearer distinctions through further research. For the moment, suffice it to say that the division as articulated in the primary sources by the Shāfiʿītes must have contributed to a healthy advancement of the school. To give an example, when the Shāfiʿīte superstar of Baghdad al-Shīrāzī came to Khurasan with a royal mission, he stayed in the city for some time, and he is said to have engaged in a long debate with the leader of Khurasani Shāfiʿīsm, al-Juwaynī.[6] The biographical dictionaries give details of the debate, which was centred on questions of mistaken fixing of *qiblat* (the direction of the prayer) and the free will of a mature virgin lady in matters of her marriage. On the second issue, al-Shīrāzī gives her no choice, and proves his point both by deductive reasoning and scriptural evidence. Al-Juwaynī counters this argument and emphasizes the possibility of multiple interpretations of the scripture under question. In the debate, as recorded, al-Shīrāzī gets the upper hand. Their methods of argumentation, rationalization, and interpretation of the scriptures could provide a vista to further enquiry. As it is, the description of their differences as given to us deviates from the binary characteristics Nawawī suggested for the two groups. Nevertheless, Halim argues that Nawawī amalgamated both groups and came up with the most valid arguments of the school, and making a contribution from his side that added lustre to his legacy among following generations.

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[4] Halim, *Legal Authority*, 65

[5] Nawawī, *al-Majmūʿ sharḥ al-Muhaḏḏab*, ed. Muḥammad Najīb Muṭīʿī (Jeddah: Maktabat al-Irshād, undated), 1: 112.

[6] Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat al-kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī) 4: 252-256, 5: 214-218; on the question of *qiblat*, see 5: 209-214.

Nawawī's works thus created some cohesion in Shāfiʿīsm and arguably brought an end to the Khurasani-Baghdadi division. In the fourteenth and fifteenth centuries his texts are the ones most read, circulated, interpreted and commented on. But, in the sixteenth century, the "readers" of Nawawī's works were divided into two prominent groups, which I identify as Cairo versus Mecca. The former was led by Shams al-Dīn al-Ramlī, while the latter was headed by his colleague from al-Azhar, Ibn Ḥajar al-Haytamī who built up a successful career in the Holy City. I will come back to this division in the next part. For now it is enough to say that the internal dynamics of a mechanism of division inherent in the Shāfiʿīte tradition have furthered its spread and survival in the Islamic world. And now we have to deal with how and why these questions fascinated the Muslim settlers of the Indian Ocean. Before addressing them, let me briefly look into another trans-regional element that facilitated the spread of Shāfiʿīsm across the fuqahā-estates.

The Economy of the Fuqahā-Estate

The relationship of the fuqahā-estate with "mainstream" society is multifaceted, and in that complexity lay its economic base. The scholars in their relationship with the people have been mostly understood as the machinery of the state or as intermediating between the people and the state.[7] I argue that such an understanding does not represent their functionalities as a whole, nor help us to understand their rapport with the believers at large. In the case of fuqahā, we can see that there are two approaches once it comes to the community, detachment and attachment. Detachment means that the estate maintained an elitist aura around itself, making its hermeneutical bases inaccessible to laypersons. The bookishness that was so central to the estate ensured that people were detached from it significantly. This does not mean that laypersons stood outside the realms of fuqahā-estate completely, but rather they were there in many other ways. That is what is meant by attachment.

While the political systems had a top-down power structure, the fuqahā-estate maintained bottom-up material power. The dynasties and their instruments mostly had an unquestionable inherited power, and they asserted it over their subjects from the top. Against this, the fuqahā maintained the locus of their power among the community at large—a factor that also determined their economic base independent from the state, similar to the financial sources of Sufism. If the political institutions did not support the fuqahā through *mansab*s or money, especially for the aforesaid second to fourth groups, they always received their "funds" from the ground as *hadyats*, *waqfs* (their greatest economic base), *ṣadaqat*s, and even from compulsory *zakāt*s. They did not have to depend on the *bayt al-māl* (treasury) of the state, which could require them to sacrifice their autonomy. A major source of funds was trade; for Shāfiʿīsm it was maritime trade. Another was the voluntary and/or obligatory disbursements (waqfs, see below).

In the cases of Shāfiʿīte and Mālikīte schools of law, if not Islam in general, maritime trade has been central to their spread and survival. In the earlier Islamic traditions a sentiment against oceanic trade prevailed, as can be seen from two examples. First, if we can trust the historicity of *ḥadīth*s, a *ḥadīth* ascribed to the Prophet Muḥammad prohibits oceanic voyages

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[7] For a recent review, see Asma Afsaruddin, *Islam, the State, and Political Authority: Medieval Issues and Modern Concerns* (New York: Palgrave Macmillan, 2011).

for anything other than jihād and pilgrimage.[8] Second, even if Muḥammad allowed seafaring for jihād, the second Caliph ʿUmar was advised by his military commander of Egypt, ʿAmr bin al-ʿĀṣ, not to enter the sea even for jihād. He wrote: "Undoubtedly the ocean is a great creature upon which weak creatures travel; [like] worms upon a piece of wood."[9] At a later stage, ʿUmar himself prohibited another commander and governor of Syria, Muʿāwiyat bin Abi Sufyān, from crossing the sea for war. While Muʿāwiya asked for permission to conquer the Greek islands which were so close that one could hear dogs bark and cocks crow, ʿUmar replied that the safety of his people is far important than the treasures of Greece.[10] Christophe Picard challenges this argument and demonstrates that the Muslims definitely engaged in multiple naval expeditions in the seventh century itself.[11] Yet, the question of maritime trade is rather problematic and the above proscription explains that the *imārat* in the early histories of Islam was against the *tijārat* via sea and related ventures. Nevertheless, this paranoia faded away after the Muslims had conquered regions such as Mesopotamia, Iran, Syria and Egypt, all of which had a long tradition of seafaring and maritime trade. This motivated the caliphates to utilize their expertise for maritime jihād; even then, trade as such was nominal. The Hijazi Arabs "were forced to come to terms with the sea", taking "many years before they could confront the seaborne might of Byzantium".[12] We do not have any clear evidence until the eighth century for a caliph encouraging any sort of maritime trade. Perhaps the *ḥadīth* that prohibited overseas engagements except for jihād and pilgrimage was still influential.[13]

The conquest of new regions, the conversion of many active maritime trading communities into Islam, and the accelerated formation of the state under the caliphate with much capital made impacts on Islamic law, which was also developing parallel to the political expansion of the caliphate, the demographic increase of multi-ethnic and multi-linguistic believers, and the geographical decentralization of the production and transmission of knowledge. The law-makers attempted to communicate with the ever-growing complexities of Islam as a way of life and practice. Once trade became the indispensable source of income, not only for the political structures but also for the very existence of society, legalist thought and development became significantly immersed in a mercantile context. The *ḥadīth* that proscribed the sea-trade now fell into oblivion and many other *ḥadīth*s glorifying trade and traders took its place.

The jurists themselves were engaged in trade and they derived most of their income directly or indirectly from it. The legal texts written since the early phases of Islamic law dealt with different forms of trade more than with themes like politics or political institutions. One

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[8] Abū Dāwūd Sulaymān ibn al-Ashʿath al-Sijistānī, *Sunan*, ed. Shuʿayb al-Arnaʾūt and Muḥammad Kāmil Qurah Balalī (Beirut: Dār al-Risālat al-ʿĀlamiyyat, 1994), 4: 145-146, no. 2489.

[9] ʿAbd al-Raḥmān bin Khaldūn, *al-Muqaddimat,* ed. ʿAbd al-Salām al-Shadadī, vol. II (Morocco: Khazānat Ibn Khaldūn, Bayt al-Funūn wa al-ʿUlūm wa al-Adab, 2005): 28; idem, *The Muqaddimah: An introduction to History*, trans. F. Rosenthal, abridged and ed. N.J. Dawood (Princeton: Princeton University Press, 1970): 209.

[10] Quoted in George Hourani, *Arab Seafaring in the Indian Ocean in Ancient and Early Medieval Times* (Princeton: Princeton University Press, 1995), 54-55.

[11] Christophe Picard, *La Mer des Califes. Une histoire de la Méditerranée musulmane (VIIe-XIIe siècle)* (Paris : Presses Universitaires de France, 2015).

[12] K.N. Chaudhuri, *Trade and Civilisation in the Indian Ocean: An Economic History from the Rise of Islam to 1750* (Cambridge: Cambridge University Press, 1985), 43

[13] A similar mentality against sea-voyage existed in many other communities. In the Indian subcontinent the Brahmins abstained from voyages, although a few of them did go to sea.

of the earliest all-encompassing sources for Islamic legal history, *al-Umm* of al-Shāfiʿī, is the best example. Apart from an extensive volume dedicated exclusively to trade, it discusses trade-related issues further in other volumes concerned with rituals, court-proceedings or marriage. More specifically, oceanic trade and its complexities are addressed quite impressively. These mercantile excursuses of *al-Umm* are explicit in almost all other later works of the Shāfiʿīte school.

Legitimating maritime trade marks a compromise between theory/scripture and practice inasmuch as they are contradictory. It also complements the give-and-take process between the ongoing mercantile activities and scholarly discussions. Discourses on these problems that emerged on the shores of the Mediterranean and the Indian Ocean transformed "thalassophobic Muslims" into an ocean-loving community and assured economic progress for Islamic polities and communities. They mark a historical juncture where *imārat* and *tijārat* come closer. This legitimization also motivates me to argue that there is a historical discontinuity between Islamic law and *ḥadīth*-law, since the *ḥadīth* against the sea was "suppressed", "lost its meaning" or "systematically forgotten". This is similar to the discontinuity between Qurʾānic law and Islamic law that has been argued well by many scholars, including Crone and Powers (see Chapter 1).

In the thirteenth (when *Minhāj* was written), fourteenth and fifteenth centuries (when its textual progenies were born and matured), the worlds of the eastern and southern Mediterranean and the Indian Ocean were invigorated and became "unusually prosperous" in commercial, religious, legalist and societal realms. They were connected through multiple networks of Islam, notwithstanding the Mongol advancement, the rise and fall of certain political structures, and the appearance of plague.[14] Though the situation would change in the next centuries, this prosperity of the oceanic networks up to the end of the fifteenth century is well reflected in contemporary scholarly productions and dissemination of legal ideas. Close connections between those who handled merchandise and those who handled legal thoughts across the oceans produced a scholarly-mercantile symbiosis.

Jonathan Berkey briefly discussed the "merchant-scholar" in medieval Egypt, but did not go into details since it was not his major concern. We know that it was normal in Islamic and Jewish societies for academics to engage in mercantile activities. Goitein has talked about Jewish merchant-scholars who travelled between Jerusalem, al-Fusṭāt and other places in the Levant dealing in Syro-Palestinian currency on the one hand and being members of the Jewish academy of Jerusalem on the other.[15] The medieval Islamic world did not accept a "radical division of intellectual and commercial labour that has at times impoverished both the academy and the corporation in the West". In all the traditional practices of Islam including the ones at Mamlūk Egypt there was no "sharp social divide between men of religious

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[14] Janet Abu-Lughod, *Before European Hegemony: The World-System A.D. 1250-1350* (New York: Oxford University Press, 1989); For the Indian Ocean, see Chaudhuri, *Trade and Civilisation*, 63; for the Mediterranean, S.D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza,* vol. I: *Economic Foundations* (Berkley: University of California Press, 1999): passim.

[15] For example, see Goitein, "Mediterranean Trade Preceding the Crusades: Some Facts and Problems," *Diogenes* 15, no. 59 (1967): 56

learning and men of commerce."[16] Thus, many jurists, not only from Cairo but also from Baghdad, Khurasan, Damascus and other centres and peripheries of Islamic knowledge, actively engaged in business. Their motivation often had to do with the basic question of survival. If they were not successful, there would be struggles for financial security.[17] This resulted in the widespread formation of independent economies for the fuqahā-estates, giving them sufficient grounds to interact, bargain with, and even control the state and its representatives.

The scholars from the coastal townships of the Red Sea or the Mediterranean were also occupied in maritime trade. That led to making space for scholarly-mercantile interaction and consequently to the transmission of legal thoughts across the oceanic world. Participation in this interaction was multi-layered.

First, there was a layer of full-time scholars who partially took part in the mercantile activities in order to earn for themselves instead of depending on the other usual sources of income, governmental support or the prevalent donations from litigants, students or others. Some went directly aboard a ship, and others invested money in ships and goods remotely. From the eleventh-century onward, most Middle Eastern ships had Muslim proprietors (a very few were local Christians) and many of the owners were *qāḍī*s or religious judges along with sultans, ladies of the ruling houses, governors, generals, and of course the more powerful merchants.[18] A scholar of this mercantile lineage through direct or indirect involvement with the transoceanic world, also usually functioned as a religious leader and exponent of the law for the crew.

The second layer was of full-time merchants who had connections with scholarly circles of their time. Most Sunnī merchants were affiliated to one of the four schools of law. This had become a standard obligation in the Muslim world by the eleventh century, if not earlier. Many merchants approached scholars of their respective schools requesting fatwās, not only for personal problems but also for the issues they faced while voyaging. The discussions became extremely elaborate in the course of time when Shāfiʿīte commentaries and super-commentaries engaged with the problems of maritime merchants. Among the many legal problems that arose they asked how to perform the obligatory prayers during the voyage, what to do if someone died in a long journey, what if pirates attacked, and how to tackle damage from natural calamities during an expedition, etc.[19]

The third layer was of part-time merchants or scholars who divided their time between trade and academic study, either equally or with an emphasis on one side according to their priorities. This group of people features in the lines of argument of Ira Lapidus, Joan Gilbert, Carl Petry and Chamberlain. They have explained that the ʿulamāʾ regularly played the role of mediator between different classes of society, varying from the merchants and common people to the ruling elites, often intermingling administrative, commercial, educational and/or

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[16] Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo* (Princeton: Princeton University Press, 1992): 95.

[17] See Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994), 91-107

[18] Goitein, "Mediterranean Trade," 57

[19] Two intriguing Shafi'ite texts in this case would be *al-Akhṭār fīn rukūb al-biḥār* and *Rukūb al-baḥr* by Abū Saʿd ʿAbd al-Karīm al-Samʿānī that I mentioned in the previous chapter.

judicial functions.[20] In some of their individual or institutional circles, trading was fused with lecturing, reading, writing, reproducing texts, and above all scholarly/mercantile networking.

There are countless examples of these people in all three layers. Various biographical dictionaries enlighten us about many noted scholars or merchants and their criss-crossing engagements. One example is Ibn Ḥajar al-ʿAsqalānī (1372-1449), a prominent Shāfiʿīte jurist and traditionist from Cairo, who came from a merchant family and participated in commercial activities himself.[21] His father, Nūr al-Dīn ʿAlī (d. 1375), was part of the Kārimī merchant-group engaged in the cloth trade. His death left a commercial vacuum for his children about which ʿAsqalānī was concerned.[22] In his early career, he travelled to Yemen, Damascus and other parts intertwining commerce and scholarship. In his academic activities he rose to prominence and then had at least three agents looking after his business, who traded in the Red Sea and the Mediterranean. It was not exceptional for him to have chosen a scholarly life besides commercial pursuits; many of his relatives were jurists, poets and scholars as much as they were merchants.[23]

More should be said about the second layer, as they were one of the most important benefactors of the estate and its institutions. If we take the histories of the Kārimī merchants and their juridical affiliation as an example, we understand how the legal school, the fuqahā-estate and the mercantile communities mattered to each other. It is beyond doubt that the Kārimī merchants were very active in the Indian Ocean and Mediterranean economic worlds from the twelfth to the fifteenth centuries and many scholars—after Goitein's extensive use of the Geniza records—have studied their modes of operation in different ways.[24] Besides some passing references, we note that no one has paid attention to the juridical affiliations of these merchants and how possibly ideas would circulate along with them between so many nodal points of the Indian Ocean and the Mediterranean.

Kārimī merchants were reasonably active on the shores of the eastern and southern Mediterranean, Egypt, South Arabia, South and Southeast and East Asia, and EastAfrica. Their organizational structure has been a point of debate among the social historians; yet scholars agree that general superiority belonged to Arab Muslims and Egyptian Islam; they

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[20] Ira Lapidus, *Muslim Cities in the Later Middle Ages* (Cambridge: Harvard University Press, 1967): 107-15, 130-42, 189-90; Carl F. Petry, *The Civilian Elite of Cairo in the Later Middle Ages* (Princeton: Princeton University Press, 1981): 321-3; J. Gilbert, "The ʿUlamāʾ of Medieval Damascus and the International World of Islamic Scholarship" (PhD diss., University of California, 1977): 144; Chamberlain, *Knowledge and Social Practice*: 6.

[21] Lapidus, *Muslim Cities*, 108-9; Sabri K. Kawash, "Ibn Hajar al-ʿAsqalānī (1372-1449 A.D.): A Study of the Background, Education, and Career of a ʿĀlim in Egypt" (PhD diss., Princeton University, 1969): 20-23, 218-41.

[22] Anne F. Broadbridge, "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt: al-ʿAynī, al-Maqrīzī, and Ibn Ḥajar al-ʿAsqalānī," *Mamluk Studies Review* 3 (1999): 85-107; *R. Kevin Jaques, Ibn Hajar: Makers of Islamic Civilization* (New Delhi: Oxford University Press, 2009).

[23] Kawash, "Ibn Ḥajar al-ʿAsqalānī," 19-45, 218-241.

[24] S.D. Goitein, *Studies in Islamic History and Institutions* (Leiden: Brill, 2010), 351–60: the chapter "The Beginnings of the Kārim Merchants and the Character of their Organization"; idem, "New Light on the Beginnings of the Kārim Merchants," *Journal of the Economic and Social History of the Orient* 1, no. 2 (1958): 175–84; Eliyahu Ashtor, "The Kārim Merchants," *Journal of the Royal Asiatic Society* (1956): 45–56; Muḥammad ʿAbd al-Ghanī al-Ashqar, *Tujjār al-tawābil fī Miṣr fī al-ʿaṣr al-Mamlūkī* (Cairo: al-Hayʾat al-Miṣrīyat al-ʿĀmmah li al-Kitāb, 1999). This latter work provides a list of more than two hundred Kārimī merchants with their full names, personal information and bibliographical details of primary sources.

were the ones who developed the techniques for their maritime commercial and legal practices. By the end of the twelfth century, the Shāfiʿī school had developed as a standard form of legalism in Egypt after its a few setbacks from the Shīʿīte Fāṭimid caliphate from the mid-tenth to the mid-twelfth centuries who had adopted Ismāʿīlī Shīʿīsm as the state religion of Egypt.[25] In the thirteenth and fourteenth centuries, the school was very influential that a common trader could not deny it in his or her social engagements in commerce. The Mālikī school was also partly influential, in and around Egypt as well as in many Southern and Eastern Mediterranean ports.

Almost all the Kārimī merchants were affiliated to one or other Islamic legal school. The biographical dictionaries prepared by ʿAsqalānī and others talk about merchants who clearly followed a *maḏhab*, and Shāfiʿīsm was the most dominant one. The normal practice in a biographical dictionary was to mention most persons under discussion with their legal school affiliation. For exemple, the full name is given of a Kārimī merchant as Ghars al-Dīn Khalīl ibn Muḥammad al-Aqfahsī al-Miṣrī *al-Shāfiʿī*, demonstrating that he followed the Shāfiʿī school. Apart from being professional Kārimī merchants, some were also legal scholars who played crucial roles among the Kārimīs. Badr al-Dīn Ḥasan bin Suwayd was a jurisconsult who occasionally acted as a notary public of Mālikīsm, but was mostly a Kārimī merchant.[26] The al-Maḥallī family was a renowned Kārimī mercantile group in Levantine trade in the fourteenth and fifteenth century. One of them in particular, Burhān al-Dīn al-Maḥallī (d. 1403), was known as the "sultan's trader" or the "outstanding merchant" (*tājir al-khāṣṣ*).[27] In the world of legal scholarship some became famous. One of the noted commentaries of *Minhāj* was written by Jalāl al-Dīn Muḥammad bin Aḥmad al-Maḥallī (1389-1459). Though he entitled his commentary as *Kanz al-rāghibīn*, it was widely known in the Shāfiʿīte circles as "Maḥallī"; its original title was forgotten over the course of time.[28]

The Mālikī merchants or merchants-*cum*-scholars traded mostly in the Mediterranean and the Red Sea, while the Shāfiʿītes operated in the rest of the Indian Ocean, with some connections to the Eastern Mediterranean. This is not a cut-and-dried demarcation, for certainly there was some overlapping. The general dominance of the Shāfiʿī legal thought and practice in the coastal belts and hinterlands of Syria, Egypt, Yemen, and Iran had encouraged this transoceanic spread of Shāfiʿīsm around the Indian Ocean rim. By contrast the Mālikī school predominated in the North African terrains, and therefore in the Mediterranean world.

Also it should be noted that a few of the commentators of *Minhāj* were part of the maritime trade networks. There were many more merchants-*cum*-scholars from the Mediterranean and Indian Ocean worlds who travelled up to South, Southeast and East Asia

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[25] On the adoption of Ismāʿīlī school as "the official system of religious law", see Farhad Daftary, *Ismailis in Medieval Muslim Societies* (London: I.B. Tauris, 2005), 73; on its abandonment as "the state religion" after Saladin's conquest, see idem, *The Ismāʿīlīs: Their History and Doctrines* (Cambridge: Cambridge University Press, 2007), 252.

[26] Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr bi-abnāʾ al-ʿumar* (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmānīyat, 1967-76): 225; he also talks about many other merchant-scholars.

[27] Eliyahu Ashtor, *Levant Trade in the Middle Ages*, 218, 275-6; on the family in general, 74.

[28] Even a nineteenth-century writer went far saying that al-Maḥallī did not entitle his work. See Aḥmad Mayqarī Shumaylat al-Ahdal, *Sullam al-Mutaʿallim al-muḥtāj ilā maʿrifat rumuz al-Minhāj*, ed. Ismāʿīl ʿUthmān Zayn (Jeddah: Dār al-Minhāj, 2005), 627; cf. Haji Khalifa, *Kashf al-Dhunun*, III: 181. On a side note, he himself was reasonably active in the commercial activities and he is said to have made a huge profit in the early fifteenth century before he turned into full-time academic activities.

and East Africa, who mingled their scholarly and mercantile aspirations. On the one hand this ensured an economic freedom for the fuqahā who engaged or invested in trade. On the other hand, it motivated the traders to finance the estate through a number of customary voluntary duties that were considered to be worthy of merit. The *waqf*s were crucial and consistent in this regard. Many wealthy merchants established educational institutions, and these were preferred by many of the fuqahā who sought freedom from political entities. The Rawāḥiyyat madrasas at Damascus and Aleppo, both established by the great merchant of the time Zakī al-Dīn Hibat Allāh bin Muḥammad bin ʿAbd al-Wāḥid b. Rawāḥa (d. 1226), he dedicated exclusively to the study of Shāfiʿism, stipulating, "Neither Jew nor Christian nor anthropomorphist Ḥanbalī (*ḥashwī*) shall enter here."[29] Nawawī stayed and studied in this Rawāḥiyyat at Damascus. The mosque-*cum*-college at Ponnāni, a Shāfiʿīte stronghold in Malabar, was primarily financed by the merchants since its establishment.[30]

Apart from trade and waqfs, the *ṣadaqat*s and *hadiyat*s also functioned as sources of income for the fuqahā. These were voluntary donations mostly of money, clothes, foodstuff, and rarely of land or property. The practice of giving to religious leaders in general and to learned men in particular had been infused into Islamic tradition from the time of Muḥammad. The members of the fuqahā would receive such gifts on occasions when a donor felt it would be rewarding, even if the faqīh had no real interest in the material being given. Muftīs would receive such *hadiyat*s whenever they clarified a legal issue, but judges were prohibited from taking any gifts.[31]

Another source of income, which is very significant regarding textual longue durée, was remunerations from book writing. J. Pedersen has elaborated on the earnings of authors in the Islamic world when they published their works. At many occasions of recitations, *samāʿ*, and *qirāʾ*, authors could and did charge their learned audience a fee.[32] Although this payment was often intermixed with the *hadiyat*s, on occasions an author asked for payment in advance or afterwards. How to legitimise income from writing became a matter of legal concern in the fuqahā-estate, as we see in the fatwā-collection of Ibn Ḥajar al-Haytamī.[33] The customs house records from thirteenth-century Aden provide a number of instances of the scholars charging to copy the texts.[34]

These various revenues, from trade to royalties, financed the fuqahā-estate on different levels, and significantly contributed to its avowed independence and integrity. Even so, such

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[29] L. Pouzet, "Rawāḥa," *Encyclopaedia of Islam*, 2nd ed.—citing Abū Shāma, *Tarājim (=D̲ayl al-Rawḍatayn)*, ed. Kawtharī, 149

[30] Mahmood Kooria "Doors and Walls of the Mosques: Textual *longue-durée* in a Premodern Malabari Inscription," in *The Social Worlds of Pre-Modern Transactions: Perspectives from Epigraphy and History*, ed. Meera Vishwanathan, Digvijay Singh, Anna Varghese and Mekhola Gomes (New Delhi: Primus Books, forthcoming).

[31] Muḥy al-Dīn Nawawī, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*, ed. Muḥammad Ṭāhir Shaʿban (Beirut: Dar al-Minhāj, 2005), 560.

[32] Johannes Pedersen, *The Arabic Book* (Princeton: Princeton University Press, 1984).

[33] See the various discussions on writing practices in Aḥmad Shihāb al-Dīn Ibn Ḥajar al-Haytamī, *Fatāwā al-ḥadīthiyyat* (Beirut: Dār al-Maʿrifat, n.d), 27, 47, 120, 121, 163.

[34] Muḥammad ʿAbd al-Raḥīm Jāzim, ed., *Nūr al-maʿārif fī nuẓum wa qawānīn wa aʿrāf al-Yaman fī al-ʿAhd al-Muẓaffarī al-wārif, Lumière de la connaissance. Règles, lois et coutumes du Yémen sous le règne de sultan rasoulide al-Muẓaffar* (Ṣanʿā: Centre Français d'Archéologie et de Sciences Sociales de Sanaa, 2003-2005), 1 : 513-514, 2 : 124-126 ; cf. Roxani Eleni Margariti, *Aden and the Indian Ocean Trade: 150 Years in the Life of a Medieval Arabian Port* (Chapel Hill, NC: University of North Carolina Press, 2007).

sources of income as those were generally very meagre if they had detached themselves from the state machinery or they were not charismatic figures on whom laypersons poured frequent gifts. An exception to this scenario would be the fuqahā who did not contact the state but contacted outside nobles. Ibn Ḥajar of Mecca, the author of *Tuḥfat*, hardly maintained any relationship with the ruling Ottoman Empire, but kept good contact with an Indian noble who was influential in the Gujarati sultanate and financed the endeavours of the Meccan fuqahā (see Chapter 5). Otherwise, many fuqahā chose a humble economic life, one that was well cherished in Islamic tradition and in the biographical dictionaries thus contributing to an approval of their legacy. In other words, this also defined the interactions of such fuqahā with the *ummat* at large. I shall elaborate later on this, in particular by citing the cases of Nawawī (who derived a major source of his income from his father), Ibn Ḥajar (from an Indian noble), al-Malaybārī (from merchants), and Sayyid Bakrī and Nawawī al-Bantanī (from pilgrims and the diaspora).

Transmission Networks

The educational frameworks of Islamic communities with the strong influence of Arabic as a lingua franca have enabled Muslims from different regions to travel across regional borders. Many scholars have studied various aspects of Muslims travelling for knowledge to dwell in distant lands looking anew for eminent teachers, students, certificates, texts and ideas.[35] As we discussed in Chapter 1, the evolution of micro-communities into macro-networks of fuqahā enabled the spread of Islamic legal ideas in and beyond the heartlands of Islam. The history of Shāfiʿīsm is no different. Starting with al-Shāfiʿī's two prominent student groups based in Baghdad and Cairo, his teachings had advanced into a doctrinal school by the ninth century. By the tenth century its wider influence was marked in Khurasan, Shiraz, and Transoxiana in the east, and in Cairo, Baghdad, Basra and Damascus in the west. Although the school competed temporarily with the political dominance of the Shīʿīte Fāṭimid kingdom, stretching from the Levant to the Hijaz, it had regained its disseminating spirit by the eleventh century through a process of internal conflict between the Khurasanis and the Iraqis. The school then reached more eastern and western regions, and to the south in Yemen. Developments in the twelfth century such as the disestablishment of the Fāṭimids and the rise of the Sunnī Ayyūbids, and the escalation of maritime economy through Arab-Persian dominance over the Indian Ocean, were the external factors that revived this expansion. The most important progress in the eleventh and twelfth centuries was the rise of many higher educational centres in the Islamic world.

"The rise of colleges", as Goerge Makdisi described it, can be traced significantly to the rise of legal education in the Islamic world for professional purposes. Most colleges in the earlier phase focused exclusively on law, and "the colleges of law" were inseparable from the "schools of law".[36] Some clusters in different fuqahā-estates were successful in dominating newly established colleges for their respective schools. However, the benefactors had their

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[35] For example, see Daphna Ephrat, *A Learned Society in a Period of Transition: The Sunni Ulama of Eleventh Century Baghdad* (Albany: State University of New York Press, 2000), 33-74. A good primary source is al-Khaṭīb al-Baghdādī, *Kitāb al-riḥlat fī ṭalab al-ḥadīth*, ed. Nūr al-Dīn ʿAtar (Beirut: Dār al-Kutub al-ʿIlmiyyat, 1975).

[36] Makdisi, *Rise of Colleges*, 1-4.

own priorities and, depending on the general trends in a particular locality, they chose to offer endowments inclusively or exclusively. The scholastic opulence of Shāfiʿīsm came from clusters which were fortunate to have benefactors from various social strata of Egypt, Syria, Iraq, Iran and Yemen, who all contributed to the physical expansion of the school. Niẓām al-Mulk, the vizier of Seljūq Empire, is one important figure in this regard. He not only contributed to the general advancement of Islamic institutional educations by establishing numerous madrasas across the Empire in the late-eleventh century, but also through all his endowments provided a chair essentially for the school of Shāfiʿīsm; some endowments he made were only for it. Political entities were by no means alone in making endowments. Merchants, noble women and men, scholars themselves, former slaves, and laypersons all contributed to the rise of colleges and thus to the transmission of the ideas of the school.

The establishment of Islamic law as a profession and of many prestigious associated centres of higher learning attracted several students to pursue fiqh more dynamically. Shāfiʿīsm gained remarkable numbers to its clusters through the charisma of such scholars as al-Shīrāzī, al-Juwaynī and al-Ghazālī in the eleventh century. Fiqh in general, and Shāfiʿīte fiqh in particular, thus became a glamorous discipline. Al-Ghazālī wrote in the late-eleventh century that jurists receive "more fame, financial security and supremacy over anyone else including preachers, storytellers and theologians".[37] The academies of Baghdad, Nishapur, Cairo and Damascus attracted students from different parts of the Islamic world. These cities hosted the prominent higher educational centres of Shāfiʿīsm from the eleventh to the fifteenth centuries, although there were constant shifts in their relative rankings of prestige, which I shall discuss towards the end of this chapter. The students from adjacent rural areas mostly ended up at these urban centres of learning which may be ruled by ʿAbbāsids, Ayyūbids, Seljūqs, or Mamlūks. This was by no means a geographically restrictive pattern. Both students and teachers travelled across political borders. Al-Ghazālī was born in Merv, educated in Nishapur, and built up his career in Baghdad. Ambivalent changes in economic, social, cultural, and political conditions influenced the mobility of scholars, but no single component, certainly not politics, was the only one to control transmission networks.

At the core of these scholarly networks lay the texts. For both the teachers and the students mastering a text represented an introduction to and an expertise in a discipline. In other words, disciplines were represented by texts rather than vice-versa. If a student wanted to study a discipline, the first thing s/he had to do was to identify the appropriate text and then learn it from an expert who has an *ijāzat* (certificate) to teach it. For example, when Nawawī wanted to study medicine, the first thing he did was to buy a manuscript of *Kitāb al-shifāʾ* of Avicenna (Abū ʿAlī al-Ḥusayn bin ʿAbd Allāh bin al-Ḥasan bin ʿAlī bin Sīnā, d. 1037).[38] For Shāfiʿīsm, in the twelfth to the thirteenth centuries the appropriate text was *al-Tanbīh* of al-Shīrāzī. Everyone started and ended his/her studies of Shāfiʿīsm with it, in the sense that it was the sourcebook on which the highly learned and the lowly educated most depended. There were a few more texts that were widely studied in Shāfiʿīte circles. Of these four important ones were those identified by Nawawī as *mutadāvalat* texts, mentioned in Chapter

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[37] al-Ghazālī, *al-Ghazālī, Jawāhir al-Qurʾān wa duraruh* (Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīda, 1988): 20-21.

[38] Nevertheless, he gave up the idea of studying medicine, because a "darkness covered my heart", he says.

1. Other texts from the school were also studied, taught, interpreted, abridged, and circulated by enthusiasts and specialists. The quest for such texts and specialist teachers formed a network of textual transmission among Shāfiʿīte students and teachers.

In the Shāfiʿīte transmission network, like in any other Islamic context of textual studies, what mattered most was the *ijāzat*. Three types of *ijāzat*s were listed in the well-known Mamlūk chancery manual of Abū ʿAbbās Aḥmad bin ʿAlī al-Qalqashandī (1355-1418), and all three show how texts stood at the core of a the whole process: *ijāzat ʿarḍ* was the certificate for memorizing a work and presenting it in front of a teacher; *ijāzat al-riwāyat* was the certificate for transmission; *ijāzat al-futyā wa al-tadrīs* was the certificate to teach and issue fatwās. Each of these certificates was highly formalized with particular guidelines, scribal styles and formats.[39] This system of graded certificates meant that even if you had a manuscript of, say, *al-Tanbīh*, and a teacher who specialized in Shāfiʿīsm, you could not in theory study the text unless your teacher had an *ijāzat* to teach it. That certificate would have been given directly by the author or indirectly through a legitimate *sanad* of teachers with *ijāzat*s going back to the author himself/herself. That is why we see many Yemeni fuqahā remembering the arrival of al-Qāsim bin Muḥammad al-Qurashī in Sahfanat, as he had an *ijāzat* to teach *al-Muhaḏḏab*. This was the starting point that created the legacy of Shāfiʿīsm in the region.[40]

The transmission networks enabled the movement of manuscripts, the issue of *ijāzat*s to teach them, and the promotion of students into teachers; some teachers became students, as with many Ottoman qāḍīs who reverted to being students once they landed in Arab provinces for their official duties. The network also facilitated interactions between different clusters of the same school and estates of distant lands. This helped the dissemination of discourses and disputes and attracted a wider attention to many local discourses. In this network of texts, ideas, debates not only scholars participated but also the community at large. They had substantial interests, motivated by diverse personal, religious, legal, economic or even political reasons. The material basis of networks, however, was purely economic, as those often depended on the existing trade-routes, caravans, and other mercantile conveniences. That is another aspect of mercantile-scholarly interconnections.

We have already discussed how the interlinkage between the fuqahā and traders contributed to the economic existence and consequent scholarly legalistic integrity of the estate in a regional setting. Definitely such interlinking was inseparable from its transregional frame, and it has contributed expressly to the transmission-networks of Shāfiʿīsm both materially and in content. As for the texts that form the core of the fuqahā-estate, the transmission of legal texts by the fuqahā and fiqh-enthusiastic traders and migrants nurtured the initial rise of fuqahā-estates in distant lands like South and Southeast Asia, and East and South Africa. In the historical trajectories of Shāfiʿīsm as a dominant school in the coastal belts of all these regions, it would be interesting to explore how the *fuqahā-tujjār* (jurists-traders) connection facilitated the movement of books. From the tenth century onward, we

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[39] Devin Stewart, "The Doctorate of Islamic Law in Mamluk Egypt and Syria," in *Law and Education in Medieval Islam: Studies in Memory of Professor George Makdisi*, ed. J.E. Lowry, D.J. Stewart and S.M. Toorawa (Warminster : Gibb Memorial Trust, 2004): 45-90, with reference to al-Qalqashandī's *Ṣubḥ al-aʿshā fī ṣināʿat al-inshā*.

[40] ʿUmar bin ʿAlī bin Samurat al-Jaʿdī aka Ibn Samurat, *Ṭabaqāt fuqahāʾ al-Yaman*, ed. Fuʾād Sayyid, (Cairo: Maṭbaʿat al-Sunnat al-Muḥammadiyyat, 1957), 125-133.

have clear references to the transmission of books across the oceans. Even so, this evidence has been little studied.[41] Historians of Islamic book-culture as well as of Islamic law itself mostly focus on the city-based movements of ideas and texts in the terrains of the Middle East alone. The transmission through maritime spaces across borders has not been emphasized, except for some passing references to it in secondary literature.

Based on his extensive research into the Geniza records, Goitein shed some light into the maritime movement of texts, merchants who specialized in the book-trade, and the book-markets of Cairo and Mediterranean towns. He says that both Hebrew and Arabic books related to religious and secular topics were an important item of international trade, in which Tunisia in southern Mediterranean played an important role as an exporter and Egypt as an importer.[42] But, needless to say, "bibliophiles were hunting after books everywhere". The twelfth century Jewish merchant Nahray ben Nissim, who was a scholar himself, specialized in the book-trade, whereas Ibn ʿAwkal, who mostly conducted large-scale businesses in other goods than books, had opportunities to transmit scholarly works from the Jewish academies of Baghdad to the Jewish communities of North Africa. From these Geniza references, Goitein speculates: "the exchange of goods and business techniques led to the travel of ideas and cultural contacts, especially as books […] constituted an important item of export".

This mode of book transmission was not specific to the Mediterranean trade, but is seen also in the Indian Ocean. We have Geniza references for an active book-trade between Egypt, Yemen and Indian subcontinent. On 9 July, 1202, Maḍmūn bin David from Aden is said to have asked his business partner in Cairo: "And buy for me any fine copies of useful books you can lay your hands on and kindly send them to me", together with "the medical writings of my lord the Rayyis", meaning Maimonides (1135-1204).[43] David's contemporaries had often sent papers and books to their colleague Abraham Ben Yiju in Mangalore (on the southwest coast of the Indian subcontinent).[44] Similarly it was not an exclusive occupation of Jewish merchants. Muslim and Christian traders also engaged in similar businesses in the eastern and southern Mediterranean and the Indian Ocean. Despite the divisions of the Mediterranean, as a Christian north and a Muslim south and east, and of the Indian Ocean, the movement of all kinds of merchandise created a larger economic unit through commercial interactions of merchants and ideological interactions of scholars in which books played a remarkable role.[45] Chaudhuri has written that legal texts protected merchants when commercial contracts were concluded between members of communities in all the trading centres of the Indian Ocean, and the "reputation of a port of trade turned on the fairness of its legal traditions".[46] One naturally then asks what were those legal corpuses, what was their

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[41] For example, in the tenth century, Ibn al-Nadīm mentions many Indian texts being circulated among the Arabs. See his *al-Fihrist*, ed. Ibrāhīm Ramaḍān (Dar al-Maʿrifat, 1994), 32-33, 303-304, 370-71, 421

[42] Goitein, "Mediterranean Trade," 55, 61.

[43] S.D. Goitein, *India Traders of the Middle Ages: Documents from the Cairo Geniza: India Book* (Leiden: Brill, 2008), 517.

[44] Goitein, *India Traders*, 61, 562, 571, 576, 590.

[45] Chaudhuri, *Trade and civilisation*, 45; on the Mediterranean side of the story, see Sean Roberts, *Printing a Mediterranean World: Florence, Constantinople, and the Renaissance of Geography* (Cambridge, MA: Harvard University Press, 2013); on the intersections, see: Arnold Franklin, Roxani Eleni Margariti, Marina Rustow and Uriel Simonsohn, eds. *Jews, Christians and Muslims in Medieval and Early Modern Times: A Festschrift in Honor of Mark R. Cohen* (Leiden: Brill, 2014).

[46] Chaudhuri, *Trade and civilisation*, 12.

nature, or how did they arrive at a port, at least in relation to the Islamic communities who had rights and responsibilities to conduct legal procedures.

We have references, though limited, about the transmission of Islamic legal texts across the Indian Ocean world from the customs house records of Aden of the thirteenth and fourteenth centuries. Those include general references to literate cultures at various levels in the ports. More specifically they mention two particular legalists whose textual transmissions and legalist exchanges were attended by merchants, laypersons, court-members and even the sultan.[47] Interestingly, one of these fuqahā charged the attendees for his lectures and for copying texts. Apart from all the notions related to the economies of the fuqahā-estate through mercantile interactions and political patronage, this reference is particular evidence for the earlier mentioned practice of an individual fuqahā charging his audience for his intellectual capability.

There was possibly a vast amount of texts of Islamic law, and we wonder if there was any specific reference to the import or export of Shāfiʿīte legal treatises. Or more generally, we wonder if the Shāfiʿīte texts ever reached to the rims of the Indian Ocean, such as South, Southeast or East Asia and Africa. Certainly there are references. Although they are patchy in the case of Southeast Asia and East Africa before the sixteenth century, we have clear evidence of Shāfiʿīte textual-intellectual production and attention in South Asian coastal belts. One of the earliest Arabic texts written in the Malabar Coast is a Shāfiʿīte legal text entitled *Qayd al-jāmiʿ* by certain Faqīh Ḥusayn bin Aḥmad in the mid-fourteenth century.[48] This text concerns marital rules, proceedings and requirements from a Shāfiʿīte viewpoint. Unfortunately we do not have details about its author, apart from a possible reference Ibn Baṭṭūṭa makes to one Faqīh Ḥusayn while discussing a miraculous tree found in Malabar.[49] The local scholars believe that both Ḥusayns are the same.[50] However, in the beginning of the text, the author mentions that he wrote the work based on renowned texts of Shāfiʿīsm. The question is how those texts reached a "remote" place like Malabar, that stood "outside" the centres of Islamic law in general or of Shāfiʿīsm in particular. Whether or not the books travelled to him or he travelled to the books at the "centres", the *Qayd* is certain evidence for the circulation of Islamic legal texts and scholars across the Indian Ocean world. More interestingly, another text from fifteenth-century Sindh is precisely related to *al-Muḥarrar*, the predecessor of *Minhāj*. Al-Muḥarrar did not attract the attention of many commentators or abridgers, as it was quickly outmoded by *Minhāj*. However, of its only two known commentaries, one, *Kashf al-durar fī sharḥ al-Muḥarrar* by Shihāb al-Dīn Aḥmad bin Yūsuf al-Sindī (d. 1490), is connected to Sindh.[51] Again, we do not have any biographical details about this author, but his patronymic al-Sindī clearly indicates the place he came from or where he was based.

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[47] Jāzim, *Nūr al-maʿārif* 1: 513-14; 2: 124-129.

[48] K.M. Muhammad, *Arabi Sāhityattinu Kēraḷattinṯe Saṃbhāvana* (Tirūraṅṅāṭi: Ashrafi Book Centre, 2012), 62-63.

[49] Abū ʿAbd Allāh Muḥammad bin ʿAbd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-nuẓẓār fī gharāʾib al-amṣār wa-ʿajāʾib al-asfār*, ed. Muḥammad ʿAbd al-Munʿim al-ʿUryān and Musṭafā al-Qaṣṣāṣ (Beirut: Dār Iḥyāʾ al-ʿUlūm, 1987), 574.

[50] Muhammad, *Arabi Sāhityattinu*, 62.

[51] al-Ahdal, *Sullam al-mutaʿallim*, 630-631.

Both *Qayd* and *Kashf al-durar* help us comprehend the movement of Shāfiʿīte legal texts to the rim of the Indian Ocean in South Asia prior to the sixteenth century itself; from Southeast Asia, it is only from the seventeenth century that we get a complete Islamic legal text. We will discuss each text relevant to our focus and further regions in the next section.

Oceanic Estates: Micro-Communities and Institutions

The intensification and gradual domination of Shāfiʿīsm in the oceanic rim occurred mainly through the decisive contributions of the fuqahā-estate (particular individuals and micro-communities) and its associated institutions. The interrelation of the estate with institutions is mostly one of explicit collaboration, as we have seen in Middle Eastern Muslim contexts in which the educational and religious institutions, once established and funded, were actually an exclusive space of the estate. But, that exclusivity changes once it comes to the non-Middle Eastern rim of the Indian Ocean, primarily for two reasons: a) most regions where Shāfiʿīsm had to operate from now on had a "non-Islamic" socio-cultural and sometimes political structures, and the Muslim communities there were a minority and bizarrely diverse; b) the prime actors of the fuqahā-estate, both individuals and micro-communities, were new entrants, who represented a foreign diaspora on those rims. The institutions there thus did not always come exclusively under the estate. It had to negotiate with many other actors in the society, economic, cultural, political or even religious ones, more than were required in Middle Eastern contexts.

Regarding the micro-communities, the credit of bringing Shāfiʿīsm to the Indian Ocean shores has been attributed rhetorically, both in traditional Muslim accounts and scholarly writings, to the Yemenis. The scholars argue that the school was spread around the rim by the Yemenis, or more precisely by the Ḥaḍramī Sayyids.[52] But they never make it clear why, when or how this happened. They have not tried to examine when Shāfiʿīte legal thoughts and practices arrived in Yemen itself. It is true that ports in Malabar, Konkan, Gujarat, Java, Sumatra, Kilwa or Zanzibar had maritime mercantile connections with Yemen, but that does not explain the exclusivity of juridical thought and practice to there from Yemen. It would be an anachronistic statement if such a legalism was only then burgeoning in Yemen. Therefore, we need to discuss briefly a) when and how Shāfiʿī legal thought arrived in Yemen and how and when it intensified through scholarly practices; b) how the trajectories of Shāfiʿīte legalism from Egypt, Syria and Iran and its intellectual fusions relate to its spread across the Indian Ocean rim.

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[52] For example, see Edward Alpers, *The Indian Ocean in World History* (Oxford: Oxford University Press, 2014), 58; particularly on South Asia, see Andre Wink, *Al-Hind: The Making of the Indo-Islamic World,* vol. 1*: Early Medieval India and the Expansion of Islam, 7ᵗʰ-11ᵗʰ Centuries* (Leiden: Brill, 1996), 69-71; vol. 2: *Slave Kings and the Islamic Conquest, 11th-13th Centuries* (Leiden: Brill, 1997): 276-77; A.D.W. Forbes, "Southern Arabia and the Islamicization of the Central Indian Ocean Archipelagoes," *Archipel* 21 (1981): 80-85; A. Cherian, "The Genesis of Islam in Malabar," *Indica* 6, no. 1 (1969): 8; M.H. Ilias, "Mappila Muslims and the Cultural Content of Trading Arab Diaspora on the Malabar Coast," *Asian Journal of Social Science* 35, nos. 4-5 (2007): 444 says: "The spread of Shafii School in Malabar can really be traced back to Hadramis. Religiously speaking, the Hadrami Saiyids had a particular mission of spreading Shafi sect of orthodoxy." On Southeast Asia, see Michael Laffan and Michael Laffan, "Sufi Scents across the Indian Ocean: Yemeni Hagiography and the Earliest History of Southeast Asian Islam," *Archipel* 70, no. 1 (2005): 185-208; on East Africa: B. G. Martin, "Arab Migrations to East Africa in Medieval Times," *The International Journal of African Historical Studies* 7, no. 3 (1974): 367-390 and Joseph Schacht, "Notes on Islam in East Africa" *Studia Islamica*, no. 23 (1965): 91-136.

Shāfiʿīsm spread in both Yemen and on other Indian Ocean coasts almost at the same time through scholarly-mercantile interconnections. Systematically, this has to be considered as the initial phase of its spread into the South Arabian and other coastal belts. Considering the role of traders in spreading Islamic ideas and of Kārimī merchants in Shāfiʿīsm, it is true that many Kārimīs limited their mercantile voyages between the Mediterranean ports and Yemen. This must have led to an intensification of thought on Islamic law in Yemen. But, there were also merchants who voyaged eastwards to the Indian coasts and farther into East Asia as well as to East Africa and who had a similar juridical affiliation to the merchants whose destination was Yemen. In these circumstances Yemen per se cannot have any claim for the initial spread of Shāfiʿīsm to the Indian Ocean coasts. In a much later period, after the massive migrations of the Ḥaḍramī community started to the shores of South and Southeast Asia and East Africa, they will have contributed to the amplification of Shāfiʿīsm and Sunnīsm in the regions they reached, but that is a different issue.

Regarding Shāfiʿīsm in Yemen, its clear prominence happened only in the eleventh century. "Shāfiʿīsm, its texts and scholars were not popular in Yemen" before the arrival of al-Qāsim bin Muḥammad bin ʿAbd Allāh al-Jumaḥī al-Qurashī (d. 1045) and his students in the eleventh century, according to Ibn Samura (d. 1190), who wrote a biographical dictionary of Yemeni jurists.[53] Until the end of the tenth century, the predominant school in the region was Ḥanafīsm with a small amount of Mālikīsm.[54] Once al-Qurashī came to Yemen after his studies in Mecca and Medina, he set up a religious educational institution at Sahfanat and attracted students from different parts of Yemen, including Sanʿāʾ and Aden.[55] In the same century, many of his students wrote different works which engaged with previous works of the school. In the twelfth century, they were introduced into Shīrāzī's *al-Muhaḏḏab* which revolutionized their legal thoughts, especially in standing against Ḥanafīsm.[56] Yaḥyā bin Abū al-Khayr al-Yamanī (d. 1163) was a leading scholar of the time in the region who set up another group of Shāfiʿīte scholars. He himself wrote a commentary to the *al-Wasīṭ* of al-Ghazālī.[57] All these scholars and many more and their texts gave Shāfiʿīsm wider currency in and around the region only in the twelfth century.

In the thirteenth century, Yemen witnessed the arrival of many Shāfiʿītes who contributed to deepening the ideas of the school there. Some political and economic turbulence under the Mamlūks made many Egyptian businessmen flee to Yemen in the early and middle parts of the century. They returned at the end of the century, when the most influential Mamlūk sultan Baybars al-Bunduqdārī introduced new policies that persuaded many expatriates to come back. But until then these businessmen had been settled in the ports of Yemen and had become involved in local socio-religious spheres.[58] Most Egyptians

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[53] Ibn Samurat, *Ṭabaqāt*, 80.

[54] Ibn Samurat, *Ṭabaqāt*, 79.

[55] Ibn Samurat, *Ṭabaqāt*, 88.

[56] Ibn Samurat, *Ṭabaqāt*, 126-9.

[57] ʿAlī Muʿawwid and ʿĀdil ʿAbd al-Mawjūd, Introduction to al-Ghazālī, *al-Wajīz fī fiqh al-Imām al-Shāfiʿī* (Beirut: Dār al-Arqam, 1997), 68

[58] The royal biographer, Muḥy al-Dīn ʿAbd Allāh bin ʿAbd al-Ẓāhir has written about the return of these businessmen, see his *al-Rawḍ al-zāhir fī sīrat al-malik al-Ẓāhir*, ed. ʿAbd al-ʿAzīz al-Khuwayṭir (Riyad: Maṭbaʿt al-Quwat al-Muslihat, 1976), 132.

followed Shāfiʿīsm by this time, so their religious practices and legal procedures in Yemen would all have been according to the prescriptions of this school. As a consequence, the juridical orientation of the general populace in the region was influenced by Shāfiʿīsm, complementing the efforts of legal scholars. Only during this time, probably due to the influence of the Egyptian expatriate elites and the local scholars, the Rasūlid sultan al-Manṣūr ʿUmar (r. 1229-1249) converted from Ḥanafīsm into Shāfiʿīsm, an act that further contributed to the popularity of the school in the country.[59]

These events show that the expansion of Shāfiʿīsm in Yemen was precipitated greatly by the ups and downs of events in Egypt. Even the prime teacher of al-Qurashī, Abū Bakr bin al-Muḍarrab, with whom the former has studied al-Muzanī's *Mukhtaṣar* and some of its commentaries, was an Egyptian who had migrated to Zabīd in the early eleventh century.[60] Therefore, we should look into the role of Egyptian networks for the spread of the school across the Indian Ocean rim. As we shall see, Shāfiʿītes from a school's epicentre like Cairo, together with the ones from Khurasan, Baghdad and Damascus, disseminated Shāfiʿīte legalism into the broader worlds of South Arabia, South and Southeast and East Asia, and Africa. Certainly there were many intermediary micro-communities, but none of those was as exclusive a force in that role as that attributed to Yemenis in the existing scholarly literature. A telling example comes from fourteenth-century Malabar where religious scholars from Oman, Persia, Mogadishu, Baghdad and Mecca functioned in different roles and positions, but there is hardly anyone among them from Yemen.[61]

Before examining the role of Egyptians in this network and other micro-communities, I shall discuss one more problem related to the Yemenis. Most previous studies have focused on a particular community of the Yemenis, the Ḥaḍramīs, despite the prevalent argument that the massive migrations from Yemen happened because of natural calamities and geographical intricacies.[62] So could not the same catastrophes have affected other Yemenis than the Ḥaḍramīs? And did not they also want to migrate to other regions? The answer would be yes, but very few studies have been conducted on this. We have clear evidence of many non-Ḥaḍramī members of a Yemeni diaspora in a number of different coastal townships of the Indian Ocean.[63] They are particularly important for this study, as they have significantly contributed to the spread of Shāfiʿīte theory and practice stimulating an intensified wave of the school along the rim. We should thus separate the Yemeni identity into multi-ethnic groups, not merely Ḥaḍramīs.

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[59] ʿAbd Allāh al-Hibshī, Ḥayāt al-adab al-Yamanī fī ʿaṣr Banī Rasūl (Yemen: Manshūrāt Aḍwāʾ al-Yaman, 1980), 53; Daniel Varisco, "Texts and Pretexts: the Unity of the Rasulid State under al-Malik al-Muzaffar," *Revue du monde musulman et de la Méditerranée* 67, no. 1 (1993): 21.

[60] Ibn Samurat, *Ṭabaqāt*, 88.

[61] Sebastian Prange, "The Social and Economic Organization of Muslim Trading Communities on the Malabar Coast, Twelfth to Sixteenth Centuries" (PhD diss., University of London, 2008), 141.

[62] There were many reasons for their migrations, which have been well analysed by scholars relating them to geographical, climatic, political and economic aspects. The most important recent study about the Yemeni migrations, primarily focusing on the Ḥaḍramī community is, Engseng Ho, *Graves of Tarim: Genealogy and Mobility across the Indian Ocean* (Chicago: University of Chicago Press, 2006).

[63] In Chapter 6 I shall elaborate on one of such communities that flourished in the Coromandel and Malabar Coasts.

Most of the non-Ḥaḍramī Yemenis belonged to or claimed to belong to such families as al-Amudīs, Makhdūms al-Bakrīs, al-Ḥumaydīs, and Asʿadīs. These were prestigious families which can be traced back to the early stages of Islam. In that way, they derive a legitimacy to preach orthodox and correct forms of Islam transmitted directly and authentically from the Prophet itself through their ancestors. The Yemeni tribes and clans like Banū Ḥamdān, Qahṭānī, Azd, Ḥumayr which all spread over the rim of the the Indian Ocean were mentioned in the hierarchical structure of noteworthy Arab tribes by Ibn Ḥajar al-Haytamī.[64] In a way, these non-Ḥaḍramī Arabs contributed to the Islamic legal cultures of the oceanic rim more than the Ḥaḍramīs. The Ḥaḍramīs took part in the religious spectrum, with a stress on spiritualism backed by an ancestry from the Prophet Muḥammad. As such they can be most easily related to Sufi ideas than to legalism. It was the non-Ḥaḍramī Yemenis who established themselves by intensive training and career aspirations into the legal culture (see Chapter 6). This difference of an "ascribed" against an "achieved" authority is clear, but only once we consider the internal dynamics. Otherwise, as a single block, both micro-communities contributed to strengthen the oceanic Shāfiʿīte clusters.

In the Indian Ocean arena the Ḥaḍramīs were perceived as a religiously privileged group because of their ancestry from the Prophet Muḥammad. Thus they occupied various religious positions. In Southeast and East Asia and also other places they operated mainly in mercantile matters, but religious and mercantile involvement criss-crossed. The Ḥaḍramīs contributed to the life of Shāfiʿīsm in the regions where they congregated by authoring texts, spreading theory and practice, establishing standard norms, etc. This was continued in subsequent generations who also took a lead in keeping the school in the mainstream of Islamic legal discourse and practice wherever they found themselves. This dynamism gave them their own space as a micro ethnic community in the fuqahā-estate. But all this happened only after the sixteenth century. Before that the Egyptians were influential in this spectrum.

We have already examined the role of Egyptian Kārimī merchants and their links with the fuqahā-world in spreading Shāfiʿīte ideas. Goitein says that in the twelfth century the Kārimīs were "neither a guild of merchants nor a particular branch of international trade but some sort of annual convoy or a seaborne caravan".[65] The argument of Gaston Wiet and Walter Fischel, that they were a strongly interconnected association of merchants was questioned by Ashtor. He instead suggested that they were a loosely organized group of merchants admitting non-Muslim merchants including Christians and Jews into their ranks.[66] However, Sunnī-Shāfiʿītes held a predominant position among them, as a detailed list of Kārimī merchants from the twelfth to the fifteenth centuries demonstrates.[67] By the fifteenth century, a Kārimī had become a synonym for a maritime trader in the Islamic commercial world and in scholarly discussions. The long-existing mercantile connections of ports in the

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[64] Ibn Ḥajar al-Haytamī, *Mablagh al-arab fī fakhr al-ʿArab* (Beirut: Dār al-Kutub al-ʿIlmīyat, 1990).

[65] Chaudhuri, *Trade and civilisation*, 59

[66] Walter J. Fischel, "The Spice Trade in Mamluk Egypt," *Journal of the Economic and Social History of the Orient* 1, no. 2 (1958): 157–74; Eliyahu Ashtor, *A Social and Economic History of the Near East in the Middle Ages* (Berkeley: University of California Press, 1976), 241–42, 300–1, 320–21; idem, "The Kārim Merchants," 54–56.

[67] Muḥammad ʿAbd al-Ghanī al-Ashqar, *Tujjār al-tawābil fī Miṣr fī al-ʿaṣr al-Mamlūkī* (Cairo: al-Hayʾat al-Miṣrīyat al-ʿĀmmah li al-Kitāb, 1999).

broad world of the Indian Ocean (including South Arabia), the Red Sea and the Mediterranean through Kārimī merchant-scholars contributed to intensifying Islamic legal systems and Shāfiʿīsm, simultaneously.

There were direct connections from the Eastern Mediterranean to the coastal belts of the Indian subcontinent. These, as well as notional arrivals of Kārimī merchants, further explain a process of possible input of Shāfiʿīsm from the Levant. Among the merchant-scholars who travelled to the Indian coasts we have clear references to Shāfiʿītes from Damascus and Cairo. Ghars al-Dīn Khalīl ibn Muḥammad al-Aqfahsī al-Miṣrī al-Shāfiʿī is noteworthy among them.[68] Qāḍī Abū ʿAlī ʿAbd al-Raḥīm bin ʿAlī al-Baysānī al-ʿAsqalānī (d. 1200) made huge profits every year from his trade both in the Indian Ocean and the Mediterranean. He was a Shāfiʿīte judge based in Egypt and a friend of the Ayyūbid sultan Saladin.[69] Ibrāhīm ibn ʿAbd al-Karīm al-Khwāja (originally from Damascus but he migrated to Cairo) and Jalāl al-Dīn Muḥammad ibn Muḥammad arrived on the Malabar Coast, but for them we have no clear evidence of a school-affiliation.[70] If they were not Shāfiʿītes, then their affiliations contributed to a phenomenon which can be identified as "intermixed maḏhabs" of maritime worlds. That indicates the simultaneous presence of more than one school without any one of them being dominant, as was the case on the Indian Ocean rim prior to the sixteenth-century. Based on biographical dictionaries, Carl Petry has convincingly tabulated the travel patterns of some medieval Muslim notables who came to the Indian subcontinent and undertook legal (*muḥtasib*, *shāhid*—notary, *qāḍī*—judge, *nāʾib qāḍī*—assistant judge, and *shaykh*), scholarly (*mudarris*—lecturer) and religious (*khaṭīb*—sermon deliverer, *muqriʾ*—reciter, *muʿtaqad*) occupations in the subcontinent as well as being a *nāẓir* (supervisor) or *tājir* (dealer), bureaucratic or commercial occupations. In his table the legal affiliations of judges or assistant judges are not manifest.[71] Yet they all show a direct link between the Mediterranean and the Indian subcontinent with mutual influence on each other's Islamic legalist formulations, together with those from Yemen, Persia and other nodes on the Indian Ocean rim. At the same time they also demonstrate a strong scholarly-mercantile interconnection in the western Indian Ocean world.

All this evidence helps us argue that the Yemenis were not the sole factor in the expansion of Shāfiʿīsm in the Indian Ocean arena. Egyptians and Syrians also contributed to the intensification and domination of the school on the rim. But in fact there were many more micro-communities, all of which have been forgotten or ignored in the historiography. These include the "Indians", the Persians, and the Malays.

For the "Indians", or *al-Hindīs* as they are called in Arabic sources, we have evidence from the thirteenth century, if not earlier, related to a few South Asian scholars who were active in the legalist, educational and intellectual circles of the Middle East and Southeast Asia well before the assumed "upsurge of Yemenis". A number of biographical entries in the

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[68] Carl F Petry, "Travel Patterns of Medieval Notables in the Near East," *Studia Islamica*, 62 (1985): 78-79. The following details are from him, but I also cross-checked with the original source, Muḥammad ibn ʿAbd al-Raḥmān al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ li ahl al-qarn al-tāsiʿ* (Beirut: Dār al-Jīl, 1992), 3: 202-04.

[69] al-Subkī, *Ṭabaqāt al-Shāfiʿīyyat*, 7: 166-168.

[70] al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ*, 1: 69 and 8: 64.

[71] Petry, "Travel Patterns," 86

Shāfiʿīte ṭabaqāt-literatures provide some valuable information.[72] ʿAlāʾ al-Dīn Aḥmad bin Muḥammad bin ʿAbd al-Raḥmān bin Muḥammad al-Hindī al-Bājī al-Shāfiʿī (1233-1315) is a fine example. If we perform a similar exercise on him as that done by Michael Feener and Michael Laffan on "al-Jāwī" with the adjectival patronymic form (*nisbat*) "al-Hindī", we find it connotes many things in relation to the contemporary scholarly practices and connections with the Indian subcontinent.[73] He was born in the same year as Nawawī was born but lived longer. He also studied in Damascus, worked as a finance-secretary at al-Karak, an important stopping place on the caravan route between Damascus and Egypt and for pilgrims from Damascus to Mecca. He left this job once he obtained his professorship at Sayfiya Madrasa in Cairo. His noted work in Shāfiʿīsm is a legal hermeneutical text called *Ghāyat al-suʾūl fī al-uṣūl*.[74] Apart from this information, we do not know much about his life, scholarly genealogy and contributions. Yet the genealogical line of his patronym reveals that he belonged to a family with many Muslim ancestors. We do not know who of three forbears (parents or grandparents) was actually *al-Hindī*; it could have been ʿAlāʾ al-Dīn alone or his great-grandfather Muḥammad. If it was the latter, it indicates that a strong "Indian" scholarly presence was active for generations in the Middle Eastern socio-cultural spheres. This should be read along with the historical fact that the Ghaznawid rulers in South Asia followed Shāfiʿīsm (particularly Maḥmūd Ghaznī, r. 998-1002 converted from Ḥanafīsm to Shāfiʿīsm)[75], as well as the rulers who succeeded them from the Ghūrīd Dynasty, after the conversion of Ghiyāth al-Dīn Ghūrī (r. 1163-1203) from the Karrāmiyyat sect (founded in Sijistān by Abū ʿAbd Allāh Muḥammad bin Karrām, d. 869) to Shāfiʿīsm in 1199 at the hand of Qāḍī Waḥīd al-Dīn (or Wajīh al-Dīn) Muḥammad al-Marwazī or Marwarrūḏī. This

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[72] For example, see the references on Abu al-ʿAbbas Aḥmad bin Muḥammad al-Daybulī (d. 984) in al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat*, 3: 56-57; and on Ṣafiyy al-Dīn Muḥammad bin ʿAbd al-Raḥīm bin Muḥammad al-Hindī al-Urmawī (1246-1316) in al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat*, 9: 162-164, 190; 10: 166, 340. This al-Daybulī, from the Daybul region, is the earliest Shāfiʿīte with a direct Indian origin I have come across so far. He lived and died in Egypt. Ṣafiyy al-Dīn al-Hindī al-Urmawī was a venerable teacher of Taqī al-Dīn al-Subkī during his studies in Damascus, the father of Tāj al-Dīn al-Subkī (the author of this *Ṭabaqāt*). Taqī al-Dīn gained the respect of al-Hindī, who gave him his many writings including certain *al-Nihāyat*. He was born in India, travelled to Yemen in 1269, performed hajj, went to Cairo and then to al-Rum (Byzantium), met and studied with one Shykh Sirāj al-Dīn. He then arrived at Damascus in 1286, where he settled for the rest of his life. He taught at the madrasas of al-Atābikiyyat and Ẓāhiriyyat al-Juwwāniyyat and became famous for his expertise in theology, to such an extent that the historian al-Subkī says that he was the most leading figure among Ashʿarī theologians in Damascus—similar to ʿAlāʾ al-Dīn ʿAlī bin Muḥammad al-Bājī (d. 1315) in Cairo. He confronted Ibn Taymiyyat publicly in the presence of many scholars and the governor. In the debate, Ibn Taymiyyat was defeated by Ṣafiyy al-Dīn and it led to the former's downfall and imprisonment.

[73] Here I have looked into only the South Asian context in connection with the Middle East. If we do the same exercise for other subcontinents, let us say East Africa, the outcome would be more promising against notions that are usually taken for granted. For example, see Neville Chittick and Robert I. Rotberg, *East Africa and the Orient: Cultural Syntheses in Pre-colonial Times* (New York: Africana Publishing Company, 1975); Neville Chittick, "The 'Shirazi' Colonization of East Africa," *The Journal of African History* 6, no. 3 (1965): 275-294; Molly Benjamin Patterson, "South Arabian maritime expansion and the origins of East African Islam: 1200-1500" (PhD diss., University of Wisconsin-Madison, 2009). The major primary source from the fourteenth century is Ibn Baṭṭūṭa who visited the kingdoms of Zanj, Mogadishu and Kilwa in 1328.

[74] Carl Brockelmann, *Geschichte der arabischen Litteratur* (Leiden: Brill, 1949), 2: 104.

[75] On the conversion of Maḥmūd Ghaznī, see al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat*, 5: 316; on another Ghaznawid ruler, Muhammad bin Sam (r. 1030, 1040-41), and his affiliation with the school, see al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat*, 8: 60-61.

conversion is said to have happened following both the sultan's and the qāḍī's dream of al-Shāfiʿī, the eponymous founder of the school, on the same night. Ghiyāth al-Dīn is also said to have extended his patronage to Shāfiʿīsm against Karrāmism, and the great Shāfiʿīte Fakhr al-Dīn al-Rāzī is one of the scholars who received his patronage to fight against the Karrāmi preachers.[76] However, the juridical affiliation of these rulers (as well as any other rulers) with a school should not be taken for granted for their subjects unless there is clear evidence. In this case, we hardly know if their subjects in Central and South Asia ever followed them in Shāfiʿīsm. Another reference comes from Southeast Asia, from the kingdom of Samudra Pasai. During the reign of Sultan al-Kamil (see below), an Indian scholar called Maulana Naina bin Naina al-Malabari is said to have come to Samudra together with many other scholars.[77] The sultan arguably gave them various positions and asked them to spread their Islamic knowledge throughout his kingdom. Al-Malabari was appointed as the commander of army. Beyond these patchy details we do not know much about this al-Malabari. Furthermore, there seems to be an inconsistency in this narrative, as it sets the regnal years of Sultan al-Kamil into the second half of the twelfth century. But, according to the existing historiography, the Samudra Pasai kingdom was Islamicized only in the late-thirteenth century, and a ruler with the name al-Kamil sat in throne only in the late-fifteenth century, and even then for less than a year.[78] These inconsistencies apart, similar narratives are told about the presence of "Indian" scholars from Gujarat and Malabar in the earlier kingdom of Perlak as well as during the later kings like Malik al-Zahir (d. 1326).[79] All these al-Hindīs and al-Malabaris tell us about a persistent historical awareness of "Indian" scholarship holding a considerable but neglected position. It would also connote legalist links of South Asian terrains to the regions of the Eastern Mediterranean as well as to Southeast Asia as early as the thirteenth century, by cutting out the existing idea of attributing the intermediation of the Shāfiʿī school between the Eastern Mediterranean and Indian Ocean worlds exclusively to Yemenite influence.

In the sixteenth and the seventeenth centuries we have more evidence of Indian Shāfiʿītes being very influential on the Indian Ocean rim and spreading the school's ideas. On the one hand, this happened through voluntary migrations of Indian scholars; this happened with many fuqahā from the west-coasts of India, particularly Gujarat and Malabar, who went to Southeast Asia, the Middle East or East Africa, looking for new horizons for their academic

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[76] Abū ʿUmar Minhāj al-Dīn ʿUthmān ibn Sirāj al-Dīn Jūzjānī, *Ṭabaqāt-i Nāṣirī*, ed. W. Nassau Lees, Mawlawī Khadim Hosain and ʿAbd al-Hayy (Culcutta: College Press, 1864), 77-78, for a translation, see idem, *Ṭabaqāt-i Nāṣirī: A General History of the Muhammadan Dynasties of Asia, Including Hindustān, from A.H. 194 (810 A.D.) to A.H. 658 (1260 A.D.) and the Irruption of the Infidel Mughals into Islām*, trans. Henry George Raverty (London: Gilbert & Rivington, 1881)1: 384-385; cf. Edmund Bosworth, "The Rise of the Karamiyyah in Khurasan," *The Muslim World* 50, no. 1 (1960), 5-14.

[77] Hasan Muarif Ambary and Bachtiar Aly, *Aceh dalam retrospeksi dan refleksi budaya Nusantara* (Jakarta: Informasi Taman Iskandarmuda, 1988), 70; Ali Hasymy, *Sejarah kebudayaan Islam di Indonesia* (Jakarta: Bulan Bintang, 1990), 9; Mehmet Ozay, "Baba Davud: A Turkish Scholar in Aceh" in *Ottoman Connections to the Malay World: Islam, Law and Society* ed. Saim Kayadibi (Kuala Lumpur: The Other Press, 2011), 36.

[78] The first Muslim ruler of Samudra is Sultan Malik al-Salih, whose gravestone has been found and dated as 696 Hijri year, that corresponds to 1297 CE. G.W.J. Drewes, "New Light on the Coming of Islam to Indonesia?" *Bijdragen tot de Taal-, Land- en Volkenkunde* 124, no. 4 (1968): 433-59; for a striking critical reading of these tombstones, see Elizabeth Lambourn, "Tombstones, Texts, and Typologies: Seeing Sources for the Early History of Islam in Southeast Asia" *Journal of the Economic and Social History of the Orient* 51 (2008): 252-286.
[79] Ozay, "Baba Davud," 36-7.

and economic prospects. As an illustration we mention the journeys of Nūr al-Dīn al-Ranīrī (d. 1658), who was born and brought up in Ranīr (Rander) in Gujarat, but was educated in Ḥaḍramawt, and built a successful career at the court of the Acehnese sultanate, before he was finally forced to return home. His journeys are not untypical; many people before him had also undertaken similar journeys in their quest for knowledge.[80] However, his contribution to the textual transmission of Shāfiʿīsm in the Malay world was unprecedented, for he wrote the first complete Shāfiʿīte legal text in the region, as we shall see later. In contrast to these voluntary migrations, there also were a few Indians who were forced to migrate into distant lands such as South Africa and begin a career of faqīh specializing in Shāfiʿīsm. We see in this in Achmat van Bengalen, who was deported to Cape Town from Chinsura in Bengal and eventually became one of the renowned Shāfiʿītes there in the late-seventeenth and early eighteenth century.[81]

Another important group which contributed to spreading the school across the rim were the Persians. Southern Persia had always been a vital link in the maritime trade and its inhabitants were very familiar with the opportunities oceanic networks presented. Many Persians, not just from the southern part but also from such far north-eastern regions as Isfahan, had been active in the transmission of Islamic legal ideas and texts for centuries, long before the arrival of the Ṣafawids. Ibn Baṭṭūṭa refers to many Persian qāḍīs and *shaykh al-Islam*s he met in different parts, including China. Their patronymic names, such as al-Iṣfahānī, al-Tabrīzī and al-Shīrāzī, suggest their Persian homelands. Ibn Baṭṭūṭa hardly ever refers to their school affiliations so we do not know if they were in fact Shāfiʿītes. But their presence in such townships and ports as Canton clearly suggests that the maritime routes were well exploited by individual Persians for transmitting legalist ideas. Also, the early Islamic communities in East Africa consisted of a good number of "Shirazis" among whom there were several dissident Muslims like the Shīʿītes, Ibāḍīs and Khārijīs who sought refuge in the Swahili Coast.[82] The Persians also utilized the Silk Road, which primarily transmitted the Ḥanafīte stream of law as far as China, an area outside the focus of this study.

Since the sixteenth century however we have clear evidence of the presence of Persian Shāfiʿītes all over the oceanic rim. They had to flee from Iran once the Ṣafawids came into power and began to introduce Shīʿīsm into the entire region. The founder of Ṣafawid dynasty, Shāh Ismāʿīl I (r. 1501–24), made extensive incursions to convert the Sunnīs to Shīʿīsm and many scholars have put forward different reasons for such a determination that would change the religious landscape of Iran for centuries to follow. Shāfiʿīsm was the predominant school in Iran until the sixteenth century. I have partly discussed how cities like Khurasan, Samarqand, Nishapur and Shiraz once played decisive roles in the early histories of Shāfiʿīsm. Prior to and during the Seljūq power in the region, Shāfiʿīte scholars had managed to build up their own vital spaces in their respective fuqahā-estates that sometimes were dominated by the Ḥanafītes. In the long run, Shāfiʿīsm had become the dominant legal thought there, which mainly followed the Sunnī version of Islam. Many Persian Shāfiʿītes also had remarkable

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[80] Al-Ranīrī's own uncle had arrived in Aceh as a teacher in the late sixteenth century. See Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern ʿUlamāʾ in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawaiʻi Press, 2004), 52-69.
[81] Achmat Davids, *The Mosques of Bo-Kaap: A Social History of Islam at the Cape* (Cape Town: South African Institute of Arabic and Islamic Research, 1980).
[82] Alpers, *Indian Ocean*, 50-51.

influence on the oceanic rim prior to the sixteenth century. Even the Ṣafawids themselves were born into a Sunnī lineage, or more precisely a Shāfiʿī-Sufi tradition, until Ismāʿīl I decided to convert himself and his kingdom entirely to Shīʿīsm. Once he started his massive inquisition against Sunnīsm, Shāfiʿīsm suffered the most. While Ḥanafīsm found its new home in the adjacent Mughal or Ottoman Empires, Shāfiʿītes had to search for a more comfortable abode.[83]

Three options were left for them: to convert to Shīʿīsm; to flee their homeland to preserve their faith; to face death. Historical sources show that many scholars and followers of Sunnīsm in general and of Shāfiʿīsm in particular died for their faith. Ismāʿīl's army massacred thousands of Sunnīs all across his kingdom. The Herat Episode, in which many Shāfiʿītes including the Shaykh al-Islam of Khurasan Sayf al-Dīn Aḥmad al-Taftāzanī (d. 1510) were killed, is a representative of those killings.[84] Many Sunnī scholars and followers converted to Shīʿīsm and joined the new Shīʿīte ʿulamāʾ who had been imported from southern Lebanon and Iraq. The entire trajectory of the Ṣafawiyyat Sufi order was to represent this moment of conversion. The order was established by Ṣafiyy al-Dīn Ardabīlī (d. 1334) as a fusion of Shāfiʿīte legalism with the mystical ideas of Sufism. The whole order was Shīʿīzed and continues to be so even today.[85] Likewise, many Shāfiʿīte clusters and individual members renounced their legalist stream and embraced the new faith. Muḥammad al-Dawānī, to whom we made a fleeting reference with regard to the scholars who stood for the supremacy of fuqahā over the state, is said to have been the one of the "last Shāfiʿītes of Persia". Another stream of scholarship argues that he had converted to Shīʿīsm.[86]

Apart from those who met their death and those who converted to the new faith, the third category is of more interest to this study, i.e. those who fled Persia to protect their faith and practices. Many Sunnīs, more particularly the Shāfiʿītes, took refuge in the adjacent Ḥanafīte kingdoms. The presence of Shāfiʿīte scholars in the kingdoms of Sikandar and Ibrāhīm Lodhīs and subsequently in the Mughal domains could thus be related to the Sunnī refugees from Iran.[87] In the Ottoman courts and in the major cities many Shāfiʿītes took refuge. Some of them went to Mecca and Medina. Muḥammad bin al-Ḥusayn bin ʿAbd Allāh al-Sharīf al-Ḥusaynī al-Samarqandī (d. 1588), who became a towering Shāfiʿīte in sixteenth-

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[83] Many Shāfiʿītes, however, arrived at the Mughal and Ottoman educational institutions. For example, while the Mughal Emperor Akbar established several madrasas in Agra, he appointed many professors from Shiraz, who had already left the place and were looking for better opportunities. See Narendra Nath Law, *Promotion of Learning in India during Muhammadan Rule (by Muhammadans)* (London: Longmans, Green, 1916), 163.

[84] On the murder of Sayf al-Dīn Aḥmad al-Taftāzanī, see Bābur, *Memoirs of Zehīr-Ed-Dīn Muhammed Bābur, Emperor of Hindustan*, trans. John Leyden and William Erskine (Milford: Oxford University Press, 1921), 1: 312-13. This source says that the family occupied the position of Shaykh al-Islam in Khorasan for several generations.

[85] On the trajectory of this order, see Monika Gronke, *Derwische im Vorhof der Macht: sozial- und wirtschaftsgeschichte Nordwestirans im 13. und 14. Jahrhundert* (Stuttgart: F. Steiner Verlag, 1993); Michel Mazzaoui, *The Origins of the Safavids: Shi'ism, Sufism, and the Gulat* (Wiesbaden: F. Steiner, 1972).

[86] Anne K.S. Lambton, "al-Dawānī," *Encyclopaedia of Islam* II, 2nd ed.; "Davānī, Jalāl al-Dīn Moḥammad," *Encyclopaedia Iranica*, VII, Fasc. 2.

[87] Sanjay Subrahmanyam, "Iranians Abroad: Intra-Asian Elite Migration and Early Modern State Formation," *The Journal of Asian Studies*, 51, no. 2 (1992): 340-363; cf. Afzal Husain, "Growth of the Irani Element in Akbar's Nobility," *Proceedings of the Indian History Congress*, 36th session.

century Medina along with an expertise in many languages, is one example.[88] In Mecca, Mullā ʿAlī al-Qārī (d. 1605) is another example. He was a jurist and a scholar of *ḥadīth*s, who migrated from Herat.[89] Many Persian Shāfiʿītes took refuge on the Indian Ocean rim utilizing the existing network of trade and legalism. They flocked into many regions, from East Africa to East Asia, as we see from a number of different primary sources which note the increased presence of Persian Sunnī-Shāfiʿītes from the early sixteenth century onward.[90]

In the case of Malays, we have references to their engagements with Shāfiʿīte law as early as the mid-fourteenth century. From Ibn Baṭṭūṭa's description that we cited in detail earlier, we could clearly understand the place of Shāfiʿīte fiqh in the Malay Archipelago. Before the intensification of Yemeni migrations in the sixteenth century, many Malay scholars must have set out spreading the ideas of the school in and around the region. However, we have ample evidence from the seventeenth century onward, when the Malays directly influenced the legal practices of many Muslims, not only in Southeast Asia but also in Sri Lanka and South Africa. The spread of Islam in South Africa in general and of Shāfiʿīsm in particular is due to the Malay fuqahā, who arrived there as political prisoners and exiles, people like Shaykh Yūsuf al-Makassarī (d. 1699).

Beyond these evident micro-communities and its individual members, there were more individuals who contributed to the process of Shāfiʿīte domination without much scholarly support from the ethnic diasporic communities to which they belonged. Among the most important are slaves, military personnel, prisoners, and political exiles. The East African slaves who traded across the Indian and Atlantic oceans and the Mediterranean practised their religion at a minimal level. Their religious adherence, as well as that of the slaves from the East (especially from Southeast Asia), is yet to be studied thoroughly. Some patchy references to a few other Shāfiʿītes who were active in some coastal cities say nothing of their background so no further contribution can be made. Only we can assume that there must have been similar individuals in the same places from similar ethnic and regional backgrounds who would form a micro-ethnic community that would contribute to the fuqahā-estate and their respective school cluster together with the other micro-communities there.

Shifts in the Centre and Rise of Multiple Centres

In the course of the centuries of Shāfiʿīte expansion, different places emerged as the school's prime centres. In the ninth century, the main centre was Cairo, which witnessed the final years of al-Shāfiʿī's teaching and authoring there. As explained earlier, his many students in the city took up his teachings and acted as torchbearers for the formation of a doctrinal school. Baghdad at this time was a satellite city to Cairo, and there were accommodated some renowned Shāfiʿītes, including Abū Thawr Ibrāhīm bin Khālid (d. 854), Ḥusayn bin ʿAlī bin Yazīd al-Karābīsī (d. d. on or after 859) and Abū ʿAlī al-Ḥasan bin Muḥammad al-Zaʿfarānī (d. 874), who had all studied with al-Shāfiʿī before he migrated to Cairo. From these scholars,

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[88] ʿAbd al-Qādir ibn Shaykh ʿAydarūs, *Tārīkh al-nūr al-sāfir ʿan akhbār al-qarn al-ʿāshir*, ed. Aḥmad Ḥalū, Maḥmūd al-Arnaʾūt and Akram al-Būshī (Beirut: Dar Sader Publishers, 2001), 565-66.

[89] Muhammad Qasim Zaman, "Transmitters of Authority and Ideas across Cultural Boundaries, Eleventh to Eighteenth Centuries," in *The New Cambridge History of Islam*, vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, ed. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 583.

[90] For more specific references from such Indian Ocean coasts like Malabar, see Chapter 6.

many more Shāfiʿītes arose in and around Baghdad. Mecca was remote from Shāfiʿīte teachings at this time, though Abū al-Walīd Mūsā bin Abī al-Jārūd (d. 846), who also studied with al-Shāfiʿī before he left for Baghdad, was there. Al-Jārūd is said to have encouraged Shāfiʿīte legal thought through his lectures in Mecca and his correspondence with Dāwūd al-Zāhirī substantiating al-Shāfiʿī's concept of *qiyās*.

Cairo's position of prominence was taken over by Baghdad in the tenth century. The rise of towering fugures of Shāfiʿīsm, such as Ibn Surayj (d. 918), in that city gave a major push to this transition. That was furthered after the conquest of Egypt by the Fāṭimids, who adopted the Shīʿīte Ismāʿīlī school as the official system of religious law and appointed the Ismāʿīlī jurists as chief judges and judges throughout the kingdom for several generations.[91] Through Ibn Surayj himself and his numerous students, the school grew into its "classical phase", as Christopher Melchert puts it, in and around Baghdad.[92] Nishapur, Shiraz, Gurgan, the Caspian and Transoxiana rose as satellite centres of the school by the middle of the tenth century. In the eleventh century, however, the Greater Khurasan had grown to become a rival centre to Baghdad, producing a parallel perspective within the school, as we have discussed earlier. By the late-twelfth century, Cairo had regained its older centrality due to a number of economic, political and social concomitant factors. This coincided with the rise of Damascus, which rarely contributed to the fiqh-activity in general and the school in particular from the mid-ninth century until the end of the twelfth century.[93] But by the time of Nawawī, Damascus had only one counterpart in the school, and that was Cairo. Baghdad and Khurasan had reverted into a secondary status following the invasions of the Mongols, against whom only the Mamlūks could resist. However, Damascus could not hold on to its shared eminence with Cairo for long. In the fourteenth and fifteenth centuries, Cairo and its al-Azhar University became the most important bastions for disseminating Shāfiʿīte teachings.

In the sixteenth century, Shāfiʿīsm had nurtured a strong scholarly tradition centred in and around Mecca thanks to the intellectual engagements of Ibn Ḥajar al-Haytamī through his oeuvre, his colleagues and his students. The importance of this development of Mecca as a centre of Shāfiʿīsm is that it leaves a mark on the perception of Islam itself in the new communities. For them, Mecca becomes synonymous to Islam and Islam becomes synonymous to Shāfiʿīsm. Medina also had similar educational units, but it had shrunk mostly between the sixteenth and eighteenth centuries either to simply being an abode of the Prophet or a centre of "renegades" within Sunnīsm, who began to question the fundamentals of Sunnī orthodoxy.[94] Simultaneously, a scholarly tradition had emerged among the fuqahā-estate claiming prominence for Mecca or Medina. The Mālikī scholars usually stood for Medina as a

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[91] Farhad Daftary, *Ismailis in Medieval Muslim Societies* (London: I.B. Tauris, 2005), 73; Paul E. Walker, The Relationship Between Chief Qāḍī and Chief Dāʿī under the Fatimids," in *Speaking for Islam: Religious Authorities in Muslim Societies*, eds. Gudrun Krämer and Sabine Schmidtke (Leiden: Brill, 2006), 70-94..

[92] Melchert, *Formation of the Sunnī Schools*, 87-115.

[93] Monique Bernards and John Nawas, "The Geographical Distribution of Muslim Jurists during the First Four Centuries AH", *Islamic Law and Society* 10, no. 2 (2003): 181

[94] In the seventeenth and eighteenth centuries, Medina produced such "reformist" and "revivalist" scholars as Shaykh Yūsuf, ʿAbd al-Raʾūf Sinkilī, Shāh Walī Allāh, Muḥammad Ḥayāt al-Sindī (the teacher of Muḥammad bin ʿAbd al-Wahhāb, the eponymous figure of Wahhabism), who all studied under the one teacher, Ibrāhīm al-Kūrānī. On this latter figure, see John Voll, "Muḥammad Hayyā al-Sindī and Muḥammad ibn ʿAbd al-Wahhāb: An Analysis of an Intellectual Group in Eighteenth-century Madīna," *Bulletin of the School of Oriental and African Studies* 38, no. 1 (1975): 39.

better city than Mecca, whereas a counter-narrative emerged among the rest of the Sunnī schools which supported Mecca. Although such Shāfiʿītes as Jalāl al-Dīn al-Suyūṭī (1445-1505) had sided with the Mālikī opinion, the majority of Shāfiʿītes argued for Mecca being the better place.[95] This discursive scholarly tradition was rooted, especially for the Mālikītes, in accordance with the juridical affiliations of their respective school. Mālikītes hermeneutically claimed Medinese practices and customs as a source for Islamic law; in other words, Medina was the "true home of the Prophetic tradition". On the other hand, Mecca was not claimed by or attributed to any legal school for centuries, except in the very formative period of Islamic law. At that time of the "regional schools", the refuted paradigm of Joseph Schacht, a few scholars like ʿAṭāʾ bin Abī Rabāḥ (d. 732), Zanjī bin Khālid (d. on or after 795), Saʿīd bin Sālim al-Qaddāḥ (d. on or after 806) represented the Meccan stream of legal opinions.[96] Although al-Shāfiʿī talked about these jurists briefly in his writings, we do not have many specific details about their arguments.[97] Also, this "regional school" did not survive beyond a certain point.[98] Mecca thus remained a neutral place in its jurisprudential orientations, and an ideological claim over the city by the three schools and a subsequent domination of it by the Shāfiʿītes significantly contributed to the historical expansion of Shāfiʿīsm, as we shall see in Chapter 5. At this rise of a Meccan fuqahā-estate and its Shāfiʿīsm, the position of Cairo was lessened, at least in the imaginations of a wider following along the Indian Ocean rim.

By the end of the sixteenth century, we witness a decentralization of Islamic knowledge led by the hitherto "peripheral Muslim communities". The central roles that the heartlands of Islam in general and the nuclei of Shāfiʿīsm in particular have been playing in their intellectual traditions, and by extension in their everyday lives, began to be more fluid when works like *Fatḥ* and scholars like al-Malaybārī or Nūr al-Dīn al-Ranīrī instigated a revived version of Islamic law and practice. Many of them were educated in central Islamic lands. I identify this phenomenon as a process of reimagining the centre by the Muslims from the fringes, a historical process that is reflected in the rise of metaphorical "Little Meccas" like Ponnāni and Aceh.

The return of educational migrants, who had left the South, Southeast or East Asian and South African coastal belts for primary centres of Islamic learning such as Mecca, Medina and Cairo, to their homelands generated a network of higher educational institutes across the Indian Ocean rim. Once these institutes had acquired a distinguished position in the academic perception of local Muslims, second and third generations of the indigenous communities managed to communicate and interact with the wider spectrums of legal and theological discourses in the same language. But they emphasized their own geographical and cultural priorities. By their frequent scholarly engagements through texts, lectures, fatwās, supportive

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[95] Jalāl al-Dīn al-Suyūṭī, *al-Ḥujaj al-mubayyanat fī al-tafḍīl bayna Makkah wa al-Madīnah* (Beirut: Yamamah, 1985).
[96] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 7-8; 249-252.
[97] Muḥammad bin Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (Mansura: Dār al-Wafāʾ, 2001), 9: 25-26; cf. Schacht, *Origins*, 7.
[98] This should be read along with another remark made by Monique Bernards and John Nawas that the fiqh-activity in Hijaz (including Mecca and Medina) and Syria was very low compared to Egypt, the East, the West and Iraq from 865 to 1010 CE (the period in their focus in their extensive study of biographical entries on early Islamic schoalrs); see Bernards and Nawas, "Geographical Distribution of Muslim Jurists": 181.

institutes and constant debates, many centres of learning (some major, some minor) were raised at various coastal townships of the Indian Ocean. Through these, another version of Islam came into the forefront of the socio-religious lives of these Muslims. For them the main reference point for different issues in their "discursive everyday life" was the local centre of Islam. Thus multiple centres were established on the Indian Ocean rim rather than a single centre for the whole Muslim community, even though ritualistically such a centre was still relevant. This historical occurrence in the sixteenth and the later centuries indicates that in fact the image of Mecca was being redrawn now that multiple Meccas were emerging.

The rise of little Meccas across the Indian Ocean rim is not a complete delineation from the "original" Mecca. In different ways, these centres and its fuqahā-estate were asserting their scholarly genealogy with the ones in Mecca. Many South and Southeast Asian and East African students and scholars tried to be disciples of Ibn Ḥajar and the like. While some of them did indeed succeed in becoming their students, others did not. Still, either they claimed to be the disciples of Meccan scholars or that identity was attributed to them. That is what is very clear in the hagiographies related to Zayn al-Dīn Jr.'s assumed scholarly journeys, especially if we connect with it the traditional narratives among the Malabari Shāfiʿītes about Ibn Ḥajar's visitation to "his student" in Ponnāni (see Chapter 6). This course of popular narratives, along with the historical course of Ponnāni's own rise as a Little Mecca, show that the reimagination of a known centre transported to a local place and the creation of alternative hubs were strong elements ingrained into the acts and thoughts of an actual centre.

Final Remarks

The mechanisms of internal division and integration in Shāfiʿīsm contributed to its growth over centuries. The early spread of the school into Yemen and all over the Indian Ocean occurred almost simultaneously, and it would be historically incorrect if we prioritized one region or community over another. Many communities and institutions played crucial roles in stimulating the spread and the consequent domination of Shāfiʿīte ideas across the rim of the ocean. However, this argument is not the same as a claim for the "sole presence" of Shāfiʿīsm in the ocean arena. On the contrary, much historical evidence repeatedly indicates the presence of other Islamic legal schools up to the end of fifteenth century enabling an "intermixed legal scape" in the Indian Ocean. So no attempt has been made to construct a monolithic legalist image on the rim. Shāfiʿīsm began to dominate the rim only after the sixteenth century through contributions of Egyptians, Syrians, Persians, Ḥaḍramī and non-Ḥaḍramī Yemenis, "Indians", and Malays.

The consequences of this historical rupture were deeply rooted. Shāfiʿīzation on the Indian Ocean rim was strengthened after the sixteenth century, and the rise of multiple Meccas represents this. I identify this as another wave of Shāfiʿīsm in its global spread. Historically, it is more explicit in the production of new legal texts that are directly connected to the textual longue durée of the school. *Qurrat-Fatḥ* duology is a demonstration of this, with its obvious lineages in which the Meccan voice was echoed and altered according to certain priorities. This reverberation formed a new approach within the long discursive tradition of the school. Whether or not the turn of the sixteenth century brought an age of commerce in the Indian Ocean rim, certainly the close association between merchants and scholars did

contribute to the survival and concurrent spread of the fuqahā-estate, which afterwards came to be dominated by Shāfiʿīte clusters.

Concluding Remarks

Recent academic literature on Islamic law has been exposing innovative vistas of the second millennium CE that had otherwise been labeled as intellectually sterile and stifled of originality. Scholarly commentaries demonstrate innovative ways of making one's voice heard over the longer discursive tradition, something that developed after the so-called classical phase of Islamic law. The process of the development of earlier circles of personal knowledge transmission into the umbrella body of the fuqahā-estate, that brought together various conflicting and compromising discourses of each school, set the scene for a more intensive transmission of Islamic knowledge. This progress was increasingly text-centric, and a set of norms and etiquettes emerged around textual transmission. Individual scholars, their collectives as clusters based on affiliation to a school, and the growth of educational institutions all contributed in equal measure to the existence, survival and spread of juridical ideas under the aegis of this estate in every locality. The regional social, economic, cultural and pedagogical contexts influenced the legal formulations, despite the fuqahā's claim to stand for a universal legal system. The vast corpus of Islamic law, particularly of the Shāfiʿīte school, that developed through different textual families over a millennium demonstrates this aspect. They were simultaneously rooted in a particular historical context together with an assertion of universal, divine, and all-embracing norms of law: the cosmopolis of law.

Islamic legal historiography has been very much centered on the Middle East. The "pure" Islamic law was synonymous with the traditions of the Islamic heartlands, while non-Middle-Eastern customs were either completely ignored or deprecated as non-Islamic. Within the Shāfiʿī school too, there were internal acknowledgements and constructive criticisms about this, which becomes evident in a growing body of commentary writing. This development can be clearly understood when we appreciate that in the longer tradition of Islamic law peripheral communities were incorporated into its orbit. The textual *longue-durée* of Shāfiʿīsm thus shows how texts from the peripheries contributed to innovative developments through subtle changes that would remain unnoticed for long time, yet gave new possibilities for interpretation by experts and followers. This process was facilitated by the spread of the Shāfiʿīte networks along the Indian Ocean rim through merchants, scholars, travelers, pilgrims and exiles from a wide variety of regions and ethnicities: the Shāfiʿīte cosmopolis of law

At the same time most Shāfiʿītes disengaged themselves from political entities from the thirteenth to the nineteenth century. This was not just because the school lacked exclusive patronage or was actually banished from many areas, but rather that its members preferred to maintain a discreet distance from the state. From their own involvement in mercantile trade or in meagre living conditions supported by donations and endowments, they funded their legalistic activities free from any state intervention. Their Ḥanafīte colleagues from the late-fifteenth century had not been able to resist the Ottoman and Mughal dominions. The transmission networks of Shāfiʿīsm, separated from political intervention and spread across a

vast territory from the Levant to Malaya and beyond, thus presents a fascinating story of the dissemination of ideas and texts through independent collectives of jurists.

All the three chapters in the Section I are my entry point to the actual materials I deal with in Section II. Perhaps some of my ideas and arguments in these pages need further clarification. Therefore, I shall provide in the following chapters particular examples from texts. From the Mediterranean to the Sulu Sea, the Shāfiʿītes created a shared cosmopolis within which their texts, ideas and adherents could travel around easily. Those developments outlined in the following chapters are traced through the long trajectory of the *Minhāj* family of texts.
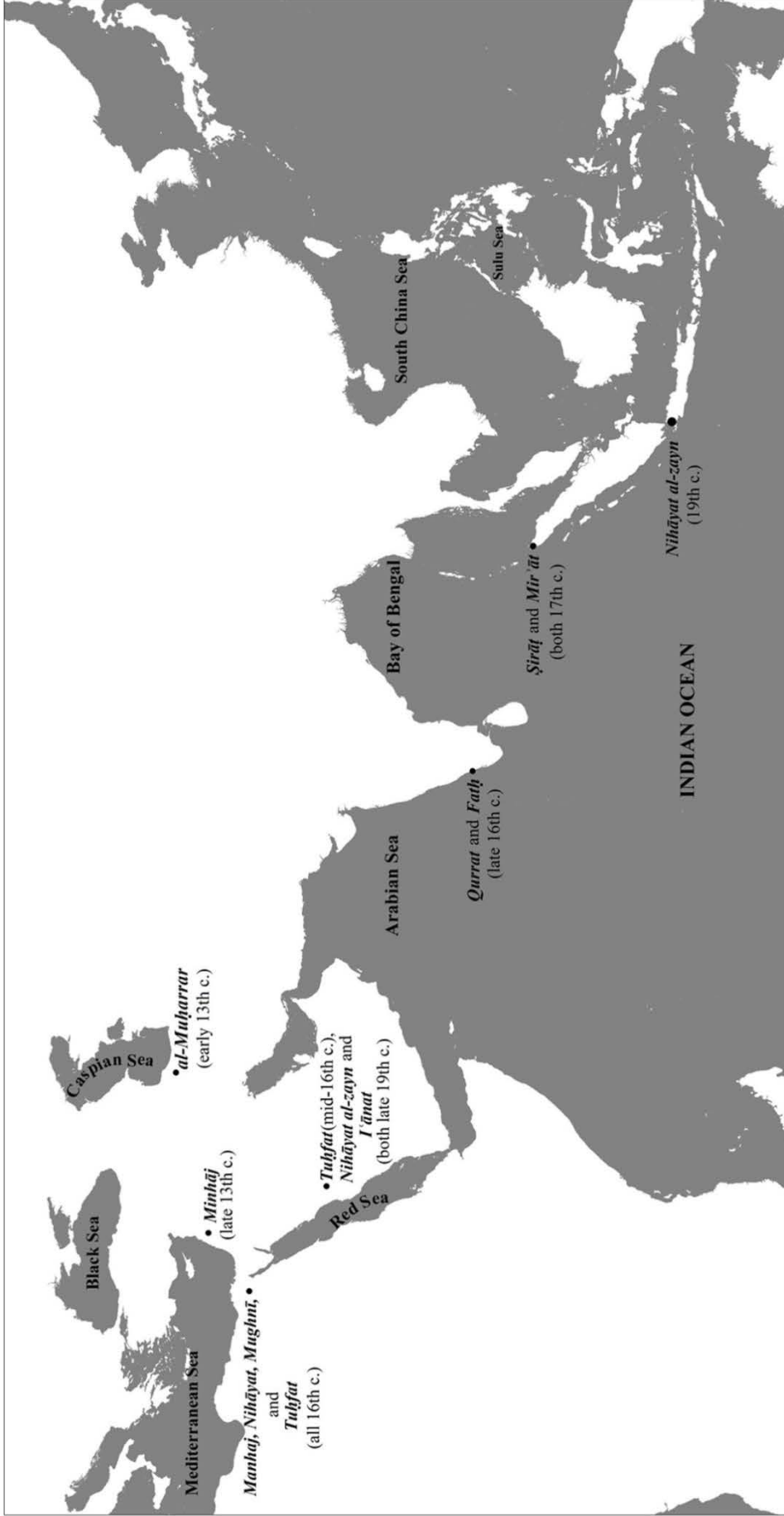
MAP 4. Distribution of the major Shāfiʿite texts discussed in the book.

Section Two
The Texts

Introductory Remarks

This section is an analysis of five legal texts from the thirteenth to the nineteenth century, from Damascus to Java. In the previous section we discussed the formation, transformation, structure and spread of the Islamic legal schools, focusing on Shāfiʿīsm, and we saw the ways in which regional and transregional elements contributed to the making and spread of the school through the prism of the juridical entity, the fuqahā-estate. In this section, we shall see how this operated with text-centrism cutting across borders of time and place. As much as each text is unrelated to the other geographically, chronologically and methodologically, all the five texts are related to one another genealogically, legalistically and intellectually. These are the texts: *Minhāj* from thirteenth-century Damascus; *Tuḥfat*, its commentary, from sixteenth-century Mecca; *Fatḥ*, its indirect summary from sixteenth-century Malabar, and its commentaries *Nihāyat* and *Iʿānat* from nineteenth-century Mecca *or* Java. In the course of investigating these five texts, many more come into consideration from diverse contexts. An unbroken but nonlinear thread runs through this magnificent canvas of time and place from one end to the other, which we call the Shāfiʿīte cosmopolis of law.

By following the long journeys of these texts I can trace the actual history of Shāfiʿīsm in the second millennium CE. I explore how each text contributed to the making of the school and how its author ensured and identified his position within the contemporary estate and the cluster of his school, as well as in the long tradition. I also examine to what extent the text reformulated legal rulings according to contextual necessities, how the internal and external "forcing functions" varied as some deterministic rules prevented the traditional system from ultimately reaching a state of rest, and what components facilitated the reception of the text and the construction of a legacy in the tradition of the school. In order to answer these questions I closely read the texts placing them in their contexts and in the broader legal discursive tradition: the textual *longue durée* of Shāfiʿīsm.

I shall discuss the specific characteristics of each text in respective chapters. But the general selection of these five texts (*Minhāj, Tuḥfat, Fatḥ, Nihāyat, Iʿānat*) requires comment. The relevance of the first two texts in Shāfiʿīsm will be recognized by any follower or observer. *Minhāj* is *the* text that codifies Shāfiʿīsm. No other text has attracted that many commentators from within or outside the school in such diverse ages and places. *Minhāj* for Shāfiʿīsm is what the *Digest* is for Roman law. As for the position of *Tuḥfat* in the school, traditional scholars may not disagree with me, but they might point out that I should add another equally important text, *Nihāyat* of al-Ramlī, also from the sixteenth century. (This text should not be confused with *Nihāyat* of the nineteenth century mentioned earlier.) I explain possible reasons behind this in Chapter 5. Yet they also would agree with me that historically the reach of this *Nihāyat* was limited to the Egyptian Shāfiʿīte cluster, whereas *Tuḥfat* appealed to the Shāfiʿītes in the rest of the world. As for its legacy (but not for any simplicity or readability), it can be compared to Blackstone's *Commentaries* on English common law.

The selection of the last three works is rather personal, although Shāfiʿītes from South and Southeast Asia and East Africa will certainly support my choice. The reason for selecting these texts is to break away from an approach to Shāfiʿīsm in particular and to Islamic law in general which is centred on the Middle East. After all, the majority of the Muslim population has been living outside Arab lands since as early as the ninth century and the largest Muslim country in the world now subscribes to the Shāfiʿīte school. That being so, we are obliged to ask what is their contribution to Islamic law, and whether in fact they have always been passive receivers of an Arab form of Islam. Such questions motivated me to choose *Fatḥ*, a Shāfiʿīte text written by a Malabari scholar in the sixteenth century and now one of the most circulated intermediate textbooks across the school's cosmopolis. Its later reception and legacy are explored by looking at its two commentaries (broadly conceived) from the nineteenth-century, *Nihāyat* and *Iʿānat*. There are plenty of other commentaries for *Fatḥ*, but I had particular reasons for selecting these two. *Nihāyat* was written by a scholar of Javanese origin, while *Iʿānat* is by an Egyptian, but both authors were based in Mecca. Both texts reflect developments in the traditional intellectual realms of their time, especially the syntheses of intellectual divisions and geo-legal differences between the centre and the peripheries. It is only with a juxtaposed reading of both these texts that such nuances can be revealed, in my opinion.

Chapter 4

Minhāj: Its Word and World

"A text that canonized the Shāfiʿīte school of law" is the best way to characterize the law-book with which we are going to deal from this chapter onward. Accommodating a number of legal devices and applying many new jurisprudential methodologies on existing literatures of the school, *Minhāj* and its family stood at the forefront of revolutionizing the ways in which Shāfiʿīte law was interpreted, perceived, and transmitted.

Minhāj was written in Damascus, near the shores of the Eastern Mediterranean, in the thirteenth century. It acquired popularity by the end of the same century and began to change the legal discourses of Shāfiʿīsm. To put it succinctly, it revolutionized later legal-textual practices, leading to the production of a copious amount of commentaries, super-commentaries, abridgements, poetic renderings, etc., which continues even to the present. For a student of Islamic legal history, it is (or if not it should be) an interesting phenomenon. Traditional historiography of Islamic law has side-lined the legal texts written after the so-called classical phase for lacking of any "change" and "originality". A few recent scholars have tried to negate such claims by explaining how original and essential these later texts are. Still, their attempts have been limited to certain biographical analyses and judicial practices. They have left untouched the intellectual textual genealogy and its connectedness and disconnectedness to/from the scholarly traditions of Islamic law. Though some scholars have attempted to overcome the general neglect of legal-intellectual works produced after the tenth century, they have hardly paid any attention to the intellectual dis-continuity to be found in texts such as *Minhāj* for Shāfiʿīsm.

Therefore, we must ask: Why are so many intellectual-legalist engagements evident with this text? Why and how did it become the concern of such intensive textual corpuses? In other words: Who wrote all of them and for whom did they write? What actual features distinguish it from previous and later texts of the school and the estates in general? Did it play a role in shaping the Shāfiʿī school of law across certain parts of the Mediterranean and the entire Indian Ocean? If yes: To what extent and how did it manage to do this? To trace such a "legal-textual revolution", I shall focus sharply on the context in which *Minhāj* was written, with some attention to the biographical details of its author. Features of Islamic knowledge networks and educational systems which developed along with the fuqahā-estates and schools confronting broader socio-political spheres are the dynamic behind its production. I discuss the components leading to its wide reception, the phenomena of categorization, hierarchization, and contextual prioritization. This helps me argue that the Damascene sub-school of Shāfiʿīsm became predominant over the Khurasani-Baghdadi ones until it was

replaced in the fifteenth century. Even if it is a legal text in its form and content, *Minhāj* sheds light into this Damascene historical context, broadly connected to the economic worlds of the Mediterranean and political landscapes of post-Caliphate Islam and the ongoing crusades.

I.

Genealogy Connected

Towards the end of the first chapter, I mentioned that we would return to the *Minhāj*-family and its genealogy in detail. I said there that *Minhāj* is an abridgement of al-Rāfiʿī's *al-Muḥarrar*, a text that tried to fill a gap in the twelfth century by connecting itself to the Ghazālīan tradition of Shāfiʿīte thought. Before we proceed further with *Minhāj*, it would be good to give a brief outline about *al-Muḥarrar* and al-Rāfiʿī, as perceived imperfections in them made way for ensuring *Minhāj* and Nawawī a legitimacy and a legacy within the Shāfiʿīte intellectual tradition.

ʿAbd al-Karīm al-Rāfiʿī was born and brought up in Qazwīn near the Caspian Sea and was educated initially by his father and later by such scholars of his family as Abū al-Khayr Aḥmad Ṭāliqānī.[1] He hardly travelled outside Qazwīn for educational purposes, except for one ḥajj-pilgrimage to Mecca.[2] He wrote most of his works in the last three decades of his life in the thirteenth century. Along with the legal texts like *al-Muḥarrar*, *al-ʿAzīz* and *Sharḥ Musnad al-Shāfiʿī*, he also wrote two regional histories: *al-Tadwīn fī ḏikr akhbār Qazwīn* (on Qazwīn) and *al-Ījāz fī akhbār al-Ḥijāz* (on Hijaz). Al-Ghazālī's *al-Wajīz* had a great influence on his intellectual pursuit: all of his two commentaries and *al-Taḏnīb* are related to *al-Wajīz*. Regardless of the fact that he did not sojourn in Arab fuqahā-estates and was physically unattached to any Arab micro-networks of legal learning, he secured a wide acceptance in Shāfiʿīte circles. Many contemporary scholars from Arab fuqahā-estates appreciated his scholarly depth by giving him epithets like the "scholar of Arabs and non-Arabs". Ibn Ṣalāḥ says: "I think I have not seen anyone like him in the non-Arab countries; he was multi-talented, good-mannered and a perfectionist."[3] On a related note, although this remark expounds the recognition of al-Rāfiʿī among Arab scholars, it is intriguing to note its significance, since the non-Arab fuqahā constituted up to 73% of Muslim jurists between 865 and 1010, 58% between 777-778 and 865, and 40% between 699 and 777-778.[4]

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[1] His full name with his genealogy is Abū al-Qāsim ʿAbd al-Karīm bin Muḥammad al-Qazwīnī. For a detailed biography of al-Rāfiʿī, see Shirwān Nājī ʿAzīz, "Ḥayāt al-Imām Abū al-Qāsim al-Rāfiʿī wa juhūduhu al-ʿilmiyyat," *Majallat Kulliyat al-ʿUlūm al-Islāmiyyat* (2011): 292-331; cf. al-Rāfiʿī, *al-Tadwīn fī ḏikr akhbār Qazwīn* I: 113; Nawawī, *Tahḏīb al-asmāʾ wa al-lughāt* (Beirut: Dār al-Kutub al-ʿIlmiyyat, n.d), 2: 264-265; Ibn Ṣalāḥ al-Shahrazūrī, *Ṭabaqāt al-fuqahā al-Shāfiʿiyyat* (Beirut: Dār al-Bashāʾir al-Islāmiyyat, 1992), 2: 784; Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿiyyat al-kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭbaʿat ʿĪsā al-Bābī al-Ḥalabī), 8: 281-293; Aḥmad ibn Muḥammad Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfiʿiyyat*, ed. al-Ḥāfiẓ ʿAbd al-ʿAlīm Khān (Hyderabad: Maṭbaʿat Majlis Dāʾirat al-Maʿārif al-ʿUthmānīyat, 1978), 1: 393.

[2] ʿAzīz, "Ḥayāt al-Imām," 302.

[3] "*Aẓunnu annī lam ara fī bilād al-ʿajam mithlahu wa kāna ḏā funūn, ḥasan al-sīrat, jamīl al-athr*", Nawawī, *Tahḏīb*, 264.

[4] John Nawas, "The Emergence of Fiqh as a Distinct Discipline and the Ethnic Identity of the Fuqahāʾ in Early and Classical Islam," in *Studies in Arabic and Islam: Proceedings of the 19th Congress, Halle 1998*, ed. S. Leder, H. Kilpatrick, B. Martel-Thoumian and H. Schonig (Leuven: Peters, 2002), 496.

A close look at *al-Muḥarrar*'s analytical pattern and style helps to understand its importance in reviving the Shāfiʿīte legal textual tradition. It aimed to canonize Shāfiʿīte law by putting together all existing literature into a single coherent narrative, avoiding confusions and ambiguities. It also gave new life to the almost dead legal discourses in a time of turbulent politics and changing trends in the way knowledge was put into practice. It adopted a communicative style. Under each chapter and subtitle, there were multiple categories, with each item taken in turn for discussion. These categories were mostly numbered or introduced with conjunctive phrases, thus facilitating an easier reading and an easier grasp of the contents.[5] Most of the "books" and chapters start with a citation of a Qurʾānic verse or Prophetic saying, similar to the traditional approach of *al-Umm* and of Buwayṭī's *Mukhtaṣar*. This convinces the reader that all the legal opinions expressed in the text are in a way an elaboration of what is already mentioned in the foundational scriptures of Islam. This style of elaborations on or explanations of scriptures is what most traditionalist legalists of Shāfiʿīsm wished to stress, by conveying a sense that they derive rulings and answers to the everyday problems of Muslims only from the Qurʾān and *ḥadīth*s. But he also took rationalistic approaches at many occasions along with his personal opinions. Such a balance between the revelation and rationality in the legal analyses helped him treat equally the existing divisions within the school. As mentioned above, al-Rāfiʿī greatly admired the intellect of al-Ghazālī in the patterns of his legal thought. This influence is reflected in the form and contents of *al-Muḥarrar* in various extents and ways, but elaboration would require more space here. Suffice it to say for the moment that its overall organization, analytical pattern, amalgamation of opposite views on a particular issue visible in *al-Muḥarrar* mostly follow the works of al-Ghazālī.

It had remarkable influence, as much on the contemporary fuqahā-estates of Baghdad and Damascus as in Khurasan. Yet it did not attract many commentaries or abridgments due to the assumed flaws highlighted by Nawawī's *Minhāj*. It did have some currency in the personal practices of a Shāfiʿīte. Subordinate opinions of the second or third rank, though not eligible for fatwā when a first rank ruling is available, could be followed in personal arrangements. Whoever was familiar with the viewpoints of *al-Muḥarrar*, either by reading them or learning of them from a teacher, could follow them when needed. During Nawawī's higher education in Damascus some twenty-five years after al-Rāfiʿī's death, *al-Muḥarrar* had become a significant legal text for its freshness and it was circulated and taught in the Shāfiʿīte clusters.[6] Nawawī found this manual the best and recent abridgement in Shāfiʿīsm. He says: "Our companions[7] have proliferated compositions, as long-manuals and abridgements. The optimum abridgement is *al-Muḥarrar* of al-Imām Abū al-Qāsim al-Rāfiʿī that has concrete opinions. It is rich with valuable knowledge, a pillar in confirming the

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[5] Abū al-Qāsim ʿAbd al-Karīm al-Rāfiʿī, *al-Muḥarrar fī al-fiqh al-Shāfiʿī*, ed. Muḥammad Ḥasan Ismāʿīl (Beirut: Dār al-Kutub al-ʿIlmiyyat, 2005).

[6] Nawawī was born seven years after al-Rāfiʿī's death; some scholars have misidentified them as contemporaries. For example, see Ahmed El Shamsy, "The Ḥāshiya in Islamic Law: A Sketch of the Shāfiʿī Literature," *Oriens* 41, no. 3-4 (2013): 292.

[7] By "our companions" (*aṣḥābunā*), Nawawī refers to his fellows of the Shāfiʿīte estate; though the term *aṣḥāb* usually connotes the immediate disciples of al-Shāfiʿī, the connotation varies according to the text or the author.

maḏhab, a support for a law-giver and other aspirants."[8] He goes on praising the text demonstrating his fascination towards it. That explains why Nawawī was motivated to depend on this work in his attempt to canonize the school.

Nawawī: Profile as the Author of *Minhāj*

Nawawī was born and brought up in Nawā in the southeastern tip of present-day Syria.[9] After his initial education in his hometown, he moved to Damascus at the age of eighteen for higher studies. He arrived in Damascus just seven years prior to the final fall of the ʿAbbāsid Caliphate in 1258. After his arrival, he consulted scholars like Ibn ʿAbd al-Mālik bin ʿAbd al-Kāfī, the imām and khaṭīb of the Umayyad Mosque, and Tāj a-Dīn ʿAbd al-Rahman Fazārī (d. 1290), who was known as Ibn al-Firkāh, seeking admission and accommodation in a better institution. Finally he settled with Kamāl al-Dīn Abū Isḥāq al-Maghribī (d. 1252), the lecturer of the Madrasa al-Rawāḥiyyat which had been built by a wealthy merchant Zakī al-Dīn bin Muḥammad bin ʿAbd al-Wāḥid bin Rawāḥat (d. 1226) for teaching Shāfiʿīsm. The Madrasa was prestigious for it was under the supervision of a renowned scholar of the time, Taqī al-Dīn Ibn Ṣalāḥ al-Shahrazūrī (d. 1245), and the Ṣūfī Ibn ʿArabī (1165-1240) lived nearby.[10] Nawawī lodged there and started to study. He refused to accept a stipend and consumed only food brought to him by his father.[11] Later he wrote an anecdotal work with a list of his main teachers and others, but he did not say much about his life in this Madrasa or about his first teacher Kamāl al-Dīn Isḥāq.[12]

He studied with many renowned scholars of his time in the city religious disciplines such as Islamic law and jurisprudence, *ḥadīth*, Qurʾān exegesis, and extra-religious disciplines such as grammar, logic, literature and linguistics. He specialized in Islamic law and *ḥadīth*, and is said to have written more than twenty works in these two disciplines, but only around ten are now available. In the contemporary fuqahā-estate he was known for his abilities to learn things by-heart and to dedicate his entire time for learning. His ability to learn texts by heart, which was the common practice in Islamic education,[13] enabled him to memorize many

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[8] Nawawī, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*, ed. Muḥammad Ṭāhir Shaʿban (Beirut: Dar al-Minhāj, 2005), 64.

[9] For a detailed biography of al-Nawawī, the most important source is a biography written by his own student: ʿAlāʾ al-Dīn Ibn al-ʿAṭṭār, *Tuḥfat al-ṭālibīn fī tarjamat li al-Imām Muḥy al-Dīn* (Amman: Dar al-Athariyyat, 2007); cf. al-Subkī, *Ṭabaqāt*, 8: 395-400; Ibn Qāḍī Shuhbah, *Ṭabaqāt*, 2: 194-200; ʿAbd al-Raḥmān bin Abū Bakr al-Suyūṭī, *al-Minhāj al-sawiyy fī tarjamat al-Imām al-Nawawī* (Beirut: Dār Ibn Ḥazm, 1994); Shams al-Dīn Muḥammad al-Sakhāwī, *al-Manhal al-ʿaḏb al-rawī fī tarjamat quṭb al-awliyāʾ al-Nawawī*, ed. Aḥmad al-Farīd al-Mizyadī (Beirut: Dār al-Kutub al-ʿIlmiyyat, 2005); ʿAbd al-Ḥayy ibn Aḥmad Ibn al-ʿImād, *Shaḏarāt al-ḏahab fī akhbār man ḏahab*, ed. ʿAbd al-Qādir al-Arnaʾūt and Maḥmūd al-Arnaʾūt (Beirut: Dār Ibn Kathīr, 1991), 7: 618-621; ʿAbd al-Raḥīm bin al-Ḥasan al-Isnawī, *Ṭabaqāt al-Shāfiʿiyyat*, ed. ʿAbd al-Ḥāfiz Manṣūr (Beirut: Dār al-Madār al-Islāmī, 2004), 1: 824-827; Abū ʿAbd Allāh Muḥammad al-Ḏahabī, *Taḏkirat al-ḥuffāẓ* (Beirut: Dār al-Kutub al-ʿIlmiyyat, 1955), 4: 1470-1474. The latest biography of his Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (New York: Routledge, 2015).

[10] L. Pouzet, "Rawāḥa," *Encyclopaedia of Islam*, 2nd ed.

[11] Ibn al-ʿAṭṭār, *Tuḥfat*.

[12] Nawawī, *Tahḏīb*, 18-19; cf. Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994), 76.

[13] Learning the Qurʾān and *ḥadīth*s by heart was considered meritorious. But rather learning the texts of renowned scholars on *fiqh*, *tafsīr* and even on logic and grammar was also considered meritorious and advantageous.

works, including al-Shīrāzī's *al-Tanbīh* and *al-Muhaḏḏab*, al-Ghazālī's *al-Wasīṭ*, *al-Jamʿ bayn al-Ṣaḥīḥayn*, *Asmāʾ al-rijāl*, Muslim bin al-Ḥajjāj's *Ṣaḥīḥ Muslim*, Ibn Jinnī's *al-Lamaʿ*, Abū Isḥāq's *al-Lamaʿ*, Ibn Sikkīt's *Iṣlāḥ al-manṭiq*, Fakhr al-Dīn Rāzī's *al-Muntakhab* and al-Juwaynī's *al-Irshād*. The works he studied at madrasas or with independent teachers he copied down himself, another standard practice of the time. A student copied down whatever had been learnt from a teacher and submitted it to the teacher for authorization. This led to the establishment of private libraries of manuscripts for almost every scholar. He collected more texts making an exceptional personal library that made him one of the privileged scholars of his time and place. These extensive cross-references with all preceding works of the school at his personal disposition through various collections, sources and methods facilitated his later recognition as an "institutionalizer of the school" and *Minhāj* as the constitution of the school. Subsequent legal historical developments would demonstrate this. A few decades later, Taqī al-Dīn al-Subkī (d. 1344) commented upon the wide range of lawbooks Nawawī had at his disposal, while trying to finish one of his incomplete commentaries.[14] Along with this assumption on his personal library, we should read the recent publication of the Ashrafīya Library catalogue by Konrad Hirschler in which we hardly see any renowned texts of the Shāfiʿīte school.[15]

After his education, Nawawī practised as a private scholar in Damascus, writing books, giving legal opinions and teaching students independently. Hagiographers note that if a visitor came into his chamber, he would give him a book to read in order that neither would waste their time. Before his demise at the young age of forty-four, he was appointed as head of the Ashrafiyya College of Tradition, one of the premier institutes in the city. Within that short life, he contributed some *magna opera* to Shāfiʿīsm, all of which became prime references for later scholars who considered his legal opinions as "the maḏhab" or the official viewpoint of the school. Such a glorification of Nawawī among later scholarly circles appears in their admiration for his works and lifestyle. Many hagiographies describe his exceptional lifestyle along with some miraculous achievemnets.[16] One such miracle, as narrated by Ibn al-Naqīb, is directly related to his lettering of books and it places him above his intellectual predecessor al-Rāfiʿī. The story goes that while he was busy writing, the light went off, but suddenly his right index-figure began to shed enough light for him to continue writing. A similar story is told about al-Rāfiʿī. Once the light went off while he was writing, but then a nearby date palm shed light for him. The narrator Ibn al-Naqīb compares the two incidents, and says that Nawawī's is more impressive than al-Rāfiʿī's because fingers would not usually provide light but a date palm could, as firewood or something.[17] It is not for us so much to judge the truth of these stories as to see the Shāfiʿīte clusters attempting to rank Nawawī and his intellectual

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[14] Subkī, Introduction to his attempt to complete Nawawī, *al-Majmūʿ sharḥ al-Muhaḏḏab*, ed. Muḥammad Najīb Muṭīʿī (Jeddah: Maktabat al-Irshād, n.d.), 10: 4-5.

[15] Out of around twenty Shāfiʿīte texts mentioned in the catalogue, only three (*Nihāyat* of al-Juwaynī, *Muhaḏḏab* of al-Shīrāzī and *Wasīṭ* of al-Ghazālī) are familiar texts. See Konrad Hirschler, *Medieval Damascus: Plurality and Diversity in an Arabic Library: The Ashrafiya Library Catalogue* (Edinburgh: Edinburgh University Press, 2016), 378 (catalogue no. 1343), 383 (1376) and 387 (1397, 1399).

[16] For example, see al-Subkī, *Ṭabaqāt*, 8: 396; Ibn al-ʿImād, *Shaḏarāt al-ḏahab*, 7: 620-21.

[17] Aḥmad Mayqarī Shumaylat al-Ahdal, *Sullam al-Mutaʿallim al-muḥtāj ilā maʿrifat rumuz al-Minhāj*, ed. Ismāʿīl ʿUthmān Zayn (Jeddah: Dār al-Minhāj, 2005), 620.

engagements above other high-ranked scholars of the school. Even though he was not affiliated with the existing institutional structures, his textual productions asserted his place in the estate. Inasmuch as he was integrated into the fuqahā-estate, his texts also were internalized into its customs, norms, institutions and individuals.

Among his legal texts, three works are noteworthy: *Rawḍat al-ṭālibīn*, *al-Majmūʿ* and *Minhāj*. All the three works are either a commentary or an abridgement of a previous text: *Rawḍat* is an abridgement of al-Rāfiʿī's *ʿAzīz* (a commentary on al-Ghazālī's *al-Wajīz*); *Minhāj* an abridgement of al-Rāfiʿī's al-*Muḥarrar;* and the encyclopaedic *al-Majmūʿ*, an unfinished commentary of *al-Muḏaḏḏab* by al-Shīrāzī. As well as these three main works, he also attempted to write others: a) a concise version of his own *al-Majmūʿ*, namely *al-Taḥqīq*, which was left unfinished; b) two commentaries (titled *Taṣḥīḥ* and *Taḥrīr*) on al-Shīrāzī's *Tanbīh*; c) a commentary on al-Ghazālī's *al-Wasīṭ*. This textual corpus and related practice help us understand how the mode and form of legalistic practices in the thirteenth century legitimized itself by becoming absorbed into the longer intellectual tradition through commentaries.

Career of *Minhāj*: An Internal Argument

Of all his works, *Minhāj* attracted most followers and observers of Shāfiʿīsm. Multiple factors contributed to this, some internal and others external. I examine the internal factors first, looking into its contents, methodologies and narrative-style. Norman Calder shed partial but insightful light into its approaches while discussing the typologies of Nawawī's fiqh-writings. He writes: "It [*Minhāj*] represents the end of logical progression: from the *Majmūʿ*, which focused equally on revelation, dispute and the *maḏhab* (together with a considerable if unsystematic concern for language), through *Rawḍat*, which eliminated revelation while retaining a complete account of dispute and of the *maḏhab*, to this work which eliminates both revelation and (on the surface) dispute, offering only a statement of the *maḏhab*."[18] This "statement of the *maḏhab*" indeed contributed to making *Minhāj* a legitimate point of reference for Shāfiʿītes in the following centuries.

Contrasting and criticizing many viewpoints put forward by *al-Muḥarrar*, *Minhāj* tried to provide the most reliable legal opinions on issues under its discussion. In the fuqahā-estates, its author is known as the editor (*muḥarrir*) of Shāfiʿīte legal thought,[19] because he was the one who put together all the works of the school and hierarchized one contrasting view over another. In his *al-Muḥarrar*, al-Rāfiʿī had made a first attempt to do such a broadly-conceived editorial work, but in the eyes of Nawawī it contained many erroneous arguments, citations, etc. He "rectified" those by writing an abridgement which led him to

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[18] Norman Calder, *Islamic Jurisprudence in the Classical Era*, ed. Colin Imber, intro. and afterword Robert Gleave (Cambridge: Cambridge University Press, 2010), 99. The following discussion has greatly indebted to this study.

[19] For example, in the fourteenth century, ʿAbd al-Raḥīm bin al-Ḥasan al-Isnawī (d. 1370) wrote in his *Ṭabaqāt* about Nawawī: "He is editor of the school, its reviver, rectifier, and organizer" (*muḥarrir al-maḏhab wa muhaḏḏibuhu, wa ḍābiṭuhu wa murattibuhu*), see al-Isnawī, *Ṭabaqāt*, 1: 825. In a fifteenth century biography of Nawawī by the eminent scholar of Shāfiʿīsm al-Suyūṭī also uses the same qualifications for Nawawī, which became synonymous to Nawawī in the later literature of the Shāfiʿīsm. He says further: "With him, God strengthened pillars and structures of the school; explained the principals and fundamentals of the divine law." al-Suyūṭī, *al-Minhāj al-sawiyy*, 26-27.

being celebrated as the editor of the school. He explained what he felt about and how he would deal with the inaccurate statements opined in *al-Muḥarrar* against the "authentic" opinions in the school.[20]

The best juridical text is the one presented most systematically. *Minhāj* arranged hierarchically legitimate legal opinions within Shāfiʿī legal thought, which by that time had developed extensively with many contradictory rulings on the same issues. Its task was to prioritize these contradictory legal viewpoints by giving preference to the rulings of one particular scholar or group of scholars over another scholar or group, on the basis of intellectual integrity and commitment to the opinions of the eponymous founder al-Shāfiʿī. It achieved this goal with a closer examination of the vast amount of literatres produced in about four centires. Its presented its findings and arguments with the use of specific technical terms that connote opinions of an individual scholar or a group of scholars, as elaborated in the introductory lines:

> Wherever I use the terms *al-aẓhar* (the more manifest) or *al-mashhūr* (the well-known), it is a reference to [the existence of] two or more *qawl*s. If the dispute is strong, I say *al-aẓhar*, otherwise *al-mashhūr*. Wherever I use the terms *al-aṣaḥḥ* (the more valid) or *al-ṣaḥīḥ* (the valid), it is a reference to two or more *wajh*s. If the dispute is strong, I say *al-aṣaḥḥ*, otherwise *al-ṣaḥīḥ*. Wherever I say the *maḏhab*, it indicates two or more *ṭarīq*s. Wherever I say the *naṣṣ* it refers to a text of al-Shāfiʿī and signifies the existence of a weak *wajh*, or a derived *qawl*. Wherever I refer to the new view (*jadīd*), the old view (*qadīm*) is its opposite; and if I refer to the old view, then the new view is its opposite. If I say *wa qīla* (it is said), this indicates a weak *wajh* and the valid or the more valid view is its opposite. Wherever I say, according to a *qawl*, then the preponderant one is its opposite.[21]

This "paraphernalia of dispute", as Calder calls it, indicated with many technical terms shows on the one hand the richly multiplied contrasting views within the school, and on the other hand how important it is to read and understand *Minhāj*. By accommodating these many contradictory and complimentary views, *Minhāj* wanted to a) categorize different strands of opinions, b) hierarchize multiple views, and c) prioritize the most dependable view of different categories which often cut across hierarchies. There are four categories: i. the views of al-Shāfiʿī; ii. the views of his disciples; iii. the views of other previous scholars; iv. the views of the author. These categories are then hierarchized: i. *naṣṣ* or statements of al-Shāfiʿī without contradicting himself, ii. *qawl* or al-Shāfiʿī's views with contradictions; both *naṣṣ* and *qawl* are sub-hierarchized as *qadīm* and *jadīd*; iii. *wajh* or opinions expressed by the companions of al-Shāfiʿī; iv. *ṭarīq* or disputes among the companions of al-Shāfiʿī in citing the *maḏhab*; v. *qultu* or the personal views of the author. The order of prioritization is: i. *naṣṣ* or the uncontradictory opinion of al-Shāfiʿī; ii. *aẓhar* or the strong *qawl*; iii. *mashhūr* or the weak *qawl*; iv. *aṣaḥḥ* or the strong *wajh*; v. *ṣaḥīḥ* or the weak *wajh*; vi. *wa fī qawl kaḏā* or the view contradictory to *qawl*; vii. *wa qīla kaḏā* or the view contradictory to *wajh*; viii. *qultu* or

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[20] Nawawī, *Minhāj*, 64.
[21] Nawawī, *Minhāj*, 65. This translation is taken from Calder, *Islamic Jurisprudence*, with slight variations.

the personal views.[22] The reasons for *naṣṣ* and *qultu* being at the two ends of the prioritization and also part of the hierarchization will be explained below.

Before moving further, more should be said about this "paraphernalia of dispute", for it not only set a trend in later Shāfiʿīte legalism, but it also became very crucial in understanding the intellectual tradition of the school. The *naṣṣ* of al-Shāfiʿī, sub-hierarchized above as *qadīm* and *jadīd*, is either found in al-Shāfiʿī's own writings or is narrated by two respective sets of his students. The *qadīm* can be found in his *al-Ḥujjat* and is recounted by his four students: al-Ḥasan bin Muḥammad al-Ṣabāḥ al-Zaʿfarānī (d. 874), Aḥmad bin Muḥammad bin Ḥanbal (d. 855), Ibrāhīm bin Khālid Abū al-Yamān al-Kalbī aka Abū Thawr (d. 854), and Abū ʿAlī al-Ḥusayn bin ʿAlī bin Zayd al-Karābīsī (d. 862). The *jadīd* version can be found in his *al-Umm*, *al-Imlāʾ* and two *Mukhtaṣar*s of his students: al-Buwayṭī and al-Muzanī. Apart from these two, Ibn Ḥarmalat, Rabīʿ bin Sulaymān al-Azdī (d. 870), Rabīʿ bin Sulaymān al-Murādī (d. 883), and Yūnus bin ʿAbd al-Aʿlā (d. 877) also have narrated his *jadīd* opinions. Generally, *jadīd* should be prioritized over *qadīm* opinion, but Shāfiʿīte scholars have often gone against this rule (on at least eighteen occasions) and so did *Minhāj* on twenty-eight occasions by the very mention of *qadīm*.[23] Its use of the term *naṣṣ* connotes that there is an opposite view among later scholars against the opinion of al-Shāfiʿī, and that opposition is weak and cannot be taken into account. The same can be said in the case of other hierarchized opinions, such as *wajh* or *ṭarīq*, although the degree of validity and recognition changes contextually, and *Minhāj* itself often prioritizes such weak opinions over stronger ones for reasons that I discuss later.[24]

This scheme of hierarchization and prioritization in *Minhāj* is differentiated through inequality and equalizing. Hierarchization denotes the sequentially positioned categories with unequal weight. Each node in this hierarchy claims a position for itself. Religious attributes along with the juridical notions of a prior time, text, context and institutionalization help sustain the hierarchy. But the prioritization seeks the possibility of equalizing opinions and stands for equalizing hierarchies beyond temporal, textual and institutional sequences. The context of the text and the author demands equalization beyond sequentiality and timeline. That is what actually makes the system of criteria of *Minhāj* a historical product of its particular context, inasmuch as it endeavours to stand within a long tradition. On a related note, it is worth keeping in mind the scholastic argumentative frameworks developed in the Islamic world in the eleventh to twelfth century and which flourished in Western Europe in the thirteenth century amassing distinctive hierarchized and systematized techniques to engage in scientific discussions. Shortly I will deal with the question of whether *Minhāj* itself accommodated any forms of this scholastic method in its disputative sequences.

The systematic approach to the paraphernalia of disputes facilitates placing its own standpoints at the top of the legalist progression of the school, in a humble way. It is clear

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[22] The *aẓhar* and *mashhūr* together are known as *rājiḥ*; thus, *wa fī qawl kaḏā* is opposite to *rājiḥ*. Likewise, *wa-qīla kaḏā* is opposite to either *aṣaḥḥ* or *ṣaḥīḥ*.

[23] *Minhāj*'s prioritization of *qadīm* views over the *jadīd* ones have been minutely studied by Muḥammad Sumayʿī Sayyid ʿAbd al- Raḥmān Rastāqī, *al-Qadīm wa al-jadīd min aqwāl al-Imām al-Shāfiʿī min khilāl kitāb Minhāj al-ṭālibīn: dirāsat muqāranat bi-ashhar al-maḏāhib al-fiqhīyat* (Beirut: Dār Ibn Ḥazm, 2005).

[24] For a detailed description of *Minhāj*'s use of these terms, see *Minhāj*, ed. Aḥmad bin ʿAbd al-ʿAzīz al-Ḥaddād, 31-42; Ayman al-Badārīn, "Iṣṭilāḥ al-Shāfiʿīyyat min khilal Iṣṭilāḥ al-Nawawī fī *Minhāj al-ṭālibīn*" *Hebron University Research Journal* 4, no. 2 (2009): 277-306.

from the overlap of both *naṣṣ* and *qultu* in hierarchization as well as in prioritization. While prioritizing the contradictory views, it always ranked the opinions of al-Shāfiʿī himself or his immediate disciples highly. But, that did not restrain Nawawī from expressing his personal opinions which he constantly did using the terms of *qultu* (I said) or *aqūlu* (I say) in the beginning and *wa allāhu aʿlam* (Allah knows best) at the end, as a mark of humility. Even if he accumulated many contrasting viewpoints on an issue within the school, at the end he pushed ahead with *the* most dependable opinion, sometimes along with his own personal opinion.

This made *Minhāj* a text of primary reference in Shāfiʿīte circles, given that a practitioner of law gets many hierarchized viewpoints on the same issue. This also indicates how legal thought within the school developed through completely opposing discourses over centuries, even after its so-called classical phase. It is true that *Minhāj* stresses the opinions of al-Shāfiʿī on an issue, but it also accumulates viewpoints of his disciples and jurists from the second, third, fourth or even the seventh generation after him. An example of this development of legal thought up to the thirteenth century is the following discussion of deciding whether water is polluted:

> [From the impure things], a dead insect without flowing blood would be exempted. It would not corrupt liquid objects, <u>according to the *mashhūr*</u>. Likewise <u>in a ruling there is</u> [*wa kaḏā fī al-qawl*]: this is an impurity so slight as to be appreciable. <u>I say</u>, this ruling is the *aẓhar*; Allah knows best. The running water is like stagnant water. In the *qadīm*, it would not be impure without a change. Two *qullat*s [of water] are approximately five-hundred Baghdadi pounds, according to the *asahh*. The effective adulteration of purity or impurity is [with a change in] taste, colour, or smell. If one confuses pure water with the impure one, he should investigate, and should purify oneself with what he thought pure. <u>It is said</u>, if he is able to [get water] with no doubt of its purity, then it is not [lawful]. The blind is like the sighted, in the *aẓhar*. If [one is confused between] water and urine, he should not investigate, according to the *sahih*. Instead, he should mix the contents of two [vessels] and then should do *tayammum*.[25]

In these lines, we notice how *Minhāj* puts together the contrasting viewpoints, expressed by different legal scholars at different points of time and place, in order to make a logical progression with conscious process of prioritization over any hierarchies. Before the *aẓhar* it places a contradictory view of *wajh* by indicating with "it is said". After that it goes to a contradictory view from a different hierarchy by reconciling the sequence of argument. The underlined words specify that there is an opposite view to what is mentioned, and it is the up to the practitioner to choose whether s/he wants to go with what is or is not mentioned, yet without opposing the legal tradition in any way. As an aside, we note that this also

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[25] Nawawī, *Minhāj*, 68. In this passage, I have made use of a few phrases of E.C Howard's translation, although I hardly agree to his style, contents and mistranslations. Nawawī, *Minhaj et Talibin: A Manual of Mohammadan Law according to the School of Shafii*, trans. E.C. Howard (London: W. Thacker and Co., 1914), 2. *Tayammum* is an ablution with sand or soil; *qullat*, literally means "jar" or "olla".

exemplifies how the minute details of a problem, in this case about the purity of water used for ablution, was constantly the subject of serious discourse among legal scholars.[26]

Starting from this exemplary passage, it is intriguing to explore if the scholastic method is deployed in *Minhāj*. Much of the literature on scholasticism with regard to science, philosophy, theology and law has arguably confused the scholastic method with anything but the same. Against that backdrop, recent scholarship has identified this method as *quaestiones disputatae* "disputed questions", the "recursive argument method".[27] It is a highly distinctive argument structure of bringing multi-layered views pro and contra on a topic and arguing against each pro and contra view in respect, before (or after) the author puts his or her view (consisting of "arguments about arguments about an argument"). It has arguably led to the birth of a scientific culture complex in Europe thanks to its use in the Medieval Latin *Summa*s and other works. The method was introduced to Europe from the Classical Arab world according to George Makdisi. Recently Christopher Beckwith has reaffirmed this, but he argues that it originated among Central Asian Buddhists in their *Aṣṭagrantha* textual tradition. Whether in Central or South Asia, the Arab world or Europe, the method had a huge impact among Islamic and European intellectuals once they were introduced to it. A major hurdle to enquire if *Minhāj* also made use of the recursive method is a conclusive statement of Beckwith, who says, "Few of the great scientists of Classical Arabic civilization used the recursive argument method in their works, and none were educated in a madrasa—al-Ghazālī being the putative exception that proves the rule".[28] This structural contradiction between the method and institutional framework can be questioned, but that is a different matter for research. For the moment suffice it to say that the paraphernalia of disputes that Nawawī has devised for his arguments and the hierarchized viewpoints he accommodates throughout the text stand very close to the recursive method. The fundamental characteristics and requirements of the method are its overt and explicit recursive argument structure, internal lists of arguments, and reconciliation of contradictory opinions.[29] These features are very much there throughout *Minhāj*. Constraints of space impede me, otherwise I would have redrawn the above passage according to the style Beckwith presented in his book. In addition, it should be mentioned that *Minhāj* was not the first Shāfiʿīte text to accommodate the recursive method for legal discussions. Its intellectual predecessor, *al-Muḥarrar* also had followed the technique, which often presented its multi-layered arguments (or the arguments about arguments about an argument) by even numbering each of those, as pointed above. The predecessors of *al-Muḥarrar*, *Khulāṣat* and *al-Wajīz* of al-Ghazālī, also have differently utilized the method. Probably al-Ghazālī was the first scholar to introduce it to Shāfiʿīte legal

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[26] For a remarkable study on this issue, see Marion Holmes Katz, *Body of Text: The Emergence of the Sunnī Law of Ritual Purity* (Albany: State University of New York Press, 2002).

[27] Christopher Beckwith, *Warriors of Cloisters: The Central Asian Origins of Sciences in the Medieval World* (Princeton: Princeton University Press, 2012), 10; cf. George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981); Makdisi, *The Rise of Humanism in Classical Islam and the Christian West: With Special Reference to Scholasticism* (Edinburgh: Edinburgh University Press, 1990). The following discussion is greatly indebted to these studies.

[28] Beckwith, *Warriors of Cloisters*, 151.

[29] Beckwith, *Warriors of Cloisters*, 22, 30, 35; for the last feature, see Makdisi, *Rise of Colleges*, 246-47.

texts, though Beckwith portrays him as a *villain* who caused the decline of the method in the Islamic world.[30]

Despite its recurrent engagement with previous opinions, we hardly get any reference in *Minhāj* to a particular text or individual scholar when an opinion is cited. It is difficult to find out who it was who said something or where it was said; for him the expressions "it is said" or "in a ruling there is" were enough. The same goes with its usage of the *naṣṣ*, which should be easier as it refers to a statement of al-Shāfiʿī himself. But we are not told to which text, let alone to which chapter or section, he refers. Some commentators have tried to provide details of the references, but not always with success, as many texts on which Nawawī depended were lost over time. Nevertheless, the use of special categories and terms in *Minhāj* to indicate different opinions on each issue collects so many opinions to build up his conclusive selection of the "most evident" or the "most legitimate" viewpoint of the school; that would not have been possible if he had not had access to all the literature of the school and an independence to engage with the norms of both the school and the fuqahā-estate. It should be noted that these terms of systematization (or more convincingly, terms of customization) became the accepted terms for discourses in the Shāfiʿīte tradition.

In structure and organization *Minhāj* follows almost the same pattern as *al-Muḥarrar*. It has around forty books (*kitāb*, pl. *kutub*) of uneven length, which are mostly sub-divided into multiple chapters (*bāb*, pl. *abwāb*) with subtitles (*faṣl*, pl. *fuṣūl*). The "books" discuss laws on almost everything, from rituals to crimes to trade to slavery. It starts with a book on purity, then moves on to prayer, congregational prayer, funerary rituals, compulsory charity, fasting, retreat to the mosque, pilgrimage, commercial dealings, marriage and ends with separate books on manumission of slaves, slavery, etc. Some traditional specialists of Shāfiʿīte legal texts have enumerated the total number of problems (*masāʾil*) analysed in *Minhāj* and they say that there are 70,000 problems explicitly discussed, and many more implicitly, that one can identify by examining the minute details of the text.[31]

Its stated objective of "abbreviating [*al-Muḥarrar*] to about half" and "smoothening memorization" was achieved in an impressive manner. Unlike previous works in Shāfiʿīsm, *Minhāj* does not beat around the bush with multitudes of metaphorical and allegorical phrases and terms; rather it comes straight to the point with succinct summaries of legal rulings. It also shows consistency in its use of specific Arabic terms instead of the customary synonyms; *qawl* and *wajh* for example each have specific meanings. The phrases indicating a contraindication for a ruling in an issue are summarized with "…*wa illā falā*" (…if not, it is not). In other words, if the conditions are not met, it is not allowed or legalized. Nawawī emphasizes his strict and confident use of terms: "Whatever extra terms and such things you get more than what is there in *al-Muḥarrar*, you rely on them; those are inevitable." He also applies this to his other additions in *Minhāj* like chants (*ḏikr*) or prayers: "You count on it. I have confirmed it from the trustworthy *ḥadīth*-texts."[32]

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[30] It is interesting to notice that despite an outright attack on al-Ghazālī's general viewpoints on philosophy and making him one exclusive reason for the decline of the recursive argumentative method in Islamic world, Beckwith hardly explores his legal or theological works in which he actually employs the recursive method. Beckwith, *Warriors of Cloisters*, 139-146.

[31] al-Ahdal, *Sullam al-mutaʿallim*, 619.

[32] Nawawī, *Minhāj*, 66.

The contrasting views of *al-Muḥarrar* and *Minhāj* could be illustrated well by an example. In a discussion related to the ransom that one owes if someone misses an obligatory fasting in the Arabic month of Ramaḍān, *al-Muḥarrar* writes:

> If someone missed fasting in one or more days of Ramaḍān and died before he could do it due to his persistent illness, there is no need [for someone else] to do it for him and do penance for him. If he died after he could have redone it, then his guardian (*waliyy*) should not fast on his behalf according to the *jadīd*. Instead, it should be ransomed from his residual property with a *mudd* of food for each day.[33]

Minhāj puts the same discourse in a different way:

> One who missed anything from Ramaḍān, and died before he could redo, then there is no redemption for him and no sin. If he died after he could redo, his guardian should not fast on behalf of him, according to the *jadīd*. Instead it should be ransomed from his residual property with a *mudd* of food for each day. The [ruling of] vow (*naḏr*) and atonement (*kaffārat*) are only like that. I say, the *qadīm* is the *aẓhar* here. And, the guardian is every relative, according to the "authentic" view (*mukhtār*). If a stranger fasted with the permission of the guardian, it is valid; not independently in the *aṣaḥḥ*. If one dies owing a prayer or *iʿtikāf,* it would not be done on behalf of him and no ransom. In the *iʿtikāf*, there is a *qawl*. Allah knows best.[34]

Minhāj's additions, in terms of a personal opinion based on previous standpoints, outdate the limited perspectives of *al-Muḥarrar* on this issue. We also notice how it prioritizes the old view (*al-qadīm*) over the new one in contrast to the approach of *al-Muḥarrar*. Similar alterations can be seen throughout *Minhāj*. The "beneficial valuables" it claims to add to *al-Muḥarrar* are thus important. Those were elaborated in the preface:

> It includes: emphasis on some conditions in some problems which are omitted in the original. It includes: [ascertain] some places *al-Muḥarrar* which are statements against the *mukhtār* viewpoint in the *maḏhab*, as you will see if Allah wishes in detail. It includes: replacing his [al-Rāfiʿī's] strange or unusual incorrect wordings with more clear and precise glittery phrases. It includes: explanation of two *qawl*s, two *wajh*s, two *ṭarīq*s, *naṣṣ* and hierarchies of dispute in every occasion.[35]

These additions, especially the last one, make *Minhāj* a text that takes the reader into almost all the details of discursive legal tradition that evolved within the school from the late-eighth to the early-thirteenth century. At the same time, there are many lacunas in the organization of contents, structure of sentences (illustrated partially in the above translations), which often

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[33] al-Rāfiʿī, *al-Muḥarrar*, 114. *Mudd* is a standard measure of grain that equals 543 gram.

[34] Nawawī, *Minhāj*, 184. The *naḏr* (vow) and *kaffārat* (atonement) are two issues with broader juridical consequences in Islamic law; *iʿtikāf* is a ritualistic seclusion at the mosque.

[35] Nawawī, *Minhāj*, 64-65.

make it difficult to comprehend, not just for a non-specialist reader. Even experts struggle with its difficult core technical terms, lexical items or sentence-structures. Some commentators and abridgers have attempted to clarify them.

Constructing the Legacy

A first attempt towards constructing the legacy of *Minhāj* was made by Nawawī himself. Following the tradition of writing guides to renowned books or classics of earlier scholars, he wrote a short guide to his own text entitled *Daqāʾiq al-Minhāj* or "Minutiae of *Minhāj*". In this text, he explained his selection of words and phrases disagreeing or agreeing with *al-Muḥarrar*.[36] Over the course of time, this short text became compulsory supplementary material for the students of the text and it was circulated widely in the Shāfiʿīte cosmopolis. Also in his own lifetime *Minhāj* attracted a number of scholars and students. A famous grammarian of the time, Jamāl al-Dīn Abū ʿAbd Allāh Muḥammad bin ʿAbd Allāh (d. 1273), expressed his enthusiasm for memorizing the entire text. [37] Similarly, a few of his contemporaries wrote appreciative poetic reviews which were collected by his student al-ʿAṭṭār. Following Nawawī's death more people came forward to memorize the text.[38] By the end of thirteenth century, it began to acquire high prestige in Shāfiʿīte clusters in different parts of the Islamic world. Through the mutual interests of institutional dynamics and the legal discursive tradition via textual transmission, it became the most prominent text of the school and its jurists, who accepted it as the foundation text on which any legal discussions should be based. The historian Shams al-Dīn Muḥammad al-Sakhāwī (1428-1497) notes that whoever memorized it was given the *nisbat* "al-Minhājī". He says: "I do not know if any other text has yet achieved this remarkability". [39] Numerous rhetorical articulations demonstrate the growing legacy of *Minhāj*. A poet says: "Scholars have authored and abridged but they have not // produced in what they have abridged [a work] like *Minhāj*".[40] To this we should add the poem cited at the head of this chapter. There are some more rhetorical statements among the ʿulamāʾ-elites pointing towards *Minhāj*'s significance within the school: "one who reads *Minhāj* is [certainly] thrilled" and "one who reads it is equal to one who has read such foundation texts of Shāfiʿīsm from *al-Muḥarrar* back to *al-Umm* of the imām of the school".[41] It is also considered as the "mother of Shāfiʿīte legal texts".[42] Although being a short work compared to its author's other elaborate writings such as al-Rawḍat or al-Majmūʿ, it revolutionized subsequent Shāfiʿīte legal thought.

So it is no surprise that we see a profusion of commentaries and abridgements on *Minhāj*. Muḥammad Shaʿbān lists more than eighty full-commentaries, fifteen partial or unfinished ones, ten specifically for inheritance-law, ten abridged manuals, and hundreds of

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[36] Nawawī, *Daqāʾiq al-Minhāj*, ed. Iyād Aḥmad al-Ghawj (Mecca: al-Maktabat al-Makkiyat, 1996).

[37] *Minhāj*, ed. al-Ḥaddād, 13

[38] Ibn al-ʿAṭṭār, *Tuḥfat*, 47.

[39] al-Sakhāwī, *al-Manhal*, 29.

[40] al-Ahdal, *Sullam al-mutaʿallim*, 619: "*qad ṣannaf al-ʿulamāʾ wa ikhtaṣarū falam / yaʾtū bi mā ikhtaṣarūhu ka al-Minhāj*".

[41] "*Man qaraʾa al-Minhāj hāja*" cited in the prefacing notes of the editor, Nawawī, *Minhāj*, 5.

[42] S.S. Caṅṅalīri, *Sunnī Ācāraṅṅaḷ Imām Nawawīyuṭe Vīkṣaṇattil* (Palakkad: Satyasandēśaṃ Publications, 2008), 9.

super-commentaries, along with many other types of commentaries written in poetic styles.[43] There were complete commentaries and also partial commentaries, which were either unfinished projects or commentaries only on the Introduction, Conclusion, or particularly contentious "books" or chapters such as inheritance law. Furthermore, the contributions of poet-scholars with their poetical versions of either the entire text or of particular sections supplement the large literary corpus. The series of intellectual attributions continue further through translations, audio, visual and virtual commentaries.

All this varied legal literary corpus, varying from glossaries (*taʿlīqāt*), minutiae (*daqāʾiq*), annotations (*nukat*), commentaries (*shurūḥ*), super-commentaries (*ḥawāshī*), epilogues (*khatama ʿalā*), selections of scriptural evidence and *ḥadīth*s, abridgments, poetizations (*naẓm*), and linguistic analyses (*iʿrāb/ʿibārat*), all related to *Minhāj*, I identify as a "sub-transdiscursive" process that followed the "transdiscursive" position of *al-Umm*.[44] It is doubtful whether there is any other text in Shāfiʿīsm that has been read, taught, commented on, and abridged this much over centuries and acquired the same position that *al-Umm* and its abridgement of al-Muzanī once had in the school. While this fact sheds light on its acceptance in the legal scholarly world, the question is why so many such engagements were made with this text.

An answer can be found in a passage from the fourteenth-century historian and legal scholar Taqī al-Dīn al-Subkī. He writes:

> He [Nawawī] might have changed a word from the words of al-Rāfiʿī; if one observes closely, he would avert this [attitude] and would say: "he has not accomplished in summarizing, and has not come up with the proper meaning." But once we explore further, we realize that he has got it right, and expressed it with a decisive discernment. This cannot be in it [in the text] without his clear intention, unsurprisingly. The summarizer might have changed a statement of the original for something like this. But the surprise lies in a change whereby rationality testifies that he has not thought of it, then he got it correct. The examples are plenty.[45]

This brings us to an overlooked historical reality about how and to what extent the Shāfiʿī school functioned after the so-called classical phase of Islamic law. The works written in such an early age were no longer relevant for the changing times and spaces in the expanding world of Islam and Muslim communities. Here *Minhāj* appealed more.[46] Its appearance made all earlier legal texts outdated, including the works of al-Shāfiʿī himself and his immediate disciples. They believed it was not right to depend on the previous texts of scholars on whom

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[43] Muḥammad Shaʿbān, Introduction to Nawawī, *Minhāj*, 16-47.

[44] I have taken this terminology from Foucault, but revise it slightly. His focus is on the author who can be in the sphere of discourse an author of much more than a book. I would bring the book into the foreground, as it is what actually mattered in the Islamic legal system, in which *kitāb* always had the validating and legitimizing capacity. For further details on the concept of discursive tradition, see Michel Foucault, *Aesthetics, Method, and Epistemology*, ed. James D. Faubion and trans. Robert Hurley and Others (New York: The New Press, 1998), 217-220.

[45] al-Subkī, *Ṭabaqāt*, 8: 398.

[46] But that itself was getting dated in a way as the commentators wanted to reformulate and revise it according to their priorities.

Nawawī had depended in his writings, though occasionally they reverted. In the conventional narrative of the Muslim jurists, the tradition of legal scholars can be divided into two categories: the predecessors (*mutaqaddimūn*) or those who lived until 400 of Hijri Era (roughly around 1000 CE), and the successors (*mutaʾakhkhirūn*) or those who lived after 400 of Hijri Era. The predecessors were much more privileged in their independent investigations and diverse methodologies with a number of different source-materials. But the successors had to depend on the works written and handed down by the predecessors (this is an argument that has dragged out many debates, but they are not our present concern) that followed the transdiscursive texts of *al-Umm*. Suffice it now to say that Nawawī belonged to the second category, and thus his work was significantly based on previous scholarship, not only from the predecessors, but even from works of some successor-scholars. He tried to combine all those legal opinions in order to identify the most preferable ruling. This process itself required a lot of attention and vast knowledge of literature written in the school in the four centuries prior to him, and he was successful in satisying such necessities when he wrote *Minhāj*. Because of this, for the practitioners of Shāfiʿīsm, the earlier works written in the first four centuries of Islamic law did not matter in their day-to-day practices or discourses. This so-called classical or golden phase of Islamic law was important only in the historical narrative on the early development of law in Islam and it is an irrelevant corpus of law for rituals, courtroom procedures, law-giving, law-making, etc. All that mattered for such occasions were the opinions provided by works like *Minhāj* and its commentaries.

In the later centuries of Shāfiʿīte jurisprudential thought we notice that scholars put forward a hierarchy for the most-dependable and the less-dependable opinions when there were contradictions.[47] In that hierarchy Nawawī's opinions stood above any previous or later scholars. The most valid opinion is when Nawawī and al-Rāfiʿī (usually known as the Two Shaykhs of the school) have the same rulings; Nawawī would be given preference if al-Rāfiʿī had an opposite opinion. When Nawawī expressed different opinions, especially if there are contradictions in different works, his later works are preferred. Thus, his last work *al-Taḥqīq sharḥ al-Tanbīh*, his penultimate work *al-Majmūʿ sharḥ al-Muhaḏḏab* and his antepenultimate work *al-Tanqīḥ* would be considered in order as his final opinion whenever they contradicted *Minhāj*. These last three works are commentaries and incomplete, compared to his earlier works, including *Minhāj*, which are abridgements and complete. Within these abridged manuals, they prefer *al-Rawḍat* over *Minhāj*. *Minhāj*'s opinions have priority only if it contradicts his earlier works like *Fatāwā*, *Sharḥ Muslim*, *Taṣḥīḥ al-Tanbīh* and *Nuktat*. Though the chances are small for such a contradiction within his texts, there are occasions in which his later works contradict the earlier ones.

This practice of dating the works of Nawawī and giving priority to the later ones over the earlier ones in the Shāfiʿī legalist circles opposes the view of Norman Calder when he wrote: "It is not necessary to think that he [Nawawī] wrote and completed any one of these works prior to starting the next. Rather he developed them in parallel", and "he did in fact complete this work after he had completed the bulk of the other two [*Majmūʿ* and *al-Rawḍat*]".[48] Calder's evidence for this argument is simply that *Minhāj*'s conclusions follow

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[47] Zayn al-Dīn Malaybārī, *Fatḥ al-muʿīn bi sharḥ Qurrat al-ʿayn* (Tirūraṅṅāṭi: Āmir al-Islām Press, 1983),

[48] Calder, *Islamic Jurisprudence*, 99.

from the studies and surveys of the preceding works, which is very weak evidence. While the other two works are commentaries and *Minhāj* is an abridgement, it would not be right to assume that he had followed the surveys, for these could have been written at a later stage. The long standing practice among the Shāfiʿītes of prioritizing these two works on *Minhāj* was made on the basis that these two represent later opinions, not only in terms of content or form but for the time of writing itself and the ways in which they reflect an internal logic. Accordingly, the chronological progression of his textual corpus indicates an advancement in the author's legal thoughts.

<div align="center">II.</div>

Politics of the State versus Estate

The context of *Minhāj*'s author is Damascus at a time of many drastic socio-political changes. Earlier in this chapter I mentioned that Nawawī was born in Nawā, which once was an important Islamic educational centre and had been noted in the narratives of pre-Muḥammadan prophets of Islam. But the place's significance had decayed in the thirteenth century due to the political decline of Seljūq Turks, who had earlier patronized and confirmed some stability for Syrian political and economic aspirations. After the Seljūqs, the Ayyūbids and Mamlūks took control of the region in sequence. Since both these kingdoms shifted their capital to Egypt, the minor regions of the Eastern Mediterranean lost their geopolitical importance to the new centres of political economy. In 1225, the contemporary historian Yāqūt al-Ḥamawī remarked that Nawā is "a small town of the Ḥawrān", though earlier it was the capital of the region.[49] That is why Nawawī moved from Nawā to Damascus, which still had not lost its prime position in Islamic scholarly networks. He spent almost his entire life in the Levant or the Eastern Mediterranean hinterlands. Damascus contributed immensely to his intellectual development.

This time of many transitions for almost all socio-cultural and economic realms of the Levant saw the mantle of political structures getting crushed. The three-century long era of the ʿAbbāsid Caliphate in particular and the glory of Arab political-cultural power centred in Baghdad in general were brought to an end by the attacks of the Mongols. The outer core of social structures was affected by the collapse of political power, though not deeply. When Nawawī arrived in Damascus in the early 1250s, not only were the ʿAbbāsid-Mongol wars tightening around Transoxiana and Khurasan leading to the final sacking of Baghdad, but also the Seventh Crusade was intensifying, the Ayyūbid dynasty of Syria and Egypt was collapsing, the Mamlūks were rising to power, with many external hindrances from the amīrs at Damascus and internal strife in which the first queen Shajar al-Durr (d. 1257) and sultan ʿIzz al-Dīn Aybak (d. 1257) caused each other's death. Just before the final fall of the ʿAbbāsids, while the military of the caliphate was busy fighting the Mongols outside the capital, Baghdad as such was in a peaceful state. Educational and intellectual activities were in full strength. The intellectual rivalry within its fuqahā-estate between the members of the Shāfiʿīte and the Ḥanafīte clusters had become more vehement in its academies, creating undercurrents among all the Middle Eastern legalists. Standing on either side, the

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[49] Shihāb al-Dīn Abū ʿAbd Allāh Yāqūt al-Ḥamawī, *Kitāb Muʿjam al-buldān* (Beirut: Dār Ṣādir, 1977), 5: 306.

intelligentsia came out more openly to support their school and oppose the other. Some of them wrote books specifically highlighting the qualities of their school over their opponent's. The ensuing intellectual conflicts between the Sunnī and Shīʿīte clusters from 1258 to 1386 added another aspect to the debate.[50] Once the caliphate collapsed, it is doubtful to what extent the fuqahā-estate was worried or even concerned about the fall of *just one* political structure. They had their own reasons to keep their eyes closed, as the rulers had hardly paid attention to their prime concerns earlier. For example, when the crusaders captured Jerusalem more than a century ago, the then caliph Aḥmad al-Mustaẓhir (d. 1118) did not care about it at all and the Qāḍī of Aleppo incited people to violence, and they eventually broke the pulpit and throne of the caliph into pieces.[51] In other words, the fuqahā-estate and state were functioning independently from each other with their own respective concerns. The notion that the estate immediately paid attention to the fall of caliphate by abandoning their intellectual concerns would be false. Although many members of the estate were massacred during the Mongol invasions, they remained as a group with internal rivalries at their core.

Nawawī's immediate responses to such developments are unknown as he was just a student, but certainly these historical circumstances influenced *Minhāj*'s legalist articulations. During his education and afterwards he renounced any political structures, unlike his colleagues who always sought some kind of *mansab*. Though *al-Muḥarrar* had also been written in the thirteenth century, it was under cultural and political circumstances completely different from the ones surrounding *Minhāj*. When the former was penned the Islamic Caliphate was still in power. That was not the case with the latter, and this shift in the political scenario had implications for the legal conceptualizations of *Minhāj*.

Nawawī was more inclined to side with beliefs in the autonomy and independence of the fuqahā from the influences of the state. The only attachment with power-structures that he had was through his teachers who provided him with lodging and a stipend. By the 1260s, Damascus had come under the Mamlūks, who controlled the city and its surroundings through a governor. The Mamlūk sultan Baybars is supposed to have said of Nawawī that he was afraid of the rulings Nawawī might announce.[52] In a letter to the sultan who threatened the Damascene ʿulamāʾ for their lack of attention to the war against the non-Muslims, Nawawī wrote: "I am not worried about your threats or [about anything] bigger than that." He further wrote: "It is mentioned in the reply [to my previous letter] that jihād is not an exclusive duty of the military. We also do not claim it is. But jihād is a communal obligation. If the sultan maintains a fixed army, and they have bread and salary from the government treasury, other subjects are exempted [from jihād]."[53] The previous letter was related to the poor living conditions that Syrians were facing in that year due to a scarcity of rain, loss of crops, and deaths of cattle. Nawawī and his colleagues had wanted to draw the sultan's attention to this issue.

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[50] The forthcoming study of Tariq al-Jamil will engage with such conflicts, see Tariq al-Jamil, *Power and Knowledge in Medieval Islam: Shi'i and Sunni Encounters in Baghdad* (London: IB Tauris, 2016).

[51] William Muir, *The Caliphate: Its Rise, Decline, and Fall; from Original Sources* (London: Religious Tract Society, 1891), 578.

[52] al-Isnawī, *Ṭabaqāt*, 1: 827

[53] This very interesting letter is cited in its complete form in Ibn al-ʿAṭṭār, *Tuḥfat*, 101-104.

What is the significance of these two letters regarding the juridical engagements of a scholar like Nawawī who produced such celebrated texts as *Minhāj*? Both the letters help us comprehend the relationships between an individual, society, polity and most importantly, the fuqahā-estate that were crucial to the production and reception of a legal text. In the divisions which existed there, the scholarly estate and their institutions acquired remarkable power, not very different from the tripartite division of power between state, church and university since the thirteenth century in Europe. Once the situation had become tense between Nawawī and the estate on the one side and the sultan on the other, many aʿyāns of the city approached Nawawī requesting him to visit the sultan and ease those tensions. He refused, but wrote to the aʿyān explaining clearly the responsibilities of a sultan and how he should be committed to the Muslim community.[54] In the same letter and all the other letters he wrote to the state and its representatives, he repeatedly asserted and reminded them of the duties and rights of the scholarly community, especially when the sultan does not fulfil what is expected of him. In another context, he also encountered the state arguing for the rights of fuqahā in particular when the state decided to prohibit them from teaching at more than one institute. All these clearly illustrate how the fuqahā-estate believed in and negotiated for its autonomy at religious, social, and even political levels. At the economic level importance derives from the scholarly-mercantile connections. Could this approach have influenced or been reflected in the legal articulations of *Minhāj*? To this question I turn my attention now.

Politics of Prioritization

In the existing historiography of Islamic law, the *fiqh* texts have not been generally taken as a source for historical analysis.[55] The reason for this is that there are comparatively few references to a specific place or time for proscriptions in the normal tradition of Islamic legalism. Scholars like David Powers and Baber Johansen have demonstrated that the *fatwās* offer many possibilities for social historians.[56] Yet the positive legal texts have not yet been taken as a source for socio-political, cultural history nor have they been analysed to see how they reflect changes in society. Certainly such texts are deeply rooted in and reflective of their historical contexts, even if they display a universal outlook and the discursiveness of *longue durée*. A convincing argument would require much space, but for now I adduce only a few certain examples related to the political sphere.

In the section on war and trade in the *Minhāj* we can identify the influence of ruptures in Shāfiʿīte legal thought that substantiate a discontinuity in putting forward or prioritizing certain legal rulings over others, and also substantiate continuity in particular issues. With regard to wars, al-Shāfiʿī took it for granted that the problematic term "jihād" as a monolithic phenomenon. In the chapter in his *al-Umm* entitled *Kitāb al-jihād*, his student al-Muzanī replaced the term with *al-siyar* which literally means "procession" or "march". *Siyar* is a

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[54] For the letters, see Ibn al-ʿAṭṭār, *Tuḥfat*, 99-113.

[55] This is not to ignore the fact many scholars have utilized such an extensive literary corpus to study the intellectual history. But most of them have still ignored the socio-political contexts that positive legal texts contain.

[56] For example, see Barber Johansen, "Legal Literature and the Problem of Change: The Case of Land Rent," in *Islam and Public Law*, ed. Chibli Mallat (London: Graham & Trotman, 1993), 29-47; David S. Powers, "Fatwas as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-century Fez," *Al-Qantara: Revista de Estudios Árabes* 11 (1990): 295-342.

broader term that includes many forms of war including jihād. Only a war against violent non-Muslims constitutes a jihād, whereas attacks on non-violent non-Muslims, or on violent Muslims fall under different categories. A time when the Muslims were fighting each other under the leadership of Ayyūbids or Mamlūks, and also together battling against the crusaders, gave *Minhāj* all the motivation to follow the categorization of Muzanī, that was reinvented by al-Ghazālī and al-Rāfiʿī. To come to the point, what stand does *Minhāj* take in these ongoing wars?

Nawawī did not take part in the crusades or in the fights between the Syrian Ayyūbids and Egyptian Mamlūks, as that correspondence with the sultan demonstrates. How is his inattentiveness towards the crusades and the stability of the Mamlūks with the decline of Ayyūbids reflected in *Minhāj*? Both historical contexts have influenced its legal conclusions through a process that I identify as the "politics of prioritization". By this I mean that the text prioritizes certain rulings over those put forward by an earlier text in addressing the immediate context. Such prioritization has a deep influence on the temporal context of politics, war, trade, culture and society. The philological formulations, selection and deselection of terms and phrases, argumentative structures, and additional information similar or dissimilar to an earlier text all contribute to the politics of prioritization. Let me elaborate with examples.

In the section on war, it chooses not to cite the Qurʾānic verses, "fight against the polytheists collectively" and "fighting has been made obligatory to you", cited in *al-Muḥarrar*.[57] Though *Minhāj* generally avoids citing Qurʾān or *ḥadīth*s, it occasionally does do so, in a case that has its own politics.[58] In the context of the author's reluctance as well as many of his colleagues to fight against the crusaders, this deselection makes its mark. Furthermore, *al-Muḥarrar* raises a question about the legal position of war during the time of Prophet Muḥammad, about whether or not it was an individual or a communal obligation, whereas *Minhāj* directly states that it was only a communal obligation.

Beyond these formulations, selections and deselections, the prioritization implied in its hierarchization-scheme also demonstrates contextual temporalities. *Al-Muḥarrar* says that even if a person fears Muslim robbers on the way to jihād, he has to go for war, according to the valid (*ṣaḥīḥ*) opinion; *Minhāj* imposes on this as a more valid (*aṣaḥḥ*) ruling.[59] In another context, in the discussion on whether or not a son or debtor should retreat from a war after it started if the parents or a lender withdraws permission, *al-Muḥarrar* says that it is forbidden to withdraw, according to the *aṣaḥḥ* opinion; but, *Minhāj* pushes it further as an *aẓhar* ruling.[60] It also happens the other way round. *Al-Muḥarrar* states that the *aẓhar* opinion on a truce between Muslims and non-Muslims with a false term is invalid, whereas *Minhāj* rules its invalidity as only the *ṣaḥīḥ* opinion.[61] Similarly, *al-Muḥarrar* says that a warrior can

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[57] al-Rāfiʿī, *al-Muḥarrar*, 446; the verses are from Qurʾān 9: 36 and 2: 216 respectively.

[58] For example, see the chapter on purity in Nawawī, *Minhāj*, 68.

[59] al-Rāfiʿī, *al-Muḥarrar*, 447; Nawawī, *Minhāj*, 518.

[60] al-Rāfiʿī, *al-Muḥarrar*, 447; Nawawī, *Minhāj*, 519.

[61] al-Rāfiʿī, *al-Muḥarrar*, 459; Nawawī, *Minhāj*, 530.

consume fruits from booty according to the *aṣaḥḥ*, a ruling that *Minhāj* identifies as only *ṣaḥīḥ*.[62]

On many occasions *Minhāj* deals with different categories or terminologies of *al-Muḥarrar* as a single category. After a military victory, a protected person (*ḏimmiyy*) is allowed to participate in a truce of taxation (*jizyat*) even if they insert a clause on their right to maintain an existing temple or church in the new Muslim land. *Al-Muḥarrar* says: a) if they do not insert such a clause, the *ashbah* opinion is that they should be prevented in the Muslim lands; b) if it is their land according to the truce, the *aẓhar* opinion is that they should not be prevented, but be allowed not only to maintain an existing worship-place but even to build a new one; c) according to the *aṣaḥḥ* opinion, they should be prevented from building any equivalent (*musāvāt*) structure nearby a Muslim one; d) if they perpetrate blasphemous activities against Islam, such as condemning the Qurʾān or Muḥammad, according to the *aqrab* ("closest") opinion the mentioned conditions for a truce will have been broken, but otherwise not. All these four rulings, that could connote different priorities for *al-Muḥarrar*, have been identified in *Minhāj* under a single category (*aṣaḥḥ*).[63] Occasionally we see the opposite, when a single term of *al-Muḥarrar* has been put under different categories in *Minhāj* in a way that caters to its paraphernalia of disputes and politics of prioritization.

Philological niceties show a noteworthy side of its politics. Many issues that *al-Muḥarrar* presents as "not allowed" or "allowed" have been replaced in *Minhāj* as "it is forbidden" or "it is meritorious". *Al-Muḥarrar* uses the expression *laysa lahu* "cannot" to stop a debtor who has reached a deadline for his repayment going on jihād without permission from his creditor, whereas *Minhāj* uses *ḥarām* "prohibited".[64] For forbidding jihād without the permission of Muslim parents, the former says it is not sanctioned (*lā yajūz*).[65] There are theological implications for these legal terms: prohibition (*ḥarām*) is one of the five foundational Islamic commandments (*aḥkām*), one that is sinful to offend and avoiding it is mandatory. But if someone does something categorized as what *cannot* or is *not allowed* to be done it is not necessarily sinful.

All these contradictions on the one hand show the terminological integrity of *Minhāj* in relation to earlier text(s), as discussed earlier.[66] On the other hand, it also explains the politics and subjectivity implied in its schemes of hierarchization and prioritization. Once we look into the parallel primary sources from thirteenth-century Damascus, or the Middle East in general, we understand that the Muslim involvements in the counter-crusades were not as simple as has been portrayed in previous literature. The historiography of crusades tends to show the Middle Eastern Muslim world as a single block against the Christendom, ready to engage in the conflict at any point. The reluctance of Nawawī and his colleagues from the fuqahā-estate to participate in the war is a clear illusration of another side of the Middle Eastern Muslim attitude to the crusades. *Minhāj*'s prioritization of certain rulings over other

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[62] al-Rāfiʿī, *al-Muḥarrar*, 450; Nawawī, *Minhāj*, 522.

[63] al-Rāfiʿī, *al-Muḥarrar*, 457-58; Nawawī, *Minhāj*, 528.

[64] Nawawī, *Minhāj*, 519.

[65] It should be noted that on many other occasions *Minhāj* follows the same terms of *al-Muḥarrar* such as *lā yajūz* or *laysa lahu*. For example, both the texts say that it is not allowed/sanctioned (*lā yajūz*) to give protection to a non-Muslim spy who would bother the Muslims. Nawawī, *Minhāj*: 523.

[66] *Al-Muḥarrar* does not elaborate on any of the technical terms it accommodates.

ones provided a chance for some to disengage from the battle. Such politicized prioritizations and disagreements clearly reflect dissenting voices within the Islamic world during the crusades.

From another point of view, *Minhāj*'s voice was not a lone voice. During the lifetime of its author, the text was recognized among scholars along with his known stand on the crusades and its position on the laws of jihād. This shows that its arguments did ring a bell with a large audience who took an anti-war stand. We should keep in mind that this was the time of the seventh, eighth and ninth crusades and the Battle of ʿAyn Jālūt. As Nawawī defended himself in legal terms that jihād is *only* a communal obligation, the text's legal rulings with prohibitions, allocations and prioritizations acted as a tool of legitimacy for reluctant Muslims to abstain from war, rule against immodest behaviour towards their non-Muslim subjects, or maintain societal norms and values even in the thick of the war. In the later years of discursive tradition, the text also had its influence in fatwās and practices of scholars, militia, and laypersons as a prominent point of reference. Its juridical opinions were often consulted by the counter-crusaders, including sultans.[67] Since the Mamlūks mostly followed the Shāfiʿī school as now "codified" by Nawawī's works, among which *Minhāj* held a distinguished position, its rulings held significance in the ongoing wars.

Pedagogical Contexts

In this period of drastic transition in the region following the Mongol invasions, the high-culture of aristocrats (*umarāʾ* or *aʿyān*) and scholars underwent a series of crises. In the inner-core, the usual remnants of socio-political expansions had been shattered. Thousands of lives had been lost, and it was not only architectural edifices and public places that had tumbled down, but the cultural institutions like books and libraries also suffered inestimable ruin. The colossal manuscript collections of Baghdad in particular and of the Middle East in general were devastated. Survivors recount that so many books were thrown into the Tigris River that they formed a bridge that would support a man on horseback, and that the waters of the Tigris ran black with ink and blood.[68] The impacts of these setbacks on Damascus and particularly on the Shāfiʿīte legal circles are yet to be studied, how they were damaged by the wider catastrophes in the Middle East or protected under the defensive shield of the Mamlūks.

While the norms and modes of both the school and the estate since the mid-thirteenth century played a crucial role in the acceptance of *Minhāj*, an interesting question arises about the context and form that expedited its sub-transdiscursivity. As we have said, it was written after the caliphate's collapse. That enabled the later scholarly communities living under a decentralized political world of Muslims to easily relate to its legal opinions. The context of internal political turmoil in which it was written continued in the Muslim world in the following centuries, even though there were attempts to centralize and monopolize the Islamic

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[67] For example, in the late-1280s, the officers urged the Mamlūk sultan Qalāwūn to consult the jurists about the invalidity of a treaty that he had signed with Acre. They thought that if the jurists declared the treaty invalid, they could wage war against the crusaders and dislodge them from the region. But the sultan did not consult the jurists as he did not want betray his oath. The chronicler-cum-administrator Abū al-Fidā provides a detailed first-hand account of Qalāwūn's expeditions: Abū al-Fidā, *al-Mukhtaṣar fī akhbār al-Bashar* (Constantinople, Dār al-Ṭibāʿat al-ʿĀmirat al-Shāhānīyat, 1869), 2: 321; cf. Amin Maalouf, *The Crusades through Arab Eyes*, trans. Jon Rothschild, (London: Al Saqi Books, 1984), 255-56.

[68] Michael Harris, *History of Libraries in the Western World* (Metuchen: Scarecrow Press, 1984), 85.

political sphere under one caliphate. A few highly centralized political entities rose in different parts of the Islamic world (such as the Ilkhanate in Central Asia), but the absence of a generally acceptable caliph and increasing infights became the norm of the Muslim community. The contextual influences on the legal formulations and conclusions of *Minhāj* thus appealed to later generations. Also, its form discussed above attracted later scholars. As the best jurist is the best systematiser so the best legal text is the one best hierarchized for students and followers. Therefore both Nawawī and *Minhāj* could be taken as the final word in the school. It quenched the thirst of the later jurists through its systematic hierarchization, prioritization of the finest opinions within the school and rectification of mistakes in prior text(s). The increasingly institutionalized madrasa-system and high professionalization of the discipline (fiqh) and its sub-discipline (Shāfiʿīte fiqh) were crucial components in expediting the shift.

Minhāj is also a concise text-book of the Shāfiʿīte school, as much as it aims to codify the school's laws. With both targets in mind, Nawawī had taken a prior text that has been recently celebrated among the Shāfiʿītes as his point of principal reference. It was his launchpad to engage with all the literature and discourses that had appeared so far in the school. The institutional function of the text, especially conversing with the context, also motivated the author in his selections. The contemporary high-culture of Islamic scholarly world involved particular texts being taught, reread and consulted for legal rulings, with an emphasis on exact wordings and phrases, by memorizing them entirely or partially. The institutionalized educational centres like madrasas, and the professionalization of the judiciary and law-giving sought precise texts more than elaborate ones to commit to memory and use at the "right" points, for which *Minhāj* was preferred. It says of *al-Muḥarrar*:

> It is one of the most important or *the* most significant [work] sought. But it is too thick to memorize for the majority of the contemporaries, save some exceptional folk. So I thought of abbreviating it to about half of its size in order to smooth memorization along with what I add to it from beneficial materials, if Allah wishes.[69]

The pedagogical function in its particular context is further clarified in its title, which could be translated as "Pathway to Aspirants and Support for Law-givers". This addresses not only students, but also teachers, judges (*qāḍī*) and law-givers (*muftī*). In other words, it aims at all the members of the fuqahā-estate interested to be an audience for Shāfiʿīte law.[70] That *Minhāj* chose the typology of abridgement (*mukhtaṣar*) is worthy of elaboration in relation to the estate. Why was it written as an abridgment to a previous text instead of an "independent" and "original" work? The main answer rests in the Islamic organization and the presentation of a legal text in two ways: a) the importance of the formal structure for organizing a *matn*, *sharḥ*, etc.; b) the significance of structuring the form of a text in which typologies like *mukhtaṣar* and *mabsūṭ* feature. The objective structure is what matters in the first approach, whereas the

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[69] Nawawī, *Minhāj*, 64.

[70] In the title, *Minhāj al-ṭālibīn*, *ṭālib* literally means a seeker, but generally connotes a student. The usual plural is *ṭullāb*, but here he used *ṭālibīn* which includes all general aspirants of Islamic law.

latter is more related to the subjective orientation, pre-occupation and/or intention of the author. In this, the author's design and structure of the functions of a text have implications.

Underneath this textual discursive tradition, certain functional matters are implied. To come up with an "original" and "independent" work was almost impossible according to the traditional methods of the Islamic scholarly community. It was a "conservative system" that "does not vary with time", as Edward Lorenz said.[71] A new work would always have an intricate approach to getting accepted among the wider high culture of the estate. This problem could be disentangled by writing commentaries to an established work. Though an abridgment, *Minhāj* does not just cut out or paraphrase sentences, paragraphs or sections; rather it is a critical engagement to outshine the work on which it depends. For this it had to consult almost all the noted legal texts, not only those of the Shāfiʿī school but those from other schools as well. It helps to obviate the difficulties in the system through its own commentarial dissipative processes, "thereby making the equations nonconservative".

As for the wide literary corpus related to *Minhāj* it is important to ask for whom it was written. The answer rests in the contemporary Islamic educational centres and their teaching cultures. It has been taught in these centres since the late-thirteenth century and still continues to be one of the significant texts that a student of Shāfiʿīte law can learn. The academic institutions that by now had become an integral part of a normative order of fuqahā-estates strongly demanded more legal texts with particular features, and urged teachers and graduates to write commentaries on existing texts according to changing social, cultural and political contexts. A particular text was taught word-by-word during which teachers implied multiple possible meanings suitable to the requirements of the time and space. This process of teaching and learning, in which the interpretations of a teacher and the consequent intellectual digestive articulations of a student when there was no satisfactory clarification in existing legal literature, led to this production of voluminous textual progenies. Either the teacher himself or the student took the driving seat for seeing the outcome in written form.

Regarding the acceptance and use of *Minhāj* in the Yemeni educational system in the nineteenth and twentieth centuries, Brinkley Messick provides a detailed picture, one which portrays the text's journey across the Shāfiʿīte cosmopolis. He says that it was one of the *maḥfūẓat* that a student had to memorize entirely once they graduated from their primary education in Qurʾān schools.[72] It was often the first text that a student of Shāfiʿīsm had to study after the initial stage of memorizing Qurʾān and many students learned it from their parents itself. This we see in the introductory words to a biographical entry about a Yemeni scholar:

> The learned scholar and man of letters, the bright and sagacious ʿAbd al-Raḥmān, son of ʿAlī, son of Nājī, al-Ḥaddād, the Shāfiʿī, the Yemeni, the Ibbi, was born in the town of Ibb in the year 1293 [1876] and received instruction from his father, in Shāfiʿī jurisprudence [beginning with] *Minhāj*.[73]

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[71] Edward Lorenz, "Deterministic Nonperiodic Flow," *Journal of the Atmospheric Sciences* 20, no. 2 (1963): 131.

[72] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

[73] Muḥammad ibn Muḥammad Zabārah, *Nuzhat al-naẓar fī rijāl al-qarn al-rābiʿ ʿashar* (Ṣanʿāʾ: Markaz al-Dirāsāt wa-al-Abḥāth al-Yamanīyah, 1979), 347-48—cited in Messick, *The Calligraphic State*, 20.

This practice continued up to the late twentieth century, as Messick's ethnographical expositions demonstrate. He provides a detailed account of the process of memorization and its role in the pedagogical traditions of Islam and Yemen. Shāfiʿīte students mostly learnt *Minhāj* by heart together with *Ghāyat* of Abū Shujāʿ, although the latter was less central in many places in the course of time. Thus all over the Indian Ocean rim Yemen's educational realm stands out as the place where *Minhāj* enjoyed prominence for so long. Precisely because of this, we do see many students from other parts of the rim coming to Yemen and studying *Minhāj* exclusively. In Ḥaḍramawt, ʿAbd al-Raḥmān bin Muḥammad bin Ḥusayn al-Mashhūr (d. 1902) taught *al-Mughnī*, *Fatḥ al-Wahhāb*, and *Minhāj*, and many East African students such as the renowned ʿAbd Allāh Bā Kathīr learnt these texts with him.[74] Only in Ḥaḍramawt do we notice the simultaneous presence of many specialists of the text. There were more than ten specialists at a time, and many students ventured to study the same text with most of them.[75]

Finally, we ask why and how *Minhāj* was selected for such an intensive teaching of Shāfiʿī school. Certainly, there were many other legal texts taught. Even so, besides the features already mentioned, *Minhāj* showed a greater precision compared with earlier texts of the school and that was a major attraction. The earlier texts like *al-Umm*, *Nihāyat*, *Basīṭ*, *al-Muḥarrar*, etc. were grandiose, to the extent that they could not be taught in a convenient amount of time for the student or the teacher. *Minhāj* in that sense too was very precise and straight to the point without much loquaciousness. Yet, some teachers found that it lacks precision in some parts with many unnecessary phrases, usages and juridical problems, leading them to write further abridged versions. That is why *Manhaj al-ṭullāb* of al-Anṣārī became another successful text in the fifteenth century.[76]

III.

Unification of Two *Ṭarīq*s

In the previous chapter, I pointed out the conflict-ridden intellectual tradition of Shāfiʿīsm that helped its growth and spread over time and space. By the time that *Minhāj* had been formulated, the predominant division was between the Baghdadi/Iraqi and the Khurasani/Iranian streams of the school. This split has been recently discussed by Fachrizal Halim, although he does not explain what actually constituted each sect against the other in terms of law or tradition.[77] He says that the Khurasanis had a more rationalistic approach in contrast to the Iraqis who prioritized a traditionalistic line, yet "despite jurists of each *ṭarīqa* holding certain communal methods of interpretation, this did not preclude them from

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[74] Shaykh Abdallah Salih Farsy, *The Shafʿi Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans. ed. and annotated by Randall L. Pouwels (Madison: University of Wisconsin, 1989), 88-90. Abdullah Ba Kathīr studied from him between June 3—mid-August, 1897.

[75] Farsy, *The Shafʿi Ulama of East Africa*, 152.

[76] *Manhaj al-ṭullāb* has eight full commentaries including the one by al-Anṣārī himself entitled *Fatḥ al-Wahhāb bi Sharḥ Manhaj al-ṭullāb* (this became another success in scholarly circles attracting more than twenty super-commentators), two partial commentaries on the Introduction, four marginalia, five abridgements and a poetic version.

[77] Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (New York: Routledge, 2015).

producing different or even conflicting legal opinions." A division such as this becomes hardly comprehensible. Earlier we quoted Nawawī who differentiated between Khurasanis and Baghdadis in terms of general characteristics and methods. It is worth quoting again for the details it provides concerning a possible framework of division:

> Our Iraqi companions are more reliable in transmitting al-Shāfiʿī's statements (*nuṣūṣ*), his school's principles (*qawāʿid*), and our previous companions' opinions (*wujūh*). Mostly their transmission is stronger than the one by the Khurasanis, who are mostly better in their behaviour (*taṣarruf*), research (*baḥth*), derivation (*tafrīʿ*), arrangement (*tartīb*) and in matters that require determining preponderance between two *qawl*s.[78]

This contrasting of the two groups is rather fluid since these features as stated can be found interchangeably in the biographical dictionaries of both Iraqi and Khurasani Shāfiʿītes. Nevertheless, we see that Nawawī provides an entry-point to further researches on the division if we read this passage closely. The Baghdadis were more concerned with the foundations and principles of the school and its eponymous founder, whereas the Khurasanis were more interested in the later developments and new attempts at interpretation. Halim argued that Nawawī attempted to amalgamate both streams by providing the most valid rulings and bringing to an end for the Khurasani-Baghdadi division.

A major motivation for this amalgamation or canonization process was the contemporary urge from both the legal estate and the political system to limit the "official" Sunnī schools into a manageable variety. With the multiplication of independent legal schools and sub-schools, a conclusive judgement or ruling on a matter had become inattainable and the available corpus of authorities was incomprehensible. Attempts to limit the range of legal opinions within Islam have been in the air ever since the eighth century.[79] At various points the ʿAbbāsids made moves towards a codification process, which found no success, and the Mongol invasions finally curtailed any further aspirations of that kind. The Ayyūbids and then the Mamlūks also made a few attempts, evoking both protest and support from different members of the estate. This motivated the scholars of each school to "rectify" their legal system and to make it more practical and explicable. In the thirteenth century, the Shāfiʿīte scholars were busy with the same project. Then the question in front of them was what actually Shāfiʿīte law was, which was spread across many texts, disciples and versions. In *al-Muḥarrar* al-Rāfiʿī tried to give an answer, by setting out opinions within the school hierarchically. But, Nawawī found him and his work imprecise and inaccurate.

The usage of the term "*al-muḥarrar*" as the title of al-Rāfiʿī's book, and the later legacy of al-Nawawī among the Shāfiʿītes as "*al-muḥarrir* of the school", possibly reflect a drive

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[78] Nawawī, *al-Majmūʿ*, 1: 112.

[79] ʿAbd Allāh Ibn al-Muqaffaʿ (d. 757) proposed to the then ʿAbbāsid caliph al-Manṣūr (r. 754-775) to codify the Islamic law. The caliph was unsuccessful in bringing it about. At one point, he approached Mālik bin Anas with an offer to cancel all other legal thoughts than Malik's, to writing his *al-Muwaṭṭaʾ* in gold, and to keep it inside the Kaʿba. Malik rejected this offer saying that the Prophet's Companions are all over the world and he does not want to stand against their legal opinions. S. D. Goitein, "A Turning Point in the History of the Muslim State (A propos of the *Kitāb al-ṣaḥāba* of Ibn al-Muqaffaʿ)," in *Studies in Islamic History and Institutions* (Leiden: Brill, 1968), 149-167; J. E. Lowry, "The First Islamic Legal Theory: Ibn al-Muqaffaʿ on Interpretation, Authority, and the Structure of the Law," *Journal of the American Oriental Society* 128, no. 1 (2008): 25–40.

towards canonization in their time, at least as the traditional narratives portrayed them and their contributions. Ibn Taymiyyat (d. 1328), a famous Ḥanbalīte who lived in Damascus immediately after Nawawī's time, entitled his legal text *al-Muḥarrar* also.[80] The term "muḥarrar" is derived from the infinitive *taḥrīr* which has various meanings associated with editing. The active noun *muḥarrir* would mean "editor" and the passive noun *muḥarrar* "edition". Nawawī defined at the word as "refined and confirmed" (*al-muhaḏḏab wa al-mutqan*).[81] All these should be read along with a major development in the Mamlūk dominion in the thirteenth and early fourteenth century. The sultan Baybars had finally accepted the four Sunnī schools as legitimate legal systems in his kingdom and appointed judges for each school.[82] This move was widely appreciated by jurists with reservations, for it recognized the legal pluralities inherent in Islamic tradition instead of projecting a single legal system or thought under the control of the state. This official recognition of multiple schools must simultaneously also have contributed to the drive towards a canonization among jurists for their respective schools mentioned earlier.

Coming from Damascus, without siding with the divisions of Baghdad or of Khurasan by default, Nawawī had been geographically fortunately placed to take a neutral stand in the debate between the two *ṭarīq*s. *Muḥarrar* was accepted in Damascus, together with Shāfiʿīte works from Iraq and Egypt, which shows that the city's Shāfiʿīte cluster kept an open mind in the existing debates, or at least was reluctant to side with either group. For Nawawī, the legal thoughts of Iraq and Khurasan were inseparable and both traditions presented some correct and some incorrect interpretations of the founder's teachings. This situation complemented the existing debates on globalization in the thirteenth century, and proves that geographical boundaries faded away in transregional religious legal discourses. A scholar from the shores of the Caspian Sea engages with a text written in the eleventh-century Baghdad, and another scholar from the shore of the Eastern Mediterranean furthers the discourse. The intellectual concordat is thus not mere religiosity in terms of a monolithic faith. Rather there is a continuity and unification of scholarly discourses cutting across social, political and cultural differences, a process which intensified in the highly globalized spirit of the thirteenth century in contrast to the previous eras. Nawawī's residence in Damascus proved to be rewarding, and he utilized this advantage with *Minhāj* and other legal texts, by subscribing into the foundations of the school and not into any sub-school through them. As an aside we note that this trajectory of Nawawī and his location in Damascus when dealing with a split between Khurasan and Baghdad is analogous to the trajectory of the school's founder. Al-Shāfiʿī's own experience four centuries earlier when he moved to Egypt involved doing away with the predominant Ḥanafīte rationalism in Iraq and the Mālikīte traditionalism in Medina. An obvious difference is that al-Shāfiʿī had first-hand experiences of both the debates and the places, whereas Nawawī's understandings were more text-based and transmitted through lines of teachers.

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[80] Ibn Taymiyyat, *al-Muḥarrar fī al-fiqh: ʿalā maḏhab Aḥmad Ibn Ḥanbal* (Beirut: Dār al-Kutub al-ʿIlmīyat, 1999).
[81] Nawawī, *Daqāʾiq*, 26.
[82] Yossef Rapoport, "Legal Diversity in the Age of Taqlīd: The Four Chief Qāḍīs under the Mamluks," *Islamic Law and Society* 10, no. 2 (2003): 210–28

In *Minhāj*, Nawawī does not directly engage with this discursive division of the school. In other works, especially in his *al-Majmūʿ*, he elaborates on different opinions of scholars, either from the stream of Khurasan or of Baghdad, and tries to prioritize one ruling over another on the basis of his own researches and establishes it as the opinion of the school or of its founder. He does not go into such debates or discussions in *Minhāj*, but rather sticks to one final judgement. Those who were familiar with his other legal texts would find it easy to understand why he judges in *Minhāj* a ruling to be *aṣaḥḥ* or *maḏhab* over other opinions, and to understand why he chooses the *ṭarīq* of the Khurasanis or the Baghdadis for that ruling.

In this respect *Minhāj* exhibits a transregionality in its legalistic judgements, one that enabled it to stand above two regional *ṭarīq*s which had adhered to particular streams of thoughts and traditions for at least two centuries. This broader spatial canvas contributed to its wider reception and circulation among the later Shāfiʿītes.

Economy of the Text: Estate and Oceanic Space

The households of Damascus must have offered a fine economic basis for *Minhāj*'s future journey, since many ruling and civil elites patronized contemporary learning there or tried to acquire it themselves. In return, the scholars attempted to secure patronage for their teaching or writing. In the specific case of *Minhāj* or Nawawī, however, we do not have evidence for any such patronage. He always tried to escape from any system of power into the comfort of the estate. Even so, his teaching at the madrasa and his transmission of books could not escape the attention of existing households, which craved power and status through patronizing any form or product of knowledge. If not during his lifetime, his works were glorified not only for their contents but also for such metaphysical attributes, such as *barkat* (talismanic power). A family who inherited his books is said to have "kept two of them for blessings (*li al-tabarruk*)".[83]

Personally, Nawawī led a modest life with almost no income and patronage for a long period of his career. For food, he fasted throughout his life without eating or drinking at all in daytime; he ate only a trifling dinner after the night prayer and drank a cup of water before dawn. During his education he depended on his father for food who brought him dry bread and figs from his agricultural land in the village. When he was asked why he does not take food from Damascus, he replied that the city's lands are filled with religious endowments which are not handled legally for such purposes as cultivation. He also added that the food from there is grown on sharecropping system, the legitimacy of which is questioned by jurists.[84] He hardly wore decent clothing and hardly cleaned himself. A colleague complained to him about this. He remained unmarried, for he believed that marriage would distract him from the pursuit of knowledge. Due to this ascetic way of life, he did not have to depend on any *aʿyān* or amīr for patronage, and that also contributed to constructing his legacy among the fuqahā-estate. Towards the end of his life, he took up a position as the head of the famous Ashrafiyya College of Tradition, yet he refused to take a single penny as salary.[85]

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[83] Chamberlain, *Knowledge and Social Practice*: 137.

[84] al-Ḏahabī, *Taḏkirat*, 4: 1472; cf. Halim, *Legal Authority*, 20

[85] al-Subkī, *Ṭabaqāt*, 8: 397.

Whether he was working independently or affiliated to a madrasa, he was always a firm member of the fuqahā-estate. In his case, the distinctions and interactions between an individual, estate, society and state were very clear. Through the letters quoted earlier that he wrote to the sultan he managed to consolidate a consensus from other renowned scholars in the city who also were either affiliated with other Sunnī schools or held positions in the central mosques and institutions.[86] Thus, instead of the patronage from civil or military elites, the effective functionality of the estate and its recognition of Nawawī's scholarly stature must also have been crucial external components for ensuring that the text of *Minhāj* survived and succeeded.

Coming more closely to economic aspects, the place of *Minhāj* in the context of the maritime space of the Levant or the Eastern Mediterranean shore is rather important. After the collapse of the ʿAbbāsid caliphate at the hands of the Mongols, the Ayyūbids and Mamlūks fought each other to control Egypt and Syria, and the Crusades that had started two-centuries earlier were continuing even more viciously than before. All this political and military unrest had affected the economic world of the Middle East which relied so much on maritime trade. Even more closely, the Madrasa al-Rawāḥiyyat where he studied had been established by a rich merchant whose wealth came from maritime trade.[87] While Nawawī was writing *Minhāj*, did he or could he have turned his eyes away from these economic situations? In other words, does the text reflect those issues and did they determine its legalist conclusions?

If we read closely *Minhāj*'s discussions on trade, we cannot help but notice some contextual influence on its judgements and articulations. Similar to the politics of prioritization I discussed above, in it is evidence for an "economy of prioritization": it deals with ruptures in the Shāfiʿīte tradition by putting forward new laws or prioritizing certain legal rulings over others which are highly influenced by the requirements of the contemporary economic context.

Trade as such has been a concern of Shāfiʿīsm from the time of *al-Umm*, a text which spends more than a thousand pages to discuss commercial laws.[88] *Minhāj* also reflects this tradition of the school. To elucidate the ruptures let us take the cases related to trade with unbelievers and maritime commerce. In Islamic law, al-Shāfiʿī is the first scholar to set the theocratic-geographical category of the "abode of Islam" (*dār al-Islām*) against the "abode of war" (*dār al-ḥarb*); it was a classification that had long consequences in the theoretical elaborations of later generations of jurists, not only in relation to war but also to other aspects including trade.[89] Many early Shāfiʿīte jurists ruled that Muslims could trade only with Muslims. But in *Minhāj*, Nawawī redefines the category of Muslim, and according to him, it

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[86] The other signatories were Abū Muḥammad ʿAbd al-Raḥmān bin Abū ʿUmar (leader or *shaykh* of Ḥanbalīsm), Abū Muḥammad ʿAbd al-Salām bin ʿAlī bin ʿUmar al-Zawāwī (leader of Mālikīsm), Abū Ḥāmid Muḥammad bin ʿAbd al-Karīm al-Haristanī (*khaṭīb* of Damascus), etc. Ibn al-ʿAṭṭār, *Tuḥfat*, 101-104.

[87] Pouzet, "Rawāḥa," *Encyclopaedia of Islam*, 2nd ed.

[88] See Muḥammad bin Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (Mansura: Dār al-Wafāʾ, 2001), vols. 4 and 5.

[89] See Ridwan al-Sayyid, "*Dar al-Ḥarb* and *Dar al-Islam*: Traditions and Interpretations," in *Religion between Violence and Reconciliation*, ed. Thomas Scheffler (Wurzburg: Ergon Verlag, 2002), 123-133. For an analysis of juridical codification of jihad with closer attention to four schools of Islamic law, see Edgard Weber, "La Codification Juridique du Jihad," in *Religion between Violence and Reconciliation*, ed. Thomas Scheffler (Wurzburg: Ergon Verlag, 2002), 135-163.

includes everyone who lived in a *dār al-Islām*, whether s/he is Christian or Jew, as long as they do not express enmity to Islam and pay the poll tax. In this category, *Minhāj* includes even the apostates, who are otherwise sentenced to death. Many jurists do not agree with him on this opinion.[90] Yet this deviation of *Minhāj* owes as much to the realities of Mediterranean trade in his time as to the intrusions of the Mongols overland. The frequent onslaughts by and occasional alliances with the Mongols had a huge impact on large cultural and economic realms of Islam that stretched from the Mediterranean to China. It became part of a new dominion identified as Pax Mongolica. Although the Mamlūks managed to ally with one section of the Mongols, the Golden Horde established by Batu Khan (d. 1255), their increasing influence around the Black Sea and by extension in the Persian Gulf and Mediterranean was beyond the control of Mamlūks.[91] The new commercial axis from the Persian Gulf to the Black Sea developed in the late thirteenth century became so crucial to the overall existence of any community which lived around the sea, from the Indian Ocean to the Mediterranean. The legal deviations of Nawawī are thus hardly surprising and it becomes more explicit once we look into his treatment of maritime trade.

In the network of trans-continental maritime trade, once we compare and contrast the contents of *al-Muḥarrar* and *Minhāj*, some discontinuities catch our attention. Although the predominant framework of *Minhāj* follows the traditional legal narrative theme of writings of including al-Shāfiʿī, Muzanī, al-Juwaynī, al-Ghazālī and al-Rāfiʿī, it also occasionally differs from their viewpoints. Familiarity with the oceanic world was comparatively less in the case of al-Ghazālī, al-Muzanī and al-Rāfiʿī since they lived in the hinterlands, which were connected to distant oceans through long-running rivers. But when we come to *Minhāj* and most of its commentaries and super-commentaries, the scenario drastically changes, as Nawawī lived in a city not very far from the Eastern Mediterranean shore. Many of his commentators led their lives in coastal townships; the textual descendants of *Minhāj* demonstrate a good amount of evidence for scholarly-mercantile interconnections, not only in theoretical discourses but also in actual situations. A simple example is how *Minhāj* brings the sea into a discussion of a traveller's obligations for prayer. Neither al-*Muḥarrar* nor any previous Shāfiʿīte text mention a believer praying when travelling overseas, whereas Nawawī clearly states that the seafarer must follow the same rules as on an overland journey, with an additional ruling that the speed of the journey does not alter the concession.[92]

This maritime aspect is clearer when we look at his approach on the right to cancel a transaction before both parties leave each other. This legal right, called *khiyār al-majlis*, is rejected in the Ḥanafīte and Mālikīte schools, but is permitted by the Shāfiʿītes. *Minhāj* has dedicated a chapter on this right but does not engage with its rejection in other schools or related discourses, something it does not do usually. In *al-Majmūʿ* Nawawī provides an elaborate justification for the Shāfiʿīte position.[93] The issue of maritime trade was the reason

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[90] Abraham Udovitch, "Religious Law, Secular Documents and the Economic Realities of the Medieval Islamic World," LUCIS Annual Lecture at Leiden University, 05 March 2015.

[91] Virgil Ciocîltan, *Mongols and the Black Sea Trade in the Thirteenth and Fourteenth Centuries*, trans. Samuel Willcocks (Leiden: Brill, 2012); Nicola Di Cosmo, "Black Sea Emporia and the Mongol Empire: A Reassessment of the Pax Mongolica," *Journal of the Economic and Social History of the Orient* 53, nos. 1-2 (2010): 83-108.

[92] Nawawī, *Minhāj*, 253.

[93] On a discussion on this, see Halim, *Legal Authority*, 115-120.

for the Ḥanafītes to reject the appropriateness of *khiyār al-majlis* by raising the status of parties conducting business on a ship. In those circumstances they would not depart from each other until the ship reached shore, and that might take up to a year. But for al-Nawawī such a long voyage is not a justification for suspending the normal concession, and in *Minhāj* he succinctly states that the customary right of *khiyār* is maintained however long it takes the parties to depart from one another:

> If they stay for long, or stay and move, *khiyār* endures for them. The departure depends on custom.[94]

By specifically mentioning moving location together and the dependence on customary practices to define the perameters of togetherness and separation he accommodates what is appropriate during an ocean voyage, when it would take an unusually long time for separation. In *al-Majmūʿ*, he elaborated on this issue:

> Al-Bayhaqī narrated a *ḥadīth* from Ibn Mubārak who said: "Two contracting parties have *khiyār* as long as they have not separated." I [Nawawī] have confirmed that al-Bayhaqī narrated these stories (*asāṭīr*) with *isnād* from ʿAlī bin al-Madāʾinī, from Ibn ʿUyayna, that this is the *ḥadīth* of the people of Kūfa, narrated from Ibn ʿUmar, that the Prophet said: "Two contracting parties have *khiyār* as long as they have not separated."[95] He said that the people of Kūfa transmitted the *ḥadīth* to Abū Ḥanīfa. But Abū Ḥanīfa said: "This is not always the case; how would you explain if the contract is on a ship?" Ibn al- Madāʾinī said that God asks one on what he says. Al-Qāḍī Abū al-Ṭayb and associates said that Abū Ḥanīfa and Mālik objected to all the *ḥadīth* above. Mālik said that only Ibn ʿUmar narrated the *ḥadīth*. Abū Ḥanīfa said that they could not accept it since it does not explain the case while the contract is on a ship, because both parties could not be separated. Mālik said: "The practice among us in Medina contradicted the *ḥadīth*. The jurist of Medina did not acknowledge the practice of *khiyār al-majlis*." The *maḏhab* of Mālik is that he would leave any *ḥadīth* that contradicts the practice of the people of Medina. But our associate said that these *ḥadīth*s are all *ṣaḥīḥ*, therefore Abū Ḥanīfa's and Mālik's refusal to accept these *ḥadīth*s are unacceptable as it is equal to discard the correct, trusted, and elaborated practice.
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> As for the objection of Abū Ḥanīfa regarding the case while on a ship, we would say that the *khiyār* of parties continues as long as they still remain together on the ship, even if [the voyage] lasts for a year or more. I have already explained the case and the evidence from the *ḥadīth* above. As for Mālik's position, he derived his isolated opinion from other jurists. Therefore his opinion to abandon the *ḥadīth* that contradicts the practice of the people of Medina cannot be accepted. How can this *maḏhab* be justified given the fact that the jurists who narrated the report [about *khiyār al-majlis*] were no longer present at the time of Mālik, nor during the period before him when they were concentrated in Medina or Hejaz. The fact is that the jurists who narrated the report were already spread all over different locations with each of them carrying parts of the report. They did not

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[94] Nawawī, *Minhāj*, 219.

[95] Nawawī brought together plenty of *ḥadīth*s with similar contents in favour of the *khiyār al-majlis*, and this is one of the last *ḥadīth*s he cited. See Nawawī, *al-Majmūʿ*, 9: 218-220.

share the report with each other, yet they transmitted the same report. How can Mālik insist that each Muslim follow the jurists of Medina? This issue had been thoroughly discussed in the field of legal theory (*uṣūl al-fiqh*). It was also not true that the jurists of Medina were in agreement regarding the non-existence of *khiyār al-majlis*. One of the prominent jurists of Medina, Ibn Abī Ḏaʾib, who was one of Mālik's contemporaries, disagreed with Mālik about this case. He expressed his disagreement to the extent that Mālik would repent of holding his opinion. How then can agreement of the jurists of Medina be justified?[96]

With his strong criticism on the legal theory of Mālikītes, who always prefer practices of Medina and on the judgments of Abū Ḥanīfa, Nawawī pushes to maintain the legitimacy of the right of *khiyār*. When applied in maritime trade it always involved a long term investment. Entangling it with those uncertainties clearly stems from his understanding of actual practices of maritime trade as well as his expertise in legal theory. He has strong evidence from *ḥadīth*s for his argument, and he believes that the Mālikītes and Ḥanafītes ignore that evidence, just as they refute "the correct, trusted, and elaborated practice".[97]

In contrast to the earlier Prophetic traditions that forbid ocean voyages except for holy-war and pilgrimage, we now notice how legal rulings underwent changes, conceptually accommodating maritime circumstances, including ones involving mercantile affairs. The legal texts since the thirteenth century thus endeavour to justify the ʿulamāʾ's involvement in trade, and the *Minhāj* is a classic example in this regard. The continuities, discontinuities and ruptures in mercantile affairs on the Mediterranean, and by extension on the Indian Ocean, have an impact on the legalistic conclusions of *Minhāj*, and its arguments in effect accelerated the spread of the school along the coastlands.

This legal transformation happened, on the one hand, by incorporating much pre-Islamic or customary maritime norms of trade. The Roman and provincial legal systems had a great influence in the making of the Islamic legal system, as convincingly explained by Patricia Crone.[98] Though Crone's arguments addressed mainly social and familial structures, the same systems had their implications for the laws of commercial contracts and the principles of nautical rights. *Minhāj*'s discussions on shipping procedures exemplify this legal continuity of Roman influence which sustained its currency in Muslim legalist circles.[99] On the other hand, the evolving Islamic legal system took into account the increased mobility of traders in the twelfth and thirteenth centuries in the Indian Ocean and the Mediterranean worlds. The predominance of Muslim merchants influenced the legal conclusions of *Minhāj*

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[96] Nawawī, *al-Majmūʿ*, 9: 220-221. This translation is largely depended on Halim, *Legal Authority*, 117 who used this passage to discuss a completely different concern of al-Nawawī. However, I have serious reservations about the accuracy of this translation when I compare it with the original of *al-Majmūʿ*, 9: 220-221. Yet, I can use it for its overall content for our present concern is sufficiently comparable with the original.

[97] For a debate on the *khiyār al-majlis* among the early jurists and al-Shāfiʿī's viewpoint on this, see Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 159-161. He speculates that al-Shāfiʿī got this idea of *khiyār al-majlis* from local customs of Mecca.

[98] Patricia Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate* (Cambridge: Cambridge University Press, 1987).

[99] On this issue, a rather convincing perspective has been put forward by Hassan Khalilieh in his comparative study of Islamic and Byzantine maritime laws: Hassan S. Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050): The* Kitāb Akiriyat al-Sufun *vis-a-vis the* Nomos Rhodion Nautikos (Leiden: Brill, 2006).

in particular and Islamic legal corpuses in general. To exemplify, *Minhāj* provides legitimacy for the trade in unseen objects, something that the maritime context of long-distance commerce required.. From a historical philological perspective, the general trend of new merchandise entering into legal discussions had its impact on *Minhāj*. The wider economic significance and social acceptance of significant products from the East, such as porcelain, sandalwood and black pepper, find a place in the text. To exemplify, he prescribes that *ḥanūṭ* scent used for embalming should be dropped into the clothing and the body when dressing a corpse.[100] In *al-Daqāʾiq al-Minhāj*, he explains that *ḥanūṭ* is a well-known scent used exclusively for corpses, and was made from white and red sandalwood, camphor, and other aromatics.[101] In the Prophetic tradition, only camphor is mentioned for embalming, and *ḥanūṭ* is a later addition arising from the new familiarity with Eastern aromatics, which were eventually legitimized.

Minhāj mostly follows the rulings of *al-Muḥarrar* for the treatment of traders during a war. Yet it disagrees with *al-Muḥarrar* on the issue of firing, besieging or attacking a non-Muslim installation if a Muslim or a merchant is there unexpectedly. In a discussion on *jizyat* taxation, both texts say that a non-Muslim trader should be conditionally allowed to enter the Hijaz (Mecca, Medina, Yemama and the surroundings, places which are usually prohibited for non-Muslims) even if the goods are not important.[102] But a difference emerges in the unexpected situation in an attack in terms of prioritization: *al-Muḥarrar* says an attack is allowed even in that situation according to the *aẓhar* opinion, while *Minhāj* makes it a more powerful *maḏhab* opinion.[103] Let me explain why this happens.

Studies on traders' participation in the crusades are limited. Even so, we know that mostly traders abstained from the ongoing wars in order to secure their economic interests. Many crusades were happening in and around the Mediterranean, but trade continued despite these interruptions. What we know of maritime trade from the Geniza records or other sources does not explain a clear-cut fluctuation in the mobility of goods interrupted by the war.[104] This shows that none of the fighters, at least in the Islamic world,[105] wanted to intimidate the merchants. The standpoints of *Minhāj* and *al-Muḥarrar* in maintaining the consensus demonstrate that they did not want to change the existing norms of war in relation to the traders, despite their religious affiliations. As for the particular disagreement in prioritizing seen in *Minhāj*, if we look deeply into the context in which it was written, we can understand that there were temporary ups-and-downs in the Mamlūks' position towards Christian merchants and Mongols. Between the fourth crusade (1202-1204) and the recovery of Constantinople (1261), the Egyptian and Byzantine mercantile connections were

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[100] Nawawī, *Minhāj*, 330 (ed. haddad); al-Rāfiʿī, *al-Muḥarrar*, 83.

[101] Nawawī, *al-Daqāʾiq*, 49.

[102] Nawawī, *Minhāj*, 526; al-Rāfiʿī, *al-Muḥarrar*, 455.

[103] Nawawī, *Minhāj*, 520; al-Rāfiʿī, *al-Muḥarrar*, 448.

[104] For example S.D. Goitein, "Mediterranean Trade Preceding the Crusades: Some Facts and Problems," *Diogenes* 15, no. 59 (1967): 57 says: "it was common for Muslims and Arabic speaking Jews to travel in Christian ships during the twelfth century". We have no evidence to believe that this multi-cultural character of ships and mercantile initiatives changed by the thirteenth century.

[105] There are incidents of the crusaders or Christian corsairs attacking merchants irrespective of their religious affiliations.

interrupted.[106] Traders as such were considered to be part of the problem. The same attitude was extended to a few Mongols when the warriors began to engage in trade, or the traders took to military activities.[107] Thus, *Minhāj*'s prioritized harsh stand makes sense. It also proves to be another part of what I call as the "economy of prioritization", similar to the politics of prioritization discussed earlier.

The politics and economy of prioritization, visible in *Minhāj* and its subtle deviations from the existing legal perspectives, stand in close proximity to the approaches of a pragmatist. As I demonstrated through examples, *Minhāj*'s viewpoints are contextually motivated, subtly anti-foundational and accommodative of alternative perspectives within its principal concerns of canonizing and systemizing Shāfiʿīte law. These factors are arguably linked to a legal-pragmatic view on the issues it deals with, as any pragmatist does in the socio-cultural intellectual world to make oneself useful to the wider society. Such subtle deviations within the Islamic legal tradition provide more chances for future enquiries in order to see how and why a jurist decides to take a different path within the substantive laws.[108]

Circulation of Commentaries: *Minhāj*'s Journeys

While all these facets show the influence of the maritime world on *Minhāj*, we need to examine its reception in the worlds of the Mediterranean and the Indian Ocean. We mentioned that *Minhāj* attracted many commentaries. With regard to the text itself we discussed how commentary writing had become a normal practice as an "independent" and "original" scholarly work, and how and why the Islamic legalistic pedagogy required its participants to follow this pattern. Even then, the question arises why scholars did not go back to the foundational works of the school written by al-Shāfiʿī himself or his immediate disciples. An answer to this question is not possible if we do not recognize two factors: a) the functional modes of textual discursive tradition; b) the typologies that *Minhāj* constructed in the thirteenth century. The Islamic discursive tradition historically maintained a set of discourses together with its own rationality, styles of reasoning, concerns and/or regulations embodied in the texts, practices and institutions. Therefore, "anyone wishing to argue within the Islamic tradition, must start with them, even if only to argue against them",[109] and the commentators' case was not different. Regarding the typology of *Minhāj*, it brought an intellectual revival in the whole setting of the *madhab* itself from which no later scholar could easily break away. The previous frames of the school set in the eighth to the tenth centuries were no more relevant, but the ones which emerged in the thirteenth century became far important. This is not related to the question of whether or not *ijtihād* (independent investigation) existed in the

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[106] Angeliki Laiou, "Byzantine Trade with Christians and Muslims and the Crusades," in *The Crusades from the Perspective of Byzantium and the Muslim World*, ed. Angeliki Laiou and Roy Mottahedeh (Washington, D.C: Dumbarton Oaks Research Library and Collection, 2001), 188-189.

[107] Ciocîltan, *Mongols and the Black Sea Trade*, 15, 30-34.

[108] A guiding study in this direction is Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, New York: Syracuse University Press, 2015); cf. Sherman A. Jackson, "Legal Pluralism Between Islam and the Nation-State: Romantic Medievalism or Pragmatic Modernity?," *Fordham International Law Journal* 30, no. 1 (2006): 158-176.

[109] Ovamir Anjum, "Islam as a Discursive Tradition: Talal Asad and His Interlocutors", *Comparative Studies of South Asia, Africa and the Middle East* 27(2007): 662l; cf. Talal Asad, *The Idea of an Anthropology of Islam* (Washington, DC: Center for Contemporary Arab Studies, Georgetown University, 1986).

post-classical era, although it did continue to be practised in varying degrees. The contribution of *Minhāj*-like texts in the thirteenth century stood within the parameters of an established framework and facilitated a conversation within the otherwise "conservative" divine law of Islam. In making such an attempt, the previous foundational principles of Islamic law and related texts of earlier scholars stood at the centre. So the possibility of a conversation with that tradition generated a historical continuity, discontinuity and ruptures in the legal textual culture for it. The writing of *Minhāj* and its reception epitomize this pattern and that is what made the text so much more important to later scholars than any previous texts. This simultaneous engagement with a long tradition and awareness of present contexts were legitimized by the specialists of jurisprudence (*uṣūl al-fiqh*) in the following centuries, as we see with Nawawī's opinions becoming the most dependable ones in the school.

Underlying all these developments in the popularity of *Minhāj* was the transition of the Shāfiʿīte legalist centre from Khurasan and Baghdad to the Eastern Mediterranean regions. Following the dominance of the Shīʿīte Fāṭimids at the end of the tenth century and due to a number of different underlying reasons, the epicentres of Shāfiʿīsm had moved from Egypt to Baghdad and Khurasan. But after the Mongol invasions, both cities and their surroundings were destroyed almost entirely politically and culturally. In this vacuum, Cairo and Damascus advanced significantly and attracted a large number of scholars. The acceptance of texts such as *Minhāj* led to the development of Damascus as a strong centre of the school which outshone all others. The arrival of new students to study *Minhāj* and other texts of Nawawī either from the author himself or from his students led to the appearance of new "text-families" and "text-specialists".[110] Along with other features of Islamic knowledge networks and educational systems, these textual communities contributed to the hermeneutics of reading *Minhāj* differently through numerous *ḥawāshī* and *mukhtaṣars*. This led to the predominance of the Damascene cluster of Shāfiʿīsm over the Khurasani-Baghdadi ones from the late-thirteenth to the late-fourteenth centuries.

The quantity and diversity of texts related to *Minhāj* in circulation, transcending geographical and chronological boundaries, reveal its remarkable sub-transdiscursivity. It attracted numerous scholars of the Shāfiʿī school who communicated with it constantly according to their specializations and their geographical and chronological priorities. This also illustrates a number of different historical realities of the textual culture of Islamic legal tradition. Within the fuqahā-estate and its Shāfiʿīte clusters in Damascus and Cairo there were individual scholars who were specialists on particular texts in their teaching and commentaries. For *Minhāj*, scholars such as ʿIzz al-Dīn Muḥammad Ibn Jamāʿat (d. 1367), Sirāj al-Dīn ʿUmar bin ʿAlī Ibn al-Mulqin (d. 1401), and Abū al-Ḥasan Muḥammad al-Bakrī al-Ṣiddīqī (d. 1545) were distinguished experts on its various complexities. They wrote multiple commentaries (al-Bakrī al-Ṣiddīqī wrote four commentaries[111]) incorporating revisions in style, presentation, content and focus. They also guided contemporary and future generations of scholars in how differently it could be read philologically, politically, socially and culturally as well as its primary legal concerns. Most of these individual specialists of

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[110] Ibn al-ʿAṭṭār, *Tuḥfat*.

[111] Those are: *Kanz al-Rāghibīn fī sharḥ Minhāj al-ṭālibīn, al-Maṭlab fī sharḥ al-Minhāj, al-Mughnī sharḥ al-Minhāj,* and *Sharḥ Minhāj al-ṭālibīn.*

Minhāj became sorts of epicentres for the hermeneutical potential it evoked in the spheres of teaching, law-giving, judicial procedures, everyday rituals and customary practices. Not only the students or teachers of *Minhāj* relied on such textual experts of their time, but even judges, writers and lawgivers approached them, as numerous biographical literatures confirm.

In different places specialist text-families for particular legal works could be found. For *Minhāj* we have remarkable families such as al-Bulqaynī in Cairo, in which a grandfather,[112] father and son all engaged with the text at various points of time. The families of Qāḍī Shuhbah in Damascus[113] and al-Bakrī al-Ṣīddīqī in Cairo[114] are other examples. Many such text-families for *Minhāj* did not make only one textual contribution, but rather repeatedly dealt with it, catering for the increasing demands from different quarters with several interests. As the sources converse together fluently, the fame and acceptance of individual specialists for *Minhāj* led to the recognition of family experts. This must have been not merely a source of social status, but equally a source of income through teaching, copying, publishing, law-giving and clarifying doubts. Specializing on a text such as *Minhāj* created groups occupied with texts within the academic cultures of the fuqahā-estates in their respective regions.

Most of these commentators and abridgers were based around Damascus, Cairo and Yemen, and *Minhāj* began to replace the older texts existing in the school for educational purposes. Particularly in Yemen, *Minhāj* replaced *Muhaḏḏab*, which was a celebrated work in Shāfiʿīte legal circles as the *ṭabaqāt* biographers and Yemeni historians like Ibn Samurat (d. 1190) confirm.[115] The members of Shāfiʿīte clusters of the Yemeni, Egyptian and Syrian fuqahā-estates extensively engaged with the text by copying, teaching, learning, commenting, and abridging. The majority of *Minhāj*'s textual progenies written before the sixteenth century came from these regions. According to the list provided by Muhammad Sha'ban, in the fourteenth century it attracted ten commentaries, in the fifteenth century thirty-five, in the sixteenth century fifteen, in the seventeenth century six, and in the eighteenth to twentieth centuries ten.[116] In this cornucopia of commentaries, the ones of Jalāl al-Dīn Maḥallī, Ibn al-Ḥajar al-Haytamī, and Shams al-Dīn al-Ramlī appealed to copious super-commentators.[117] As

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[112] Sirāj al-Dīn ʿUmar bin Raslān al-Bulqaynī (d. 1402) wrote *Taṣḥīḥ al-Minhāj*, commenting on the last quarter of the book on criminal law (*al-jirāḥ*) so extensively that it alone has five volumes, and another volume on the part on marriage. His son Jalāl al-Dīn ʿAbd al-Raḥmān (d. 1421) wrote only as far as the "book" on expenditures (*al-kharāj*). His grandson Qāsim (d. 1457) wrote an independent commentary.

[113] Taqī al-Dīn Abū Bakr bin Aḥmad Ibn Qāḍī Shuhbah (d. 1447), the author of the renowned *Ṭabaqāt al-Shāfiʿīyyat*, wrote an unfinished commentary as far as the chapter *khulʿ* and named it *Kifāyat al-muḥtāj ilā tawjīḥ al-Minhāj*. His son Badr al-Dīn Abū al-Faḍl Muḥammad (d. 1469) wrote two extensive commentaries: *Irshād al-muḥtāj ilā tawjīḥ al-Minhāj* and *Bidāyat al-muḥtāj ilā sharḥ al-Minhāj* in two volumes.

[114] Jalāl al-Dīn Muḥammad Aḥmad al-Bakrī al-Ṣīddīqī (d. 1486) wrote a commentary and an annotation. His son Abū Al-Ḥasan Muḥammad (d. 1545) wrote four commentaries mentioned above (footnote 95). Both of them also wrote separate supercommentaries on the commentary of *al-Maḥallī*.

[115] On the receptivity of *Muhaḏḏab*, see ʿUmar bin ʿAlī bin Samurat al-Jaʿdī aka Ibn Samurat, *Ṭabaqāt fuqahāʾ al-Yaman*, ed. Fuʾād Sayyid, (Cairo: Maṭbaʿat al-Sunnat al-Muḥammadiyyat, 1957), 125-133. On the supersedure of *Minhāj* and other works of Nawawī, see ʿAbd Allāh al-Hibshī, Ḥayāt al-adab al-Yamanī fī ʿaṣr Banī Rasūl (Yemen: Manshūrāt Aḍwāʾ al-Yaman, 1980), 54.

[116] Muḥammad Shaʿbān, Introduction to Nawawī, *Minhāj*, 16-47.

[117] Maḥallī attracted fourteen. Ibn al-Ḥajar's commentary outshined them all as it attracted more than thirty super-commentators mainly from the Central Asian, South Arabian and Indian Ocean regions. We shall discuss this in the next chapter together with other important commentaries.

we saw with *Minhāj*'s incorporation of maritime trade and merchandise, the commentaries and super-commentaries also engaged with legal implications of new situations, mobility and products which appeared by the end of the fifteenth century. Coffee is a clear example. Although it must have been familiar already to residents in South Arabia, it never found a place in the Middle Eastern sources until then. By the sixteenth century, when coffee consumption had spread to Egypt and other parts of the Islamic world, Islamic jurists wrote treatises or additional commentaries discussing whether or not it was to be treated as a narcotic.[118] Similarly changing concerns in the maritime world were reflected in the ongoing circulation of commentaries on *Minhāj*.

Seeing this vast number of texts of Islamic law, it is worth reverting to the discussion we raised in Chapter 3 with regard to the question of any possible reference to the circulation of Shāfiʿīte legal treatises across the Indian Ocean rim before the sixteenth century. To recap: we have evidence from the South Asian coastal belt for Shāfiʿīte productions of intellectual texts, but not from other parts of the rim. One of the earliest Arabic texts written in Malabar is a Shāfiʿīte text entitled *Qayd al-jāmiʿ* by a shadowy author Faqīh Ḥusayn bin Aḥmad, about whom we do not have many details. The local scholars assume that it is the same Faqīh Ḥusayn that Ibn Baṭṭūṭa met during his visit to the region. Nevertheless, the text has survived through several manuscripts and printed editions. It deals with issues of marriage and divorce according to the Shāfiʿīte school. Another Shāfiʿīte text comes from fifteenth-century Sindh, and it is precisely related to *al-Muḥarrar*, the predecessor of *Minhāj*. It is called *Kashf al-durar fī sharḥ al-Muḥarrar* by Shihāb al-Dīn Aḥmad bin Yūsuf al-Sindī, and it is one of only two known commentaries on *al-Muḥarrar*.[119] We also do not have any biographical details about this author, but his patronymic al-Sindī clearly indicates his homeland or where he was based. Both *Qayd* and *Kashf al-durar* are evidence for the circulation of Shāfiʿīte legal texts along the Indian Ocean rims of South Asia prior to the sixteenth century. From Southeast Asia, the earliest Shāfiʿīte legal text we get is from the seventeenth century, *Ṣirāṭ al-mustaqīm* of Nūr al-Dīn al-Ranīrī.

What about the circulation of *Minhāj* in these regions? We have no evidence for any textual transmissions related to it in South, Southeast Asia or East Africa up to the mid-sixteenth century. However, we see many jurists from these areas increasingly engaging with the text since then and the number increases dramatically in the following centuries. So how did this text reach there and communicate with the fuqahā-estates there? In the next chapter, I shall explore this mechanism by arguing that this transmission was mediated by the commentaries, primarily the ones from Mecca and Cairo in the sixteenth century.

Final Remarks

Minhāj's significant intellectual contribution to the "conservative" Islamic tradition is its attempt to obviate the difficulties of a long existing tradition through multiple dissipative techniques and its end result in canonization of the school. Through extensive exploration into

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[118] C. van Arendonk, "Kahwa," *Encyclopaedia of Islam*, 2nd ed.; cf. Ralph Hattox, *Coffee and Coffeehouses: The Origins of a Social Beverage in the Medieval Near East* (Seattle: University of Washington Press, 1985).

[119] al-Ahdal, *Sullam al-mutaʿallim*, 630-631.

its textual genealogy it brought about changes and thus "prevented [sic] the system from ultimately reaching a state of rest", as Lorenz says.

It owes its production and reception to the institutional dynamics that the fuqahā-estate encouraged in the Islamic world, reacting to changing social, religious, economic and political conditions. Its extensive textual transmission stimulated the longer discursive tradition of the Shāfiʿīte clusters, bringing about standardized, hierarchized and systemized legal rulings, notions, and even norms. It rectified many inaccuracies in the judgements of *al-Muḥarrar* which pioneered the canonization process in the school. By virtue of its time and place in thirteenth-century Arab world, or more precisely in late-thirteenth-century Damascus, it was infused with normative scientific requirements including the method of recursive argument which continued within the longer tradition of Shāfiʿīte legal discourses. It also catered to the pedagogical expectations of the time in becoming incorporated into the longer tradition of the school.

The strategy of prioritization and the very act of canonization that *Minhāj* upheld was strongly influenced by the socio-cultural and politico-economic contexts that I have identified as the politics and economy of prioritization. That concept helps us analyse most dry, positive, legal texts as a source for social, cultural, and economic history. In giving attention to the problems of war and trade at the time of the crusades and Mamlūk counter-crusades it illustrates political aspects of prioritization. Its author's familiarity with the mercantile worlds of the Eastern Mediterranean and his living not far away from the maritime world motivated him to take a more "ocean-friendly" approach, seen as *Minhāj*'s economy of citations. These engagements and disengagements of the text with existing rules and laws were deeply rooted in the longer textual tradition of the school over more than four centuries. Reciprocating such a tradition through the estate and its textual cultures and institutional frameworks made remarkable impacts on the broader worlds of the Mediterranean and the Indian Ocean through its commentaries and other textual progenies.

Chapter 5
Tuḥfat: Rise of the Meccan Shāfiʿīsm

In the previous chapter we discussed how *Minhāj* tried to canonize the Shāfiʿīte law through different schemes of cohesion, prioritization and hierarchization. Taking the regional and transregional contexts of *Minhāj*, we analysed the interconnections between the functions of an author-jurist, the fuqahā-estate in which he was involved, its institutional dynamics and capacities for negotiation with the broader society and polity, the construction of a legacy for the text, and the impact it had on and received from the oceanic world. At the end of the chapter, I pointed out that until the sixteenth century *Minhāj* was not that important, or was not even known at the non-Middle Eastern rims of the Indian Ocean, where the largest followers of Shāfiʿīsm had begun to reside. I argued that the "peripheral" Shāfiʿītes actually did receive the text, but much later, and this process was mediated through other texts in the interim, mainly the commentaries on *Minhāj*. This chapter will analyse this process, dealing with several questions: Which commentaries intermediated the text from the Middle East? Why did so many scholars repeatedly endeavour in the sixteenth century to comment on a text which had already been well commented on in the fourteenth and fifteenth centuries? What is the uniqueness that makes this a mediator text out from a plethora of others? To address these questions, I focus in this chapter primarily on one commentary, *Tuḥfat*, or to give it its full title *Tuḥfat al-muḥtāj* by Ibn al-Ḥajar al-Haytamī (d. 1566).

The intellectual gap between the Eastern Mediterranean and non-Middle Eastern Indian Ocean, which was earlier filled by mercantile networks with a tendency for intellectual motivation, was now shortened through the intermediation of Mecca, by people such as Ibn Ḥajar and texts such as *Tuḥfat*. Mecca's intellectual revival in the late-fifteenth and early-sixteenth century, I argue, provided the space in which South and Southeast Asian and East African residents with aspirations towards legal intellectual traditions could sharpen their wits and enlighten themselves. Once *Tuḥfat* was released, it became an immediate appetizer for many "peripheral" students of Shāfiʿīsm. It became a popular scholarly text in the eastern parts of the Middle East as much as in the Indian Ocean rim. At this time the oceanic arena was the highway for massive numbers of Yemeni, Persian, Swahili, Indian and Malay migrants, who also played roles in promoting this text among the learned classes. *Tuḥfat*'s commentaries produced on the rim are the best illustrations of this process.

I.

Genealogy Paralleled

Tuḥfat is a commentary on *Minhāj*, so it obviously belongs to the *Minhāj*-family. In this part, I briefly engage with two sisters of *Tuḥfat* which the Shāfiʿīte jurists consider as important commentaries of *Minhāj*: *Nihāyat al-muḥtāj* (hereafter *Nihāyat*) of Shams al-Dīn Muḥammad bin Shihāb al-Dīn al-Ramlī (d. 1596), and *Mughnī al-muḥtāj* (henceforth *Mughnī*) of Shams al-Dīn Muḥammad al-Khaṭīb al-Sharbīnī (d. 1570). All three sisters are indebted to two other texts and their authors: the commentary *Kanz al-rāghibīn* by Jalāl al-Dīn Muḥammad bin

Aḥmad al-Maḥallī (d. 1459), and the summary *Manhaj al-ṭullāb* by Zakariyā bin Muḥammad al-Anṣārī (d. 1520). I have explained how *Minhāj* was received among the Shāfiʿīte clusters of the Middle Eastern fuqahā-estates. Particularly in Cairo, the text faced appreciation and criticism, generating numerous commentaries and summaries out of which these two are the most important. The Cairene fuqahā-estate had become a dominant epicentre of Shāfiʿī legalism by the late-fourteenth and fifteenth centuries responding to different social, economic, religious and political developments, and al-Azhar University performed an imperative role in the legalist dialogues of the school, being one of the leading educational institutes in the Middle East (see below). Ibn Ḥajar's two contemporary commentators of *Minhāj* and their two teachers are known collectively as "the Five Scholars" (*ʿulamāʾ al-khams*) in Shāfiʿīte history. Their significance is that they lead the so called "Era of the Confirmers" (*ʿaṣr al-muḥaqqiqīn*) that dates from 600 to 1000 of the Hijri Era (roughly from 1200 to 1600 CE). The main contribution of the scholars in this era is *tarjīḥ* or determination of preponderance, by prioritizing and hierarchizing the contradictory views of previous scholarship within the school. The commentator colleagues belonged to the second recension in the era, with Ibn Ḥajar and al-Ramlī as the towering figures among them.

Both al-Maḥallī and al-Anṣārī studied at al-Azhar. The former also went to other institutions and individual scholars whereas the latter was trained only there. During their career, they headed the fuqahā-estate of Cairo attracting numerous students, colleagues and followers. Both of them became deeply engaged with *Minhāj*. Al-Maḥallī's commentary clarified many linguistic absurdities, and this attracted fifteen super-commentaries. Al-Anṣārī's abridgment aimed at avoiding loquaciousness, and this attracted eight commentaries, including one by himself (*Fatḥ al-wahhāb*). That commentary attracted as many as twenty-one super-commentators. In other words, both their works on *Minhāj*, and *Minhāj* itself, provided a hotspot for the Shāfiʿīte legal aspirants in Cairo and elsewhere to explore the Islamic legal tradition within changing times and places. The making of *Tuḥfat* and its sister-texts owe much to this atmosphere of change.

Al-Anṣārī had a long life and in his century he formed a generation of *Minhāj* specialists around him at al-Azhar.[1] In this legalist enterprise he was joined by a student from Palestine, Shihāb al-Dīn al-Ramlī (d. 1550). His educational commitment attracted al-Anṣārī and he allowed only that student to edit his works during and after his life. Out of the circles of al-Anṣārī and Shihāb al-Ramlī, three students emerged as *the* specialists of *Minhāj*: Shihāb al-Ramlī's son Shams al-Dīn al-Ramlī,[2] Ibn Ḥajar al-Haytamī, and Khaṭīb al-Sharbīnī. These three together decided not only the future course of *Minhāj* but also of Shāfiʿīsm. The influence of both their teachers in the making of these three "Minhājis" is remarkable. Ibn Ḥajar was more inclined towards the legal hermeneutics of al-Anṣārī while Sharbīnī and al-Ramlī preferred those of Shihāb al-Ramlī. In their engagement with *Minhāj*, they each wrote separate commentaries long after their student days when they had become leading figures of the fuqahā-estates at different places and institutions. In a study on the composition-dates of *Minhāj*'s major commentaries, ʿAbd al-Raḥmān al-Khaṭīb says that *Tuḥfat* of Ibn Ḥajar was

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[1] For his biography with an emphasis on his contributions to traditional knowledge transmissions, see Matthew B. Ingalls, "Subtle Innovation within Networks of Convention: The Life, Thought, and Intellectual Legacy of Zakariyā al-Anṣārī (d. 926/1520)" (PhD diss., Yale University, 2011).

[2] I shall now use al-Ramlī to denote only the son, unless otherwise indicated.

the first of the three. He started to write it in 1551 in Mecca and finished it in the same year, after eleven months. Sharbīnī started with *Mughnī* in 1552 but he took almost five years to finish it. The *Nihāyat* of al-Ramlī required ten years to complete, from 1556 to 1566.[3] We notice many typological, methodological and theoretical differences the individual authors exhibit in these three commentaries on *Minhāj*. These differences in prioritizing respective teacher's opinions and adding one's own viewpoint are part of a wider debate, context, academic trajectories and how *Minhāj* and Shāfiʿīsm were connected over time to the contemporary social, economic, political and cultural spheres.

Nihāyat, the last of the three, was written to correspond with *Tuḥfat* and *Mughnī*. In its preface, al-Ramlī explained his methodology in writing the commentary.[4] He refers to the earlier commentaries of *Minhāj*, of which he finds only a few of worth. He appreciates al-Maḥallī's commentary at length, whereas the works of al-Sharbīnī and Ibn Ḥajar have a general reference as the writings by "our eminent contemporary colleagues".[5] Indirectly he disagrees with many opinions of Ibn Ḥajar. The text attracted eight super-commentators, and interestingly, out of those eight authors, five wrote super-commentaries to *Fatḥ al-wahhāb of* al-Anṣārī. Al-Ramlī had studied initially multiple disciplines, including *ḥadīth*, *tafsīr*, and fiqh with his father, then with al-Anṣārī. He specialized in Islamic law, and then in Shāfiʿīte law. In the course of education, he also studied legal texts of other schools with renowned scholars such as Shihāb al-Dīn Aḥmad bin ʿAbd al-ʿAzīz (Ḥanbalīsm), Sharaf al-Dīn Yaḥyā al-Ḍamīrī (Mālikīsm), Nūr al-Dīn ʿAlī bin Yāsīn al-Tarābilsī (Ḥanafīsm). The opinions of other schools are thus regularly referred to in the text.

Khaṭīb al-Sharbīnī was born and brought up in Sharbīn at Dakahlia, from where he moved to Cairo. He studied with Shihāb al-Ramlī, but scholars differ whether he also managed to meet al-Anṣārī. Amongst his other teachers was the prominent scholar Aḥmad al-Burullusī, with the famous cognomen Shaykh ʿAmīrat, who wrote a popular super-commentary for al-Maḥallī's *Kanz*. Whenever he began to write *Mughnī* he is said to have visited the grave of the Prophet Muḥammad seeking blessings. He significantly depended on the lecture notes and opinions of Shihāb al-Ramlī. He also extensively used a previous commentary by Ibn Shuhbah al-Kabīr.[6] Apart from law, he also wrote on exegesis, theology and Arabic grammar.

For many reasons, *Tuḥfat* is different from both *Nihāyat* and *Mughnī*, and it appealed to the wider Shāfiʿīte clusters of the fuqahā-estates more than any other commentaries on *Minhāj* did. Before I explain why, let me introduce its author and his context.

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[3] Taqī al-Dīn Abū Bakr ibn Muḥammad Ḥiṣnī, *Kifāyat al-akhyār fī ḥall ghāyat al-ikhtiṣār* ed. ʿAbd al-Rahman Rashid al-Khatib (Jeddah: Dar al-Minhaj, 2007), 632.

[4] Shams al-Dīn Muḥammad bin Aḥmad bin Hamzat al-Ramlī, *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj* (King Saud University Manuscript Collections, No. 3687). This manuscript was written by ʿAbd Allāh al-Munʿim bin ʿAbd Allāh bin Muḥammad bin ʿAbd Allāh bin Abī Bakr Ibn al-Suwaytī in 1612, just sixteen years after al-Ramlī's demise.

[5] Shams al-Ramlī, *Nihāyat al-muḥtāj*, 1: 11-13.

[6] al-Khaṭīb al-Sharbīnī, *Mughnī al-muḥtāj sharḥ al-Minhāj li al-Nawawī* (King Saud University Manuscripts Collections, No. 6048). This manuscript is written by a certain Najm al-Dīn in 1572, just three years after the death of of al-Sharbīnī. Thus the copyist must have copied it from the original manuscript.

Ibn Ḥajar as the Author of *Tuḥfat*

The writing of *Tuḥfat*, its discourse and reception owe much to the fact that its author lived in Mecca. In contrast to Cairo, Mecca was not an established place for Shāfiʿīte discourses until the sixteenth century. Ibn Ḥajar's selection, or rather "rediscovery", of this place would change and divide the course of the school from then on.

Ibn Ḥajar was born at the end of 1503 at Haram in Eastern Egypt. From here, his family moved to the area of Abū al-Haytam in Western Egypt with which he is famously associated.[7] In his early childhood his father passed away and he grew up with his grandfather who died soon afterwards at the age of more than a hundred and twenty. Ibn Ḥajar was still very young, so two teachers of his father, al-Shams al-Shanāwī and al-Shams al-Dīn Muḥammad al-Sarwī bin Ab al-Ḥamāyil, took care of him for a short while. Later, al-Shanāwī alone looked after him, but he could not afford the expense for long due to the widespread economic depression in Egypt. He sent him to live with al-Sayyid al-Badawī at Ṭanṭā where Ibn Ḥajar received his primary education. This parentless and insecure stage of childhood along with poor living conditions had an impact on his later intellectual life. Amidst all these difficulties he focused on his study.[8]

Fighting against all odds, he managed to get into al-Azhar at the age of fifteen with the help of al-Shanāwī in 1518, one year after the Ottoman conquest of Egypt. By the fourteenth and fifteenth centuries the al-Azhar University, established by the Fāṭimids in the tenth century, had become a hub of Sunnī learning with a commanding role in the Shāfiʿīte legalist dialogues of Cairo as well as throughout the Middle Eastern world of education. It was "a great centre for the study of jurisprudence and it was the final goal of many of the students to attain eminent positions in the judicial systems of the cities where they lived"; it offered a spatial-temporal context in which "a young man could find a brilliant career in one of two fields of activity", the military or the law.[9] Thus, to arrive in Cairo and especially at al-Azhar was the dream of most legal aspirants of the time who wanted to establish themselves in the

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[7] His full name is Aḥmad bin Muḥammad bin Muḥammad bin ʿAlī bin Ḥajar al-Salmuntī al-Haytamī al-Azharī al-Wāʾilī al-Saʿdī al-Makkī al-Anṣārī al-Shāfiʿī. In this, the attributives al-Salmuntī and al-Haytamī denote two places. Another attribution, Ibn Ḥajar or Son of Stone, refers to his great-great-grandfather who was notorious for keeping stoney silence all the time. In biographical dictionaries it is said that he belonged to the sub-tribe of Banū Saʿd of the Wāʾila tribe, one of many tribes who helped the Prophet Muḥammad during his exodus from Mecca to Medina. This sub-tribe is said to have migrated from Medina to Egypt during the early expeditions of the first caliphs.

[8] For a biographical overview of Ibn Ḥajar, see: Ibn Ḥajar al-Haytamī, *al-Fatāwā al-kubrā al-fiqhiyyat* (Cairo: ʿAbd al-Ḥamīd Aḥmad Ḥanafī, 1938), 1: in the Introduction, one of his students wrote a biography of Ibn al-Ḥajar while the subject was still alive; cf. Abū Bakr bin Muḥammad Bā ʿAmr al-Sayfī al-Yaznī, *Nafāʾis al-durar fī tarjamat Ibn Ḥajar al-Haytamī* (al-Dhahiriyya Manuscripts, No. 2319 History/*Tārīkh*): 138-144; ʿAbd al-Muʿizz al-Jazar, *Ibn Ḥajar al-Haytamī* (Cairo, al-Majlis al-Aʿlā li al-Shuʾūn al-Islamiyyat, 1981); ʿAbd al-Qādir bin Muḥammad al-Jazirī, *al-Durar al-farāʾid al-munaẓẓamat fī akhbār al-ḥājj wa-tarīq Makkah al-muʿaẓẓamat* (Riyadh: Dār al-Yamāmat, 1983), 94-96, 963, 1402, 1829; ʿAbd al-Qādir ibn Shaykh ʿAydarūs, *Tārīkh al-nūr al-sāfir ʿan akhbār al-qarn al-ʿāshir*, ed. Aḥmad Ḥalū, Maḥmūd al-Arnaʾūt and Akram al-Būshī (Beirut: Dar Sader Publishers, 2001), 390, 287-292; Najm al-Dīn al-Ghazzī, *al-Kawākib al-sāʾirat bi aʿyān al-miʾat al-'āshirah: A Biographical Dictionary of Notable Men and Women in the Moslem World in the 16th Christian Century*, ed. Jibrāʾīl S. Jabbūr (Beirut: American Press, 1949), 3: 111-112; ʿAbd al-Ḥayy ibn Aḥmad Ibn al-ʿImād, *Shaḏarāt al-ḏahab fī akhbār man ḏahab*, ed. ʿAbd al-Qādir al-Arnaʾūt and Maḥmūd al-Arnaʾūt (Beirut: Dār Ibn Kathīr, 1991), 10: 541-43.

[9] Bayard Dodge, *Al-Azhar: A Millennium of Muslim Learning* (Washington: The Middle East Institute, 1961), 49.

wider world of a legal career, tradition, discourse, or praxis. Even the farmers and their young children left the hinterlands of Palestine, Syria, Egypt or Yemen for Cairo to become involved in its academic world. That naturally created a headache for the provincial and central ruling classes as the income from farming taxes and agricultural products immediately decreased. Many bureaucrats and administrators tried to use force to prevent the students going to the educational centres or to bring them back. That evoked the resentment of the fuqahā-estate through fatwās and pamphlets: "If consequently any cultivator abandons his cultivation and comes to dwell in Cairo, there is no claim against him, and the action of the oppressors in subjecting him to compulsion is illegal, especially if he wishes to engage in the study of the Qurʾān and learning like the students at the mosque of al-Azhar," one jurist ruled back then.[10] To be affiliated with Cairo meant receiving a token of fame and recognition of the fuqahā-estates elsewhere in the Islamic world. Within the Cairene estate, a number of different things were regarded similarly. Once admitted, Ibn Ḥajar studied with Zakariyā al-Anṣārī and Shihāb al-Ramlī various religious and extra-religious disciplines such as history, medicine, logic, grammar and linguistics. Though he wrote widely on each of these disciplines, he is mostly known as a historian and legalist.[11] In a legal text such as *Tuḥfat* we are therefore not surprised to find detailed references to other disciplines recurring.

He started his studies when Egypt was suffering from pathetic socio-political and economic conditions in the early sixteenth century, especially after the fall of the Mamlūks at the hands of the Ottomans (see below). Academia was not immune from those threats. He himself had to confront deplorable social, political and economic ailments, about which he wrote later:

> At al-Azhar University, I have suffered terribly from hunger that no one human being could tolerate if there were no grace and mercy of God. For instance, for about four years I lived without tasting a single bit of meat. But on one night we were invited to a feast, and there meat was being grilled. We waited until midnight. Finally it was brought in. It was dry [tasting] as if it was uncooked. I could not enjoy even a single slice of it… I also have suffered from some terrible teachers (*ahl al-durūs*) whose classes we used to attend with horrific hunger. There is nothing tougher than such starvation when I saw our teacher Ibn Ab al-Ḥamāyil standing in front of my master Aḥmad al-Badawī, and two [portions] were brought, and in front of us he sliced them and ate each and every piece. It was so annoying.[12]

Furthermore, after a theft at the university he was left broken-hearted. Some of his books, especially his lengthy commentary on *al-ʿUbāb* titled *Bushrā al-karīm*, were stolen. He

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[10] Hamilton Gibb and Harold Bowen, *Islamic Society and the West: A Study of the Impact of Western Civilization on Moslem Culture in the Near East.* vol. I: *Islamic Society in the Eighteenth Century* (London: Oxford University Press, 1950), Part I: 261, note.

[11] For his contributions to the historical writing, see: Miyāʾ Shāfiʿī, "Ibn Ḥajar al-Makkī wa juhūduhu fī al-kitābat al-tārīkhiyyat" (PhD diss., Umm al-Qura University, 1996); on his role and position in the Shāfiʿīte school, see Amjad Rāshid Muḥammad ʿAlī, "al-Imām Ibn Ḥajar al-Haytamī wa atharuh fi al-fiqh al-Shāfiʿī" (M.A. thesis, Jordan University, 1999).

[12] Ibn al-Ḥajar al-Haytamī, *al-Manhaj al-qawīm bi sharḥ masāʾil al-taʿlīm ʿalā al-Muqaddimat al-Ḥaḍramiyyat al-musammā Bushrā al-karīm* (Jiddah: Dār al-Minhāj, 2006), 25

constantly prayed to God to forgive the thief.[13] He says it was because of jealousy of his knowledge, but it could have been to relieve poverty as books were valuable goods. Neither al-Ramlī or Sharbīnī seem to have met such troubles, probably because both of them were born into the prosperity of the fuqahā-estate. Their fathers were renowned teachers and legal scholars of their time, a support for new entrants from their family. Ibn Ḥajar was mostly a self-made man who underwent much deprivation in his life.

He focused on his studies and learnt almost all the famous texts in each discipline with the available scholars. The other teachers and texts he studied are well described in anecdotal notes occurring in various works. He says he was deeply influenced by the knowledge and teaching methods of al-Anṣārī: "He is the brightest among the dynamic (ʿāmilīn) scholars and descendant leaders I have seen. He is the highest-ranking among the juristic, 'chain-holding' (musannidīn, i.e. with the sanads of recognition) legal scholars from whom I have reported and studied."[14] He says further: "I have not collected anything from him without him saying: 'I ask God to make you legally knowledgeable [yufaqqih] in religion.' "

At the age of twenty he had finished his higher studies, and had started to write small booklets and give fatwās, "… to the extent that my distinguished teachers gave me permission (ijāzat) to teach and utilize those disciplines, to regulate editing difficult parts of those by affirming (taqrīr) and compiling, to give fatwās and to teach according to the school of al-Imām al-Muṭṭalib al-Shāfiʿī bin Idrīs, and to author and compile. Thus, I wrote from matns the commentaries for what does not require any elaboration... all this when I was less than twenty years old."[15] His similar outstanding academic performance was to make him a reputed scholar, despite the poor social and political conditions in Egypt which were major hindrances. That is the background to his decision to move from Egypt to Mecca, which was a burgeoning centre of knowledge and learning. Before he moved there permanently, he visited the city twice as a pilgrim: once in 1527 and secondly in 1531. On both trips he must have realised the academic opportunities the city could offer him.

Life and Career of *Tuḥfat*

As a person educated in Cairo with such *Minhāj*-authorities as al-Anṣārī and Shihāb al-Ramlī, *Minhāj* had an immense influence on Ibn Ḥajar's academic career. He wrote many separate works on it: a super-commentary, a partial commentary on the Introduction and another one on the Conclusion. All these are apart from his frequent dependence on the text in his many other legal texts and law-giving. As we see in his fatwā-corpus *al-Fatāwā al-fiqhiyyat al-kubrā* (collected by his student ʿAbd al-Raʾūf al-Wāʿiz al-Zamzamī) and works dealing with specific aspects like ḥajj, marriage, and judicial proceedings such as *Manāsik al-ḥajj*, *Ḥāshiyat ʿalā al-Īḍāh fī al-manāsik*, and *Jamr al-ghaḍā lī man tawallā al-qāḍaʾ*. Whereas many of those were specialized, short or incomplete, *Tuḥfat* was the complete and self-satisfying work of his own *Minhāj* corpus. He must have given it his full attention as we see in its typologies and articulations, an accuracy that would add to its importance. He also

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[13] Muḥammad Abū Bakr Badhib, Biographical Introduction on Ibn Ḥajar, in Muḥammad Mahfūẓ bin ʿAbd Allāh al-Tarmasī, *Ḥāshiyat al-Tarmasī al-musammāt al-Manhal al-ʿAmīm bi ḥāshiyat al-Manhaj al-qawīm wa Mawhibat ḍi al-Faḍl ʿalā sharḥ al-ʿAllāmat Ibn Ḥajar Muqaddimat Bā Faḍl* (Jiddah: Dār al-Minhāj), 24.

[14] Ibn al-Ḥajar, *al-Manhaj al-qawīm*, 22-23.

[15] Ibn Ḥajar, *al-Fatāwā al-kubrā al-fiqhiyyat* (Miṣr: ʿAbd al-Ḥamīd Aḥmad Ḥanafī, n.d.), 1: 4.

authored diverse works in disciplines varying from law, history to medicine and linguistics, and his contributions to historical writing itself could be a subject for a long analysis.[16] His works in Islamic law are abundantly divergent and we focus here only on *Tuḥfat* for it is the most important legal work among his oeuvre.

Tuḥfat's intellectual uniqueness can be understood only in comparison to and connection with his other texts, as well as other commentaries within the school either related or unrelated to *Minhāj*. His other main law-books are the interconnected *al-Naʿīm*, *al-Īʿāb*, *al-Imdād* and *Fatḥ al-jawād*. *Al-Imdād* is a commentary on Ismāʿīl bin al-Maqarī al-Zubaydī's *al-Irshād*, an abridgement of ʿAbd al-Ghaffār al-Qazwīnī's *al-Ḥāwī al-ṣaghīr* which is abridged from al-Rāfiʿī's *al-ʿAzīz*, a commentary of *al-Wajīz* of al-Ghazālī. For *al-Imdād*, Ibn Ḥajar himself wrote an abridgement entitled *Fatḥ al-jawād*. *Al-Naʿīm* and *al-Īʿāb* also belong to the same textual family. Al-Rāfiʿī's *al-ʿAzīz* was abridged by Nawawī into *al-Rawḍat* for which al-Zubaydī wrote an abridgment entitled *al-Rawḍ*, and Ṣafiyy al-Dīn Aḥmad bin ʿUmar al-Muzjid wrote another entitled *al-ʿUbāb*. Ibn Ḥajar's *al-Naʿīm* is a commentary on *al-Rawḍ* and *al-Īʿāb* is a commentary on *al-ʿUbāb*. In other words, all his four works are textual descendants of al-Rāfiʿī's *al-ʿAzīz* and thus belong to a textual genealogy different from that of *Minhāj*. But there is a node in the family-tree in which both lineages intersect at al-Ghazālī's *al-Wajīz*. In contrast to any of these four texts connected to great-grandmothers through many intercessor-texts, *Tuḥfat* is directly attached to the work of Nawawī with fewer intermediaries to *al-Wajīz*.

In this textual longue-durée, Ibn Ḥajar's works are connected to Nawawī, the "editor" of the school, and also go further back to al-Rāfiʿī and other predecessors. For example, in the case of *al-Īʿāb* there are at least two mediators between Nawawī and Ibn Ḥajar, whereas in the case of *Tuḥfat* this relation is rather straightforward. It may or may not add to the textual longue-durée that I emphasise, but there the genealogical tree becomes much longer and deeply complicated. This is especially true when we take into account that in the *Fatḥ al-jawād* this line does not get connected to Nawawī who is "the editor" of the school, but goes into al-Rāfiʿī and then to the ancestral texts. This genealogical skip might have made both *Fatḥ al-jawād* and *al-Imdād* less attractive to the Shāfiʿīte clusters, compared to the texts with the strongest ancestors.

These are not the only reasons why *Tuḥfat* is more exceptional that the four other texts I have mentioned. From those it stands out not just as a commentary on *Minhāj* but rather for its belatedness in being written. All his other works were earlier texts whereas *Tuḥfat* is a comparatively late text. The internal logic of Shāfiʿīsm considers later works and later opinions more trustworthy and effective. Though this is a general rule only if two opinions of the same author contradict, it has implications for prioritizing texts. Accordingly, in this case *Tuḥfat* was given its chance over Ibn Ḥajar's other works, adding to its receptivity among the later generations.

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[16] For a partial description of Ibn Ḥajar's works along with the details of the manuscripts, see: Muḥammad al-Ḥabīb al-Hīla, *al-Tārīkh wa al-muʾarrikhūn bi Makka min al-qarn al-thālith al-Hijrī ilā al-qarn al-thālith ʿashar: jamʿ wa-ʿarḍ wa-taʿrīf* (Mecca: Muʾassasat al-Furqān lil-Turāth al-Islāmīyah, 1994), 216-228. We note that among forty-two works listed, al-Hīla has not mentioned many legal texts of Ibn Ḥajar since his major focus was on Ibn Ḥajar's role as a historian who lived in Mecca.

The reason why Ibn Ḥajar decided to write a commentary on *Minhāj* while there were a plenty of others is given when he himself speaks of his personal motivation:

> For a long time, I have been contemplating to get blessings (*tabarruk*) by serving any of the legal works of al-Quṭub al-Rabbānī, al-ʿĀlim al-Ṣamadānī, Waliyy Allāh without dispute, the editor of the *maḏhab* without opposition (*dafaʿ*) Abū Zakariyā Yaḥyā al-Nawawī (May God sanctify his soul and brighten his grave), until I decided on the twelfth Muḥarram, 958 to serve his *Minhāj*, of which the exterior (ẓahir) is manifest, and the treasures and stockpiles are abundant.[17]

These notions of service and getting blessings are expressed in many Islamic commentaries, as most authors in the later centuries believed that engaging with a noted text is not merely an intellectual activity but also bestows a religious accolade with divine blessings. The authors believe that they are doing a service not only for society in general but for the text itself, for which God will give His reward. This passage also shows how he asserts himself into the longer intellectual-*cum*-textual tradition of the school particularly through *Minhāj*.

In his statement of motivation we select four nodes: a) the act of service (*khidmat*); b) two persons, Nawawī and Ibn Ḥajar; c) Nawawī's position as the editor of the school; d) two texts, *Minhāj* and *Tuḥfat*. Ibn Ḥajar says that he wants to serve the school through the work of Nawawī, the editor. This notion of serving the school is an oxymoronic assertion by which Ibn Ḥajar asserts authority for himself and for *Tuḥfat* by relating to a person and his text that are already authoritative in the Shāfiʿīte tradition.[18] Certainly, the school has grown into a powerful socio-political space of the fuqahā-estate, capable of uniting and dividing its members through a discursive praxis. The school has developed much from what it was, "the opinion" of Nawawī in his *Minhāj* and its own contribution of standardization, hierarchization and prioritization. The socio-legalistic and political developments by the fourteenth century and later restricted Sunnī legal thoughts into simply four in which Shāfiʿīsm had important and powerful roles. In its locus of power, Nawawī's works and particularly *Minhāj* had grown up to be a sort of *sanctum sanctorum*. Once Ibn Ḥajar states with much humbleness that he is *serving* the power-centres of a person, his text and the school, oxymoronically he asserts his own power and consequently that of *Tuḥfat*. It also indicates that only a powerful person and text can claim to serve in this way.[19]

More precisely Ibn Ḥajar explains what exactly he intends to do and to contribute by writing such a commentary. He aims to summarize the original text depending on its widely circulated commentaries; to deal with extensive statements; to avoid any beating around the bush by giving exact evidence; to reconcile whatever disputes (*khilāf*) and provide appropriate justifications (*taʿlīl*); to trace back articles (*maqālat*) and studies (*abḥāth*) to its authors if the

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[17] Ibn Ḥajar, *Tuḥfat al-muḥtāj* (Dār al-Kutub al-ʿIlmīyat, 1996), 1: 3.

[18] The functions of oxymora have been well conceptualized and articulated by different scholars of literary theory; broadly see Hommi Babba, *The Location of Culture* (New York: Routledge, 1994); more particularly see Simon Gikandi, *Writing in Limbo: Modernism and Caribbean literature* (Ithaca: Cornell University Press, 1992), 232.

[19] A rather convincing parallel would be the title *Khādim al-Ḥaramayn al-Sharīfayn* (Custodian of the Two Holy Cities) "given" to the Ayyūbid, Mamlūk, and Ottoman sultans and its usage well into modern times by Saudi kings. This term *khādim* (servant/custodian) denotes the autocratic king and his obligation of service to the religiously powerful cities.

intentions and determinations are idle about giving confirmation, let alone internal difficulties; to refer to the debates by utilizing the *qiyās* (deductive analogy) or *ʿillat* (*ratio legis*). With all these targets in mind he says, "I commenced writing it asking the support from God and trusting in him", and "I entitled it *Tuḥfat al-muḥtāj bi sharḥ al-Minhāj*."[20] That the massive volume of legal commentary texts came out three centuries following *Minhāj* was a major concern for Ibn Ḥajar. Hence, the classification of authority, hierarchization of tradition and contextual pressure added to his qualitative elaboration which was inherent with complexities. This precision in analytical design and intention lead *Tuḥfat* towards erudition, and resembles the predicaments Nawawī faced in his time. If Nawawī had to encounter all the works of the school since its inception, Ibn Ḥajar had to face all the works written after Nawawī, primarily the commentaries on *Minhāj*.

He finished writing this four-volume work in just eleven months. His experience and expertise as a teacher of the Shāfiʿī school for more than two decades must have been helpful to let him complete it so quickly. *Minhāj* was a legendary text in the legal institutions, and Ibn Ḥajar must have taught it repeatedly, an academic exercise that facilitated the process of commentary writing. That is why the form and contents of *Tuḥfat* displays the style of a teacher-student dialogue when making elaborations, following a question with an answer, engaging other texts and scholars from within and from outside the school, etc. Thus, it could be identified as a "dialogic text", if we re-contextualize Mikhail Bakhtin's suggestion, in the sense that it underwent a process of "dialogization" with relativized, deprivileged, and open-handed discourses.[21]

If we compare the contents of *Tuḥfat* with those of the rest of his works we understand how idiosyncratic it is in terms of logical formulation, philological articulation and the amalgamation of diverse commentaries and possible disagreements into the narrative. For a non-specialist it can be hard to comprehend the judgements of Ibn Ḥajar on each issue. Even among scholars, heated debates have erupted over possible meanings of particular phrases or sentences. Throughout the text, the philological constructions are those of a committed legalist. For the common reader, even one fluent in Arabic and in the technical terms of Islamic law, it is very challenging to understand the wordings and sentence structures. It might appear that Ibn Ḥajar is very bad at phrasing a sentence or conveying the message. But traditional experts of the text say that if we read it with extreme care, we understand how Ibn Ḥajar has carefully framed a sentence with exact wordings at exact places. This applies also to the loquaciousness often found in *Tuḥfat*. The super-commentators and law-givers try to analyse all of it in a sort of text-based conversational tradition imbued with hyper-hermeneutical underpinning.

To show the complexity of the language and content in *Tuḥfat* we take its commentary on the "paraphernalia of disputes" in *Minhāj* we already took for analysis in Chapter 4. *Tuḥfat* reads:[22]

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[20] Ibn Ḥajar, *Tuḥfat*, 1: 3.

[21] M.M. Bakhtin, *The Dialogic Imagination: Four Essays*, ed. Michael Holquist and trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), especially see the fourth chapter "Discourse in the Novel," 259-422.

[22] In **bold font** I give my translation of expressions the author quotes from the original text of *Minhāj*, in round brackets the Arabic expressions he used for a translated term, and in square brackets my interpretative phrases.

Wherever [= Ar. *ḥayth*, is written] with *ḍamm* [on the letter *th*], *fatḥ* and *kasr* are also allowed by changing *yāʾ* into *wāw* or *alif*.[23] It indicates an actual or notional place […] **I use** [it in the text] al-Akhfash has argued that it [the word *ḥayth*] connotes time; *aẓhar* **or** *al-mashhūr* related to the *aẓhar* or the *mashhūr* for a characteristic of it; that is, one of those derived at once; **it is a reference to two or more** *qawl***s; if the dispute is strong**, because of the power of its percipient non-*rājiḥ* from it by expounding evidence, lacking its peculiarity and equalling both their evidence in the original expression. [If] the *rājiḥ* could be distinguished, [either] because the majority certainly supports it, or for its evidence being the clearest, surely the differentiation would not happen. **I say *al-aẓhar,* otherwise** it expounds the contrary, empowered [by] its percipient ***al-mashhūr***. That is how I termed it as it indicates that its contrary [meaning] is subtle. There might be contradictions among the works of the author in determining **preponderance** (***tarjīḥ***) emerging out of changes in his **independent investigation** (***ijtihād***). Then one should fix that by editing it especially if one wants to confirm things according to their value. **Wherever I use *al-aṣaḥḥ* or *al-ṣaḥīḥ* for two or more** ***wajh***s then if it is from one, the *tarjīḥ* is according to the abovementioned *qawl*s; or if it is from more than one, it is according to the *tarjīḥ* of another independent investigator. **If the dispute is strong I say *al-aṣaḥḥ*** similar to the abovementioned *qawl*s, as it informs with the *ṣiḥḥat* of its opposite…[24]

From this passage we understand how *Tuḥfat* approaches *Minhāj*. Here it is concerned about the terminological usages found there, while in other contexts it delves into many other aspects. It enters into a detailed hagiographical account of al-Shāfiʿī in the continuation of this passage, when *Minhāj* says, "Wherever I say the *naṣṣ* it refers to a text of al-Shāfiʿī and signifies the existence of a weak *wajh*, or a derived *qawl*". It explains al-Shāfiʿī's birth, death, full name, genealogy and miracle-stories. It provides a textual and intellectual reference to other works commenting on a *Minhāj* statement: "Wherever I refer to the new view (*jadīd*), the old view (*qadīm*) is its opposite; and if I refer to the old view, then the new view is its opposite." *Tuḥfat*'s complexity of philological enunciations comes from an attempt to achieving sophistication in legalist insinuations by elaborating on the grammar and structure of *Minhāj* which had been a famous element in the Shāfiʿīte tradition. Certainly it leads to an elaboration of content, both qualitatively and quantitatively. The quantitative aspect, habitually inherent in a commentary, resulted in the production of a four-volume text. The qualitative facets are entwined with authorial intentions, compulsions of new contexts and the like.

Its typologies need a deep analysis, to which I shall not turn in detail. However, one example might help us understand how differently it approaches various topics. Commenting on *Minhāj*'s discussion on purity and impurity which we discussed earlier, we read:

It should be excluded from the things that would pollute a little water added to more water by a change [in colour, taste or smell] and a little water by its contact with it [with the filth]. Then the dispute discussed below is about water again,

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[23] The *fatḥ* and *kasr* are Arabic vowels: *fatḥ* is a diagonal stroke written above the consonant and represents a short vowel "a"; *kasr* is diagonal stroke written below the consonant and represents a short vowel "i". The *yāʾ*, *wāw* and *alif* all are consonants.
[24] Ibn Ḥajar, *Tuḥfat*, 1: 49-50

contrary to those who argued that the *matn* would confuse [by] identifying it with solid objects, given among the legalists that it is just a part of it, and it is carelessness about excluding from it (*mustathnā minhu*). **The dead insect without blood** that is of its kind **flowing** (*sāʾil*) when a part of its live body splits, like a fly, mosquito, moth, flea, beetle, bug, scorpion, toad, cockroach, wasp and gecko, but not a snake, tortoise, or frog. If one doubts whether or not its blood would flow, it would not offend, as it appears [to me?] in opposition to al-Ghazālī, as I have explained in *Sharḥ al-Irshād* and elsewhere. Rather, the rule of the animals whose blood does not flow applies to it.

Remark: According to *al-Majmūʿ*, it is allowed in *sāʾil* to [pronounce] the *rafʿ* and the *naṣb* [at the last letter].[25] Both their modes are obvious, and with *al-fatḥ*. It has been contested about [the purity of] the parted [fragment of the animal], for it has been rejected extensively in *Sharḥ al-ʿUbāb*. You must refer there; it is important. **Then it would not contaminate** a moist **solid object** if it is [solid] or others such as cloth and ledged on the solid objects, for it is identical to the liquid discussed in the Prophetic Tradition below; not to specify it, then there is no disagreement about it by its meeting with it if it has not changed **according to the *al-mashhūr*** for the valid Tradition: "If a fly falls into any of your water, let him immerse it completely, then take it out. Certainly there is disease in its one wing and cure in the other". A valid report narrates: "Certainly he is taking care with its wing that has disease". In another report we read: "In one of the two wings of a fly is poison and in the other is cure. Therefore, if it fell into food then you dip it in, that is, immerse it. It ejects the poison and withdraws the cure." Its immersing leads to its death, especially in hot water. If it is contaminated, it is not required. All other [insects] that do not have putrescent blood are similar to the fly, even if those do not spread when they fall. Because a lack of putrescent blood entails less impurity than purity, as a group [of scholars] like al-Qaffāl have opined.[26]

Following these Prophetic Traditions, *Tuḥfat* continues to discuss the relative purity and impurity of water, food and other solids that become contaminated with small creatures with or without shed blood. This example demonstrates how it proceeds with legal discussions on minute details that a believer might come across in everyday life. *Tuḥfat*'s typology is well reflected in this passage as it demonstrates how the text deals with the original text, with the discursive tradition of the school, with the larger narratives of Islam, and with earlier texts of the author himself. *Minhāj*'s syntax conciseness and hierarchical deployment of multiple disputes are the usual starting point for *Tuḥfat*. Eventually, it moves on to the layered possibilities of meanings implied in the original text. It also comes up with a justifying analysis of the text's rulings standing within the framework of the school. To this purpose, it takes refuge in the foundation scriptures of Islam, Qurʾānic verses and *ḥadīth*s. Though its stand is to extend the dominant views of the school, it advances them with inevitable disagreements with previous commentators of *Minhāj*, and with legalist authorities before *Minhāj*.[27] In its typology, *Tuḥfat* stands closer to the *Majmūʿ* of Nawawī, on which Calder

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[25] The *rafʿ* and the *naṣb* are two out of four grammatical states in Arabic.

[26] Ibn Ḥajar, *Tuḥfat al-Muḥtāj*, 90-92; cf. Oded Zinger, "Tradition and Medicine on the Wings of a Fly," *Arabica* 63, no. 1-2 (2016): 89-117.

[27] This argument opposes the claim of Fachrizal Halim who has written that the juridical debates happened before Nawawī became irrelevant for later scholars. As we see in this passage and elsewhere in *Tuḥfat*, Ibn Ḥajar

wrote: "[It] binds together a number of allied sciences: the science of biography in relation to *isnād*s, the science of language in relation to lexis and syntax, the science of *ḥadīth* in identifying authoritative collections and variants, the various sciences of juristic argument, *ikhtilāf* and assessment of *maḏhab*. The whole is a dense reticulation of knowledge and meaning that justifies and creates the religious history of the community – the Shāfiʿī community within the Sunnī community."[28]

A noteworthy difference that *Tuḥfat* has is in its mode of "textual connectivity", that is the relative frame of reference with regard to the preceding Shāfiʿīte literary family. Whenever it cites an opposite or an authentic viewpoint of a scholar, it usually refers to the scholar alone without mentioning from which particular text it is taken. This is something that we also see in *Minhāj* itself. A serious reader then has to find out in which text of that particular scholar such an argument has been made. This was an important catalyst in the birth of commentaries, super-commentaries or marginalia which endeavour to provide exact citations, but it is a problematic process called *taṣḥīḥ* or *taqrīr*. This general trend of *Tuḥfat* changes in two contexts: first when it refers to Nawawī; secondly when it refers to its author's other works. In both situations it provides the title of the text in which the argument is presented. In the passage given above we see *al-Majmūʿ* as a title of Nawawī and *Sharḥ al-ʿUbāb* as one of Ibn Ḥajar, whereas just the names of scholars such as al-Ghazālī and al-Qaffāl are given.

Between the Storms: Reception and Legacy

Despite all the internal idiosyncrasies in terms of content, articulation, form and structure, a most important factor contributing to the popularity of *Tuḥfat* over any of Ibn Ḥajar's other works is the fact that it was a commentary of *Minhāj*. In the sixteenth century, *Minhāj* was having a sort of glorious moment in Shāfiʿīte circles through multiple commentaries, discussions, fatwās, and curricula of higher educational institutions, and al-Ramlī and Sharbīnī were yet to write their commentaries. Naturally their colleague's commentary which had appeared recently was an immediate reference point for them, even if only one with which they would mostly disagree. The fact that Ibn Ḥajar began to teach it at Mecca once he had finished writing it must also have accelerated its wider reception. The practice, generally called *samāʿ* (hearing) and *iqrāʾ* (reading), was how Islamic authors published their texts. The audience read back a copied text to the author to be authenticated. In those sessions, the author sometimes revised phrasings or even arguments. The teaching gatherings were more intensive than *samāʿ-iqrāʾ* sessions as they offered a chance for rigorous discussion. The author could then revise the text with additions and deletions in response to questions raised by students. All such educational gatherings led to the production of a "dynamic text", in which additions and deletions frequently invigorated a text. This process continued either until the death of the author or until s/he stopped spending time on it. The "original" manuscript of such a dynamic text is practically impossible to trace. *Tuḥfat* is no different

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constantly goes back to the earlier scholars of the school to validate his arguments. See Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law* (New York: Routledge, 2015).

[28] Norman Calder, *Islamic Jurisprudence in the Classical Era*, ed. Colin Imber, intro. and afterword Robert Gleave (Cambridge: Cambridge University Press, 2010), 113.

from this general paradigm, although it was written in less than a year in 1551. Historical sources tell us that the author conducted teaching sessions regularly. Numerous doubts from students at those sessions about different usages and arguments of *Tuḥfat* will have motivated him to produce another supportive super-commentary/marginalia (Ar. *ḥāshiyat*, pl. *ḥawāshī*).[29] Such super-commenting on one's own work is an independent aspect of a dynamic text. Possibly this super-commentary, though he could not finish it, would be the first in the series of more *ḥāshiyat*s, and certainly an accelerator to its wider reception in the Shāfiʿīte world.

Initially the wind of opinion was against *Tuḥfat*. The Cairene Shāfiʿīte cluster disagreed with many of its formulations. Al-Ramlī in his commentary indirectly appreciates the works of Ibn Ḥajar, yet directly puts forward his views contradicting those in *Tuḥfat*. Al-Sharbīnī did not go that far, but he mildly opposed many of its rulings. The situation got worse for *Tuḥfat* when another renowned scholar from Cairo, Ibn Qāsim al-ʿIbādī (d. 1586), produced a direct super-commentary on *Tuḥfat*, in which he expressed many criticisms and opposite viewpoints to its arguments. ʿIbādī was born and brought up in Egypt and had visited Mecca many times. We do not know whether he met Ibn Ḥajar there, but note that many of his visits happened while he was still active in the city. ʿIbādī was truly a Cairene scholar, having been educated at al-Azhar with renowned scholars of the time, such as Naṣr al-Dīn al-Laqānī and Shihāb al-Dīn Aḥmad al-Burullulsī known as Shaykh al-ʿAmīrat, who also wrote a super-commentary on Maḥallī's commentary on *Minhāj*. ʿIbādī also wrote super-commentaries on *Jamʿ al-Jawāmiʿ*, a jurisprudential text of the fifteenth century, and on *Sharḥ al-Waraqāt* and *Mukhtaṣar al-Maʿānī*. More importantly, he wrote a *ḥāshiyat* on *Fatḥ al-Wahhāb* of al-Anṣārī.

His *ḥāshiyat* was put together by his student Manṣūr al-Ṭablāwī (d. 1606), who himself wrote a marginalia on *Fatḥ al-Wahhāb* and an epilogue-commentary for *Minhāj*. He explains his motivation for organizing such a super-commentary from the lecture-notes of his teacher in the preface: "This is a gentle super-commentary, with fine minutiae, valued editing, significant alerts, self-evident passages unprecedented in hitherto works." He further places al-ʿIbādī as the last scholar with a thorough understanding of Islamic law.[30] While al-Ramlī and Sharbīnī levied only occasional criticisms in their commentary on *Minhāj*, al-ʿIbādī expressed his disagreements directly and frequently. ʿIbādī utilized al-Ramlī's commentary significantly to substantiate and strengthen his own arguments. Certainly all these works together must have added to the reception and acknowledgement of *Tuḥfat*'s position and efforts, but only from a sympathetic view. This would have been similar to the fate of *al-Muḥarrar* once *Minhāj* had been released.

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[29] The characteristics and roles of *ḥāshiyat*s in defining and disseminating Islamic law since the sixteenth century are of great importance. The role of *ḥāshiyat*s in the Islamic literary corpus in general and in the Islamic law in particular has been well analysed in a series of articles at a special volume of *Oriens*; see especially, Asad Q. Ahmed and Margaret Larkin, "The Ḥāshiya and Islamic Intellectual History," *Oriens* 41, no. 3-4 (2013): 213–216; Ahmed El Shamsy, "The Ḥāshiya in Islamic Law: A Sketch of the Shāfiʿī Literature," *Oriens* 41, no. 3-4 (2013): 289–315. Nevertheless, El Shamsy's use and analysis of *ḥāshiyat* is problematic as he takes it as a monolithic literary corpus without demarcating the obvious differences between a *sharḥ* and a *ḥāshiyat*. For him, for example, both *Tuḥfat* (a commentary on *Minhāj*) and its commentary by al-Ḥakamī (a super-commentary on *Minhāj*) are the same.

[30] Ibn Qāsim al-ʿIbādī, *Ḥawāshī al-Shirwānī wa Ibn Qāsim al-ʿIbādī ʿalā Tuḥfat al-muḥtāj bi-sharḥ al-Minhāj* (Beirut: Dār al-Kutub al-ʿIlmīyat, 1996), 1: 3-4.

A more favourable wind blew when Ibn Ḥajar's grandson Raziy al-Dīn bin ʿAbd al-Raḥmān (d. 1631) produced another super-commentary in which he confronted the criticisms raised by ʿIbādī, and also those raised by other Egyptian commentators on *Tuḥfat*. While countering the juridical disapproval, Raziy al-Dīn justified the arguments of *Tuḥfat* and stated that ʿIbādī raised criticisms to *Tuḥfat* only because he could not properly understand what he called the "heteroglossia" of the text. As an aside we note that the rise to fame of Raziy coincided with the rise of Ibn Ḥajar's family, one which had once lacked support in Cairo, but now came into prominence in the Meccan fuqahā-estate in particular and in the Shāfiʿīte world in general.

That relieved the pressure on *Tuḥfat*'s further journey over an otherwise hazardous ocean. The onward course into the scholarly worlds was moderately smooth. Only the Egyptians were not fully convinced by the arguments of *Tuḥfat* or by Raziy's super-commentary. This led to a division in Shāfiʿīsm. In the later textual-*cum*-academic history of the school, al-Ramlī's commentary attracted the circles of Egypt, whereas *Tuḥfat* enjoyed a primary position in the rest of the Shāfiʿīte world, especially along coasts of the Indian Ocean, from South Arabia to Southeast Asia and partly in East Africa. It marked the rise of two sub-schools within Shāfiʿīsm by the sixteenth century, which I shall discuss below.

Of the twenty-five known super-commentaries of *Tuḥfat*,[31] two are widely circulated and used among the Shāfiʿītes, the ones by ʿIbādī and ʿAbd al-Ḥamīd al-Sharwānī. Both their works were copied down together, and the printed editions include *Tuḥfat* in the margins. This transformed the four-volume *Tuḥfat* into a ten-volume text, which embodied three books in all. Compared to the work of al-Sharwānī, ʿIbādī's work is much smaller. Beyond the full super-commentaries, there are also many more specialized textual descendants for *Tuḥfat*. Three scholars interpreted its section on inheritance law alone, and many other scholars have attempted to write about the technical terms used in *Tuḥfat*. As we mentioned earlier, *Tuḥfat* has a very complicated use of language which even experts have problems to analyse. That motivated textual experts to produce clarifications and elaborations.[32] There are also some lesser known elucidating texts, though these are relevant regionally in the Muslim-dominated coastal belts of the Indian Ocean and the Eastern Mediterranean. The main concern of this sort of work was for terms of dispute-paraphernalia and personal titles such as "my teacher", "the judge", "our master".

There are two other notable texts related to *Tuḥfat*: *al-Itḥāf fī ikhtiṣār al-Tuḥfat* by ʿAlī bin Muḥammad bin Abū Bakr bin Abū al-Qāsim bin Mātir al-Ḥikamī al-Yamanī (d. 1631)[33], an attempt to engage with the abridgment of *Tuḥfat*; *Mukhtaṣar al-Tuḥfat* of ʿAlī bin ʿUmar bin Qāḍī Bā Kathīr (d. 1795), a summary of *Tuḥfat*. Compared to its textual ancestors, *Tuḥfat* was much less abridged, mainly because the complexity of language it maintains throughout the work prevents even expert interference. Removing certain parts destroys the content. The eighteenth-century summary is nevertheless such an attempt, but it was not received widely

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[31] According to a list provided by Muḥammad Shaʿban, Introduction to Nawawī, *Minhāj al-ṭālibīn wa ʿumdat al-muftīn*, ed. Muḥammad Ṭāhir Shaʿban (Beirut: Dar al-Minhāj, 2005), 28-31.

[32] Two such works are *ʿUqūd al-durar fī bayān muṣṭalaḥāt Tuḥfat Ibn Ḥajar* by Muḥammad bin Sulaymān al-Kurdī (d. 1780) and *Taḏkirat al-Ikhwān fī sharḥ Muṣṭalaḥāt al-Tuḥfat* by Muḥammad bin Ibrāhīm al-ʿAlijī al-Qalhatī (d.? in the twentieth century).

[33] He himself wrote a commentary on *Minhāj*.

by the Shāfiʿītes. Conversely, there are many indirect abridgements of *Tuḥfat* which seem to be independent works at first glance, but are in fact summarizations of *Tuḥfat* when examined more closely. *Qurrat al-ʿayn* and *Fatḥ al-muʿīn* to be discussed in the next chapter are the best examples.

As well as these different sorts of *ḥāshiyat*s on *Tuḥfat*, there is another side to its reception which should be noted, although in a way this is only stating the obvious. The production of such detailed and multiplied marginalia explains its wider reception in Islamic legal higher education, in institutions and in practicing fatwā-giving, judgement and debates. Each *ḥāshiyat* represents a minor part of these diverse activities, surrounding the text in different localities in the Indian Ocean coastal belt and beyond. An expert involvement with the text encouraged its social reception in a way that made possible deep inferences from and analyses of *Tuḥfat* in particular. The *ḥāshiyat*s in general acted as a hierarchized marker of its scholarly social status in the fuqahā-estates and/or the Shāfiʿīte clusters. I shall return to this point towards the end of this chapter.

In a nutshell, *Tuḥfat* owes its reception to "serving" *Minhāj*, whose "exterior is manifest, treasures and stockpiles are abundant". Moving away from the deleterious social and academic atmospheres of Cairo, Ibn Ḥajar could build up a successful career in Mecca, where he could write many legal texts while interacting with numerous students from all over the world. *Tuḥfat* caught the attention of students and scholars for being a commentary of *Minhāj* written by a towering scholar based in Mecca. The immediate criticisms and endorsements from his contemporaries in Cairo and elsewhere contributed further to its legacy in the long run. The responses or commentaries of al-Ramlī, Sharbīnī, Ibn Qāsim al-ʿIbādī and rebuttals by Raziy al-Dīn, all within a few decades of its composition, demonstrate that the text attracted the wider attention of the Shāfiʿīte jurists within a short period. If *Minhāj*'s legacy was based on its precision, canonization and systematization of Shāfiʿīte law, *Tuḥfat* was able to be received for its elaborate engagements with all the previous commentaries and the many thematic and linguistic aspects of the canon. The reception of *Minhāj* can be equated with the "success of the canon", while that of *Tuḥfat* can be seen as the "success of the commentary".

II.

Political Entities and Meccan Shāfiʿīsm

By the end of the fifteenth century Egypt had become a wrecked ship in a poor political, economic and social condition. A contemporary historian, al-Maqrīzī, captured its wretched circumstances when he says: "The shadow of justice shrank, faces of injustice spread, violence mugged its teeth, honour diminished ..."[34] Since the long years of war with the Ottomans at Anatolia and Syria which began in 1485, Egypt's political situation deteriorated drastically. The ruling Mamlūk dynasty faced a pathetic phase in their royal and aristocratic might against many internal conflicts and external attacks.[35] Although the penultimate ruler

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[34] Aḥmad ibn ʿAlī Maqrīzī, *Kitāb al-mawāʿiẓ wa al-iʿtibār: bi ḏikr al-khiṭaṭ wa al-āthār* (Cairo: Maktabat al-thaqāfah al-dinīyah, 1987), 2: 221

[35] Shai Har-El, *Struggle for Domination in the Middle East: The Ottoman-Mamluk War, 1485-91* (Leiden: Brill, 1995).

Qānṣūh al-Ghawrī (d. 1516) could be said to have been efficient in his office, the economic conditions were weakening day by day, after the indefatigable rise of the Ottomans in the northeast and the Portuguese in the Indian Ocean.

Egypt's political desolation was exploited and intensified by pressure from the Ottomans, one of the booming empires of the time. After Sultan Selim I (r. 1512-1520) conquered Cairo in 1517 and hanged the last Mamlūk sultan Tuman Bay II publicly like a criminal at the south gate of the city, the Ottomans took numerous members of the fuqahā-estate, nobles, merchants and the manuscripts to Istanbul. This amounted to "about 1800 persons: judges, important noblemen, members of the *ʿulamāʾ*, rich and poor, various merchants of Khan Khalil and other bazaars, legal authorities, high officials, women and children, scholars and labourers, Christians and treasury clerks and many artisans".[36] This deportation was aimed at strengthening the Ottoman capital, which would eventually develop into a centre of Islamic legalism.

In the same year, through a series of wars in the Hijaz, the Ottomans managed to take control of Mecca when its Sharīf, Barakāt bin Muḥammad (r. 1497-1525), agreed to the new caliphate's supremacy but which allowed him to retain his local autonomy. The wind blew in favour of Selim I when the Portuguese incursions into the Red Sea generated panics and uncontrolled price-hikes. This led the Sharīf to send his young son to the Ottoman Sultan at Cairo offering the suzerainty of the Hejaz in order to save the region from poverty and insecurity.[37] Once the holy-city came under their control, the Ottomans tried to legitimize themselves through momentous endowments for social and religious activities in the city.[38] It helped the once-politically remote place like Mecca revive in terms of economy, culture and knowledge. Although the existing knowledge centres like Cairo did not immediately loose currency in the broader Islamic world, they began to suffer from new developments in production of and the increasing needs for legal expertise. Turkish cities such as Istanbul began to rise as new academic centres, and the Ottomans desired a wider recognition and legitimacy among the Muslim scholarly elites. Mecca benefited in that stage of social transition. The city had not been recognized as a centre of academic excellence, except for some nominal madrasas and *ribāṭ*s during the Mamlūk period and even earlier.[39] Once the Ottomans took power those existing centres became less legitimate for restoring intellectual prestige in the new empire, but Mecca showed a positive desire to be involved. It was a long sanctified place in the Islamic tradition which was furthered with a new band of politically

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[36] Dodge, *Al-Azhar*, 77

[37] Suraiya Farooqhi, *Pilgrims and Sultans: The Hajj under the Ottomans, 1517-1683* (London and New York: I.B. Tauris Publishers, 1994).

[38] For example, Sultan Selim II (r. 1566-1574) made frequent charitable donations to the inhabitants of Mecca and Medina, and he ordered the reconstruction of the Masjid al-Haram in Mecca. For the details, see Ibn al-ʿImād, *Shaḏarāt al-ḏahab*, 8: 396; ʿAbd al-Malik ibn Ḥusayn ʿIṣāmī, *Samṭ al-nujūm al-ʿawālī fī anbāʾ al-awāʾil wa-al-tawālī* (Cairo: al-Maṭbaʿah al-Salafīyah wa-Maktabatuhā, 1960/61), 4: 94; Muḥammad ibn Muḥammad Ibn Abī al-Surūr, *al-Minaḥ al-Raḥmānīyah fī al-dawlah al-ʿUthmānīyah: wa-dhayluh, al-Laṭāʾif al-Rabbānīyah ʿalá al-minaḥ al-Raḥmānīyah* (Damascus: Dār al-Bashāʾir, 1995), 185-202; Quṭub al-Dīn al-Nahrawālī al-Makkī, *al-Barq al-Yamanī fī al-fatḥ al-ʿUthmānī: Tārīkh al-Yaman fī al-qarn al-ʿashir al-Hijrī*, ed. Ḥamd bin Muḥammad al-Jāsir (Riyadh: Dār al-Yamāma li-al-Baḥth, 1968): 197; cf. al-Nahrawālī al-Makkī, *Lightning over Yemen: A History of the Ottoman Campaign (1569-71): Being a Translation from the Arabic of Part III of al-Barq al-Yamānī fī al-Fatḥ al-ʿUthmānī*, trans. Clive K Smith (London and New York: I.B. Tauris, 2002).

[39] al-Fāsī, *al-ʿIqd al-thamīn fī tārīkh al-Balad al-Amīn*, ed. Fuʾād Sayyid (Beirut: Muassasat al-Risalat, 1985).

charged and revitalized academics. That is precisely what the Ottomans also wanted, to attempt to regulate the aspirations of the fuqahā-estate by attracting scholars, who were looking for new vistas to escape from war torn and poverty stricken lands such as Egypt. In their quest for legitimacy as a caliphate, they could not find a better site for controlling the day-to-day activities than the holy cities of Muslims from all over the world. They took over the royal title of "the custodian of the two holy cities (khādim al-ḥaramayn al-sharīfayn). Once they could control the temperature of events in Mecca, we see many Ottoman rulers coming up with new policies and plans for the city to gain physically and intellectually. Many of them initiated several construction projects and charitable endowments in the city, to the extent that it motivated one local historian, Jār Allāh Muḥammad bin Fahd, to write a book on the Ottoman constructions in the city.[40] All these developments opened up new vistas for Ibn Ḥajar and for many other Egyptians as well as for the "global Muslims". It is against this backdrop that we should read Ibn Ḥajar's appreciations of the Ottoman sultan Sulaymān the Magnificent (r. 1520-1566) for the reforms he brought in Mecca.[41]

The juridical affiliation(s) of the Sharīfs of Mecca, the autonomous traditional rulers of the city, would be interesting to explore in order to understand how they contributed to the general legal practices in the city, affecting educational endowments, academic developments, legal clarifications and judicial proceedings. Though we do not have any clear references to their school in the period, it is clear that they constantly changed their affiliations between Zaydī, Shīʿīte and Sunnī schools.[42] Since the establishment of the Sharīfate in 968 CE, most of its rulers associated with the Zaydī Shīʿīsm and some took to Ismāʿīlī Shīʿīsm. But the Ayyūbids, Rasūlids and Mamlūks tried to impose their theological legalist ideas of Shāfiʿīsm over them, even though they were unsuccessful in the long run. The Mamlūks had been desperately looking for a way to eradicate Shīʿīsm and Zaydīsm from Mecca throughout their period of power. Sultan Muḥammad bin Qalāwūn denied appointing a Zaydī imām in the Great Mosque (Masjid al-Ḥarām) in the 1320s, and another imām was severely beaten and imprisoned in 1353 for refusing to denounce Zaydīsm. By the end of the fourteenth century, there were signs from the Sharīfs of their inclinations towards Sunnīsm and particularly Shāfiʿīsm, as the descriptions about the Sharīf ʿAjlān bin Rumaythat Abī Numayy (d. 1375) indicate.[43] Following his death, the Sharīfs almost stopped supporting Zaydīsm leading to its disappearance by the early fifteenth century. The following Sharīfs, including Ḥasan bin ʿAjlān (r. 1395-1426 with a slight interruption in 1415), the Emir Barakāt bin Ḥasan bin ʿAjlān (r. 1426-1455), his son Muḥammad (r. 1455-1497) and grandson Barakāt (r. 1497-1525), all studied ḥadīths and Shāfiʿīte laws with many renowned scholars of Egypt and Syria. This resulted in the gradual decline of Zaydīsm in the region and the nominal prominence of Shāfiʿīsm by the fifteenth century.[44] In the sixteenth century, Shāfiʿīsm

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[40] Jār Allāh Muhammad bin Fahd, *Nukhbat bahjat al-zamān bi ʿamārat Makka li mulūk Banī ʿUthmān*, ed. Qays Kāzim al-Janābī (Beirut: Dār al-Kutub al-ʿIlmiyyat, 2010).

[41] Ibn Ḥajar, *Arbaʿūn ḥadīth fī al-ʿadl*, ed. Samīr Kattanī (Beirut: Manshūrāt al-Jamal, 2012), Introduction.

[42] Richard T. Mortel, "Zaydi Shiism and the Hasanid Sharīfs of Mecca," *International Journal of Middle East Studies* 19, no. 4 (1987): 455-472.

[43] al-Fāsī, *al-ʿIqd al-thamīn*, 6: 70, no. 1979; biographical note on the Sharīf ʿAjlān, 58-73.

[44] For the existence of Zaydism in Mecca after the death of ʿAjlān bin Rumaythat we have no direct reference in the works of three contemporary historians from the city: al-Fāsī, Najm al-Dīn ʿUmar bin Fahd (d. 1480), and ʿAbd al-ʿAzīz bin ʿUmar b. Fahd (d. 1516); cf. Mortel, "Zaydi Shiism".

achieved a prominence over them and they "exchanged their Zeidite (Shi'ite) confession for the Shafi'ite", as Snouck Hurgronje noted. [45] Since then many Sharīfs displayed hostile attitudes towards Zaydīs, and they denied entrance to some Zaydī pilgrims from Yemen who wanted to perform ḥajj in 1672. In the seventeenth century, many Zaydīs of Mecca and Yemen converted to the Ḥanafī school, meaning to Sunnīsm. [46] It is difficult to come to a conclusion about the influences of the school affiliation of the Sharīfs on the Meccan estate as the details we have are very fragmented and patchy. Nevertheless, we see that just before, during, and after Ibn Ḥajar's arrival in the city, the Sharīfs followed Shāfiʿīsm, and we can only assume that their affiliation with that school must have contributed positively to the internal dynamics of the cluster. This also indicates that the wider political structure of the Ottomans (and of the Ayyūbids and Mamlūks earlier) as such did not matter to the internal dynamics of the local state and the fuqahā-estate.

Almost all primary sources note that there were four *imām*s and judges for each Sunnī school, in addition to an occasional fifth Zaydī *imām*. Hurgronje's generalized sense that the chief judge was always a Shāfiʿīte is wrong. [47] Certainly the position was held by the Ḥanafītes from the mid-sixteenth century with only a few occasional changes; the Ottoman policy was to appoint only Ḥanafītes to higher judicial positions. Thus, it would be interesting to ask about the interrelations between the judges of these schools and see if there were any conflicts. Prior to the sixteenth century, we have evidence of conflicts and interactions between Shāfiʿītes and Zaydīs, when the latter were comparatively powerful. [48] In the sixteenth and seventeenth centuries, we see references about the ego clashes between the Ḥanafī chief-judges and the judges of other schools. The superiority ascribed to the Ḥanafīte judge by the Ottoman state was a matter of contestation among the members of other schools, and it would be a Shāfiʿīte judge who usually instigated conflict from others against him. [49] Yet it is unclear if Ibn Ḥajar took part in the Shāfiʿīte-Ḥanafīte political factionalism of the city.

Unlike Nawawī who entered directly into encounters with the Mamlūk sultan Baybars, we have hardly any references for Ibn Ḥajar disassociating himself from contemporary political entities. In his lifetime two eminent Ottoman sultans (Selim I, and Süleyman r. 1520-66) and two Meccan Sharīfs (Barakāt bin Muḥammad Barakāt, r. 1497-1525 and Muḥammad bin Barakāt, r. 1525-1584) were in office and we have only a few patchy references for any engagement of him with the rulers of Mecca or of the Ottoman empire. He himself wrote

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[45] C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning: the Moslims of the East-Indian Archipelago*, trans. J H Monahan (Leiden: Brill, 2007), 1: 199.

[46] Hurgronje, *Mekka*, 200.

[47] Hurgronje, *Mekka*, 200, 189.

[48] During the funeral sessions of the Sharīf Rumaythat in 1346, the Zaydi *imām* Abū al-Qāsim bin al-Shughayf al-Zaydī was pulled back from leading the rituals by the Shāfiʿī jurist and chief qāḍī of the city, Shihāb al-Dīn al-Ṭabarī. The same Ibn al-Shughayf is said to have formally approached the Egyptian Shāfiʿīte ʿIzz al-Dīn bin Jamāʿat expressing his willingness to denounce Zaydism. He did abjure it and accepted Sunnīsm, according to the account of al-Fāsī. The first incident is recorded in al-Fāsī, *al-ʿIqd al-thamīn*, 4: 417; cf. Mortel, "Zaydi Shiism," 466.

[49] For example, see: Fāsī, *al-ʿIqd al-thamīn*, 4: 417.

about his attitude: "My wont is not to be mixing with people, mainly men of the world".[50] In fact he did associate with a few Indian noblemen who may have funded his scholarly pursuits, as we shall see below.

Pilgrimage-Refuge-Knowledge Sojourners

By the middle of the thirteenth century, such traditional Islamic centres of knowledge and prosperity as Baghdad and Khorasan had almost lost their prominence first to Damascus and then later Cairo, especially with regard to the history of the Shāfiʿī school. To the eminence of Cairo in the late-fourteenth and early-fifteenth century distinguished scholars such as ʿAbd al-Raḥīm ibn al-Ḥusayn al-ʿIrāqī (d. 1403) and Ibn Ḥajar al-ʿAsqalānī (d. 1449) contributed by rejuvenating traditionist approaches of al-Buwayṭī and Ibn Quṭayba (d. 889) in interpreting Shāfiʿīte law. It was differently furthered in the fifteenth century by al-Maḥallī and Zakariyā al-Anṣārī, who simultaneously introduced the methods of Nawawī's *Minhāj* and the approach of *Riyāḍ al-ṣāliḥīn*, a traditionist framework. Through these vital discourses and a wider subscription of the scholarly community, Cairo had reinvented itself in the Shāfiʿīte realm, centuries after the school's inception there through al-Shāfiʿī, Muzanī, Ibn Quṭayba, and many others.

The fall of Mamlūks, the rise of Ottomans seeking legitimacy at the Holy Cities, the Shīʿīzation of the Ṣafawids in Persia, the Portuguese interruptions in the Indian Ocean world and consequent decline of Arab trade, all carved out channels for the movement of Muslim pilgrims, educational aspirants and traders to Mecca. The increasing involvement of the Ottomans in the Indian Ocean world and their attempts to establish a global abode for Islam stretching to East Asia was a catalyst for the mobility of believers to the heartlands of Islam, all now governed by one and the same regime.[51] All these factors contributed to the growing significance of the Meccan fuqahā in the broader spectrum. Scholars acquired renown through interactions with sojourning pilgrims, refugees and other aspirants for knowledge, making an idiosyncratic feature of Meccan academia from that century onward.

Before the sixteenth century, Mecca was not an interesting place for educational aspirants and intellectuals. Certainly it had its share of micro-networks of scholars, pilgrims, sojourners, but it did not produce any renowned scholars or texts, at least from the Shāfiʿīte cluster. In the whole longue durée of the school, it had until then held only a trifling position. Just like the eponymous founder al-Shāfiʿī who grew up there, one of his early students Abū al-Walīd Mūsā al-Makkī promulgated his ideas there for short time. Al-Ghazālī's teacher and renowned legalist of his time al-Juwaynī taught there for some years and started writing his *Nihāyat* there. Apart from these, it had never become a lively spot for Shāfiʿīte scholarship. But that definitely does not mean Shāfiʿīsm was not there at all, because it was represented as one of the four Sunnī schools. In the mid-fourteenth century, Ibn Baṭṭūṭa visited the city and its sanctorum and he tells how the representative leaders of the four schools divided their authority as they coexisted with each other in the city. In the fifteenth and early sixteenth

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[50] Ibn Ḥajar al-Haytamī, "Riyāḍ al-riḍwān" or "Life of al-Masnad al-ʿĀlī Abil Kasim ʿAbdul ʿAzīz Āsaf Khān", in ʿAbdullāh Muḥammad al-Makkī al-Āsafī al-Ulughkhāni, *Zafar ul Wālih bi Muzafar wa Ālihi: An Arabic History of Gujarat*, trans. M.F. Lokhandwala (Baroda: Oriental Institute, 1970), 1: 279.

[51] On the Ottoman aspirations in the Indian Ocean world, see Giancarlo Casale, *The Ottoman Age of Exploration* (Oxford: Oxford University Press, 2010).

century the situation was not different. Shāfiʿītes such as Jalāl al-Dīn Muḥammad al-Makhzūmī (d. 1457), a student of Ibn Ḥajar al-ʿAsqalānī, Jamāl al-Dīn Muḥammad bin ʿAlī al-Qurashī (d. 1433), were there teaching law, leading prayers, and composing some lesser known works. Most of them (e.g., Abū al-Makārim Shams al-Dīn Muḥammad al-Bakrī al-Ṣiddīqī, d. 1545) studied in Cairo with reputed scholars of their time, such as al-ʿAsqalānī and al-Anṣārī. This definitely demonstrates Cairo's important position even in the minds of Meccan students up to the early sixteenth century. Yet none of these scholars had a reputation in the wider Shāfiʿīte world for different reasons, as well as the socio-economic, geophysical and political insignificance of the place. Many scholars who had been born, brought up or spent many years in Mecca were migrating to Cairo till the turn of the century. Abū Bakr bin Qāsim al-Makkī, known in the Egyptian estate as Abū Bakr al-Ḥijāzī (d. 1383), and Abū al-Maʿālī Kamāl a-Dīn Muḥammad (d. 1500) are the best examples in this regard.[52]

Into a legalist context such as this Ibn Ḥajar came in 1534 and was to spend his whole academic life there without returning again. As someone educated in Cairo with renowned scholars, he must have understood he had a market value in the new atmosphere of Mecca. The rise of the Ottomans and their consequent domination over the city had led to the general stimulation of the legal intelligentsia there. The Ottomans were followers of the Ḥanafī school, so Ḥanafītes took up the key positions in the newly established educational institutions. Yet the Ottomans wanted to accommodate other schools, especially Shāfiʿīsm, since a large portion of Muslims living in the empire adhered to this school. Furthermore, their ambition to control Shāfiʿīte domains such as the Indian Ocean was also an incentive. That naturally offered big opportunities for scholars such as Ibn Ḥajar. All these new developments as a consequence of Mecca developing as a prime centre of Islamic academia particularly for legalist knowledge, together with his own difficulties in his personal and professional life, must have motivated his decision to migrate.

Once he arrived in Mecca, he easily attracted numerous aspirants for Shāfiʿīte law. He began to teach, compose texts, and give legal rulings. In an academic career lasting for more than three decades there, he taught several students from unconventional backgrounds for traditional Muslim academics, different geographically, culturally and socially. A large chunk of Shāfiʿīte pilgrims to Mecca from different parts of the world ended up in his lectures. While the pilgrimage in the sixteenth century was not an easy affair that can be completed in a couple of weeks, as happens now, it then took several months or even years of travel, and most pilgrims stayed in Mecca for a sustained period. Many of them investigated the circles for knowledge that existed in both Mecca and Medina.[53] Many Shāfiʿīte pilgrims were fluent in Arabic and keen to listen to the lectures related to everyday legal issues that a believer may encounter, so they attended Ibn Ḥajar's lectures. Such pilgrims listened to his normal lectures, and also approached him seeking legal solutions for various issues with which they were

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[52] al-Hīla, *al-Tārīkh wa al-muʾarrikhūn*, 126 on Jamāl al-Dīn al-Qurashī; 136 on Jalāl al-Dīn al-Makhzūmī; 87 on Abū Bakr bin Qāsim al-Makkī; 167 on Abū al-Maʿālī Kamāl a-Dīn; and 193 on Abū al-Makārim Shams al-Dīn. The only exception could be two families (Banū Ẓahīrat and Banū Fahad) who controlled the Meccan fuqahā-estate in general and the Shāfiʿīte cluster in particular for decades. Still, their reputation in the wider estate or *longue-durée* of the school is marginal. For details on Banū Ẓahīrat, see 88-89; and 99-110 on Banū Fahad.

[53] For the details of educationally motivated pilgrims in the sixteenth to eighteenth centuries, see Michael Pearson, *Pious Passengers: Hajj in Earlier Times* (London: Hurst, 1994).

struggling personally or collectively in their homelands. His *Fatāwā al-kubrā* and *Fatāwā al-ḥadīthiyyat*, two massive collections of legal rulings on a different number of topics and themes, is a fine example of this intermixture of proper legal academic reasoning and popular responses to pleas for fatwās (*istiftāʾ*). They contain questions asked by enquirers from such unusual terrains as Malabar, which had never appeared in Islamic legal texts before.[54] In such an institutional setting of Mecca, these popular interactions with academic discourses were closely interconnected and would not have been possible elsewhere on such a massive scale.

As the prominence of Mecca rose in the legalist sphere, Ibn Ḥajar asserted himself into the longer intellectual-*cum*-textual tradition of Shāfiʿīsm. Although he composed much in many disciplines, he is mostly known as a legalist and a historian. All his legalistic engagements were an assertion of his connectedness to the longer tradition of the school. Those works also were part of his attempt to contribute to the expanding arena of the Meccan fuqahā-estate. His life and career in Mecca and the reception of *Tuḥfat* show how the sixteenth century nourished the development of new estates, clusters and legal intelligentsia in the city and the ways in which Shāfiʿīsm acquired its prime position in the fuqahā-estate there, a process to be discussed below.

Customary Law: Meccanization

An aspect of *Tuḥfat* which grabs most attention is a process we can call Meccanization which it initiated within Shāfiʿīsm and in the fuqahā-estate in general. By Meccanization I mean ethnic and cultural assertions centred on Mecca with varied parochial subtexts. It was nurtured through separate factors, such as through socio-cultural associations with an ethnic identity, generally with Arab tribal communities living in the Hijaz region, through geographical implications of an inward migration, and through progressive dynamics, such as textual progress, in this case from *Minhāj* to *Tuḥfat*. By and large, the process connected Mecca as a centre of legal authority, of Islamic knowledge, of the modes and practices of a Muslim's life, etc. In other words, Meccanization became a significant contributing factor to the rise of Meccan Shāfiʿīsm. Ibn Ḥajar and *Tuḥfat* were ardent architects of this change in Sunnī legalism. Although there was a significant recognition and adaptation of Meccan customs and norms among the Shāfiʿītes (for example, Joseph Shacht assumes their standpoint on the right of *khiyār al-majlis* to "have been based on some local custom of Mecca"[55]), this never leads to any overestimation. But Ibn Hajar attempted to thrust forward and invoke ethnic, scholarly, linguistic and other cultural identities, in which Meccan traditions and Hijazi norms and values were portrayed as authentically Islamic, and we can see those repeatedly in *Tuḥfat*. Let me explain this through a few examples.

In a discussion about the dress code for a believer at congregational prayer, *Minhāj* says only that it is meritorious to wear nice clothes. As it is an obvious statement, it only recommends wearing good dress and does not make it obligatory. One chapter later, it deals with norms and laws related to clothing over about ten lines, where its main concern is about

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[54] The question on an Indian king's (Ratan al-Hindī) conversion to Islam during the lifetime of the Prophet Muḥammad and his becoming a companion to the Prophet is an example of this. On this question, see Ibn Ḥajar al-Haytamī, *Fatāwā al-ḥadīthiyyat* (Beirut: Dār al-Maʿrifat, n.d.), 175.

[55] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 161.

proscribing men from wearing silk (for women naturally silk is permitted), and then briefly discusses exceptional occasions such as war and extreme poverty.[56] But *Tuḥfat* takes this further, with a long discussion on what a common Muslim should wear and how and why s/he should wear it.[57] The discussion of the dress code for scholars is interesting for our purposes. He starts by asserting that scholars should wear model dresses (meaning formal Hijazi style) and forbids other believers from wearing similar dresses.[58] To do so would tempt someone to pretend to be a scholar through such a dress and it is therefore forbidden. No such discussion is in *Minhāj*, or in other works of Nawawī or his predecessors. Furthermore *al-Majmūʿ* clearly states that wearing best dresses is ideal and meritorious for all people, not only for congregational prayers but for any other gathering too, and there is no difference between scholar and layperson. During the congregational prayer it is highly recommended for *imām*s more than anyone else to wear good clothes and look elegant.[59]

Elsewhere it argues that the Arabs are the best ethnic group in the world. That argument clearly illustrates a Meccan cultural preoccupation covered in the legal discourse. Such rhetoric can be found in the early histories of Islam, dispersed through various collections of *ḥadīth*s and exegeses, and the Ḥanbalītes often clung to such arguments. But only now do we find such a claim first broadly taken up by a Shāfiʿīte jurist in his career, particularly in the legal texts.[60] Once he asserts this Arab identity and its religio-cultural superiority, he narrows that to a Hijazi identity, clearly excluding Arabs from Egypt or Syria. It is not easy to answer why he or his text does that, though it should be remarked that Ibn Ḥajar claims a genealogy going back to the Banū Saʿd clan of al-Anṣārs. The al-Anṣārs were one of the dominant groups in Medina in the early history of Islam. They embraced the new faith from the very beginning, and they helped the Prophet and his Companions to settle down there once they migrated from Mecca, according to traditional Islamic sources. So Ibn Ḥajar claims the superiority of a Hijazi-Arab identity, and asserts himself into this spectrum despite his actual original roots in Egypt. In a detailed pamphlet on the "racial" supremacy of Arabs, he placed the Quraysh tribe as the best among the best, followed by the al-Anṣārs. Into this hierarchy he introduces his own legal affiliation to Shāfiʿīsm by narrating a *ḥadīth* in which the Prophet predicts that a scholar from the Quraysh will fill the horizons of earth with knowledge. In interpreting this prophetic saying scholars differ about who that scholar was. The Shāfiʿītes claim that it was al-Shāfiʿī, but that is a claim denied by some Ḥanafītes. Ibn Ḥajar refers to the alleged fabrication of the *ḥadīth*: "Some Ḥanafītes' allegation of its fabrication is inaccurate or envious. Thus, Aḥmad and similar scholars have interpreted that it is al-Shāfiʿī (may God bless him!), because no Qurashī's knowledge is spread across the lands and among followers as that of al-Shāfiʿī has been, as has been witnessed and is well-known from their time until today."[61] After this discourse on Quraysh and al-Shāfiʿī, he mentions the

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[56] Nawawī, *Minhāj*, 136, 139-40.

[57] Ibn Ḥajar, *Tuḥfat*, 2: 474-476, 3: 18-39.

[58] Ibn Ḥajar, *Tuḥfat*, 3: 33-39; cf. Ibn Ḥajar, *Darr al-ghamāmat fī ḏarr al-ṭaylasān wa al-ʿaḏbat wa al-ʿamāmat* (Miṣr: Maṭbaʿat al-Saʿādat, n.d)—this book is dedicated completely on the dress-code, particularly the turbans.

[59] Nawawī, *al-Majmūʿ sharḥ al-Muhaḏḏab*, ed. Muḥammad Najīb Muṭīʿī (Jeddah: Maktabat al-Irshād, n.d.), 4: 411.

[60] Ibn Ḥajar, *Mablagh al-Arib fi fakhr al-ʿArab* (MSS).

[61] Ibn Ḥajar, *Mablagh al-Arib*

eminence of the al-Anṣār tribe, to which he also claims to belong. That statement would have had possible implications in the contemporary legal world of Islam. This claim enlightens us on the social hierarchies and cultural differences he constructed and which are reflected in the transformation of Shāfiʿīte legal discourses as they imagine new loci of power which involve different sorts of provincialism and hierarchized ethnicities.

We may ask, in a general sense, when he was claiming a Hijazi-Arab ethnic superiority, what he actually meant to do with it at that particular time and in that particular space. Was he just excluding heterogeneous Muslim communities with different lifestyles and cultural traditions, whom he encountered frequently at a pilgrimage centre like Mecca, from the core of "Islamic" authority? Or was he disavowing the existing Cairene scholarly and ethnic predominance over religious authority in general and over Shāfiʿīsm in particular? Even further, was he asserting the power of his and his colleagues at Mecca over the legalist, wider religious, interpretations at a time when the non-Arab and non-Shāfiʿīte Ottomans were accumulating their strength in political spheres and at educational levels by introducing new centres of knowledge at Istanbul and elsewhere? The answers to these ethnic-provincial preoccupations need further research.

For now suffice it to say that such questions are valid once we move on to further textual histories of Shāfiʿīsm. Such a Meccanization process has long lasting implications particularly in the Shāfiʿīte school and broadly in the Islamic legal-educational-intellectual realm. In the Shāfiʿīte sphere, it marked the emergence of a Meccan stream against the Cairene one, to which we will come back in a while. In broader spheres, Mecca began to be recognized as *the* centre of Islamic knowledge, a case that would define further developments of Islamic legalism in South, Southeast and East Asia and in Africa. That development was certainly mediated through the movement of *Tuḥfat* across the Indian Ocean rim along with the charisma attributed to its author. The assumed role of the Ḥaḍramī Arabs in transmitting Shāfiʿīsm in later periods, if not before the sixteenth century, to the broader Muslim world could have been catalysed in the transmission of *Tuḥfat* that justified a cultural superiority to their identities.

Shāfiʿīzation of Mecca

The Meccanization process is closely associated with Shāfiʿīzation of Mecca in which many local and translocal networks participated. Here I briefly look into some of the major players. Thanks to the intellectual engagements of Ibn Ḥajar, his oeuvre, colleagues and students, Shāfiʿīsm had nurtured a strong scholarly tradition centred in and around Mecca by the middle of the sixteenth century. This significant development of Mecca as a centre of Shāfiʿīsm influenced the perception of Islam itself in the new communities, as I discussed in Chapter 3. A scholarly tradition had already emerged among the fuqahā-estate claiming prominence for Mecca or Medina. The Mālikī scholars usually stood for Medina as a better city than Mecca, whereas the rest of the Sunnī schools stood for Mecca. The majority of Shāfiʿītes argued for Mecca as the best place on earth. Yet the city remained unclaimed by any legal school for centuries and thus the ideological claims over it by the three schools and a subsequent domination of it by the Shāfiʿītes significantly contributed to the historical expansion of Shāfiʿīsm.

Mālikīsm had not completely lost its appeal in and around the region in the period, a position that it has been enjoying for centuries after its eponymous figure Mālik bin Anas had been based in Medina. As he was the one and only Hijazi scholar to establish one of the four surviving Sunnī schools, this Medinese tradition had an impact on Meccan legal practices. The influence was mainly on the daily practices and norms of the Meccan population. But in the scholarly legalist tradition it is hard to evaluate any prominence for Mālikīsm in the city before the sixteenth century. However we do have a fifteenth-century chronicler of the city, Taqī al-Dīn Muḥammad bin Aḥmad al-Fāsi (d. 1429), who was a Mālikī judge there since 1405 and wrote historical texts rather than legal ones. The connections of such towering Mālikī scholars as Shihāb al-Dīn al-Qarafī (d. 1285) and Khalīl ibn Isḥāq al-Jundī (d. 1365) were mainly with Medina and hardly with Mecca. In general the most renowned Mālikī scholars came from North Africa and al-Andalusia. By the sixteenth century, the situation became comparatively better in the city as Mālikītes such as Tāj al-Dīn (d. 1553) visibly upheld their school's doctrines there.[62]

After the Ottomans took control of the Hijaz, Ḥanafīsm began to enjoy its best time in Mecca. They significantly promoted their school through different legal administrative policies. While all the Sunnī schools had their representative judges (*qāḍī*s) in Mecca, the chief-judgeship from now on was given to a Ḥanafīte.[63] In 1565, the Ottomans also regulated that judges of other schools should consult the judgment registers (*sijillāt*) of a Ḥanafīte judge before giving their adjudication. Such measures in favour of the Ḥanafīte cluster of the Meccan fuqahā-estate must have motivated many Ḥanafītes to move to Mecca. We see many scholars from the Indian subcontinent and the Ottoman Turkish lands settling in Mecca and attracting a wide reception by the early decades of the century. Interestingly, many of them were from South Asia, mainly from Sindh and Gujarat, but also from Bijapur and Allahabad, more than from the Ottoman Empire.[64] The Ḥanafīte cluster had expanded even more by the seventeenth and eighteenth centuries. Then no direct conflicts developed with Shāfiʿīsm, as would happen later in the nineteenth century between the traditional Sharīfs and the Ottoman emirs with a direct involvement of Shāfiʿīte jurists (see Chapter 7).

Ḥanbalīsm was only marginally represented in the city in this period. Muḥammad al-Fākihī (d. 1574), who also studied Shāfiʿīsm with Ibn Ḥajar, and other schools with many other scholars, was a leading scholar of Ḥanbalīsm, but he was almost alone in his cluster there which had only lesser known members. So he travelled between different centres of Ḥanbalīsm in particular and the fuqahā-estates in general.[65] His probable colleague in Mecca was Abū Bakar Abū al-Khayr (d. 1621), who worked as a caller to prayer like his father, but he had to leave the city due to some issues with a Shāfiʿīte judge.[66] The school found its

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[62] On Taj al-Dīn Mālikī, see: ʿAbd Allāh Murdād Abū al-Khayr, *al-Mukhtaṣar min Kitāb Nashr al-nawr wa al-zahr fī tarājim afāḍil Makkah min al-qarn al-ʿāshir ilā al-qarn al-rābiʿ ʿashar*, eds. Muḥammad Saʿīd ʿĀmūdī; Aḥmad ʿAlī (Jiddah: ʿĀlam al-Maʿrifat, 1986): 149; on some other Mālikītes in sixteenth-century Mecca, see: 79, 84, 140, and 277.

[63] Uzuçarsılı Ismail Hakki, *Umarāʾ Makkat al-Mukarramat fī al-ʿahd al-ʿUthmānī*, trans. into Arabic Khalīl ʿAlī Murād (Baṣra: Manshūrat Markaz Dirāsāt al-Khalīj al-ʿArabī bi-Jāmiʿat al-Baṣrah, 1985), 115.

[64] For details on some prominent Ḥanafītes in Mecca at that time, see: Abū al-Khayr, *al-Mukhtaṣar*, 149, 151, 250, and 365; on some of the South Asian Ḥanafītes: 183, 195, 210, 235, 280 (from Bijapur), 395 and 400.

[65] About his journeys and biography, see Abū al-Khayr, *al-Mukhtaṣar*, 471-473.

[66] Abū al-Khayr, *al-Mukhtaṣar*, 60-61

considerable followership in the Hijaz, including Mecca and Medina, only in the twentieth century.[67]

Though administrative policies supported Ḥanafīsm, Shāfiʿīsm managed to gain the upper hand over the educational circles of Mecca and thus over the fuqahā-estate. Different factors contributed to this significantly. One of the main reasons is the rise of some Shāfiʿīte families. The al-Ṭabarī family, the most important among them, was in and around the city for centuries, but they achieved a momentum in the sixteenth century. Since then its members, men and women alike, became very influential in the Meccan fuqahā-estate and they took overall control in its educational realm, even though most of them did not at all associate with any political system or take up any administrative position. They focused mainly on educational activities, holding sway over the Meccan curriculum and its legalist setting.

Several scholarly families prompted the circulation of Shāfiʿīte ideas and the empowerment of its cluster there through their diverse activities. Two important families who promoted the school were those of Zamzamī and Ẓahīrat. In the Zamzamī family, ʿAbd al-ʿAzīz ʿIzz al-Dīn Zamzamī (d. 1568) is as famous as Ibn Ḥajar in the sixteenth century. His biographers say that one of his great-grandfathers migrated to the city in 1330 from Shiraz and joined Salīm bin Yāqūt, who was in-charge of the Zamzam Well. His family shared their name with the well.[68] ʿAbd al-ʿAzīz was a colleague of Ibn Ḥajar in Mecca composing books and giving fatwās according to Shāfiʿīte law. He is recorded as a lawgiver in one fatwā-collection from sixteenth-century Malabar.[69] His son Muḥammad and grandson ʿAbd al-ʿAzīz Jr. also contributed to the external structure of Shāfiʿīsm in the city to a significant level.[70] The Ẓahīrats, on the other hand, were prominent in the Meccan estate by the fifteenth century. One of them, Jamāl al-Dīn Ẓahīrat (d. 1502), was chief judge in Mecca and his life gives us the best example of the conflicts that arose between the Meccan estate and the state in which the autonomy of the one challenged that of the other. He fought against the Sharīf of the city, but failed, and met a tragic death on the festival of Eid. His son, Ṣalāḥ al-Dīn (d. 1521), became the judge of Shāfiʿītes in the city in the period just before Ibn Ḥajar's arrival.

Another important Shāfiʿīte family was that of Ibn Ḥajar. His two sons (Muḥammad and ʿAbd al-Raḥmān) were scholars of Shāfiʿīsm and though they could not attain as wide a reception as their father, they did manage to hold some sort of honorary position in the Meccan estate. ʿAbd al-Raḥmān's son Raziy was well accepted in his circles as well as more widely in the Shāfiʿīte clusters elsewhere due to his juristic contributions, one of which is a commentary on *Tuḥfat*. ʿAbd al-ʿAzīz (d. 1661), the son of Ibn Ḥajar's daughter, also became eminent particularly in the Meccan Shāfiʿīte realms and in the estate in general.

Many of these families had inter-marital connections, such as Ibn Ḥajar's daughter married to Muḥammad, son of ʿAbd al-ʿAzīz Zamzamī. Marriage functioned as a path to social status and professional camaraderie within the estate, as it did in the royal families. Altogether these families dominated the local Meccan fuqahā-estate in favour of Shāfiʿīsm

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[67] For other lesser-known Ḥanbalītes in the sixteenth century, see Abū al-Khayr, *al-Mukhtaṣar*, 93; the seventeenth, 238; the eighteenth, 67; the nineteenth, 287 (female).

[68] Abū al-Khayr, *al-Mukhtaṣar*, 258-259.

[69] Zayn al-Dīn al-Malaybārī, *al-Ajwibat al-ʿajībat ʿan al-asʾilat al-gharībat*, ed. ʿAbd al-Naṣīr Aḥmad al-Shāfiʿī al-Malaybārī (Kuwait: Dār al-Ḍiyāʾ, 2012).

[70] On Muḥammad, Abū al-Khayr, *al-Mukhtaṣar*, 345; on ʿAbd al-ʿAzīz Jr.: 259-60.

from the sixteenth century on, and continued in partly to do so up to the eighteenth century or later. They could do this for several reasons: a) They controlled the educational circles, known as *ḥalqat*s and *bayt*s that were co-ordinated individually by scholars or scholarly families or collectively. The *Bayt al-Zamzamī* still exists as *Bayt al-Rīs*. It was an exclusive Shāfiʿīte space controlled by the Zamzamī family. b) They were leaders within the Meccan estate. Ibn Ḥajar and later Zamzamī the *Raʾīs ʿulamāʾ Makkah*, the leader of the Meccan *ʿulamāʾ*, had the final word on many general and particular issues within and outside the estate's concern. Similarly, many more Shāfiʿītes became so powerful in the city that many other individuals and schools had to obey their supremacy. Consider for example the case of Abū Bakar Abū al-Khayr mentioned above, who had inherited the position of caller to prayer from his father, but had to leave the city for a long time due to a dispute with the Shāfiʿīte judge. Nevertheless, the Ottoman state, which was mostly unaware of the local internal dynamics of such an estate, appointed the Ḥanafīte qāḍīs showing their favouritism for that school. But the position of the qāḍī was a tool of the state, from the top downwards, so this did not create much change in the interests of the estate, for their power was constituted from the bottom upwards. Having said that, we should also keep in mind that the Meccan estate was not in direct conflict with the Ottoman state, even though it had some conflicts with the local rulers of the city, the Sharīfs. Ibn Ḥajar praised the Ottoman sultan Sulaymān for reforms he brought in Mecca and ʿAbd al-ʿAzīz Zamzamī took charge of the newly established Ottoman madrasa in the city towards the end of his life.[71]

In addition to the family dynamics, the student chains of particular teachers also had a role in the undercurrents of the estate and contributed to the intensification of the Shāfiʿīte cluster in the city. Some of Ibn Ḥajar's and Zamzamī's prominent students such as Ibrāhīm al-Ṭabarī (d. 1615)[72], Aḥmad al-Ṭabarī (d. 1594)[73] Sayyid ʿUmar al-Baṣarī (d. 1627) and Muḥammad Bā Faḍl (d. 1597), and their respective students ʿAbd Allāh bin Saʿīd Bā Qushayr, ʿAlī and Zayn al-ʿĀbidīn bin ʿAbd al-Qādir al-Ṭabarī, Muḥammad al-Ṭāʾifī, Abū al-Jūd al-Muzayyan, Aḥmad bin Ḥusayn Bā Faqīh, and Abū Bakr bin Muḥammad Bā Faqīh, have all internalized this Meccan constellation of Shāfiʿīsm in their legalist approaches.

Beyond the students, we also see many other renowned scholars of Shāfiʿīsm centring their legalist careers in and round Mecca towards the end of the sixteenth century. Scholars such as Abū Bakr al-Anṣārī (d. 1598; a specialist of inheritance law within Shāfiʿīsm, along with his expertise in mathematics and linguistics), Raziy al-Dīn al-Qazanī, ʿAbd al-Raḥmān bin ʿAbd al-Qādir Fahad al-Hāshimī and ʿAbd al-Qādir al-Fākihī[74] (d. 1574; apart from the legal texts, he clearly showed an interest in the mystical works of al-Ghazālī), have made remarkable contributions through their works, fatwās, teachings, etc. to the expansion of the school in the city and beyond. We think especially of al-Fākihī who was a colleague and friend of Ibn Ḥajar and is said to have written works "equalling al-Jalāl al-Suyūṭī in abundance".[75] Though many of their works or fatwās are not available today, we can clearly

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[71] ʿAbd al-ʿAzīz and the Ottoman madrasa, Abū al-Khayr, *al-Mukhtaṣar*, 259; Ibn Ḥajar, *Arbaʿūn ḥadīth*.

[72] Abū al-Khayr, *al-Mukhtaṣar*, 47.

[73] Abū al-Khayr, *al-Mukhtaṣar*, 98.

[74] Abū al-Khayr, *al-Mukhtaṣar*, 272-273.

[75] Abū al-Khayr, *al-Mukhtaṣar*, 273.

imagine the intensity of Shāfiʿīte legalist teachings and careers in Mecca in the sixteenth century. The renowned Shāfiʿītes ʿAbd al-Qādir al-Ṭabarī (d. 1623),[76] ʿAbd Allāh bin Saʿīd Bā Qushayr (d. 1665)[77], and ʿAbd Allāh bin Sālim al-Baṣarī (d. 1721)[78] furthered the tradition in the seventeenth century, and it was taken further by Zayn al-ʿĀbidīn al-Manūfī (d. on or after 1737),[79] Ibrāhīm al-Zamzamī (d. 1781),[80] and Ibrāhīm al- Ṣanʿānī (d. 1798)[81] in the eighteenth century. In addition to Bayt al-Zamzamī, more institutions such as Bayt al-Manūfī rose in the eighteenth century which certainly added to the Shāfiʿīte excellence in the city, alongside the disturbances caused by the arrival of Wahhābī ideology in the holy cities.

All these scholars and intellectuals permanently residing in Mecca helped to make the city a renowned centre of learning and legal clarification, catering for the needs of Muslims from all over the world. All other schools had a space in the spectrum, but most of their teachers or students did not rise to prominence in the global fuqahā-estate or their own school, whereas Ibn Ḥajar had done so. Change could be found only in Shāfiʿīsm, in which many jurists managed to hold sway within the school and even further afield.

III.

Mecca versus Cairo: Division of Commentators

Just as Nawawī once amalgamated two *ṭarīqa*s, now his *Minhāj*'s commentators were divided into two sub-schools. One I broadly identify with Cairo and the other with Mecca. The mechanism of divisions inherent in the Shāfiʿīte tradition now expressed itself in a split between commentators on the same text. Ibn Ḥajar led the newly formed version of Meccan Shāfiʿīsm, whereas the Cairene one was led by al-Ramlī. The commentaries on *Tuḥfat* and *Nihāyat* stood at the forefront of this division, and a comparative reading of the texts demonstrate the differences. The opposition of traditionalism against rationalism, the major components in earlier splits in the school, is hard to substantiate in this new development. Ibn Ḥajar's articulations can be seen to stand closer to a puritan, traditionalist version, although it is not an exclusive character of his viewpoints. On a related note, the *Mughnī* of al-Sharbīnī was subsumed to a supporting text in the long run of discourses, because mostly *Nihāyat* represented the Egyptian stream.

The origin of this division and consequent differences in authority lay, according to traditional Islamic scholars, in the nominal disagreements within the Cairo group of *Minhāj*'s readership in the early sixteenth century, between al-Anṣārī and his student-*cum*-colleague Shihāb al-Ramlī. In interpreting the text and giving rulings on a few issues the two had their differences. After al-Anṣārī's death, the leading position in the Shāfiʿīte cluster was taken over by Shihāb al-Ramlī whose opinions gained the upper-hand in Egyptian circles through his two students, Shams al-Ramlī and al-Sharbīnī. The Shāfiʿīte accounts tell us that since Ibn

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[76] Abū al-Khayr, *al-Mukhtaṣar*, 267-272

[77] Abū al-Khayr, *al-Mukhtaṣar*, 289-90.

[78] Abū al-Khayr, *al-Mukhtaṣar*, 290-93.

[79] Abū al-Khayr, *al-Mukhtaṣar*, 200.

[80] Abū al-Khayr, *al-Mukhtaṣar*, 45-6.

[81] Abū al-Khayr, *al-Mukhtaṣar*, 46.

Ḥajar left Cairo for Mecca while al-Anṣārī was the leading figure in Shāfiʿī legalist circles there, he was mostly familiar with the *dated* opinions of al-Anṣārī and was unaware of the revisions brought by Shihāb al-Ramlī. This traditional narrative would, in a way, help us trace the origin of the division to the teachers of the dominant commentators on *Minhāj*. One of them was al-Anṣārī whose work was continued by Ibn Ḥajar, and the other Shihāb al-Ramlī whose work was furthered by Shams al-Ramlī and al-Sharbīnī. [82] Yet such compartmentalization does not always work. At times al-Ramlī agrees with al-Anṣārī, opposing Ibn Ḥajar. Furthermore, a clear distinction between the two streams is not as explicit as it is between Ibn Ḥajar and al-Ramlī. There is a regional factor very much visible in Ibn Ḥajar's legal articulations following his move from Cairo to Mecca.

The framework of a Meccanized Shāfiʿīsm is a corner stone of Ibn Ḥajar's interpretation of Islamic law. I have elaborated above on how he asserted the Meccan/Hijazi identities in his general rulings. Once we look more closely at his differences with al-Ramlī and his occasional articulations against Egyptian cultures and customs, this aspect becomes even more obvious. In *Tuḥfat*, he asserts the purity of the Arab people and the Arabic language in contrast to other sects and languages. He says that if a non-Arab mispronounces the wordings of the Qurʾān while reciting the obligatory chapter al-Fātiḥat in prayer, the prayer will not be valid.[83] By contrast, al-Ramlī says that accurate pronunciation is not so important, and inaccuracies do not affect the legitimacy of the prayer.[84] The roots of the debate go back to Nawawī, who discussed the issue in detail by differentiating the validity of prayer from the validity of recitation. He said that if someone mispronounces or drops a letter of al-Fātiḥat, his recitation would not be correct. There are two opinions about the validity of that prayer. The *aṣaḥḥ* opinion says it is invalid, whereas *ṣaḥīḥ* makes it valid. If the reciter had not managed to study the pronunciation of the prayer properly, that would not affect its legitimacy.[85] Ibn Ḥajar in a detailed discussion on the issue maintains the invalidity of an incorrectly pronounced prayer. He writes: "If he changed *ḥāʾ* of *al-ḥamdulillāh* as *hāʾ*, or the *qāf* of Arabs with an uncertain letter between it and *kāf*, the meaning for Arabs is one imputing to them features which are not considered theirs. That is why some scholars have considered the people of Western (*ahl al-gharb*) and Upper Egypt [as Arabs]… [the prayer] will not be valid, except if he had an excuse about learning before the prayer time passes". In the following lines, he refutes a few other scholars who took a liberal view on the issue.[86] Indeed, al-Ramlī has a liberal view on this, as he clearly states that his prayer will be valid, although his pronunciation is abominable.[87] Khaṭīb al-Sharbīnī also has the same view.[88]

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[82] Many Islamic scholars have tried to tabulate the differences between the Five Scholars in general, and between al-Ramlī and Ibn Ḥajar in particular. See for example ʿUmar bin Ḥāmid Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī bi jamʿ al-khilāf bayn Ibn Ḥajar wa Ibn al-Ramlī*, ed. Shifāʾ Muḥammad Ḥasan Hītū (Beirut: Dār al-Minhāj, 2010). The first two texts take up the differences of all five scholars together, whereas the latter work restricts itself to the disagreements between Ibn Ḥajar and al-Ramlī only in the matter of rituals.

[83] Ibn Ḥajar, *Tuḥfat*, 2: 37.

[84] al-Ramlī, *Nihāyat al-muḥtāj*, 1: 481.

[85] Nawawī, *al-Majmūʿ*, 3: 347-348; idem, *Minhāj*, 97.

[86] Ibn Ḥajar, *Tuḥfat*, 2: 37.

[87] al-Ramlī, *Nihāyat al-muḥtāj*, 1: 481.

[88] al-Sharbīnī, *Mughnī*, 1: 243.

This dispute shows the pattern of Ibn Ḥajar's standpoints on a number of different disagreements with his Cairene colleagues. He asserts confidence in the purity of the Arabic language, and of the ways and methods in which it should be pronounced. Even in an unlikely discussion on prayer he does not fail to deprecate Egyptians by pointing to their non-Arab origins. The examples of his disparagement of the Egyptian identity, culture and customs are too many to list. One another example occurs in his discussion about observing non-Islamic festivities and celebrations, where Ibn Ḥajar notes that the Egyptians are the worst in breaking this rule.[89] In the previous debate he also shows his reluctance to accept an excuse of ignorance as he restricts the incompetence to the time of prayer. This debate also shows that al-Sharbīnī takes sides with the al-Ramlī group in the in the division. Interestingly, in this debate al-Anṣārī also has a liberal view,[90] and al-Ramlī followed him but Ibn Ḥajar did not. This supports my earlier suggestion against the traditional view of tracing the al-Ramlī debate against Ibn Ḥajar to their teachers such as al-Anṣārī and Shihāb al-Ramlī

Asserting a privileged position for Mecca and more generally the Hijaz by Ibn Ḥajar in his arguments can be seen further in his disagreements with al-Ramlī on issues such as the obligations on Meccans for ḥajj-pilgrimage, and prioritizing Meccan staple foodstuffs over others for obligatory charitable gifts during the annual festival of al-Fiṭr, etc.[91] Again, in all these issues al-Anṣārī has the same views as of al-Ramlī.[92] This only adds to the "regional" element within the transregional divisional debate. As for foodstuffs, Ibn Ḥajar specifically gives priority to dates, whereas Egyptian scholars favour rice.

In the later history of Shāfiʿīsm, this division in the debate spread across its clusters. The Shāfiʿītes of Syria, Yemen, Daghistan, Kurdistan, South and Southeast Asia followed Ibn Ḥajar's views, whereas Egyptians followed al-Ramlī's arguments.[93] The wide currency of Ibn Ḥajar's oeuvre throughout the Shāfiʿīte world, except paradoxically in Egypt, has to do with his migration from Cairo to Mecca and the Meccanization process that engendered. While al-Ramlī stayed in his homeland throughout his life, Ibn Ḥajar's move to Mecca in the middle of his career helped to disseminate his work more easily than could have happened from Cairo, which was dominated by particular individuals and scholarly families. Ibn Ḥajar lost his possibity of space in Egypt, but only to win a much wider spectrum of acceptance in Northern and Southern Arabia, and in Central, Southern and Southeastern Asia and East Africa. In the Hijaz, the Shāfiʿītes initially followed Ibn Ḥajar's viewpoints, but the Egyptians who migrated to the Hijaz came infiltrating al-Ramlī's arguments. In the later centuries the Hijazi Shāfiʿītes mingled the views al-Ramlī's and Ibn Ḥajar's without prioritizing one over the other.[94] This trend can be seen in present-day East Africa, Singapore and Indonesia too.

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[89] Ibn Ḥajar, *Fatāwā al-kubrā*, 4: 239.

[90] See al-Anṣārī, *Asnā al-maṭālib*, 1: 150.

[91] On the disagreements related to Meccans performing ḥajj, see *Tuḥfat* 4: 37; al-Ramlī, *Nihāyat al-muḥtāj*, 3: 258; on foodstuffs, see: *Tuḥfat*: 3: 322; al-Ramlī, *Nihāyat* 3: 122.

[92] For his view on the abovementioned issue of ḥajj, see al-Anṣārī, *Asnā al-maṭālib*, 1: 459; on foodstuffs, al-Anṣārī, *Fatḥ al-wahhāb* 2: 283.

[93] Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 16, 927-28; C. van Arendonk and Joseph Schacht, "Ibn Ḥadjar al- Haytamī," *Encyclopaedia of Islam*, 2nd ed.

[94] Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 16-17

In the seventeenth century, scholars such as Nūr al-Dīn ʿAlī bin ʿAlī al-Shabrāmalsī (d. 1676)[95] attempted to reconcile the disagreements between *Nihāyat* and *Tuḥfat* by writing separate commentaries on each text. The attempt helped to tone down the bitterness in the disagreements, but it was not a general success, because by this time the Shāfiʿīte following was clearly divided into a Cairene and a Meccan stream. In the later tradition, many Shāfiʿīte scholars tried to reconcile the division by fixing a hierarchy of the opinions of Ibn Ḥajar and al-Ramlī. Yet these endeavours were not devoid of partiality; the Cairene division would prioritize al-Ramlī's views, and the Meccans Ibn Ḥajar's. Cairene favouritism is reflected in the hierarchy attributed to ʿAlī bin ʿAbd al-Barr al-Wanāʾī when he says, "the *muʿtamad* is what unified both the Shaykhs, al-Ramlī and Ibn Ḥajar, as long as the followers of their opinions have not unanimously stated that it is poorly articulated. Then, [follow] al-Ramlī in his *Nihāyat*, and Ibn Ḥajar in his *Tuḥfat*, even if the majority disagree."[96] Similar expressions can be found in Meccan sub-school's adherents. However, both sub-schools prioritize an opinion when both *Nihāyat* and *Tuḥfat* have the same ruling, and forbid any ruling against their unanimity. An eighteenth-century Medinese scholar, Muḥammad al-Kurdī (d. 1780) wrote in his *al-Fawāʾid al-Madaniyyat*: "In my opinion, it is not allowed to give a fatwā contradicting both of them, specifically contradicting *Tuḥfat* and *Nihāyat*, unless they contradict each other."[97]

This Cairene-Meccan division persisted among the Shāfiʿītes until it became synthesised once again in the nineteenth century, as we shall see in Chapter 7.

Maritime Communities and Mecca

In Mecca, the dual process of Meccanization and Shāfiʿization was made possible through the mobile merchants and nobility of the Indian Ocean rim. In the case of Ibn Ḥajar, we see that he accepted no position or benefit from the local political entity, the Sharīfs, or from the broader imperial power of the Ottomans. He visibly depended for his intellectual enterprise on an Indian nobleman and his family, al-Masnad al-ʿĀlī Abū al-Qāsim ʿAbd al-ʿAzīz Āsaf Khān, a Gujarati migrant who lived in the city for long time, and a former minister of the Gujarati sultan Bahadur Shah (d. 1537 at the hands of the Portuguese). When Āsaf Khān passed away, Ibn Ḥajar wrote a long panegyric in which he explained their relationship. Regarding their first meeting he wrote:

> When he arrived there, I did not salute him as was my wont due to my not mixing with people mainly men of the world. This famous Khān is not with us. He was an eminent man of the world and a wazīr. He sent a man of his acquaintance to me with excessive kindness and much love till a meeting took place between us. I then became acquainted with his excellent nature, and weighty words and deeds. He was a man of religion and world. He was a man of wide learning and abundant righteousness. He was not of the nature of men of the world though he was of their shape and form.[98]

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[95] He also wrote a marginalia to the *Sharḥ al-Manhaj* of al-Anṣārī.

[96] Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 927.

[97] Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 17.

[98] Ibn Ḥajar al-Haytamī, "Riyāḍ al-riḍwān," 279-280.

Ibn Ḥajar goes on praising Āsaf Khān in length, and we can clearly see how he presents himself as someone who keeps his distance from worldly men, including a wazīr whom he regarded as a politician, and from Ottoman nobles. Nevertheless he chose to maintain a good relationship with this Āsaf Khān, about whom we get other biographical details apart from Ibn Ḥajar's writing.[99] Following the fuqahā-tradition to keep a distance from the political nobilities, Ibn Ḥajar must have observed that attitude for the Ottomans who ruled Mecca at that time. But he chose to keep a good relationship with an Indian noble, who did not possess any political power in the Holy City, and not even in his homeland, for it had been taken over by the Mughal Emperor Humāyūn (r. 1530-40 and 1555-56) in 1535. He definitely arrived in the city with much money and we can assume that he was sent by the dethroned Bahadur Shah (or Humāyūn himself—it is not clear in the original text) with his treasure and harem. Āsaf Khān was, as Ibn Ḥajar says, very generous and enjoyed the company of scholars, which must have helped Ibn Ḥajar to meet his financial needs. In other words, the legalistic enterprise of Ibn Ḥajar was not funded by the regional political entities, but by transregional itinerants in Mecca such as Āsaf Khān.

Outside Mecca a hagiographical story was circulating of a miracle (*karāmat*) in Yemen. Once Ibn Ḥajar had finished writing *Tuḥfat*, a group of pious Yemeni scholars, such ones as Muḥammad bin Ḥasan bin ʿAlī Bā ʿAlawī al-Ḥusayn, dreamt of the author sending a copy of it to Tarim in Ḥaḍramawt. In the dream, once *Tuḥfat* arrived there, Ibn Ḥajar himself came to Tarim. People hurried to him, and he began to teach them at the congregational mosque. Everyone was so happy. When the group woke in the morning they found an actual manuscript of *Tuḥfat* before them. They wrote about this to Ibn Ḥajar. He was very pleased to hear it, and he endowed (*waqafa*) that manuscript to them.[100]

The historicity of the story, entangling the worlds of dream and reality, is not for us to authenticate. Whether or not it is true, what matters is the historical consciousness behind it and a legitimating diplomacy the narrative embodies. The records of dreams and claims of dreams have always been a means to assert authority and legitimacy for Islamic traditions. Various scholars have discussed this on the basis of the visions of the Prophet Muḥammad and other prominent figures of Islam.[101] However, dreams about a legal text are rare in the known literature, except for the many visions related to the Qurʾān and *ḥadīth*s. Therefore, such a narrative as this on *Tuḥfat*'s arrival with blessings from its author reflects the Yemeni scholars' aspiration to assert themselves into a larger contemporary hub of Shāfiʿīte textual and knowledge production. In the story we also have references to the lectures Ibn Ḥajar delivered for local students and people. That statement is a further indication of how deeply they wanted to legitimize their academic activities, affirming an adherence to the chain of

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[99] Cuṭb ed-Dīn Muhammed Ben Ahmed el-Nahrawālī, *Kitāb al-Iʿlām bi-aʿlām balad bayt Allāh al-ḥarām Geschichte der Stadt Mekka und ihres Tempels*, ed. Ferdinand Wüstenfeld (Leipzig: F.A. Brockhaus, 1857).

[100] Muḥammad Bukhārī al-Fayḍī, *Tārīkh al-abrār mimman tudras kutubuhum fī diyār Malaybār* (Palakkad: Lajnat Anwar al-ʿUlūm al-Jāmiʿat al-Ḥasaniyyat al-Islamiyyat, 2010): 213-214

[101] For example, see John C. Lamoreaux, *The Early Muslim Tradition of Dream Interpretation* (Albany: State University of New York Press, 2002); Louise Marlow, ed., *Dreaming Across Boundaries: The Interpretation of Dreams in Islamic Lands* (Cambridge, MA: Harvard University Press, 2008); Ozgen Felek and Alexander Knysh, eds. *Dreams and Visions in Islamic Societies* (Albany: State University of New York Press, 2012); Elizabeth Sirriyeh, *Dreams and Visions in the World of Islam: A History of Muslim Dreaming and Foreknowing* (London and New York: I.B. Tauris, 2015).

transmission of legal knowledge, something which is very crucial in traditional Islamic communities for the purposes of legitimacy and authenticity. The historical content of the story revolves primarily around its textual and educational context. The transmission of texts from Mecca, especially ones written by the author himself or copied down with his authentication, is an important element. The transmission of knowledge from a charismatic, textual scholar from Mecca to the people of another locality is another aspect that sheds light on contemporary educational norms. Rather than a text or scholar from a different terrain such as Cairo or Damascus, such a notion on Mecca being circulated among the fuqahā-estate and knowledge aspirants marked the centrality of the Meccan educational system which had gained prominence in the Muslim world by this time. It also shows an interconnection between Ibn Ḥajar and his *Tuḥfat* with Yemen which from now on will play a substantial part in the spread of Shāfiʿīsm.[102]

The new Meccanized version of Shāfiʿīsm appealed to its followers in the Hijaz, especially the Yemeni Arabs. They appreciated the new relevance of Shāfiʿīte clusters in Mecca and beyond. Ibn Ḥajar's views about Arab identity and hierarchized Arab ethnic groups, which appeared in *Tuḥfat* and in an exclusive polemic pamphlet, legitimized the position of Yemenis in the estate. In a way, this led to their functioning as a bridge between the paradoxical gaps of the text and its wider Indian Ocean audience. By the thirteenth century, if not earlier, Yemenis were influential in Meccan everyday life, in administration, economy and religion. Once the fuqahā-estate intensified, they delved into the possibilities of this new horizon. Many Yemenis began to run their own circles and madrasas, studied and taught law, and composed texts. All these activities added further to their acceptability in the Arab world on the one hand and in the Indian Ocean rim of Islam on the other. Thus, after the sixteenth century we notice many Yemeni scholars contributing specifically to the intellectual development of Shāfiʿīte clusters. Aḥmad bin al-Muzjad (d. 930/1524), his student ʿAbd al-Raḥmān bin Ziyād (d. 975/1568), and ʿAbd al-Muʿtī bin Ḥasan Bā Kathīr al-Ḥaḍramī (d. 1581) are the most noteworthy among them.[103]

By this time the Indian Ocean was witnessing massive migrations of Yemenis who played a role in promoting this text in learned circles. The commentaries and glossaries on *Tuḥfat* produced in South Arabia and South and Southeast Asia and East Africa are the best evidence of this, and it led to an intensified "maritime wave" of Shāfiʿīsm along the South Arabian coast, and by extension on the South and Southeast Asian and East African coasts. The Yemenis helped to keep *Tuḥfat* prominent in the Shāfiʿīte school by writing super-commentaries. As with the story from Yemen of the miracle of *Tuḥfat* and Ibn Ḥajar, more miraculous and travel narratives from the Indian Ocean world thus arose. A scholar from Malabar called Zayn al-Dīn Makhdūm Jr., whom we will feature in the next chapter, seems to have become a student of Ibn Ḥajar. Once he finished his studies, he returned home and took

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[102] However, some Yemeni scholars such as Bā Qushayr were in constant touch with Ibn Ḥajar, whom they described as the "faqīh of the age". In 1546, Bā Qushayr sent his epistle on menstruation for Ibn Ḥajar. The latter wrote *taʿlīqat* on it, which became almost like a *sharḥ*. It is published along with the Fatāwā of Bā Qushayr. Ibn Ḥajar wrote a commentary on the *Muqaddimat al-Ḥaḍramīyyat* titled *Minhāj al-Qawīm* at the request of a Yemeni scholar ʿAbd al-Rahman bin ʿUmar al-Amudi. (*Kitāb al-juhūd*, 1: 555)

[103] For many other important Yemeni fuqahā of the sixteenth century, see: ʿAbd al-Qādir ibn Shaykh ʿAydarūs, *Tārīkh al-nūr al-sāfir ʿan akhbār al-qarn al-ʿāshir*, eds. Aḥmad Ḥālū, Maḥmūd Arnaʾūṭ and Akram Būshī (Beirut: Dār Ṣādir, 2001), *passim*.

charge of a religious institute in Ponnāni which had been established by his grandfather. Once when he was teaching, his own teacher Ibn Ḥajar is said to have come to his institute, taught his students, and laid down a stone on which an oil-lamp was placed to help the students get proper light to learn, read and write.[104] Again, establishing the historicity of the story is hard, especially as none of Ibn Ḥajar's biographers talk about him travelling to South Asia. What is important to us is the historical consciousness it shows with regard to the networks of mobile scholars in which a jurist like Ibn Ḥajar could have participated. By supposing that such a renowned scholar of Shāfiʿīsm visited a "remote place" like Malabar primarily legitimizes the educational significance this place aspires to acquire in the realm of Shāfiʿīte legalism. It also represents an urge in non-Middle Eastern Shāfiʿīte clusters to publicize the wider expansion of their school.

In the following centuries, *Tuḥfat* was the source on which the school most depended for final verdicts in legal debates and lawgiving, learning and teaching at higher educational centres. It stood at the forefront of textual circulation as an authority and highly ranked source of law in the new waves of population movements. It attracted commentaries, super-commentaries, abridgments, and poetized versions, and also became a prime source of Shāfiʿī discursive tradition in and around the Indian Ocean and the Eastern Mediterranean area, where the school began to dominate other legal schools of thought.[105] The growth of higher educational institutions dedicated to Shāfiʿī law in particular and Islamic law in general facilitated a further popularity of *Tuḥfat* significantly.[106] The proliferation of legal texts and scholars strongly influenced by the Yemeni diaspora led to the intensification of the Shāfiʿī school in the non-Middle Eastern Muslim communities.

Circulation of Super-Commentaries

As the Indian Ocean rim was subjected to a process of Shāfiʿīzation through different individuals, micro-communities and institutions, we ask what implication this had on the course of Shāfiʿīsm as such. What was the role *Tuḥfat* played in that historical rupture as a text that revolutionized the Shāfiʿīte thought dividing it into two sub-schools? I deal with these questions here, looking into its commentaries through a spatial prism.

After the sixteenth century, *Tuḥfat* appealed to more commentators, similar to many of his texts that "spread in a few years in innumerable copies to the remotest countries".[107] In the seventeenth century four known super-commentaries were written by scholars from different regions, from Nablus (Palestine), Ḥaḍramawt, and Kurdistan.[108] Another three followed in the

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[104] P.A. Sadiq Fayḍī Tānūr, *Dars Kitābukaḷ: Caritraṃ Swādhīnam* (Calicut: Islamic Sāhitya Academy, 2013), 116; cf. Muḥy al-Dīn Alwāy, *al-Daʿwat al-Islāmiyyat wa tatawwuruha fī shibh Qārat al-Hindiyyat* (Damascus: Dar al-Qalam, 1986).

[105] For example, we do see Jamāl al-Dīn Muḥammad Ṭāhir al-Hindī from Gujarat, despite his school-affiliation with the Ḥanafī school of law, depending on the works and arguments of Ibn Ḥajar in his counter-arguments with Rāfiḍīs and Mahdawīs. See *Tārīkh al-nūr al-sāfir*, 475-76.

[106] At the madrasas of Gujarat, Malabar or Aceh or Africa, where Arabic was the medium of instruction, textbooks and notes.

[107] C. van Arendonk and Joseph Schacht, "Ibn Ḥadjar al- Haytamī," *Encyclopaedia of Islam*, 2nd ed.

[108] The seventeenth century super-commentators other than al-Shabrāmalsī are Ismāʿīl bin ʿAbd al-Ghanī bin Ismāʿīl al-Nāblusī (d. 1652), Muḥammad bin Aḥmad al-Shawbarī (d. 1659) who also wrote a super-

eighteenth century. [109] In the nineteenth century one of its most celebrated super-commentaries was released, by ʿAbd al-Ḥamīd al-Sharwānī al-Dāghistānī (d. 1884). [110] His contemporary and possibly a colleague in Mecca, Abū Bakar bin Muḥammad bin Shaṭā known as al-Bakrī al-Dimyāṭī al-Makkī (d. 1893), who we will feature in Chapter 7, also wrote a super-commentary. This tradition continued into the twentieth century and *Tuḥfat* remains even today one of the most authentic texts in Shāfiʿīte debates, law-giving and higher educational institutes. [111] Al-Sharwānī belonged to Daghistan in the Caucasus, but migrated to Mecca and taught there for a long time. [112] Before settling in Mecca, he had travelled to and studied in Istanbul and Cairo with many eminent scholars of his time, including Ibrāhīm al-Bājūrī (d. 1860) at al-Azhar. He was fluent in Arabic, Turkish and Persian and used to teach at the Sulaymaniyyat Madrasa in Mecca. After the morning prayers, he usually taught *Tuhfat* before he withdrew to his room in the madrasa for his prayers and chants. The Dāghistānīs in Mecca were "some of the more highly esteemed depositaries of learning" and ʿAbd al-Ḥamīd al-Sharwānī was the towering figure whom many considered to be "more learned than" the Shāfiʿīte judge in the city, Aḥmad Zaynī Daḥlān (1816-1886). [113] Many "peripheral" Muslims attended his lectures on *Tuhfat*, such as the East African Sayyid Shaykhan bin Muḥammad al-Hibshy, the Indian Aḥmad Kuṭṭi Musliyār Kōṭancēri, and the Indonesian Nawawī al-Bantanī, who also we will feature later. [114] His super-commentary has no details about its composition or motivation. The one-line ritualistic prayer is directly followed by comments on phrases in *Tuhfat*. This work extensively interprets phrases, arguments, opinions, and scriptural references, which are otherwise incomprehensible for students.

Apart from this super-commentary and another one by Ibn Qāsim al-ʿIbādī mentioned earlier, two other super-commentaries are also used by very specialist readers of *Tuḥfat*. The one is by ʿUmar bin ʿAbd al-Raḥīm al-Baṣarī (d. 1628), and the other by Rasūl bin Yaʿqūb al-Kurdī al-Zakī (lived in the seventeenth century). ʿUmar al-Baṣarī was also a knowledge-migrant in Mecca, originally belonging to Basra. In his super-commentary, he attempted to

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commentaries to *Sharḥ al-Manhaj* of al-Anṣārī, Rasūl bin Yaʿqūb al-Kurdī al-Zakī (d. in the seventeenth century), and ʿAbd Allāh bin Abī Bakr Qādirī Bā Shuʿayb al-Ḥaḍramī (d. 1706).

[109] In the eighteenth century, three super-commentaries are known: by ʿAli bin Abd al-Rahim bin Muḥammad Ba Kathīr (d. 1732); ʿĪsā bin Sibghat Allāh bin Ibrāhīm bin Ḥaydar al-Safwī al-Ḥaydarī al-Kurdī (d. 1776); ʿAbd al-Raḥmān bin ʿAbd Allāh bin Ḥasan al-Suwaydī al-Baghdādī (1786).

[110] Other notable *ḥāshiyat*s in the nineteenth century are the ones by Ḥasan bin Ibrāhīm bin al-Qāʾid (d. 1819), Yaḥyā bin Khālid al-Marwazī al-ʿImādī (d. 1839), *Bulūgh al-Irādat wa nayl al-ḥusna wa ziyādat min Ḥawāshī Shaykh al-Islām Ṭāhā bin Abd Allāh al-Sādat ʿalā Tuḥfat al-muḥtāj* by Ḥusayn bin ʿAlī bin Muḥsin bin Ibrāhīm al-Muftī al-Ḥabshī al-Ubbiy al-Yamanī (d. 1840) and *Aqṣā al-rawāj li Tuḥfat al-muḥtāj* by Rasūl bin Muḥammad al-Barzanjī (d. 1855).

[111] The *ḥāshiyat*s widely known in the twentieth century were written by ʿAbd al-Raḥmān bin ʿUbayd Allāh al-Saqqāf (d. 1955), who also has an elaborate *ḥāshiyat* on the "book" of *al-aqdiya* of *Tuḥfat* as a separate text, Abū Darr Ḥāmid bin Burhān al-Ghifārī, ʿUmar bin ʿAbd al-Raḥīm al-Baṣarī al-Makkī, Muḥammad bin Abī Ṭāhir al-Madanī, Mala Muḥammad al-Kurdī and ʿAbd Allāh bin Abī Bakr Bā Qushayr.

[112] For his biographical details, see Naḍīr al-Durkilī al-Tunī, *Nuzhat al-adhan fī tarājim ʿulamāʾ Dāghistān*, ed. and trans. Michael Kemper and Amri R. Sixsaidov (Berlin: Klaus Schwarz, 2004), 149-150. In this text, his firs name is given as ʿAbd al-Majīd, although in all other texts he is known as ʿAbd al-Ḥamīd.

[113] Hurgronje, *Mekka*, 202.

[114] Chaidar, *Sejarah pujangga Islam Syech Nawawi Albanteni, Indonesia* (Jakarta: Sarana Utama, 1978); Hurgronje, *Mekka*, 289; Alex Wijoyo, "Shaykh Nawawi of Banten: Texts, Authority, and the Gloss Tradition" (PhD diss., Columbia University, 1997), 73

analyse the ʿibārat of *Tuḥfat* and to draw attention to the occasions where *Nihāyat* of al-Ramlī offered the same opinion. This text was compiled by Muḥammad bin Ṭāhir al-Kurdī.[115]

Besides these four super-commentaries which had a limited readership in the Indian Ocean and Eastern Mediterranean regions, there are other commentaries of which only one or two manuscripts survive, and these are generally inaccessible to the world of scholarship. Some are regionally important, such as the *Bulūgh al-irādat wa nayl al-ḥusnā wa ziyādat min Ḥawāshī Shaykh al-Islam Ṭahā bin ʿAbd Allāh al-Sādat ʿalā Tuḥfat al-muḥtāj* by Ḥusayn bin ʿAlī bin Muḥsin bin Ibrāhīm, and the one by ʿAbd Allāh bin Abū Bakr Qādrī Bā Shuʿayb al-Ḥaḍramī.[116] Their fame in the higher educational elites of Yemen may be due to the fact that they were written by locally known scholars. Their works must have been transmitted through the internal networks of their students and chains of pupils, until their very recent publication.

Muḥammad al-Bālī (d. unknown) wrote a commentary on the Introduction of *Tuḥfat* entitled *Ḥāshiyat ʿalā dībājat Tuḥfat al-muḥtāj*. The author's adjectival patronymic (*nisbat*) "al-Bālī" could indicate an origin in Bali, Eastern Indonesia, but I have not yet managed to find any biographical details for him. Historical research on Islam in the Hindu dominated religio-cultural sphere of this island is an untrodden path.[117] However, we know one Muḥammad al-Bālī who studied, taught and lived for a long time at Medina in the nineteenth century. He wrote commentaries on Islamic texts and issued fatwās on a number of controversial issues, including one on the accusation of Shīʿīsm against a Māppiḷa Muslim group of Malabar.[118] This al-Bālī could be the same person, but we lack any further details on either of them. If he indeed came from Bali in Indonesia, it opens many interesting aspects of another peripheral region of the Islamic world. It could tell us not only of the introduction of *Tuḥfat* to the scholars from there, but also on its wide reception in Southeast Asia, or among Southeast Asian scholars living in Middle Eastern educational centres, and on the role of a possible Balinese scholar in the wider Islamic intellectual networks.[119]

The Cairene-Meccan division of the school initiated by *Tuḥfat* and *Nihāyat* spilled over to the prioritization of their respective super-commentaries. Again, there were a few attempts at reconciliation within the school. A passage in *Fawāʾid al-Madaniyyat*, by the eighteenth-century scholar Muḥammad al-Kurdī, says this: "Then the fatwā should be given with the opinion of Shaykh al-Islam, then with the opinion of al-Khaṭīb, then the opinion of *Ḥāshiyat al-Ziyādī*, then the opinion of *Ḥāshiyat Ibn Qāsim*, then the opinion of ʿAmīrat, then the opinion of *Ḥāshiyat al-Shabrāmalsī*, then the opinion of *Ḥāshiyat al-Ḥalabī*, then the opinion of *Ḥāshiyat al-Shawbarī*, then the opinion of *Ḥāshiyat al-ʿAnānī*, as long as they do not

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[115] Muḥammad Shaʿban, Introduction to Nawawī, *Minhāj*, 29.

[116] Muḥammad Shaʿban, Introduction to Nawawī, *Minhāj*, 28-31.

[117] For a general historical outline on Balinese Islam, though not on Muḥammad al-Bālī, see Hans Hägerdal, *Hindu Rulers, Muslim Subjects: Lombok and Bali in the Seventeenth and Eighteenth Centuries* (Bangkok: White Lotus, 2001); Jean Couteau, "Bali et l'islam: 1. Rencontre historique," *Archipel* 58, no. 3 (1999): 159-188; Adrian Vickers, "Hinduism and Islam in Indonesia: Bali and the Pasisir World," *Indonesia* 44, no. 2 (1987): 30-58.

[118] On the Sunnī-Shīʿīte conflicts among the Muslims of Malabar from the eighteenth through twentieth centuries and the involvements of Middle Eastern scholars including Muḥammad al-Bālī in the debates, see: Husayn Raṇṭattāṇi, *Mappila Muslims: A Study on Society and Anti-colonial Struggles* (Calicut: Other Books, 2007), 49-65, esp. 58

[119] I am grateful to Henk Schulte Nordholt for sharing his thoughts on academic research related Islam in Bali on the basis of his familiarity with the region over the last few decades.

contradict the foundation of the school."[120] All these *ḥāshiyat*s or the author-jurists mentioned refer to their super-commentaries which were well-known among the learned Shāfiʿītes.

If we look closely into the contexts of these textual progenies of *Tuḥfat*, especially the backgrounds of their authors, we see that most of them belong to a particular belt of the Muslim world, in South, Southeast and Central Asia and South Arabia. There is less participation of Egypt or Syria. This is a very interesting historical development in the legal history of Shāfiʿīsm. The revival of Mecca as a centre for Shāfiʿīte legalism in the sixteenth century created a break for the Muslim communities who had been living on the peripheries for legal discourses and who "stood outside" the circles of textual and intellectual transmission. The revitalization of Mecca for Shāfiʿīsm under the leadership of Ibn Ḥajar and his *Tuḥfat* quickly attracted them to becoming new centres for Islamic legal practice.

Most of these regions had not been represented in the earlier educational-intellectual histories of Shāfiʿīsm, and the scholars from there did not get access to mainstream intellectual engagements, until Mecca became an easily "accessible" place and a centre of Shāfiʿīsm for most of them. Mecca's intellectual development in the sixteenth century, along with the stimulation of legal education in their homelands, provided a space for such aspirants of legal traditions to sharpen and enlighten themselves. They were helped not only through stories of miracles, but also through direct participation in significant numbers. The intellectual gap between the central Islamic lands and the rest of the Muslim world, which had earlier been filled through mercantile networks and the intellectual motivation they provided, was now narrowed by the fortune of those in Mecca and adjacent regions.

Final Remarks

The sixteenth century was a point of many remarkable shifts in the textual *longue-durée* of Shāfiʿīsm. It witnessed the production and dissemination of at least four famous texts of the school, all which were commentaries on one text, *Minhāj*. For this the credit goes to the so-called "the Five Scholars" (*ʿulamāʾ al-khams*), two of whom demonstrate conflicting viewpoints. Ibn Ḥajar's migration to Mecca gave a remarkable spurt to this legalistic conflict. His move was occasioned by contemporary developments in political, social, economic and cultural realms. The decline of the Mamlūks, the rise of the Ottomans and their conquest of the Middle East, the arrival of the Portuguese in the Indian Ocean, and increased mobility toward Mecca and beyond to the Hijaz all contributed to these new developments. The composition of *Tuḥfat* and its later trajectory reflected many of these developments. The most important one was the Meccanization of Shāfiʿīsm, which would determine future engagements of numerous Shāfiʿīte scholars from the fuqahā-estates of South Arabia, the Hijaz, South and Southeast and Central Asia, and East Africa. Once the Ottomans began to take advantage of the possibilities offered by Mecca for their political, religious and economic expansion from the sixteenth century, the Muslim communities living in the regions east and south, and to some extent in the immediate west, had the chance to engage with active Islamic discussions. The strengthening grip of the Ottomans over such sacred spaces as Mecca and their growing interest in the Indian Ocean trade helped them push their activities into the mainstream and attract the attention of Muslims who were "geographically unfortunate" and

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[120] Quoted in Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 17.

marginalized far away from the Middle-East-centric Islamic world. This remarkable development led to a flock of Muslim educational aspirants crowding into the Hijaz. Biographical literature about Meccan scholars shows an increasing presence and prominence of South, Southeast, Central Asian and East African scholars by the sixteenth century, in contrast to an almost complete absence earlier.

Tuḥfat engaged in the conversation of this cosmopolitan atmosphere in the city, and reasserted its position in the longer textual genealogy of Shāfiʿīsm. It could have been that there was too much cosmopolitanism and the increasing role of the non-Arab communities in the heartland of Islam persuaded the author of *Tuḥfat* to take a very Arab-centric attitude towards Shāfiʿīte law and Islam in general. It is too early to make a final judgment on this. The Arab-centric, Hijaz-focused and Meccanized version of Shāfiʿīsm projected in *Tuḥfat* would not have been welcomed in the peripheral regions of the Indian Ocean, from East Africa to Southeast Asia. Furthermore, its complicated methodology and incomprehensible language were hard to follow for primary and intermediate students of Islamic law, and could have also had a negative impact on its receptivity outside Arab lands. But the appearance of the Yemenis in the picture changed that scenario. Their genealogy, ethnicity, language and culture were cherished in the Arab-centric articulations of *Tuḥfat* as well as in the other works of Ibn Ḥajar. In reasserting a Mecca-centric view of Islam and dealing with much of the incomprehensibility of *Tuḥfat* and of Islam broadly, they began to play important roles. But they were not the only actors in the future drama.

Along with the Ḥaḍramī and non-Ḥaḍramī Yemenis, there were Persians, Swahilis, Malays and Malabaris who shared in disseminating Shāfiʿīte ideas. This new maritime wave of Shāfiʿīsm along the Indian Ocean rim gave an intellectual confidence to the "peripheral" Muslim communities. An awareness in some of its Muslim intelligentsia who arrived in Mecca grew that they should return to their homelands, establish similar educational centres, and revive the "indigenous Islams" into a standardized and purified Islam. This phenomenon resulted in the emergence of many religious higher educational institutions all along the rim. It also led to a more intensive Shāfiʿīzation of the existing Muslim communities. For those scholars who returned home, *Tuḥfat* was an immediate reference point for many of their legalistic problems. Another significant outcome of revival under the flag of *Tuḥfat* is that from now on *Minhāj* began to be overshadowed by the oeuvre of Ibn Ḥajar. The new oceanic scholars referred to *Tuḥfat* and other works of Ibn Ḥajar along with the texts of his contemporaries like al-Ramlī and Sharbīnī, which eventually pushed *Minhāj* behind the curtain. That process can be better understood once we look at a sixteenth-century Malabari text, an indirect progeny of *Tuḥfat*, which is the subject of the next chapter.

Chapter 6
Fatḥ: Reimagining the Centre

Until now we have been discussing the ways in which Shāfiʿīsm came to dominate the fuqahā-estate in Mecca under the active leadership of Ibn Ḥajar and his *Tuḥfat*. That development in the history of the school led in turn to its dominance on the Indian Ocean rim in Meccan dress. It was Ḥaḍramī and non-Ḥaḍramī Yemenis and Persian Shāfiʿītes who were the catalysis for this expansion, externally directing the course of the maritime fuqahā-estates and internally Meccanizing the school after the sixteenth century. I have indicated how Ibn Ḥajar's *Tuḥfat* gradually overshadowed the glory of *Minhāj*, its intellectual predecessor, so that it distinguished itself as *the* text for the "peripheral" Islamic lands. To move further in our discussion on the legal textual histories of *Minhāj* and *Tuḥfat*, a particular subsequent text and its author offer a point on which to analyse Shāfiʿīte experiments in the periphery. In this chapter I explore those aspects in relation to a text which can be considered an indirect progeny of *Tuḥfat*, known as *Fatḥ al-muʿīn* (hereafter *Fatḥ*) by Aḥmad Zayn al-Dīn bin Muḥammad al-Ghazālī al-Malaybārī. He wrote it as a commentary to his earlier *Qurrat al-ʿayn* (henceforth *Qurrat*). Both these texts helped to empower Shāfiʿīte legalism and the legacy of Ibn Ḥajar and his oeuvre on the Malabar Coast and around the wider Indian Ocean rim. I also aim to demonstrate how peripheral communities found a place in the Middle Eastern-centric Shāfiʿīsm, even in the heartlands of Islam, as a result of this text.

By the middle of the sixteenth century the peripheral communities on the Indian Ocean coasts began to participate intensively in Islamic intellectual activities, producing many jurists and composing many legal texts. They made lengthy journeys to religious educational centres such as Mecca which had a significant impact on the production of a huge corpus of literature, "ascribed" to particular scholars who themselves constructed an estate in that time and space. As a consequence, peripheral Muslims began to imagine the centres of Islam in their homelands in the sixteenth and seventeenth centuries through a legal prism. Taking *Fatḥ* as an example, we can see how such a law book added to the long pattern of Islamic legal thought in a traditional way and also advanced its thought. From the peripheral perspective, we must ask how those texts criticized many methods and arguments of its intellectual predecessors and whether the Shāfiʿīte text that generated a non-Middle Eastern alternative discourse within the school can be identified as *al-Hindī* or "of the Indian Ocean"

Following the same method of analysis I took for earlier texts with regard to their significance in the internal and external legal discourses of the Shāfiʿīte clusters, I argue that when the non-Middle Eastern texts of the school located themselves in the longer tradition of religion and law, Middle Eastern-centric legalistic notions began to be questioned for their "regionality". This helped peripheral texts and authors to gain popularity among Indian Ocean Shāfiʿītes, who would in time dominate the Muslim world demographically. Yet their texts were not completely detached from the traditional Middle Eastern centres of Shāfiʿīte legalism. Their books were accepted there as well, generating "return journeys" for peripheral Shāfiʿīte scholars, ideas and texts back to the Middle Eastern heartlands. I demonstrate this by

looking at *Fatḥ* and analysing it as a product of its specific historical place and time in relation to its broader contexts of Islam, Shāfiʿīsm and the Indian Ocean.

<center>**I.**</center>

Genealogy Disconnected

Although I counted *Fatḥ* and its base-text *Qurrat* in Chapter 1 as an independent textual family similar to the *Minhāj*-family, their relation with each other is rather complicated. *Qurrat* is a much smaller text, no bigger than a pamphlet if compared to the multi-volume texts usual in the tradition of Shāfiʿīsm and of Islamic literary corpuses in general. It is even smaller than *Minhāj*, which was itself considered to be a short text. It can be classified as an "independent" work, similar to *al-Muḥarrar* of al-Rāfiʿī. It does not explicitly acknowledge on which text it is based or from which it is intellectually derived. *Al-Muḥarrar* was long enough for us to be able to identify an indebtedness to previous works on the basis of its content, structure, and arguments. But, *Qurrat* is too short for us to do that, and the issues on which it focuses are not so different from any other Shāfiʿīte legal discussion, even though some analogies to the content of earlier texts are evident. It does not openly state a reliance on another work by claiming to be a direct commentary or abridgement, as the other two texts we discussed did. We see it is an "indirect abridgement", and its "originality" is in making a context for specific situations implied in the contents. *Qurrat*'s commentary *Fatḥ* written by the same author gives us more chance to trace its genealogy. It is a work connected explicitly to the intellectual spectrum of previous works, particularly *Tuḥfat* and *Minhāj*, and the author says he depended primarily on the works of Ibn Ḥajar to write it. *Fatḥ* belongs to a separate family, with *Qurrat* as its base-text with subsequent commentaries and super-commentaries as progenies, as other scholars did (see Chapter 1). Yet, I consider it as an extension of the *Minhāj*-family for its connectedness to and deep influence from Ibn Ḥajar's oeuvre on the one side, and on the other, its wide reputation among traditional Shāfiʿītes as an abridgement of *Tuḥfat*.[1] In fact, *Fatḥ* belongs to the same legalistic network of *Tuḥfat*, as the later history of the school demonstrates. In this sense, the family proximity of *Minhāj* may not be here in its physical terms, but intellectually it is.

Once we analyse in detail the contents of *Qurrat* (for the moment we leave aside the question of whether or not its author sailed to Mecca and received education there, see below) we cannot deny its intellectual concordat with *Tuḥfat* and with Ibn Ḥajar's oeuvre in general. Though in the text we do not find many direct citations from *Tuḥfat*, it often arrives at similar judgements. It also follows *Tuḥfat*'s patterns of legal analysis, vocabulary choice and legalistic viewpoint. Yet in form and structure *Qurrat* has antecedents in a more advanced school than *Tuḥfat*, being so short, discarding sub-chapters, and organizing most legal texts written after the tenth century into a pattern of chapters. Apart from *Minhāj*, the Shāfiʿīte text widely known for its precision, there are many other concise texts within the school, such as *Muqaddimat* of Bā Faḍl and *Muḥtāj* of Imām al-ʿAlawī. The style of *Qurrat* is rather close to theirs. Some *matn* texts do not use sub-chapters for their contents. To some degree this raises

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[1] Shihāb al-Dīn Aḥmad Kōya al-Shāliyātī, *al-ʿAwāʾid al-dīniyyat fī talkhīṣ al-Fawāʾid al-Madaniyyat*, ed. ʿAbd al-Naṣīr Aḥmad al-Shāfiʿī (Cairo: Dār al-Baṣāʾir, 2010), 72.

problems which can be seen often in many legal texts written in the oceanic belts of South and Southeast Asia and East Africa. In those works only a textual expert could locate a legal ruling or reference easily, but a commentary by the same author does much to help. What we can say is that there is a broad division of the entire text into four parts: *ʿibādāt* (worship or rituals); *ʿādāt/muʿāmalāt* (custom or economic bonds); *munākahāt* (marital issues); *jināyāt* (criminal laws). This type of chapter organization corresponds to the general pattern of Shāfiʿīte texts with slight variations.[2]

Zayn al-Dīn Jr.: The "Ṣāḥib" of *Fatḥ*

In the historical spread of Shāfiʿīsm as the dominant school in the sixteenth-century on the Indian Ocean rim, in Malabar, in Ponnāni which represented *its* Mecca, we find that the scholarly family of the Makhdūms was a nodal point of the wider pattern. Zayn al-Dīn Jr. belonged to the Makhdūm family (for more details on this family, see below). About his grandfather, Zayn al-Dīn Sr., his son ʿAbd al-ʿAzīz wrote a detailed biographical note.[3] But about the grandson we have no contemporary references. A vast oeuvre of scholarship has been produced by historians and traditional scholars, and many doctoral dissertations have been written on the Makhdūms in general or on him in particular at various South Asian and Middle Eastern universities. Even so the facts of his life remain part myth and part reality.[4] His most famous text known to historians, *Tuḥfat al-mujāhidīn*, has been translated into many European and Indian languages,[5] whereas *Qurrat* and *Fatḥ* are his legal texts best known among Shāfiʿīte clusters. Neither professional historians nor traditional scholars have offered any solid historical account of his life or expressed any doubt on the authenticity of popular traditions about him. They simply repeat the stories of his life uncritically.

To summarise the stories will be helpful. He was born and brought up in Combāl, northern Malabar.[6] His primary education was at home with his father Muḥammad al-

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[2] ʿAbd al-Wahhāb Ibrāhīm Abū Sulaymān, *Tartīb al-mauḍūʿāt al-fiqhiyyat wa munāsabatuh fi al-maḏahib al-arbaʿt* (Mecca: Jāmiʿat Umm al-Qurā, 1988), 59-69.

[3] ʿAbd al-ʿAzīz Malaybārī, *Maslak al-atqīyāʾ wa manhaj al-aṣfīyāʾ fī sharḥ Hidāyat al-adhkiyāʾ ilá ṭarīq al-awliyāʾ* (Beirut: Kitāb al-Nāshirūn, 2014).

[4] See, for example: Rafīq ʿAbd al-Barr al-Wāfī, "al-Juhūd al-fiqhiyyat li al-Imām Aḥmad Zayn al-Dīn al-Makhdūm al-Malaybārī wa duwaruhu fī nashr al-Maḏhab al-Shāfiʿī fī al-Hind" (PhD diss., al-Azhar University, 2014); Muhamed Kunju P., "The Makhdums of Ponnani" (PhD diss., University of Kerala, 2004); O.P. Mayankutty, "Role of Makhdums in the Anti-Colonial Struggles of Sixteenth-Century Malabar" (PhD diss., Calicut University, 2007). Apart from these doctoral dissertations, also see semi- or complete-hagiographical works like: *Fatḥ al-qayyūm fi manāqib al-Shaykh Zayn al-Dīn Makhdūm* (Ponnāni: Publisher? Date); Kōyakkuṭṭi Musliyār, *Qaṣīdat al-Makhdūmiyyat: Khwājā Zayn al-Dīn Taṅṅaḷum Avaru Makan ʿAbd al-ʿAzīz Makhdūm Taṅṅaḷum Mattuṃ Manāqib*, (Ponnāni: Muttikkal ʿAlī bin ʿAbd al-Qadir, 1806); M.A. Bīrānkuṭṭi Faydī, *Shaykh Zayn al-Dīn Makhdūmuṃ Ponnāni Jumuʿattu Paḷḷiyuṃ* (Ponnāni: Ponnāni Valiya Jumuʿattu Paḷḷi Paripālana Committee, 1994); Husain Raṇtattāṇi, *Makhdūmuṃ Ponnāniyuṃ* (Ponnāni: Jumuʿattu Paḷḷi Paripālana Committee, 2010), 120-125.

[5] A short bibliography of its translations could be found at K.K.N. Kurup, "Foreword" in *Shaykh Zainuddin Makhdum's Tuḥfat al-Mujāhidīn: A Historical Epic of the Sixteenth Century*, trans. S. Muhammad Husayn Nainar (Kuala Lumpur: Islamic Book Trust and Calicut: Other Books, 2005), xiv-xv; cf. Engseng Ho, "Custom and Conversion in Malabar: Zayn Al-Din Al-Malibari's Gift of the Mujahidin" in *Islam in South Asia in Practice*, ed. Barbara Metcalf (Princeton: Princeton University Press, 2009), 403-08.

[6] The exact location of his birth in Malabar is a matter of dispute among biographers. While most say he was born in Cōmbāl where his father was based as a religious judge, some scholars say he was born in Ponnāni, the family hospice of the Makhdūms.

Ghazālī. Then he moved to Ponnāni, where his uncle ʿAbd al-ʿAzīz was the main teacher and patron. There he studied many disciplines and memorized the Qurʾān completely. After graduating he went to Mecca for higher studies. There he studied with many scholars including Ibn Ḥajar. After spending around ten years in academic life in Mecca he returned home, taught at Ponnāni, and took up the position of chief teacher and leader his uncle had held until he passed away. Eventually, he moved near to his father's house in northern Malabar and spent the rest of life in a small village called Kuññippaḷḷi. It is there that he died and was buried.

Interspersed with these bare facts different traditional scholars add further details for each stage of his life. But they rarely supply references to primary sources, give dates which are contradictory, and include details that are confusing or exaggerated. We do not know when he was born or when he died, the dates and destinations of his travels, with whom he associated in the scholarly, social and political world, and what works he actually composed. Fortunately, for some texts we are given the dates of composition or completion. Yet if we take a revisionist approach, although those works claim to have been written on a particular date, we do not have any original manuscripts, and not even a reliable one until more than a century after his assumed lifetime.[7] In fact we do not have any proof to say that any one text was actually written by Zayn al-Dīn Jr. himself. We lack proper historical evidence for saying that *Qurrat*, *Fatḥ* or *Tuḥfat al-mujāhidīn* were written by Zayn al-Dīn Jr. in 1574-5 or 1583, even though most historians and scholars make that claim.

Despite this problem of historicity, for the moment we have to depend on what we are told and keep in mind how weak it is. He is said to have gone to Mecca in a cargo ship, performed ḥajj, visited the grave of the Prophet Muḥammad in Medina, and stayed in and around Mecca for a decade learning different Islamic disciplines, mainly law and *ḥadīth*. The Meccan scholars are said to have called him a *muḥaddith* for his expertise in *ḥadīth*. He accepted Ibn Ḥajar as his main teacher, but also studied with ʿIzz al-Dīn bin ʿAbd al-ʿAzīz al-Zumarī, Wajīh al-Dīn ʿAbd al-Raḥmān bin Ziyād, and ʿAbd al-Raḥmān bin al-Ṣafā. His important colleagues and friends were Abū Bakr bin Sālim al-Ḥaḍramī, Aḥmad bin Sayyid, Shaykh ʿAydarūsī Ahmadabad, Mullah ʿAlī al-Qārī, and Shaykh bin ʿAbd Allāh al-Saqāf al-Ḥaḍramī.[8]

We search in vain for a reference in the primary biographical or hagiographical literatures on Ibn Ḥajar or ʿIzz al-Dīn al-Zumarī to a student named Aḥmad Zayn al-Dīn who came from Malabar or al-Hind to study with them. Many hagiographers and biographers provide a list of the important students of both these scholars. How they could overlook a student who studied with Ibn Ḥajar for ten years and came to known for his own works in Shāfiʿīte circles needs to be explained. Perhaps Zayn al-Dīn was not a notable student at the time, even though later indigenous narratives claim that Ibn Ḥajar came to visit him and his college in Ponnāni. The questions are important, but the answers are evasive. A comparatively recent thesis on Ibn Ḥajar's contributions to the Shāfiʿīte legal tradition confirms that Zayn al-Dīn was his student. It appears to be the first reference to him in a monograph devoted Ibn

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[7] Various manuscripts of *Qurrat*, *Fatḥ*, *Tuḥfat al-mujāhidīn* available in different collections of South Asia and Europe are dated at the earliest to the eighteenth century.

[8] For a summary of such accounts, see Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 120-123.

Ḥajar, in contrast to him himself.[9] But that thesis is full of mistakes, contradicting other narratives by saying, for example, that his father's name was ʿAbd al-ʿAzīz and he died in 1579.[10]

The story goes that after his return to Malabar, Zayn al-Dīn maintained his scholarly relationship with renowned scholars like Muḥammad Shams al-Dīn al-Ramlī, Muḥammad Khaṭīb al-Sharbīnī, the Mughal Emperor Akbar, the then Zamorin, and the ʿĀdil Shāhs of Bijapur.[11] While the companionship with the latter two rulers is quite possible on the basis of contextual evidence of his later academic life in Malabar in the kingdom of the Zamorins, and a book "undoubtedly attributed" to him being dedicated to ʿĀdil Shāh, the other associations again lack historical evidence. What we can say is that all these individuals lived in the supposed lifetime of Zayn al-Dīn, even if his exact dates are controversial.[12] The historicity of these popular narratives is hard to substantiate, but in them we see the historical consciousness of a community relating its past and a predecessor with the wider world of Shāfiʿīsm and with Islam in general. It opens our eyes into the possible and the existing networks of Malabari scholars connecting with an educational centre such as Mecca, with the personalities of broader fuqahā-estates, and with the eminent political structures which transcend geographical, cultural, linguistic and even legalistic borders partly substantiated in earlier historiography.

We have to analyse *Fatḥ* against this background, and keep in mind these uncertainties within it. However, the historiographical consensus is that Zayn al-Dīn Jr. and his text *Fatḥ* are products of a Malabari educational centre that managed to converse with the long culture of legal discourse that prevailed in the Middle East, and that this has been neglected by scholars of the Islamic legal history in particular and of Islamic history in general. The text is a fine example of how a Malabari scholar could compose such a text along with many others in the academic language of the time through education received locally at Ponnāni and more broadly at Mecca. From here we can try to analyse the features which made it distinctive in the wider world of Shāfiʿīsm.

The author is said to have composed many works in different disciplines.[13] His most renowned work is *Tuḥfat al-mujāhidīn* written in the 1580s against the Portuguese incursions on the Malabar Coast and inciting the Muslim community to fight against those intruders. It

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[9] Amjad Rashid Muḥammad ʿAlī, "al-Imām Ibn Ḥajar al-Haytamī wa atharuhu fī al-fiqh al-Shāfiʿī" (MA thesis, Jordan University, 2000), 29. About his sources, see the next footnote.

[10] He refers to Khayr al-Dīn al-Zarkalī, Khayr al-Dīn al-Zarkalī, *Tartīb al-aʿlām* (Beirut: Dār al-ʿilm lilmalāyīn, 1985), 3: 64. Apart from this contradictory information on his father, the year of his death is given as 1579 corresponding to the Hijri year 987. That contradicts the fact that *Tuḥfat al-mujahidin,* widely ascribed to him, provides accounts of Portuguese incursions in Malabar until 1583. A person who died in 1579 does not recount events which happened four years afterwards. Almost all historians who wrote on this text agree that he died after 1583. This error in the date of Zayn al-Dīn's death as well as in his father's name persists in other Arabic texts, especially the ones published in Egypt. See, for example: *Mulḥaq fihris al-Maktabat al-Azharīya: al-kutub al-maujūda bi al-Maktabat al-Azharīya ilā sanat 1382 h.* (Cairo: Maṭbaʿat al-Azhar, 1962), 7: 108.

[11] Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 122-123

[12] Most people say he was born in 938/1524. The disputes are mainly about the year of his death. Muḥammad al-Numayri says it was in 991/1583, Jurjī Zaydān says it was in 978/1570, Raṇṭattāṇi gives the date 1028/1619. See: ʿAbd al-Munʿim Nimr, *Tārīkh al-Islām fī al-Hind* (Beirut: al-Muʾassasat al-Jāmiʿīyat, 1981); Jurjī Zaydan, *Tārīkh adab al-lughat al-ʿArabiyyat* (Beirut: Dār Maktabat li al-Hayat, 1983); Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 124.

[13] For a list of his ten works, see Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 124-125.

was translated into Portuguese and English in the early nineteenth century, followed by multiple Indian translations.[14] Two other dogmatic works have been ascribed to him: *al-Jawāhir fī ʿuqūbat ahl al-kabāʾir* (on grave sins and punishments in Islam); *Sharḥ al-Ṣudūr fī aḥwāl al-mawtā wa al-qubūr* (on the life hereafter). However, he composed more legal texts: *Fatāwā al-Hindiyyat* (a compilation of his fatwās); *Ajwibat al-ʿajībat* (a collection of fatwās given by his teachers); *Irshād al-ʿibād ilā sabīl al-rashād* (on a number of different legal and ethical issues varying from apostasy, homosexuality, alcohol-consumption to rituals and good behaviour); *Iḥkām aḥkām al-nikāḥ* (on marital laws); *Qurrat* and its commentary *Fatḥ* were the most important of his works. These last two works are comprehensive legal texts, and that must have contributed to their popularity among his other works. *Fatḥ* gave him the widest recognition in the Shāfiʿīte world and identified him as "*Ṣāḥib Fatḥ al-muʿīn*", the author of *Fatḥ al-muʿīn*.

Life and Career of *Fatḥ*

Qurrat, the base-text of *Fatḥ*, was written with a framework that can be described as a revivalist. The author believed that Islam on the Malabar Coast had been corrupted and needed to be rejuvenated through legalist teaching. This idea was not new if we remember that the Middle Eastern scholarly tradition often complained that religion was getting corrupted more day by day, and that an enthusiasm for pursuing pure knowledge was decreasing immeasurably.[15] We have seen that in *Minhāj*, as well as in the writings of al-Ghazālī as early as the eleventh century. It is a common rhetoric among the fuqahā and they made a space for themselves in that rhetoric by asserting their responsibility of reformation and revival.[16] Zayn al-Dīn had the same preconceptions about his community, especially in the contexts of being geographically remote from the central Islamic lands and being a demographic minority under a Hindu majority, politically ineffective, and economically threatened by the arrival of the Portuguese.

His belief that his audiences in Malabar and the wider Islamic world were becoming morally corrupt and religiously impious is reflected in his writings. In his treatise against the Portuguese, *Tuḥfat al-mujāhidīn*, he articulates this by interlinking the reasons for Portuguese attacks with certain weaknesses in the Muslims' piety. He writes: "They were guilty of ingratitude towards God, forgetting the blessings that they enjoyed, going astray, and becoming divided into schisms. Therefore, God brought down upon them the people of Europe, the Franks, Christians by religion (May Almighty God confound them!), who began to oppress the Muslims, and to bring ruin amongst them."[17] Resisting the attacks and defending the interests of the community were the main goals of this jihādi text, whereas

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[14] Kurup, "Foreword," xiii-xvi.

[15] The notion stemmed from the idea that the ideal time and people were to be found in the time of the Prophet, his companions and their successors, and quality decreases as time passes. This attitude certainly is related to apocalyptic ideas in Islam.

[16] Such statements in the Ottoman contexts have been analyzed by D.A. Howard in his "Ottoman Historiography and the Literature of 'Decline' of the Sixteenth and Seventeenth Centuries", *Journal of Asian History* 22, no. 1 (1988): 52-77.

[17] Aḥmad Zayn al-Dīn al-Malaybārī, *Tohfut-ul-mujahideen: An Historical Work in the Arabic Language*, trans. M.J. Rowlandson (London: Oriental Translation Fund of Great Britain and Ireland, 1833), 103, with slight modification in translation.

correcting the immoral community and teaching "proper Islam" were why he composed legal texts like *Qurrat* and *Fatḥ*.

Qurrat communicated to its immediate audience in Malabar with its mission of introducing a more purified, legalized Islam on the basis of the education its author could have received in Middle Eastern centres. At the same time, by choosing Arabic rather than the regional language (Malayalam),[18] he demonstrated his political motive of communicating with the wider world of the Indian Ocean where Arabic was still a lingua franca. Arabic also enabled it to be incorporated into the broader Middle Eastern and non-Middle Eastern Islamic networks of scholars, texts and ideas. For the sake of the argument, we can disbelieve the popular narratives and suppose that the author never went to the Middle East for academic purposes, but the language used and references provided still lead us to interesting conclusions. He refers to many books, which must have been available to him at the time of writing, either as part of the curriculum in indigenous educational centres such as Ponnāni or in local private collections. That leads to speculate again on the possibility of Islamic legal texts being physically transported across the Indian Ocean and so to Malabar. To write a book like *Qurrat* and its commentary with sensitivity to the longer tradition of Islamic juridical writings and adopting a position in the genealogy of better known Shāfiʿīte texts, access to previous literature is a *sine qua non*. We thus conclude that if the author did not sail to a central Islamic location such as Mecca, the Islamic texts of the sixteenth century and earlier were brought to him in the course of the general circulation of texts along the Indian Ocean rim more than before. In either case the question sheds light on the intensified movement of scholars and texts in the sixteenth century as the number of legal texts from these lands subsequently increased.

What the author meant by using specific linguistic terms is worthy of note. In the introductory lines, *Qurrat* is simply said to be a *mukhtaṣar* (abridgement) of Shāfiʿīsm. We are given no elaboration on the intention or motivation of the author in writing it. We have simply the title followed by a usual prayer for comfort "tomorrow", i.e. in his afterlife: "I entitled this [book] *Qurrat al-ʿayn bī muhimmāt al-dīn*, expecting from God that the intellectuals (*aḏkiyāʾ*) will use it and that it will cool my eyes tomorrow, when glancing at His venerated face all the time."[19] The term *aḏkiyāʾ* connotes the broader intellectual and mystical communities within the fuqahā-estate in the region and beyond. It was also used in the title of a mystical text, *Hidāyat al-aḏkiyāʾ ilā ṭarīq al-awliyāʾ*, "A Guide for Intellectuals to the Path of the Mystics", written by his grandfather Zayn al-Din Sr. at the beginning the sixteenth century.

The style and language of *Qurrat* have been a matter of concern in Shāfiʿīte clusters ever since the time of its composition and even now. Its extremely precise formulations lack any discursive engagement with the previous scholarship of the school and the specialist readers find it too obvious to engage with. Trying to remedy this, the author wrote his commentary dealing with the broad tradition of the school. Even so, complicated language persisted which deterred an audience from understanding the base text and the commentary.

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[18] The origin of Malayalam as a written language is a matter of historical and political debate, but certainly the language and script spread across the region by the ninth century, as numerous inscriptions and texts testify.

[19] al-Malaybārī, "Qurrat al-ʿayn bī muhimmāt al-dīn" in his *Fatḥ al-muʿīn bi sharḥ Qurrat al-ʿayn* (Kottakkal: Maktabat al-Wafa, n.d), 4.

The new text gained significance and intellectual prestige from later discussions of its contents. It always seeks to provide a clear ruling, without deep complications by giving many contrastive viewpoints within the school. In the context of the Malabari fuqahā-estate, its less rigorous legal discourses and the condensed Islamic traditions and practices of the community, such precision without complexities would have been sufficient. Its aversion to discursive traditions and avoidance of the related paraphernalia means that *Qurrat* is even far shorter than *Minhāj*. Its rulings always confirm the most valid views in the school, but also provide apt opinions for actual problems the author had encountered in his his life related to socio-cultural issues in the environment of the Indian Ocean rim. These issues are explained further in *Fatḥ*.

Because the precision, the avoidance of disputes within the school, and the complexity of language, made *Qurrat* an impractical text for many non-specialists and experts, the author sought in his commentary to overcome those obstacles and at the same time display the depth of his knowledge in recent Islamic legal discourses. In the preface of *Fatḥ*, he writes:

> This is a beneficial commentary on my work titled *Qurrat al-ʿayn bī muhimmāt al-dīn*. It elaborates on the subtext, completes inferences, amplifies connotations and explicates benefits. I have entitled it *Fatḥ al-muʿīn: A Commentary of Qurrat al-ʿayn bi muhimmāt al-dīn*. I ask the generous and benevolent God to broaden its usefulness for colleagues, specialists and laypersons.[20]

These words partly explain the author's intention in writing a commentary on his previous text. It also marks a growth of the fuqahā-estate on the Malabar Coast by addressing an audience assumed to have some advanced knowledge of Islamic law. This practice of writing commentary or abridgement on one's own work sustains the custom in the textual history of Shāfiʿīsm, so prominently demonstrated by al-Ghazālī as early as the eleventh century. Here we see that intellectual practice being sustained centuries later.

Unlike *Qurrat* or the other works ascribed to Zayn al-Dīn Jr., we are given an exact date for the composition of *Fatḥ*. At the end of the text we read that revision (*tabyīḍ*) of the manuscript was finished on Friday, Ramaḍān 24, 982 A.H., which corresponds to January 7, 1575. Even though the original manuscripts or immediate copies have not yet been found, this date can be taken to fix the context in which the text was written. The popular narratives say he was in Mecca until the early 1560s, from which we can assume that he wrote *Qurrat* immediately after his return, and the commentary after he had established himself in the fuqahā-estate as a recognized scholar.

In the long legalist discursive tradition of the school, *Fatḥ* tries to accommodate the latest views in its analyses and arguments. It primarily refers to the works of Ibn Ḥajar, especially his *Tuḥfat* written a couple of decades earlier. He gives priority to the oeuvre of Ibn Ḥajar over other contemporary scholars, and the teachers in teacher-chains going back to Nawawī and al-Rāfiʿī. That is why texts such as *Tuḥfat* began to outshine the preceding works like *Minhāj* in the discursivities of the Shāfiʿīsm. He writes:

> I have selected those [legal views] for this book from reliable works of our teacher, the Last Codifier [*khātimat al-muḥaqqiqīn*], Shihāb al-Dīn Aḥmad bin

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[20] al-Malaybārī, *Fatḥ*, 4.

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[20] al-Malaybārī, *Fatḥ*, 4.

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Ḥajar al-Haytamī and of other eminent *mujtahid*s: Wajīh al-Dīn ʿAbd al-Raḥmān bin Ziyād (May God bless them both!) and two teachers of my teacher, Shaykh al-Islām al-Mujaddid Zakariyā al-Anṣārī and Imām al-Amjad Aḥmad bin al-Muzjad (May God bless them both!) and other later confirmers (*muḥaqqiqūn*), relying on the views of two shaykhs of the school, al-Nawawī and al-Rāfiʿī.[21]

Two unfamiliar names of scholars occur in this quotation that we have not discussed so far, ʿAbd al-Raḥmān bin Ziyād (d. 975/1568),[22] and his teacher Aḥmad bin al-Muzjad (d. 930/1524).[23] Both these scholars come from Zabīd in Yemen and studied and taught in Yemen and/or Mecca for a long time. The works of al-Muzjad, especially his *al-ʿUbāb al-muḥīṭ bi muʿẓam nuṣūṣ al-Shāfiʿī wa al-asḥāb*, widely known simply as *al-ʿUbāb*, influenced the Shāfiʿīte clusters and Ibn Ḥajar wrote a commentary on it.[24] That these two Shāfiʿītes are mentioned in *Fatḥ* shows the legalistic connections between the Yemeni and the Malabari estates. This interrelationship becomes once again important if we keep in mind tracing a possible lineage for the Makhdūms back to Yemen. Also, it is important to note that he does not mention al-Shams al-Dīn Ramlī or his son Shihāb al-Dīn Ramlī or his contemporary al-Sharbīnī, all of whom wrote remarkable commentaries to *Minhāj* and made other contributions to the legal corpus of the school. Even so, his relationship with them is evident from the existing narrative. On a few occasions he cites al-Ramlī, but only to prove a point for opposing him. This validates my earlier argument on sub-dividing Shāfiʿīsm into a Cairene and a Meccan block, with the Shāfiʿītes of South and Southeast Asia accepting Mecca.

From the oeuvre of Ibn Ḥajar we notice that *Fatḥ* mostly depends on *Tuḥfat* to validate judgements and at times to dissent from it. We will return to these criticisms later. Apart from *Tuḥfat* it also uses *al-Irshād* and *Fatḥ al-jawād* of Ibn Ḥajar. We do not know what works of the Yemeni scholars it used, for no references are given.

Fatḥ selects the most dependable view among the issues (*masāʾil khilāfiyyat*) being debated by Shāfiʿītes. It normally avoids references to the minute details, but states a generally agreed view. It does include larger subjects of debate among his teachers and earlier

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[21] al-Malaybārī, *Fatḥ*, 4

[22] On the works of ʿAbd al-Raḥmān (bin ʿAbd al-Karim bin Aḥmad) bin Ziyād al-Zabīdī, see Ismāʿīl Bāshā al-Baghdādī, *Hadīyat al-ʿārifīn: Asmāʾ al-muʾallifīn wa athār al-muṣannifīn* (Beirut: Dār Iḥyāʾ al-Turath al-ʿArabī, 1951), 545-546. He wrote many works on controversial but trivial ritualistic and matrimonial issues among Shāfiʿīte scholars and the fuqahā-estate in general, as some of the titles indicate: *Iqāmat al-burhān ʿalā kammiyat al-tarāwiḥ fī Ramaḍān, Īrād al-nuqūl al-maḏhabiyyat ʿan ḍawi al-taḥqīq fī anti ṭāliq ʿalā ṣiḥḥat al-barāʾ min ṣīgh al-muʿaraḍāt lā al-taʿlīq, Ithbāt sunnat rafʿ al-yadayn ʿind al-iḥrām wa al-rukūʿ wa al-iʿtidāl wa al-qiyām min ithnatayn*, etc.

[23] Aḥmad bin al-Muzjad was appointed qāḍī of Aden in 1493 after the death of Jamal al-Dīn Muḥammad bin Ḥusayn al-Qumat al-Zabīdī. He continued in that position until his death. On his life and contributions, see ʿAbd al-Qādir ibn Shaykh ʿAydarūs, *Tārīkh al-nūr al-sāfir ʿan akhbār al-qarn al-ʿāshir*, ed. Aḥmad Ḥalū, Maḥmūd al-Arnaʾūt and Akram al-Būshī (Beirut: Dar Sader Publishers, 2001), 127; ʿAbd al-Ḥayy ibn Aḥmad Ibn al-ʿImād, *Shaḏarāt al-ḏahab fī akhbār man ḏahab*, ed. ʿAbd al-Qādir al-Arnaʾūt and Maḥmūd al-Arnaʾūt (Beirut: Dār Ibn Kathīr, 1991), 8: 169; al-Zarkalī, *Tartīb al-aʿlām*, 1: 188; Ḍirār bin al-Azwar, *ʿUqūd al-zabarjad fī tarjamat al-Imām al-Muzjad*, http://www.ahlalhdeeth.com/vb/showthread.php?t=47774 (accessed on 3 February, 2015).

[24] On other works of al-Muzjad, see: al-Baghdādī, *Hadyat al-ʿārifīn*, 140. His *Tajrīd al-zawāʾid wa taqrīb al-fawāʾid* is greatly dependent on the *Rawḍat* of Nawawī. His fatwas were collected by his son al-Qāḍī Ḥusayn and further improved with additions by Ibn al-Naqīb. His *Tuḥfat al-ṭullāb wa manzumat al-Irshād* is a poetical legal text of 5840 lines, in which he brought in many additional legal issues to *al-Irshād*.

luminaries of the school such as Nawawī, al-Rāfiʿī, and ʿAlī bin Muḥammad al-Māwardī. It also occasionally refers to the opinions of other schools, mainly Ḥanafīsm and Mālikīsm. In such debates it is important to note the position it takes. Without directly referring to any of his teachers or immediate preceding scholars, he expresses his disagreements with earlier legalists. An analysis of the context of these dissenting positions shows that many of his arguments emerge from actual incidents in the place where he was living in (see below). The references to opinions of other schools were necessary at times, and Islamic legal hermeneutics allows a practitioner to follow opinions of other schools as secondary opinions within his own school, provided that there is no fundamental contradiction concerning the ritual or circumstance. He uses such a general legalistic consensus to do some "forum-shopping" if necessary, and thus navigates a course through a contextual reading of earlier texts. Citations and references in legal texts are always political, economic, and diplomatic, and *Fatḥ* follows that pattern.

This text became a foundation for the major developments of Shāfiʿīsm in Malabar, as well as along the Indian Ocean rim. *Fatḥ* achieved this status essentially for two reasons. Not only did it add to the long tradition of the pattern of Islamic legal thought in a traditional way, but it also advanced it by addressing many legalistic concerns of non-Middle Eastern Muslims. Its advancement of Shāfiʿīte legalism proceded in two ways: a) it criticized many rulings and arguments made by its intellectual predecessors; on a number of issues *Fatḥ* expresses its own views in dissent from previous unanimity; b) it generated a non-Middle Eastern alternative discourse of Shāfiʿīsm. In this regard Ibn Ḥajar and his work *Tuḥfat* became major targets for criticism, but it also had other earlier scholars in view, as far back as the classical stage of the school. They all represent a Middle Eastern intellectual group against which a South Asian scholar and his text were responding according to the prevailing needs of their time and place. Legal clarifications in *Fatḥ* on a number of different issues oppose the viewpoints of previous scholars and texts reveal the attempts a scholar from a peripheral territory addressing issues of central importance in his place and time. A century ago a modern Indian jurist referring to the "Middle-Easternness" of Islamic law wrote that since the Islamic legal system had its origins in Arabia and was developed by the Arab jurists, we should "expect to find on it the impress of Arabia's social history and of the Arab mind and character."[25] *Fatḥ* attempted to break this Arabian impress on its mind and character by integrating the social, cultural, and political experiences of a non-Middle Eastern, non-Arab region into the legal narratives. On the one hand, incorporating the traditional genealogy helped its reception in Middle Eastern Shāfiʿīte circles. On the other, its non-Middle Eastern qualities helped it to make its ways towards a wide welcome in the circles in the "peripheries" across the ocean.

Receptivity: Constructing Legacy

Fatḥ appealed to the wider world of Shāfiʿītes along the Indian Ocean rim thanks to the peripheralness it deliberately demonstrated. It made its way into the Shāfiʿīte clusters in many regions which would otherwise be neglected peripheries of the Islamic world. The text's

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[25] Abdur Rahim, *The Principles of Islamic Jurisprudence: According to the Hanafi, Maliki, Shafi'i and Hanbali Schools* (New Delhi: Kitab Bhavan, 1911), 1.

distinctive approaches in socio-cultural, political and ecological aspects must have helped the school's adherents and the fuqahā to relate to it more than any text from a Middle Eastern context. The acceptance in the non-Middle Eastern rim however is also partly due to the text's reception in the Middle East itself, especially in Mecca and Yemen. That is a process on which I shall elaborate in the next chapter.

The popularity of *Fatḥ* owes much to it its precision and simplicity. Both factors are related. If we compare the text with the available literature in the school until the sixteenth century, we notice that most texts were *mabsūṭat*s (*sharḥ*s and *ḥāshiyat*s with multiple volumes) or *mukhtaṣar*s (abridgements in most cases). *Minhāj* is a *mukhtaṣar* as we explained earlier, and *Tuḥfat* is a *mabsūṭ*. Both those texts have advantages and disadvantages: Although *Minhāj* was a short and precise text, it became only an intermediate text with the arrival of the advanced *Tuḥfat*, and its language and technical terms were too precise and complicated. It continued to be difficult for a non-specialist reader to comprehend without the help of commentaries or a trained specialist. Some Shāfiʿītes were inclined to identify it as a legal "theoretical" text rather than a "practical" one. [26] *Tuḥfat* was not only linguistically complicated, but its length required much time and patience for the student to get to grips with its content and language. Hence, only deep specialists or aspirants of Shāfiʿīte law could engage with it. On the other hand, *Fatḥ* presented its arguments more precisely and simply. While *Qurrat* was more like *Minhāj* in its extreme precision, *Fatḥ* presented its extreme precision more simply for the rulings of the school. This was certainly a help for many intermediate students to study Shāfiʿīte law inside and outside the institutional frameworks like madrasas. Apart from its inclusion in the curricula of Shāfiʿīte madrasas from the Eastern Mediterranean to the Eastern Indian Ocean, it is still also a prominent "textbook" on which the Shāfiʿīte fuqahā depend to teach Islamic law to the general public in public sessions on specific occasions in mosques or during the sacred month Ramaḍān. *Fatḥ* and Shāfiʿīsm popularize each other through this sort of democratizing of juridical learning and dissemination of Islamic knowledge.

It addresses almost all the issues that a general text of Shāfiʿīsm would address, not like specialist texts. Those may also be precise and simple, but address only particular issues like marriage, inheritance, rituals, or trade. We should also keep in mind that simplicity and precision are relative, and the contrasting opinions of particular teachers and students of the text have stimulated the production of commentaries on or abridgements of it.

While consciously or unconsciously advancing Shāfiʿīte legalism in a non-Middle Eastern setting, the socio-cultural environment of Malabar, *Fatḥ* acquired a wider acceptance in Shāfiʿī clusters. Shāfiʿīte Muslims along the non-Arab spheres of the Indian Ocean rim could easily relate to the text theoretically and culturally. The text became a most dependable intermediate work of Shāfiʿīsm among the Malabari adherents and students of the school across the globe. During the lifetime of the author, *Qurrat* must have been widely read, taught and circulated in scholarly circles, a fact which motivated him to write his own commentary. Eventually both the base-text and commentary attracted more commentaries from Southeast Asia, such as *Nihāyat al-zayn bi sharḥ Qurrat al-ʿayn*; and there were also super-commentaries on the author's commentary from South Asia, such as *Fatḥ al-mulhim*, and

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[26] See below the section on East Africa.

from the Middle East, such as *Iʿānat al-mustaʿīn* and *Iʿānat al-ṭālibīn*. In the next chapter I shall examine each of these commentaries in detail with a special focus on the first and the last. For the moment, I briefly discuss the scholarly response to *Qurrat* and *Fatḥ*.

There were different methods of teaching, memorizing and circulating *Fatḥ* which added to its peculiarity in the Islamic world, especially as it was a Shāfiʿīte legal text coming from a non-Middle Eastern region. Learning *Qurrat* by heart, or even the whole of *Fatḥ*, was a common practice for Shāfiʿīte legal aspirants in South Arabia, South Asia and Southeast Asia. In that way they could use its exact wording in discourses, debates, fatwās and speeches. That is an exercise which is very common in the Islamic world for, as we noticed earlier, many students learned *Minhāj* by heart.[27] Memorizing exact phrases and sentences was considered a mark of a high standard of competence and deep knowledge. The sacred scriptures like the Qurʾān or the classical *ḥadīth* texts could be recited from memory, and so texts on the law, theology and even on grammar and logic texts were similarly memorized. Short texts such as *Qurrat* and *Minhāj* would have been relatively easy to memorize, for others were more voluminous. The crucial chapters of *Tuḥfat* on inheritance law must have been a challenge even for students who had an exceptionally good capacity to memorize.

The legacy of *Fatḥ* is well illustrated over the centuries by the many commentaries, super-commentaries, translations and abridgements it attracted. *Qurrat* has only two commentaries and two poetic versions, but more than ten super-commentaries, fifteen translations of the commentary, and three abridgements. As for textual progenies, it means that *Fatḥ* received more attention that *Qurrat*, which was given only indirect attention. Nevertheless, a nineteenth-century Indonesian scholar, Muḥammad bin ʿUmar Nawawī al-Jāwī, commonly known as Nawawī al-Bantanī, turned again some attention to *Qurrat* when he produced his commentary entitled *Nihāyat al-zayn fī irshād al-mubtadiʾīn*. We shall discuss his contribution in the next chapter. For the moment suffice it to say that *Nihāyat* is a commentary showing us how *Qurrat* spawned its own intellectual endowment of legalist, social, and educational significances for a broader spectrum of the population from Southeast Asia to the Middle East. In the early twentieth century, a Malabari scholar Muḥammad Musliyār ibn Aḥmad Arīkalī (d. 1952) wrote a poetic version of *Qurrat* entitled *Naẓm Qurrat al-ʿayn li matn Fatḥ al-Muʿīn*.[28] Very recently, Anwar ʿAbd Allāh Faḍfarī produced another poetic version entitled *al-Naẓm al-wafy fī al-fiqh al-Shāfiʿī*,[29] which also complements the list of non-Middle Eastern scholars actively engaged in the Middle Eastern estates. For many reasons the presence of the South Asian fuqahā in the Meccan and Medinese spheres had decreased by the nineteenth century and even further in the twentieth, especially after the predominance of Wahhabism. Snouck Hurgronje has noted the presence of Malabari professors in Mecca in the later part of the nineteenth century, stating that their number has decreased from earlier times.[30] Very few South Asian scholars ventured to underpin their

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[27] Cf. Dale F. Eickelman, "The Art of Memory: Islamic Education and Its Social Reproduction," *Comparative Studies in Society and History* 20, no. 4 (1978): 485-516.

[28] I have made many attempts to locate this work but I have not been successful.

[29] Abū Suhayl Anwar ʿAbd Allāh bin ʿAbd al-Raḥmān al-Faḍfarī, *al-Naẓm al-wafy fi al-fiqh al-Shāfiʿī* (no place: no publisher, 2010). Available at: https://www.scribd.com/doc/112279981/النظم-الوفي

[30] C Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning* (Leiden: Brill, 2007), 202.

Shāfiʿīte intellectual traditions while standing within the fuqahā-estates of Saudi Arabia, but Faḍfarī is one of them. His origin and early education was in Malabar, and by the end of twentieth century he had established himself in a successful career in educational centres in Mecca. Throughout his intellectual engagements he consistently asserted the Shāfiʿīte legacy of Malabar. *Naẓm* is an example of an intermediary route one which *Qurrat* embarked from the revivalist atmosphere of sixteenth-century Malabar to the unreceptive and rejectionist context of twentieth-century Mecca.

Apart from these texts, *Fatḥ* outshined the appeal of *Qurrat*, which might otherwise not have attracted the attention of Shāfiʿīte clusters. Once introduced to *Fatḥ*, many scholars appreciated it on different levels and its legacy was nurtured through different educational practices, textual descendants and legalist discourses across the Shāfiʿīte world. One scholar, Farīd ibn Muḥy al-Dīn al-Barbarī, praised *Fatḥ* in the words that became an emblematic description. He says: "*Fatḥ al-muʿīn* is a wondrous book which included all that was not included in other books. [….] the rules of our school of jurisprudence are in its sections and even Arabs have appreciated the quality of its compilation."

Precision and simplicity were valued in Shāfiʿīte clusters, especially by students who had already finished their basic training in positive law in the school and were looking for something more analytical and broader. *Tuḥfat* and *Minhāj* required much time and deep knowledge in legal hermeneutics and positive law as well as in language, so such a text was not a solution for them. But *Fatḥ* stood as an intermediary text for legal aspirants of the school. One could learn it in a year or so even with other subjects, whereas other texts required many more years. This fitted the purpose of intermediate students of the school, especially the ones who flocked to the Middle East for their education or merged their pilgrimage with an aspiration for education.

Fatḥ was taught in Mecca as well as in many other places at least from the early nineteenth century; we have no evidences to argue for an earlier reception. Many students and student-pilgrims from the Indian Ocean rim who arrived at Mecca studied the text there, took it back home, and taught and popularized it in existing or nascent educational centres. The increased Ḥaḍramī-migrations to Mecca and across the Indian Ocean contributed to its reception on a wider level. Teachers in the Middle East and the Ḥaḍramī migrants could hardly resist the demands of students who wanted to study such a simple, precise and now celebrated text like *Fatḥ*. This contributed to its reception both in Middle Eastern and non-Middle Eastern centres of Shāfiʿīte legalism. Despite its peripheral roots, *Fatḥ* grew tall in Mecca, and in many other Meccas. I shall explain its wider circulation along the Indian Ocean rim towards the end of this chapter.

II.

Politics in a Complicated Abode of Islam

The intensification and gradual domination of the school in the oceanic rim can be attributed to the three components of the fuqahā-estate mentioned in Chapter 2, individuals, clusters and institutions. In Middle Eastern Muslim contexts we have seen how the three collaborate with each other *vis-à-vis* the state and society and how the educational and religious institutions functioned as an exclusive space of the estate once they were established or funded by the

state. But things were different on the non-Middle Eastern rim of the Indian Ocean for two main reasons: a) in most regions there Shāfiʿīsm had to operate from now on with non-Islamic (broadly conceived) socio-cultural and sometimes political structures, when the Muslim communities were a minority and bizarrely diverse; b) the main actors in the fuqahā-estate, the individuals and micro-communities, were new arrivals, a foreign diaspora in the rim. This "strangeness" or "foreignness" in their new lands forced both mobile and settled jurists around the Indian Ocean to compromise their earlier notions of autonomy from local authorities. Their legal institutions did not come under the full control of the estate. Negotiations with many other actors in the society were called for, be it on economic, cultural, political or even religious matters, ones which were its concern in Middle Eastern contexts.

The author of *Fatḥ* lived under the command of non-Muslims, the Zamorins of Calicut. This was unlike all other previous centres of Shāfiʿīsm. Here the rulers were the Hindus who arguably belonged to the upper caste of Brahmins. Yet the Muslims never faced any troubles in practising their faith and observing their law. Indeed the Zamorins had shown them high consideration in social and political milieus and involving their religious and juridical requirements. From the contemporary sources we understand that the kingdom was very tolerant to Islam and Muslims in each and every respect.[31] But the situation quickly changed with the arrival of the Portuguese at the end of the fifteenth century. Malabar was one of the first regions on the Indian Ocean rim that entered into negotiations with the Portuguese. Sources show that the Zamorins were at a "golden stage" of political conquests and economic growth when the Portuguese arrived. They had a well-equipped army of sixty-thousand Nayars under their commanding officers, another seventy-six thousand under their feudatories, and another large force in the Cochin contingent which they had recently subjugated. They also had a battalion of musketeers and a corps of artillery primarily staffed by Muslims. Besides their military might, they had a well filled treasury. Their ships, provided according to custom by local merchants and Arabs, also fleshed out the organization of the kingdom economically and politically. But the situation became complex with the arrival of the Portuguese.[32] The Zamorins soon became part of a larger network that was politically and diplomatically affiliated to the ʿĀdil Shāhs, Ottomans, Mamlūks, etc.[33] The Cochin kings, who until then had been under the yoke of the Zamorins, found in the Portuguese an exclusive ally. The region as a whole had suffered or gained immensely from the Portuguese incursions. The local petty kingdoms, merchants and brokers on the coast associated with and dissociated from the Portuguese for personal gain.

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[31] Muḥammad al-Kālikūtī, *Fatḥ al-mubīn* in M.A. Muid Khan, "Indo-Portuguese Struggle for Maritime Supremacy (as Gleaned from an Unpublished Arabic Urjuza: Fathul Mubiyn)," in *Studies in the Foreign Relations of India (from Earliest Times to 1947): Prof. H.K. Sherwani Felicitation Volume, ed. P.M. Joshi and M.A. Nayeem*, (Hyderabad: State Archives, Government of Andhra Pradesh 1975), 169-171; Zayn al-Dīn Jr., *Tuḥfat al-mujāhidīn fī baʿḍ akhbār al-Burtughālīyīn*, trans. S. Muhammad Husayn Nainar (Calicut: Other Books, 2006), 15, 45-46..

[32] K.V. Krishna Ayyar, *A Short History of Kerala* (Ernakulam: Pai & Co., 1966), 76.

[33] Sanjay Subrahmanyam, *The Political Economy of Commerce: Southern India, 1500-1650* (New York: Cambridge University Press, 1990), 252-342.

The initial communications between the Portuguese and the Zamorin ruler had no positive outcome for either side, as had been documented in many studies in detail.[34] He had his own reasons to reject the proposals of the Portuguese, especially when Vasco da Gama asked him in 1502 to expel all Muslims who had come from the Cairo and the Red Sea region out of Calicut. He rejected it, "for it was unthinkable that he expel 4,000 households of them, who lived in Calicut as natives, not foreigners, and who had contributed great profits to his kingdom." [35] This rejection exasperated the Portuguese who then adopted a hostile relationship with the kingdom. The situation was further aggravated by some furious political and military actions. In the ensuing conflicts the Zamorin was more cautious, and he introduced campaigns and strategies to strengthen the army, requesting help from each and every individual and collective he could depend on. Simultaneously the Ottomans were endeavouring to maintain a political network based on religion in the Indian Ocean arena to secure an economic base for them. The Portuguese expansion threatened their dreams of grabbing wealth from around the rim.[36] The Ottoman rulers kept in constant touch with the minor kingdoms of the area, and the political and religious elite responded to them positively offering support in their own self-interest. A new "invisible abode of Islam" began to appear as premeditated by the Ottomans. It was an area with three distinctive features: a) with no clear-cut geographical boundaries; the area was defined through mutual alliances against a common enemy, the "cross- and image-worshipping" Portuguese; b) with no cut and dried religious restraints, for Hindu kingdoms such as the Zamorins were embedded in the abode; c) in a non-Middle Eastern Islamic world where the natural wealth of spices and other commodities had crucial roles to play.

Alongside their initiatives for diplomatic relations with the Mamlūks and the Ottomans, the Zamorin wanted to mobilize a strong navy for his kingdom. He offered all the same privileges of status and autonomy for those who converted to Islam as Muslims themselves received. Many converted and joined in sea battles usually under the command of Muslims.[37] Indigenous Muslims and those of the diaspora both had their own reasons to link with the Zamorin against the Portuguese. He had always protected them in his kingdom facilitating their commercial and religious ventures.[38] Thus, as early as the first decade of the century,

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[34] For a detailed reading about the Portuguese-Zamorin relationship, see Sanjay Subrahmanyam, *The Career and legend of Vasco da Gama* (Cambridge: Cambridge University Press, 1998); Michael Pearson, *The Portuguese in India* (Cambridge: Cambridge University Press, 2006); K.S. Mathew, *Portuguese Trade with India in the Sixteenth century* (Manohar, New Delhi, 1983).

[35] Cited in M.N. Pearson, "Corruption and Corsairs in Sixteenth-Century Western India: A Functional Analysis," in *The Age of Partnership: Europeans in Asia before Dominion*, eds. Blair B. Kling and M.N. Pearson, (Honolulu: The University Press of Hawaii, 1979), 26

[36] Pius Malekandathil, "The Ottoman Expansion and the Portuguese Response in the Indian Ocean, 1500-1560," Charles J. Borges and M.N. Pearson (eds.), *Metahistory: History Questioning History*, *Fetschift in Honour of Teotonio R. de Souza* (Lisbon: Nova Vega, 2007), 497-508; Giancarlo Casale, *The Ottoman Age of Exploration* (Oxford: Oxford University Press, 2010); Salih Özbaran, *The Ottoman Response to European Expansion: Studies on Ottoman-Portuguese Relations in the Indian Ocean and Ottoman Administration in the Arab Lands during the Sixteenth Century* (Istanbul: Isis Press, 1994); Suraiya Faroqhi, *Pilgrims and Sultans: The Hajj under the Ottomans, 1517-1683* (London and New York: I.B. Tauris, 1994).

[37] al-Malaybārī, *Tohfut-ul-mujahideen*; cf. Stephen F. Dale, "Trade, Conversion and the Growth of the Islamic Community of Kerala, South India" *Studia Islamica* 71 (1990): 155-175.

[38] Geneviève Bouchon, "Calicut at the Turn of the Sixteenth Century: The Portuguese Catalyst," *Indica* 26, nos. 1-2 (1989): 2-4.

they themselves tried to play on the religious sentiments of the Mamlūks, who also had an interest in maritime trade, to support the Zamorins against the Portuguese.[39]

The conflicts lasted for a century, involving various interested groups including the local militia of Nayars, Muslims of the diaspora, locals and converts, the rulers of Bijapur, Gujarat, and the Ottomans. This situation interrupted the social, economic, cultural and religious life of Malabar, in contrast to that of the powerful communities and dominions under the Mughals in the hinterland, which were hardly affected by the battles. The constant Portuguese attacks on religious establishments, the mosques and learning centres, and on Muslim pilgrims, traders, the settlements on the coast and its waterways made traditional intellectuals concerned more about their own self-survival than keeping their distance from their cohabitants. This was reflected in the contemporary writings of the ʿulamāʾ in various forms. For the fuqahā-estate those events created a crisis point in legal discourse arising from its entanglement with issues such as the minority status of the community. In *Fatḥ* Zayn al-Dīn particularly recognized this secondary status of the community and drafted rulings accordingly. Despite their religious differences, he recognized the Zamorin as a legitimate ruler capable of dealing with Islamic affairs.[40] As an example, when he discusses the appointment of judges he recognizes a non-Muslim or unbelieving ruler as a legitimate sultan, with the authority to select, appoint or dismiss *qāḍī*s.[41] This was unprecedented in Shāfiʿīte literature, including *Tuḥfat* of Ibn Ḥajar or *Nihāyat* of al-Ramlī, as one commentator later noted.[42] For earlier Shāfiʿīte scholars it was a condition that legitimate sultan must be a Muslim, something inapplicable in a Malabari context. The issue of jihād also arose for criticism. It has always been incumbent for only a Muslim ruler (*imām*) to initiate and lead battles, according to the existing legal formulations. Zayn al-Dīn revised this standpoint to fit the sovereignty of the Hindu king, the Zamorin, so that he could initiate the anti-Portuguese wars and legitimize the participation of the Muslim laity and militia, so that it became a religious battle just as meritorious as jihād. His most renowned work among historians, *Tuḥfat al-mujāhidīn*, explicates this case, for it is his response to the recurring Portuguese atrocities against Muslim travellers, pilgrims, merchants, mosques and settlements. Through this treatise, he incites his audience to engage in jihād against the Portuguese under the banner of the Zamorins.[43]

The Portuguese arrival in the Indian Ocean had pushed the Muslim mercantile communities of Malabar into deep peril by the end of the sixteenth century. Throughout that century they had tried to cheat about new regulations introduced by the Portuguese *Estado da India* over the free movement of Asian traders by issuing their trading licences (*cartazes*) and by other means. This could have immediately and completely blocked the economic aspirations of the Arab Muslim traders, but they managed to avoid the Portuguese

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[39] Palmira Brummett, *Ottoman Seapower and Levantine Diplomacy in the Age of Discovery* (Albany, NY: State University of New York Press, 1994), 112-113.

[40] On the political affiliations of the local Muslim jurists, see Mahmood Kooria, "An Abode of Islam with a Hindu King: Circuitous Imagination of Kingdoms among Muslim Intellectuals of Sixteenth-Century Malabar," *Journal of Indian Ocean World Studies* (forthcoming).

[41] al-Malaybārī, *Fatḥ*, 476.

[42] Sayyid Bakrī, *Iʿānat al-ṭālibīn* (Cairo: Maṭbaʿat al- Āmirat/al-Mīriyyat, 1883), 4: 253.

[43] Zayn al-Dīn Jr., *Tuḥfat al-mujāhidīn*, 13-25.

stranglehold by conflict, piracy, and deceit. Asian overseas trade was under threat, but the indigenous Muslim communities found ways to travel and even to trade, as pilgrims and sojourning scholars. In the sixteenth century we see numerous non-Middle Eastern Muslims travelling back and forth to Mecca, which by the end of the century had become a "true global city" for the first time in its history. The traders moved along the ocean highroads as travellers to Mecca, a hub which connected numerous regions. The actual composition of *Fatḥ* is an illustration of this problem, as much as Zayn al-Dīn's many questions to the Arab scholars in Mecca and Yemen were.[44] The Malabari traders and travellers were repeatedly attacked by the Portuguese, but they continued frequently to make their way to Mecca and to send charitable gifts for delivery in the holy city. From Ponnāni, an import centre and second capital of the Zamorins, many ships set sail to Mecca every year with charitable gifts, as recorded in Portuguese documents.[45] In these ships there were many traders, pilgrims, and migrants. Not only did those ships bring educational aspirants to Mecca, they brought back many Arabs facilitating the growth of communities and scholarly circles in the region.[46] Zayn al-Dīn's own scholarly trajectory, if we are to believe the existing accounts, prove these political, religious and juridical entanglements. Zayn al-Dīn changes the traditional Shāfiʿīte narrative here too to cater for the immediate contexts of the ongoing wars. This reformulation stands closer to his recognition of the Hindu ruler as a legitimate sultan, to arbitrate in the juridical affairs of Muslims, including the appointment of a qāḍī.

Intellectuals in a Port: Makhdūms of Ponnāni

We have made passing references to Ponnāni but now more can be said. It is a port at the southern end of the Zamorin's kingdom and it functioned as his second capital and became a target of repeated Portuguese attacks. It remained a crucial place over the course of time for different political entities: the Zamorins, Tānūr Rajas, Cochin Rajas, as well as the later Mysore sultans, and economic adventurers such as the Portuguese, Dutch, French and English. Ponnāni's opulence began when it became a major site of settlement for Muslims and a centre of Islamic activity. It has been called the "Mecca of South India" or "Little Mecca" (Mala. *Dakṣinēntiayuṭe Makka* or *Cerumakka*). Several other knowledge-centres of the Indian Ocean Muslim world were given the nickname Mecca from the sixteenth century on: Bijapur on the Konkan coast was known as a Mecca of Sufism; Aceh in the Indonesian archipelago as "Veranda of Mecca" (Mal. *Serambi Makkah*); Hezhou (Linxia City) as "Little Mecca of China"; Surat in Gujarat was called "Gateway to Mecca" (Ar. *Bāb al-Makka*) for its importance for the pilgrimage. Apart from Surat, the other places were so tagged because of their importance in local religious higher education, and not for any ideas of sacredness such as Mecca itself had for believers. Ponnāni received the name after the arrival of a particular scholarly family known as the Makhdūms and their attempts to make it a centre for Islamic higher education. The author of our texts belonged to this family.

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[44] Zayn al-Dīn al-Malaybārī, *al-Ajwibat al-ʿajībat ʿan al-asʾilat al-gharībat*, ed. ʿAbd al-Naṣīr Aḥmad al-Shāfiʿī al-Malaybārī (Kuwait: Dār al-Ḍiyāʾ, 2012).

[45] Michael Pearson, *Pious Passengers: The Hajj in Earlier Times* (London: C. Hurst and Co., 1994), 163, 175.

[46] To compare this process with similar trends in the Coromandel Coast towards the end of this century and throughout the next, see Sanjay Subrahmanyam, "Persians, Pilgrims and Portuguese: The Travails of Masulipatnam Shipping in the Western Indian Ocean, 1590-1665," *Modern Asian Studies* 22, no. 3 (1988): 503-530.

By the second half of the fifteenth century there was a significant Muslim population in Ponnāni, for many affluent Muslim families had migrated there from the Coromandel Coast and other parts of Malabar. There they obtained a religious leader who was said to be able to trace his genealogical roots to Yemen and was well educated in Islamic science. In the early sixteenth century it witnessed a translocation of Muslim mercantile families from ports such as Cochin who had suffered hostility from the Portuguese. Furthermore, the geographical and topographical features of the town gave the site an importance on land and sea. On land it borders Portuguese-dominated Cochin to the south and a significant mountain-pass in the Western Ghats to the east, which gave access to the broader hinterlands of Southern India. Ponnāni was the site of the chief arsenal of the Zamorin, and it played host to his admirals, the Kuññāli Marakkārs, a large part of the navy. It also constantly produced many war treatises, addressing the Muslim population not only in Ponnāni but throughout Malabar and beyond. These treatises were mainly initiated by the religious scholarly circle of Ponnāni, who expressed strong religious sentiments in the treatises with open calls for jihād. The Zamorin was supportive of such moves as he knew that all such incitements would benefit his anti-Portuguese aspirations.

Behind these developments the Makhdūm family played a central role. They had recently migrated to Ponnāni from Cochin, and they made its congregational mosque a centre of their socio-religious, economic and political revivalism. That their real origin goes back to Yemen and that the family genealogy goes back to the Prophet's best companion, Abū Bakr al-Ṣiddīq (d. 634), are debated among scholars because of the lack of substantive evidence. Nevertheless, we do have evidence for their recent past before the sixteenth century. As a group of mobile scholars they had settled in various places on the coasts of Coromandel and Malabar. The first family member we can identify is Zayn al-Dīn, who came from Yemen to Nagōre (Tanjavur) on the Coromandel Coast in the early fifteenth century and became a disciple of a renowned Sufi scholar there, Abū Bakr Ṣādiq Maʿbarī.[47] After a while he moved to Cochin, where he is said to have converted many people to Islam, founded the mosque known today as Cempiṭṭapaḷḷi. He died and is buried there. He had two sons called ʿAlī and Ibrāhīm. The former became a qāḍī of Cochin and established a madrasa, whereas the latter moved to Ponnāni along with his nephew who was born in 1468 and was named after his grandfather Zayn al-Dīn. Ibrāhīm is said to have founded a mosque in Ponnāni which became a principal centre of congregational prayer in and around the locality, and also a distinguished educational centre offering religious studies. From this point on the history of Zayn al-Dīn's family became more settled. This is not to forget that some descendants moved further north to Cōmbāl, or travelled to the Middle East, but Ponnāni remained the centre for them, and members of the family still act as religious leaders there. The educational centres in Cochin and in Ponnāni both functioned in and around newly established mosques which opened new opportunities for a good number of students who could not pursue higher studies after their primary and secondary education.

These mosques as education centres were important for the Makhdūm family and the graduates from their college as newly educated persons could effect a change in a different

[47] Mehrdad Shokoohy, *Muslim Architecture of South India: The Sultanate of Ma'bar and the Traditions of the Maritime Settlers on the Malabar and Coromandel Coasts (Tamil Nadu, Kerala and Goa)* (London and New York: RoutledgeCurzon, 2003), 241.

setting, instead of trying to alter traditional indigenous practices all at once. These institutions soon became centres of higher education, but they also stood at the forefront of transforming the community gradually by attracting many believers for congregational prayers and other occasional rituals and ceremonies. As the anti-Portuguese sentiments strengthened on the coast and Calicut became fused into a broader Middle Eastern network more than before, the aspirants for knowledge from the locality saw new vistas of travel opening up through contacts with the wider scholarly world. This development can be compared to how Mecca was resurrected to new fame in the Islamic world as a centre of knowledge, which we discussed earlier. Now many new Malabari students could have access to ideas and books from Middle Eastern regions through the power of new political and diplomatic ties made to confront a common enemy.

From Ponnāni's mosque-college a number of scholars emerged through Ibrāhīm's educational efforts. The most important was his own nephew who would eventually become famous as Shaykh Zayn al-Dīn Makhdūm Abū Yaḥyā, or Zayn al-Dīn al-Kabīr (the Senior). After he had finished his education in Malabar in the late fifteenth century, he travelled to the Middle East on pilgrimage and for education. First he arrived at Mecca, stayed there for at least six years, and then he moved to Cairo to be educated at al-Azhar University. He studied with renowned scholars including Jalāl al-Dīn Suyūṭī (d. 1505), Zakariyā al-Anṣārī, Sayyid Muḥammad al-Samhūdī (d. 1506), Abū Bakr al-Ḥaḍramī (d. 1508), Abū Bakr al-ʿAydarūsī (d. 1511), Ḥāfiz Muḥammad al-Saqāwī (d. 1496), ʿAfīf al-Dīn ʿAbd Allāh bin Aḥmad Bā Makhruma al-ʿAdanī (d. 1540), Aḥmad bin ʿUmar al-Zabīdī (d. 1523), Qāḍī Jamāl al-Dīn Muḥammad bin ʿUmar al-Ḥaḍramī (d. 1524), and ʿAbd al-Raḥmān bin ʿAlī al-Makudī (d. 1495).[48] Why Shihāb al-Dīn al-Ramlī is not mentioned in this list of teachers is intriguing. He must have left Cairo before al-Ramlī rose to prominence. When he returned to Ponnāni he took charge of the religious leadership of the region from his uncle Ibrāhīm.

During the wars the Portuguese burned the congregational mosque of Ponnāni. Someone reconstructed it around the 1520s and an inscription from inside the mosque contains a related chronogram.[49] No name is mentioned in the inscription, but Zayn al-Dīn Sr. must have been responsible for this, and is reputed as such among the indigenous Māppiḷa community. He began to teach there, give fatwās, write books, engage in social and political affairs and introduce other religious reforms.

Returning to the family, we know that this Zayn al-Dīn left two sons, ʿAbd al-ʿAzīz and Muḥammad al-Ghazālī. The former became a renowned scholar, writing books, teaching and functioning as *qāḍī* like his father. By this time, the *qāḍī* of Ponnāni was the one appointed to be in charge of the religious leadership of Malabar Muslims. The books he wrote were mainly related to Islamic law, mysticism and to an extent on Arabic grammar and logic. The other son Muḥammad al-Ghazālī is said to have moved into Cōmbāl, where he died and was buried. He left one son, named after his grandfather and his great-great-grandfather, but as Aḥmad

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[48] ʿAbd al-ʿAzīz Malaybārī, *Maslak al-atqiyāʾ*.

[49] Mahmood Kooria, "Doors and Walls of the Mosques: Textual Longue-durée in a Premodern Malabari Inscription," in *The Social Worlds of Pre-Modern Transactions: Perspectives from Epigraphy and History*, ed. Meera Vishwanathan, Digvijay Singh, Anna Varghese and Mekhola Gomes (New Delhi: Primus Books, forthcoming).

Zayn al-Dīn. He would later be renowned as Shaykh Zayn al-Dīn al-Ṣaghīr (the Junior), the "hero" and author of *Fatḥ*.

The mosque-college of Ponnāni began to change the course of history for the Makhdūm family in the sixteenth century as it produced many renowned scholars who were more confident to go to the Middle Eastern centres for higher education. It also changed the local scenario of educational ambitions and even the wider scenario, now that subcontinental scholars are represented in the legal discourses of Middle-Eastern centric Shāfiʿīte intelligentsia. After Zayn al-Dīn Senior and Junior, we see many more Malabari students who graduated from the local educational centres or from the college of Ponnāni pursuing their further studies in Mecca. It should be noted that if Zayn al-Dīn Sr. went to Cairo for his higher education, Zayn al-Dīn Jr. chose Mecca for his. It illustrates a shift in academic prestige, when Cairo had been replaced by Mecca by the sixteenth century. Such movements increased in the following centuries. Though this was a natural development according to the changing times and opportunities for travel, especially by the late eighteenth and early nineteenth centuries, we see students flock back for their higher education from the Middle East to Southeast Asia, coming to the college of Ponnāni.[50] The popular historical writings tell us that the college used to attract students from Ceylon (Sri Lanka), Aceh, Java and Sumatra. One Sri Lankan historian writes that during the Portuguese and the Dutch incursions in the island, "a number of Muslims from Ceylon studied in Madrasahs in the regions of present Kerala state". They travelled via the patrol "ships of the Zamorins of Calicut (and officered by Muslims)" on the the west coast of Sri Lanka.[51]

We know nothing about the curriculum of the college, but for a number of different reasons we can say that certainly it did not follow the one predominant in the Islamic world of the Ottomans, the Ṣafawids or even the Mughals. Criticisms have been raised against concluding that the "rational sciences" were neglected in the Ottoman world. Francis Robinson has presented an illuminating comparison on the syllabi under these three empires in the sixteenth to seventeenth centuries, and this would have been helpful if he had not generalized so much.[52] If we follow his procedures, without making so many sweeping generalizations about the curricula but to get a sense of contemporary trends in texts and debates, we could understand that religious sciences played a significant role in Mecca, in the Hijaz and thus in the college of Ponnāni too.[53] The texts written in the Hijaz were

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[50] The Ḥaḍramī sayyids like Ḥasan Jifrī and Sayyid Faḍl bin ʿAlawī, who both studied at Ponnani, are a few examples.

[51] Anuzsiya S, "Development of Education of Muslims during the Portuguese, Dutch and British Rule in Sri Lanka" *Kalam: Journal of Faculty of Arts and Culture* 2-3 (2004): 72.

[52] Francis Robinson, "Ottomans-Safavids-Mughals: Shared Knowledge and Connective Systems," *Journal of Islamic Studies* 8, no. 2 (1997): 151-184; for a recent criticism on his arguments on the Ottoman cases, see Khaled El-Rouayheb, "The Myth of "The Triumph of Fanaticism" in the Seventeenth-Century Ottoman Empire", *Die Welt des Islams* 48, no. 2 (2008): 196-221.

[53] He does not say a word on the Ottoman-controlled Hijaz or Egypt, which were the centres of Islamic education until Istanbul was raised to this glory in the late-sixteenth century. Nor does he look into the fringes of the Mughal Empire that networked into the Middle Eastern patterns of education. Certainly the Shīʿīte Safavid curriculum would not appeal to any of these regions. According to his conclusions and appendices, the "rational sciences" played a significant role in the Safavid and Mughal spheres. Islamic law or traditional disciplines were too marginal. Apart from a single concrete syllabus of the Farangi Mahall, he does not have any other substantial evidence to "generalize" about the South Asian contexts or even the Safavid and Ottoman areas. Instead, he has

significantly legalistic, theological and mystical. That is not because they had a negative stand towards the rational sciences. Robinson might argue for that, as he did in the context of Ottomans for which he has been criticized. Rather we see that Meccan and Egyptian scholars strongly supported the "rational sciences" and occasionally even advanced them by critically engaging with existing arguments. Naturally they prioritized "religious" texts significantly, as is clearly visible with Ibn Ḥajar who himself was a supporter of rational sciences.[54]

This approach was also followed in Ponnāni, as the texts produced at this time indicate. Priority was given to religious disciplines, and rational sciences like logic and philosophy are hardly touched upon. In the sixteenth century, a shift in the programme of education that is worth noting is from spiritual subjects (*taṣawwuf, akhlāq, dīniyyāt*) to legalistic disciplines (fiqh, *uṣūl al-fiqh, tafsīr*s and *ḥadīth*s with a legal thrust). Most works produced in the early sixteenth century by Shaykh Zayn al-Dīn Sr. have a mystical orientation, whereas the ones in the second half of the century are purely *fiqh*-related. In relation to this, we should also keep in mind that Fakhr al-Dīn Abū Bakr (d. 1489) developed a syllabus called "Manhaj Fakhriyyat" in Malabar, although we do not have any further details to elaborate on it.[55] He is said to have studied with Jalāl al-Dīn Maḥallī (d. 1459), the famous commentator of *Minhāj* based in Cairo. Zayn al-Dīn Sr. studied with many disciples of Fakhr al-Dīn at Calicut.[56]

The family became the sole leaders of the Malabari fuqahā-estate from the sixteenth to the eighteenth century, but then their leadership was questioned. Between those two centuries, the family produced many outstanding scholars who contributed to the spread of Shāfiʿīte thought in and around the region.[57] As with the contributions of many other well educated scholarly families of the Islamic world, the Makhdūms played an enviable role in stimulating religious education on the coast in particular and along the Indian Ocean rim in general.[58] Following the common trend in ʿulamāʾ networks for spreading a heavily legalized version of Islam, they established themselves among the indigenous Muslim community through their texts, fatwās and teachings after the sixteenth century by upholding Shāfiʿīte ideas. The career of the family epitomizes the wider Shāfiʿīzation process after the century as much as it can demonstrate the ultimate extension of Islamization of the Indian Ocean rim ever since.

The Shāfiʿīzation process made use of the revered space assigned to religious scholars, especially those who were educated at Mecca and similar Middle Eastern educational hubs, and they always tried to rectify any deviating tendencies in their community. In Malabar, it

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followed a methodology of clinging to the commentaries and glossaries written in the period in the regions under his focus.

[54] Khaled El-Rouayheb, "Sunni Muslim Scholars on the Status of Logic, 1500-1800," *Islamic Law and Society* 11, no. 2 (2004): 213-232.

[55] ʿAbd al-Naṣīr Aḥmad al-Shāfiʿī al-Malaybārī, *Tarājim al-ʿulamāʾ al-Shāfiʿīyyat fī diyār al-Hindiyyat* (Amman: Dār al Fatḥ, 2010).

[56] ʿAbd al-ʿAzīz al-Malaybārī, *Maslak al-atqīyāʾ*.

[57] Some of the remarkable figures are: ʿAbd al-Aziz (1508-1586), Shaykh ʿUthmān (1504-1583), Jamal al-Dīn Qāḍī (d.?), ʿAbd al-Raḥmān Senior (1541-1619), ʿUthmān Makhdūm (d. 1619), ʿAbd al-ʿAziz Junior (d. 1619), ʿAbd al-Raḥmān Junior (d.?), Muḥy al-Dīn Kuṭṭi (lived in 1729), Nūr al-Dīn (d. 1740), Khwājā Aḥmad alias Kōyāmu (d. 1747), Muḥammad (d. 1752), Kuññaḥammad (d. 1756), Aḥmad (d. 1766), Kuṭṭi Ḥasan (d. 1783), ʿAlī Ḥasan (d. 1785), and Pazhayakattu Aḥmad Kuṭṭi (d. 1801). On each of them, see Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 118-130.

[58] The same family still exists with a limited religious outreach. They continue to teach at the college, provide legal clarifications and lead religious rituals and ceremonies in the locality.

was in particular mediated through texts such as *Kifāyat al-farāʾiḍ fī ikhtiṣār al-Kāfī*, *Ḥāshiyat ʿalā al-Irshād* (by Zayn al-Dīn Sr.), *Mutafarrid*, *Arkān al-ṣalāt* (ʿAbd al-ʿAzīz), *Qurrat*, *Fatḥ*, *Ajwibat al-ʿajībat*, *Iḥkām aḥkām al-nikāḥ* and *Fatāwā al-Hindiyyat* (Zayn al-Dīn Jr.). Many of these texts addressed the jurists and legal enthusiasts, and also the larger audience of laypersons. Some of the titles explained very basic rituals and religious duties. The graduates of the mosque-college joined this project by composing similar texts. One of them was Qāḍī Muḥammad I of Calicut (d. 1616), who is particularly outstanding for his works on marriage law and inheritance law.[59] Several other texts written by them were vital in this process, but to catalogue them will require much space and energy. In the sixteenth century they produced many legal, mystical, theological, jihādi texts with historical contents, and biographies. All these texts contributed to their wider schema of Islamization. They were deeply framed to give a Sharīʿat perspective which was rooted in Shāfiʿīte ideals. This textual corpus also provides a clue to the curriculum they will have followed in the sixteenth century, which inspired advanced students to produce texts in the disciplines they studied and taught in and around Ponnāni. Rational science is clearly absent from their oeuvre, which again negates the blanket generalization of Robinson about the "rationalistic" emphasis of South Asian ʿulamāʾ. It should be mentioned that most of these legal treatises largely depended on *Tuḥfat* for their articulations. In the course of time, *Fatḥ* became an emblematic text of the college and the family among several Shāfiʿīte clusters. Graduates and their descendants dealt with it over the generations, and all their textual and intellectual contributions were the catalyst for the vertical spread of Shāfiʿīte ideas and practices among the masses.

Customary Law: Indian-ness

The large number of textual descendants of *Fatḥ* is mainly due to two factors, "peripheralness" and precision. Zayn al-Dīn himself, for his commentary on his very precise *Qurrat,* did not compose a multi-volume work text. His commentary is a comparatively concise work dealing with genealogies of discourses within the school and providing examples from his local context. He opposes many Middle Eastern teachers he may have had who were not aware of peripheral contexts when formulating their rulings on different issues.

The word peripheralness is used for a regional application of a legalist formulation, which may show some conflict, compromise, contradiction, and/or complementation with ones expressed from a centre. For Shāfiʿīsm the centre fluctuated over time between Cairo, Khurasan, Baghdad, Damascus, and Mecca. But Mecca was imagined as the centre by a large number of adherents from the sixteenth century. Despite all these shifts, the centres remained within the Middle East and legalistic thought saw the whole province as its centre. Once South, Southeast Asian or East African scholars began to engage in the discourses of the school, they indirectly questioned the legitimacy of such a centre and directly asserted "peripheralness" into their enunciations as being not so divergent from or subordinate to existent articulations pivoting around the Middle East.

In *Fatḥ* deliberate peripheralness appears in a number of rulings and contexts. For example, in the chapter on ḥajj pilgrimage we read that the first human being and the prophet

[59] Those include *Maqāṣid al-nikāḥ* and *al-Farāʾiḍ al-multaqaṭ*. K.M. Muhammad, *Arabi Sāhityattinu Kēraḷattinte Saṃbhāvana* (Tirūraṅṅāṭi: Ashrafi Book Centre, 2012), 63-65, 71-72.

Adam made forty pilgrimages on foot from *al-Hind*.[60] Furthermore, it repeatedly discusses the virtues of and rulings for sending gifts to Mecca,[61] a practice much followed by Malabari Muslims in particular and South Asian Muslims in general from the early sixteenth century if not earlier. A connection between Adam and al-Hind can also be found in earlier Islamic/Muslim chronicles and travel accounts, but not in a legal text.[62] With regard to charitable gifts sent to Mecca, we find very few legal discourses in earlier texts of the school. In *Minhāj* there is no discussion at all. In *Tuḥfat* it is mostly mentioned with rulings about receiving and distributing gifts for charity. This makes perfect sense knowing that the text was written in Mecca, the place to which people living abroad in lands such as Malabar would send their donations. That *Fatḥ* discusses the matter repeatedly illustrates a contextual significance, that primarily it addresses the fact that the whole economic foundation of Mecca was dependent on assistance from wealthy regions such as the peripheries; scholars have written at length on charities sent from a number of different Ottoman regions.[63]

Since *Fatḥ* was written in Malabar, many regional issues are addressed. At one point, in the discourses related to pure and impure animals, it mentions a number of insects which are found in tropical areas. It says that the excreta of insects that live in water or between the leaves of the coconut tree are not impure. It goes on to say that the leaf of the coconut tree is a material used for thatching houses to prevent rain, and exempted insects are the ones to be found between such thatching.[64] Consequently, if one prays wearing a dress or at a place marked with such insect excreta that prayer would not be invalid, for it is hard to get rid of so many insects. This reflects socio-cultural and ecological conditions in the landscape of Malabar within the text of *Fatḥ*. The reference to coconut leaves for thatching is interesting in the light of an observation of Tomé Pires. He says that in sixteenth-century Malabar most people thatched their houses with coconut-leaves. Only the palace, temples, mosques, and the houses of a few great Kaimals were allowed tiles on the roof "to prevent them from becoming too powerful in the land."[65]

This regionality apparent in *Fatḥ* is amplified in a fatwā-collection by the same author, *al-Ajwibat al-ʿajībat ʿan al-asʾilat al-gharībat*. It basically addresses many peculiar legalistic problems that the Muslim community of Malabar faced in the sixteenth century.[66] During his probable stay in the Middle East, Zayn al-Dīn could have raised these issues he knew of in his homeland when questioning his teachers in Mecca and Yemen. Those issues include the validity of a judge appointed by an unbelieving ruler, religious life in a non-Muslim kingdom, the use of a local language instead of Arabic in rituals, and social mixing in non-Muslim communities. And so it is in *Fatḥ* that we find the same type of legal questions occurring in a varying tone and volume, so much so that the special circumstances of the region become

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[60] al-Malaybārī, *Fatḥ*, 205.

[61] al-Malaybārī, *Fatḥ*, 220.

[62] For an early account of the story by the ninth-century Muslim traveller, Sulaymān al-Tājir, see Eusèbe Renaudot, *Ancient accounts of India and China by Two Mohammedan Travellers Who Went to Those Parts in the 9th Century* (London: S. Harding, 1733), 3

[63] For example, see the chapters in Michael David Bonner, Mine Ener and Amy Singer, eds. Poverty and Charity in Middle Eastern Contexts (Albany: State University of New York Press, 2003).

[64] al-Malaybārī, *Fatḥ*, 38-40.

[65] Tome Pires, *The Suma Oriental of Tome Pires*, ed. and trans. A. N. Cortesão, (London: Hakluyt, 1944), 1: 81.

[66] al-Malaybārī, *al-Ajwibat al-ʿajībat*.

unhesitatingly harmonised into a general Shāfiʿīte legal discussion. The intentional peripheralness in the text is deeply entangled with the normative tradition of discussion of Islamic legal ideas and practices, despite the differences that naturally arise.

The regionality in the text appeals to the wider context of the subcontinent and then beyond. Its appeal in the subcontinent derives from references such as the one to *al-Hind* mentioned earlier, which brings the whole Indian subcontinent into focus, and even more, into its framework. Ceylon (Sri Lanka) is brought into the picture, where folklore circulated predominantly in the sixteenth century and even earlier,[67] including a claim that Adam arrived first in Sri Lanka after he was expelled from paradise. The Mount of Adam there became a site of pilgrimage for the people from the subcontinent and also from the Arab world as early as the seventh century, according to another folklore tradition in another text quoted by the same author.[68] This general reference to *al-Hind* and similar narratives and even legal rulings have contributed to giving the text a wider appeal among the Shāfiʿīte clusters of the subcontinent and the Indian Ocean in general.

III.

Intersections of Trade and Estate

Malabar had a strong connection with the Middle Eastern centres of Islamic learning, and particularly with Mecca, and this was able to facilitate the production and dissemination of *Fatḥ*. In the sixteenth century travel in the Indian Ocean increased. There were more migrants, traders, warriors, scholars, mystics and refugees such as Persians, Egyptians, Yemenis, Ethiopians, Malays and Swahilis. Many Malabari Muslims joined this web of global mobility and found their way to Mecca as pilgrims, students and traders. People from the northern parts of the Indian subcontinent for their voyages to the Middle East, say for pilgrimage, depended on Surat on the Gujarat coast. The place was also known as Bandar-i mubārak, "the blessed port" as well as having the nickname, Gateway to Mecca.[69] Malabar maintained a strong and direct connection with Mocha, Aden and Jeddah, major ports for pilgrims and traders.[70] Portuguese officials and Jesuit missionaries expressed concern against such "religious movements" to Mecca. Different Provincial Councils held at Goa asked their coreligionists to blockade Muslims from travelling to Mecca and returning with copies of the Qurʾān and other religious texts.[71] Yet the indigenous Muslim communities still found ways to reach the Middle East, and many Middle Easterners including Yemenis and Persians made

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[67] For example, see the fourteenth century narrative of Adam's Feet in Muḥammad bin ʿAbd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-nuẓẓār fī gharāʾib al-amṣār wa-ʿajāʾib al-asfār*, eds. Muḥammad ʿAbd al-Munʿim al-ʿUryān and Musṭafā al-Qaṣṣāṣ (Beirut: Dār Iḥyāʾ al-ʿUlūm, 1987), 610-611.

[68] *Shaykh Zainuddin Makhdum's Tuḥfat al-Mujāhidīn: A Historical Epic of the Sixteenth Century*, trans. S. Muḥammad Husayn Nainar (Kuala Lumpur: Islamic Book Trust and Calicut: Other Books, 2005), 29.

[69] The first coin to be minted in Surat during the reign of the Mughal Emperor Aurangzeb (r. 1658–1707) had the epithet *Bandar-i mubārak*.

[70] Mahmood Kooria, "'Killed the Hajj Pilgrims and Persecuted Them': Portuguese Estado da India's Encounters with the Hajj, 16th Century" in *The Hajj and Europe in the Age of Empire*, ed. Umar Ryad (Leiden: Brill, 2016): 14-46.

[71] Pearson, *Pious Passengers*, 99 with reference to *Bullarium Patronatus Portugalliae Regum in Ecclesiis Africae, Asiae atque Oceaniae*, ed. Vicecomite de Paiva Manso, I, Appendix, Concilia Provincialia Ecclesiae Goanensis, (Lisbon, 1872), 14.

their way to Malabar. Their presence in large numbers changed the balance of the intermixed legal landscapes in which Ḥanafīsm, Mālikīsm and even Shīʿīsm once coexisted, and Shāfiʿīsm began to dominate the scenario.

Precisely when the Yemenis arrived in Malabar is a matter of dispute among scholars. Stephen Dale traces the presence of the Ḥaḍramīs back to the mid-eighteenth century, looking at the most renowned Ḥaḍramī-clan of Malabar, the Bā ʿAlawīs.[72] It has been argued that the ʿAydarūsīs were the first Ḥaḍramīs to land in the region, but again only in the early eighteenth century. According to a list of Islamic scholars and religious specialists functioned in the Malabar Coast, prepared by Sebastian Prange on the basis of Ibn Battuta's account, there are hardly any Yemenis (not to mention Ḥaḍramīs) while there are references to scholars from Oman, Persia, Mogadishu, Baghdad and Mecca.[73] However, if not the ʿAydarūsī and Bā ʿAlawī clans, there were some nominal individual Ḥaḍramīs active in the region by the sixteenth century. In the educational centre at the mosque of Tanūr a certain Ḥaḍramī named Muḥammad bin ʿAbd Allāh al-Ḥaḍramī (d.?) taught and functioned as a muftī in the sixteenth century. Interestingly, the only fragmentary reference we have about him also relates to the movement of Islamic legal texts across the Indian Ocean world.[74] In a manuscript of *Tanbīh* by al-Shīrāzī kept at Tanūr, it is mentioned that he donated (*waqf*) it to the mosque library in 1568 (975 A.H.).[75] It also says that he copied down this manuscript while he was a teacher and muftī there. More interestingly, all these details are written in Persian on a separte piece of paper, which is pasted on the manuscript. That points towards the next group of Shāfiʿītes who arrived on the coast. Around thirty Ḥaḍramī clans arrived subsequently and all of them helped to strengthen the influence Shāfiʿīte legalism there.

Persian Muslims were also present in Malabar. Although now they have evidently found it hard to survive as a community, they go back to the fourteenth century if not earlier.[76] Persian Sufi orders and ideological streams had remarkable following. In the sixteenth century particularly, the Portuguese chronicler Barbosa notes down the presence of Persians in and around Calicut.[77] He differentiates Persians from Khurasanis.[78] Shokoohy identifies those Persians as people from southern Persia, mainly from the area of the port Hormuz who arrived at Malabar by sea. The Khurasanis were from north-eastern Iran who reached the coast overland. Both groups must have been following Shāfiʿīsm, as contextual evidence shows. The Khurasanis included people from such strong Shāfiʿīte centres as

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[72] Stephen Dale "The Hadhrami Diaspora in South-Western India: The Role of the Sayyids of the Malabar Coast", in *Hadrami Traders, Scholars and Statesmen in the Indian Ocean, 1750s-1960s*, ed. Ulrike Freitag and William G.Clarence-Smith (Leiden: Brill, 1997), 175-184.

[73] Sebastian Prange, "The Social and Economic Organization of Muslim Trading Communities on the Malabar Coast, Twelfth to Sixteenth Centuries" (PhD diss., University of London, 2008), 141.

[74] I am thankful to ʿAbd al-Samad Fayḍī, in charge of the manuscript collection at Tānūr, for allowing me to consult the manuscript and helping me read and figure out the dates and names.

[75] Abū ʾIsḥāq Ibrāhīm bin ʿAlī al-Shīrāzī (n. d.), *al-Tanbīh,* Iṣlāḥ al-ʿUlūm Arabic College, Tānūr, MS. no. An actual colophon at the end of the manuscript claims that the scribe's name was Ḥusayn bin Aḥmad bin Ismāʿīl (la mutsl?) al-Anṣārī and he finished writing it in A.H. 806/1404 A.D.

[76] This is not to overlook the obvious presence of such non-Muslim Persians as the Zoroastrians and Christians in Malabar, for which we have inscriptional and textual evidences from the first millennium CE.

[77] Duarte Barbosa, *The Book of Duarte Barbosa: An Account of the Countries Bordering on the Indian Ocean and Their Inhabitants* (Farnham: Ashgate, 2010):

[78] Shokoohy, *Muslim Architecture*, 146.

Nishapur, Bukhara, Herat, Merv, Faryab, Taloqan, Badghis Abiward, Gharjistan, Tus or Susia, Sarakhs, Gurgan and Balkh.[79] The arrival of Bukhārī-clans is strong evidence to shed light on the Persian role in spreading the school in Malabar. The Ṣafawid ruler Ismāʿīl I conquered Uzbekistan, which included Bukhara, in 1512, defeating the army of Muḥammad Shaybānī (d. 1510) in a series of battles. The region, like the whole of Persia, was predominantly Sunnī until then. In the following years, Ismāʿīl began his campaign of Shīʿīte conversion, which left the indigenous Sunnīis, more particularly Shāfiʿītes, the three options, to convert, to be killed or to flee, as we explained earlier. Many of the religious elites fled, and we have references to the first Bukhārī to arrive on the Malabar Coast. He was Sayyid Aḥmad Jalāl al-Dīn al-Bukhārī (d. 1569) who landed at the port of Vaḷapaṭṭaṇam in 1521.[80] He came with his wife and claimed to be a descendant of the Prophet Muḥammad, as the Ḥaḍramī Sayyids did. He was appointed as qāḍī of Vaḷapaṭṭaṇam.[81] His son, Ismāʿīl studied at Calicut with a renowned scholar of the time, ʿAbd al-ʿAzīz bin Aḥmad bin Fakhr al-Dīn (d. 1601), possibly the grandson of the same Fakhr al-Dīn who is said to have founded the Fakhriyyat Syllabus of Malabar. Ismāʿīl became a jurist and later moved to Cochin, where he died and was buried at Koccaṅṅāṭi in 1612. His son Muḥammad (d. 1677) moved to Paravaṇṇa, another port, and his grandson Ismāʿīl (d. 1720) to Karuvantirutti near Cāliyaṃ, an old port to the south of Calicut.[82] The Bukhārī clan, still active in religious spheres across Malabar, claim an ancestry to one of these individuals. Most of them are renowned scholars of Shāfiʿīsm, not like the Ḥaḍramī Sayyids in Malabar, of whom only a few are known as fuqahā. The ancestry of the Bukhārīs to the Prophet Muḥammad is disputed, but not that of the Ḥaḍramīs. They had a religious and spiritual authority ascribed to them inherently, while the Bukhārīs had to earn it through the additional quality of legal education. Yet the Bukhārīs affirm a strong Persian Shāfiʿīte element, contributing to the dominance of the school in the coast. Persian literature and cultural traditions have had an impact in a new creole language of Arabi-Malayalam flourishing among the indigenous Māppiḷas in the mid-sixteenth century. Furthermore, we should bear in mind that the Persian was even a lingua franca in Malabar Coast up until the eighteenth century competing with Portuguese,[83] and a language cannot spread and survive into such a status without the influence of its native speakers.

Another significant micro-community which contributed to the spread of the school at the rim in general and in Malabar in particular is the Egyptians. On various earlier occasions we have mentioned their role in disseminating the school's ideas, as al-Shāfiʿī's immediate students, maritime Kārimī merchants, mobile scholars, merchant-scholars, or business exiles

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[79] C.E. Bosworth, "Khurāsān," *Encyclopaedia of Islam*, 2nd ed.

[80] These descriptions and dates are from: al-Shāfiʿī al-Malaybārī, *Tarājim al-ʿulamāʾ*, 86-87. Shokoohy, *Muslim Architecture*, 239 cites "the local records" on Sayyid Ismāʿīl and says that he is the son of Aḥmad Jalāl al-Dīn al-Bukhārī and is said to have died in 769/1367-8. Shokoohy states that the records are unattested, and does not make clear what local sources he refers to.

[81] al-Shāfiʿī al-Malaybārī, *Tarājim al-ʿulamāʾ*, 82. I am grateful to Abdul Jaleel PKM, who conducts a comparative and connective study on the Ḥaḍramīs in Malabar and Singapore, for sharing this information and part of his doctoral dissertation.

[82] al-Shāfiʿī al-Malaybārī, *Tarājim al-ʿulamāʾ*, 75-76.

[83] Gagan Sood, *India and the Islamic Heartlands: An Eighteenth-Century World of Circulation and Exchange* (Cambridge: Cambridge University Press, 2016), 197. I am thankful to Gagan Sood for further elaboration on this point through personal correspondence.

in Yemen and elsewhere. In Malabar they were also active in these roles. A most important feature representing their entanglements in the coast and for the focus of this study is the spectacular Miṣrippaḷḷi (the Egyptian Mosque) in Ponnāni. It is situated to the west of the main congregational mosque-*cum*-college and within a walking distance. The wonderful architectural complex represents a long history of many Egyptians who once were religiously, legalistically, commercially and politically active in the area and contributed to the life of the school there. Popular narratives associate its establishment with the arrival of the Mamlūk militia under the command of Amīr Ḥusayn al-Kurdī, on their way to Diu and Chaul to fight against the Portuguese between 1507 and 1509, but we can hardly be sure if this particular Egyptian navy ever camped at Ponnāni.[84] The historian of that time and from that locality, Zayn al-Dīn, the very author of *Fatḥ*, makes no mention of them coming to Malabar, despite his accurate descriptions of them and their battle at Chaul and Diu. If not with this particular navy, the mosque's origin and establishment can be related to and be a representative of many other Egyptian militias and people who frequented the Indian Ocean. Its military aspect is emphasized by the distinctive architectural style of this mosque. It differs from the other old mosques of Ponnāni but is comparable to the one at Kōṭṭakkal of Kuññāli Marakkārs, the admirals of the Zamorins. A tomb in another old mosque in Ponnāni, called Teruvattu Paḷḷi, belongs to one Sayyid ʿAlī al-Miṣrī, an Egyptian who is said to have been martyred in the fight against the Portuguese, according to the popular beliefs.[85] In sum, the establishment of a separate mosque within a small region that already had many mosques indicates that this Egyptian micro-community had a semi-permanent attachment with the place and its religious community.

Even further, another important but larglely neglected micro-community that contributed to the influence of Shafi'ite school in Malabar is scholars from the Swahili Coast in East Africa. One of the earliest references on a Swahili Shafi'ite jurist comes from Ibn Batutta who writes in the mid-fourteenth century that he met one Faqih Sa'id from Mogadishu working at Ezhimala (Hili) in northern Malabar. According to Ibn Battuta, this jurist had travelled from Mogadishu to Mecca and Medina and studied there for fourteen years in the late thirteenth century and had been in touch with many scholars of the Holy Cities as well as with their rulers Abu Numayy in Mecca (r. 1254-1301) and Mansur bin Jammaz in Medina (r. 1300-1325). After his education there, he left for India and China before he finally settled down in the small port-town of Ezhimala and collaborated there with Faqih Husayn, possibly the author of Qayd al-jami', the first known Shafi'ite text from Malabar.[86] Faqih Sa'id is an epitome of many more East African scholars who arrived in the Malabar Coast and partook in its religious spectrums, and their contributions await further research.

All these Persians, Egyptians, Swahilisand the non-Ḥaḍramī Yemenis such as the Makhdūm family that migrated to Malabar from the Coromandel Coast clearly tell us that the Ḥaḍramīs are not the only group that contributed to the making of Shafi'ism influential in the region. All these communities functioned there with a close association with the mercantile elites. Although there was a landowning agricultural community among the Māppiḷas in the

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[84] The popular narrative can be found in K.V. Abdu Rahman Kuṭṭi, "Prathama Adhiniveśa Viruddha Pōrāṭṭam" *Bodahanam* 15, no. 18 (2015): 62-76.
[85] Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, 98-99.
[86] Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa*, 572.

hinterlands of Malabar, they were so marginal and too few in number to be significant. The religious and legalistic enterprises of the Makhdūm family in Ponnāni were financed by wealthy merchants and also by laypersons with lower incomes. Numerous inscriptions found on walls and doors of the mosque-college confirm this scholarly-mercantile interaction. The *nākhuda*s, merchants, brokers and diasporic settlers all contributed to the maintenance of the institutions, establishment of hostels, salaries for teachers and stipends for students.[87] Not just this mosque-college but many other mosques and religious institutions were founded and funded by the Muslims from Gujarat, the Red Sea and Coromandel coasts and by the local community, especially by the mercantile-*cum*-royal house of ʿĀlī Rajas of Cannanore. Apart from the obvious statements in Zayn al-Dīn's *Tuḥfat al-mujāhidīn* supporting the mercantile and religious priorities of Muslims in the region, many formulations of *Fatḥ* also indirectly imply a close association between trade and estate. All these micro-communities also facilitated the circulation of the text across the oceanic rim.

Circulation across the Rim
Fatḥ has been taught in many Shāfiʿīte educational institutions, from East Africa, South Arabia, Central and South and Southeast Asia, to the Eastern Mediterranean worlds. The historical origins for the introduction of this text into that wider world are hard to trace, and it is also not so important to do so after Marc Bloch's refutations of an "obsession with origins".[88] However, we can note some limited references for how the text came into specific regions, identifying a historical moment that provides possibilities of "thick-descriptions". By the late-eighteenth and early nineteenth century, if not earlier, *Fatḥ* had become a notable Shāfiʿīte text that was taught around the rim. Its many commentaries, super-commentaries, abridgements, glossaries, marginalia, and poetized versions, whether in Arabic, Malay, Bahasa Indonesia, Malayalam, Urdu, Kannada, Swahili or Tamil, tell us about a vast and deep reception that a non-Middle Eastern text acquired against the more widely known texts of the school. I shall briefly outline a few of those progenies to demonstrate the breadth of its circulation.

In the South Asian coastal belts the biggest supporters of the legacy of *Fatḥ* come from the the author's own place, Malabar. The Makhdūm family to which he belonged continued in their hegemony in everyday religious and more specifically legal affairs of the Māppiḷa Muslim community for a few more centuries. Many Makhdūms have made contrasting contributions from the sixteenth century until the twentieth, even though their legitimacy has been questioned by what has been identified as a Shīʿīte mystical sect of the Koṇṭōṭṭi, known in the hinterlands of Malabar from the late-eighteenth century until the early twentieth, when the Shīʿītes finally conceded to the mainstream Sunnīs. Throughout this time, the educational centre of Ponnāni was controlled by the Makhdūms who dominated all Sunnī articulations of Islam by producing generations of scholars who spread "Ponnāni Shāfiʿīsm" from Malabar into Southeast Asia. The central text in the Ponnāni system of legal education was *Fatḥ*, which was mostly taught by the leading teacher of the Makhdūm family in each generation. I have found some references in local historical or biographical works to *ḥāshiyat*s written by

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[87] On many inscriptions found in this mosque, see Kooria, "Doors and Walls of the Mosques".
[88] Marc Bloch, *Historian's Craft* (New York: Knopf, 1953), 24-27.

various members of the Makhdūm family in the eighteenth and nineteenth centuries but I have not been able to locate many of them.[89]

The only *ḥāshiyat* now available from the Makhdūm family is *Sharḥ Fatḥ al-muʿīn* by Zayn al-Dīn Makhdūm the Last (d. 1887).[90] This *ḥāshiyat*, which the author identifies as a *sharḥ*, by taking *Fatḥ* as the base text and disregarding its "commenteriness" to *Qurrat*, is in two volumes and has been published. The text has a special significance, not only as a progeny of *Fatḥ*, but also as one located in the literary corpus produced from Ponnāni in the nineteenth and early twentieth century. When the Shīʿīte-cluster of the Malabari fuqahā-estate challenged the religious authority of Ponnāni through ardent theological and legalistic debates, most works written and published by the Sunnī-Shāfiʿīte cluster were polemics against their opponents.[91] Against that background, this *ḥāshiyat* demonstrates what was normal in Ponnāni's educational spheres in developing scholarship that continued to flow as an undercurrent to the sectarian debates. It also shows an attempt by a descendant of the Makhdūms to overcome the "damages" caused by the Shīʿīte-cluster's challenges. It represents a move to reclaim the religious authority that Ponnāni and the family had over Islamic life in Malabar.

Ponnānity spread in Malabar with the emergence of new educational centres established by the graduates of the Ponnāni College. By incorporating the Ponnāni-curriculum into the existing centres, *Fatḥ* experienced an intensive interest from teachers and learners. The practice of *taṣḥīḥ* which commonly existed in Middle Eastern Muslim educational centres found a route to new and estrablished centres where *Fatḥ* was also subjected to *taṣḥīḥ*s repeatedly, producing numerous glossaries, marginalia, and sometimes even abridgements. *Taṣḥīḥ* (Ar. rectification, Mala. "*nannākkal*") literally means correcting mistakes in manuscripts, but it has a more positive meaning in the educational environs of the Muslim world. It includes correcting mistakes (widely called *taṣḥīf*)[92], but more generally it is an exercise for students to cross-check the references in a text they are studying, and to read supplementary material on particular portions in preparation for a class, and to note down supportive or contradictory viewpoints from other texts in the margins. Mostly this was done in advance of the lectures to specify a student's doubt and to generate debate with the teacher. In *Fatḥ* the usual cross-references were checked against the works of Ibn Ḥajar, and students went further according to the availability of manuscripts. Most students had their own personal copies for independent *taṣḥīḥ*s. Although many of those are lost today, I located a number of *taṣḥīḥ*-manuscripts of *Fatḥ* in Malabar that highlight a range of discourses and everyday issues law students of the nineteenth and twentieth centuries faced.[93]

While *taṣḥīḥ* belonged to an institutional framework of learning and teaching, individual collectives continued their engagements with *Fatḥ* even after graduation. The text

[89] Raṇṭattāṇi, *Makhdūmuṃ Ponnāniyuṃ*, passim.

[90] al-Shāfiʿī al-Malaybārī, *Tarājim al-ʿulamāʾ*,

[91] For example, see: Cōla Mammad Kuṭṭi, ed., *Fatāwā al-radd Koṇṭōṭṭi*, MSS (1860); Puttanviṭṭīl Aḥmad Musliyār, *Hayat al-dīn wa mamat al-maʾanidin, athava Hidāyat al-ikhwān fī radd al-bustan* (Ponnāni: Nalakattu Muḥammad, 1892); Putiyakattu Valiya Bāva Musliyār, *Kuññītuvinte codyaṅṅaḷkkuḷḷa marupaṭi*, MSS.

[92] See F. Rosenthal, "Taṣḥīf," *Encyclopaedia of Islam*, 2nd ed. .

[93] The C.H. Mohammed Koya Chair for Studies on Developing Societies at University of Calicut has been collecting and preserving various such *taṣḥīḥ* manuscripts of *Fatḥ*, a project still ongoing.

was a point of serious debate, discussion, clarification, and fatwās, in which the peers communicated with each other and when convenient. A historical reconstruction for such discussions that happened in the scholarly collectives would be a laborious task, but we now know of an interesting collection of four *ḥāshiyat*s written on *Fatḥ* by four close friends in the second half of the twentieth century, written by Niramarutūr Bīrān Kuṭṭi Musliyār (d. 1983), K.K. Abū Bakr Ḥaḍrat (d. 1995), Veḷḷiyānpuraṃ Zaydalavi Musliyār (d. ?), and Kariṅkappāra Muḥammad Musliyār (d. 1988). They all studied together under Pāññil Aḥmad Kuṭṭi Musliyār (d. 1946), a graduate of Ponnāni College and a professor at Tānūr for decades. After their graduation from Tānūr, they all were appointed as *qāḍī*s, *imām*s and lecturers at different institutions of Malabar. Every weekend they gathered together and engaged in scholarly discussions in which *Fatḥ* was the starting point for many issues. Even though they would go into many other extensive texts, they finally returned to *Fatḥ* for their concluding statements.[94] Eventually the first two, Niramarutūr and Abū Bakr Ḥaḍrat, co-authored a commentary entitled *Fatḥ al-mulhim sharḥ Fatḥ al-muʿīn*, and the other two wrote their own independent *ḥāshiyat*s. Karinkappāra's work became so popular among teachers and students of *Fatḥ* that they all tried to copy it down from whatever manuscript copies they could lay hands on. With the arrival of the printing press for publishing madrasa textbooks and materials, this *ḥāshiyat* was printed and continues to be printed in thousands of copies by a number of printing presses in Malabar. On the other hand, *Fatḥ al-mulhim* was published only once. Veḷḷiyānpuraṃ's work was never published, but the manuscript is preserved in a personal collection.

Besides the collectives many individuals took a part in maintaining the legacy of *Fatḥ* in a number of ways. Most important among them are their *ḥāshiyat*s in which they partially or completely engaged with the text. *Tanshīṭ al-muṭāliʿīn sharḥ Fatḥ al-muʿīn* by ʿAlawī ibn Shaykh ʿAbd al-Raḥmān al-Tānūrī al-Naqshabandī (d. 1929) commented on *Fatḥ* as far as its chapter on prayer. Kuññi Muḥammad Musliyār bin Kōṭancēri Aḥmad Kuṭṭi Musliyār's *Sharḥ ʿalā Fatḥ al-muʿīn* (d. 1934) is a complete *ḥāshiyat*, and so is the three volume *ḥāshiyat* of Aḥmad ibn Muḥammad al-Shīrāzī al-Nādāpuramī (1851-1908) and the one of Shihāb al-Dīn Aḥmad Kōya Shāliyātī (d. 1955).[95]

Apart from all these prose commentaries, there also are certain poems on *Fatḥ*, which are different from *Naẓm Qurrat* of Arīkalī and *al-Naẓm al-wafy* of Faḍfarī mentioned earlier. Two poetic summarizations introduce *Fatḥ* and express an appreciation of its contents and form. The one by Farīd al-Barbarī we mentioned earlier is a poem which was widely circulated among and memorized by the students of *Fatḥ*. It lauds the text's merits and when reciting it before a class on *Fatḥ* begins students affirm their own esteem in learning such a

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[94] In a personal conversation with ʿAbd Ṣamad Fayḍī, he told me how he had witnessed many of their debates.

[95] He was born in Cēriyaṃ (Maṅkaṭa) and moved into Nādāpuraṃ, where he died and was buried. His patronym al-Shīrāzī is an Arabization of his hometown Cēriyaṃ and it should not be confused with Shiraz, Iran. He composed other *ḥāshiyat*s on *Sharḥ Alfiyat* of Makhdūm Sr. in two volumes, *Sharḥ al-Taftāzanī ʿalā Tasrīf al-Zanjānī* in three volumes. See: C.N. Aḥmad Moulavi and K.K. Muhammad Abdul Karim, *Mahattāya Māppiḷa Sāhitya Pāranparyaṃ* (Calicut: Published by the authors, 1957): 315; Nellikkuttu Muḥammadali Musliyār, *Tuḥfat al-akhyār fī tārīkh ʿulamāʾ Malaybār*, manuscript pages: 27-28; C.S. Ḥusayn, "Musāhamāt ʿulamāʾ Malaybār fi al-adab al-fiqh bi al-lughat al-ʿArabiyyat" (PhD diss., Calicut University, 2004), 121-23.

prestigious work. Another poem in Arabic (by an unknown author) asks the reader to accept *Fatḥ* as the best companion for excelling in Shāfiʿīte law.[96]

The text has been translated into many South Asian languages. There are four translations into Malayalam. The first was by P.K. Kuññubāva Musliyār Paṭūr, in the middle of twentieth century and it became the most popular and successful translation with many reprints. Thousands of copies were reprinted more or less biennially between 1967 and 1998.[97] The translator was honoured by the government of Kerala State for the quality of the translation. The second translation was by Ibrāhīm al-Fayḍī Puttūr, which provoked the publisher of the first translation to claim that that was plagiarism of Paṭūr's work. The issue ended up in the Kerala High Court and district courts in which a few eminent Shāfiʿīte ʿulamāʾ gave their testimonials and expert opinions on matters of copyright, originality, translatability, etc.[98] It was a legal process which is of interest in the longer tradition of textual production in the school and claims for and against originality. The third and fourth translations were done in the last decade attracting another set of readers.[99]

It has also been translated into Tamil and Kannada. The translation into Arwī (Tamil written in Arabic script) was done by Aḥmad Muḥy al-Dīn, the son of Muḥy al-Dīn ʿAbd al-Qādir and was published in Madras in 1964. "No further details are available" on it, according to the eminent literary scholar of Arwī, Tayka Shuʿayb ʿĀlim.[100] But I was able to trace out its two copies, one printed in 1929 and the other very recently. It is titled *Tuḥfat al-ṭāmiʿīn fī tarjamat Fatḥ al-muʿīn*, and the translator writes a comparatively detailed introduction to the importance of *Fatḥ* as a textbook on the Shāfiʿīte laws widely taught across the Islamic world, particularly in Mecca, and its author was a student of Ibn Ḥajar al-Haytamī.[101] He further emphasises it has been a source for fatwas for jurists and teachers and it has been commented upon by many eminent scholars. Out of his humility, he says that he does not have a mastery of those scholars to write such a hashiyat, but he understands the necessity of its translation as many people in his land do not understand Arabic. Its new editions printed in and around Kayalpatnam further explain the continuing popularity of this translation. In 2015, a translation into Kannada was published by Muḥammad Ḥanīf Dārimī, who studied at a Shāfiʿīte educational center in Calicut called Dār al-Salām Arabic College.[102] His name is not given in the work as he believes that "translation is not a scholarly activity".[103] The

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[96] Rafīq ʿAbd al-Barr al-Wāfī, "al-Shaykh Zayn al-Dīn al-Makhdūm al-Malaybārī wa Khidmāt al-ʿIlmiyyat" *Thaqāfat al-Hind* 64, no. 3 (2013): 138; Muḥammadali Musliyār, *Malayālattile Mahārathanmār*, 29.

[97] al-Malaybārī, *Fatḥ al-Muʿīn Paribhāṣa*, trans. P.K. Kuññubāva Musliyār Paṭūr (Trissur: Amina Bookstall, 1998).

[98] Publisher's Statement in al-Malaybārī, *Fatḥ al-Muʿīn Paribhāṣa*, 28-31.

[99] A third translation was done by K.V.M Pantāvūr (d. 2008), who is said to have translated more than two hundred works from Arabic into Malayalam and authored another hundred by himself. The fourth one titled *Islam niyama samhita* is a free translation jointly done by Sadiq Anwari, K.C. Ali Madani, Siddiq Irfani and Ayyār Mammuṭṭi. *Islam Niyama Samhita* (Calicut: Poomkavanan Publications, 2012). The first edition was printed in 2008, the second in 2009 and the third in 2012.

[100] Tayka Shuʿayb ʿĀlim, *Arabic, Arwi, and Persian in Sarandib and Tamil Nadu : a study of the contributions of Sri Lanka and Tamil Nadu to Arabic, Arwi, Persian, and Urdu languages, literature, and education* (Madras: Imāmul ʿArūs Trust for the Ministry of State for Muslim Religious and Cultural Affairs 1993), 284.

[101] Aḥmad Muḥy al-Dīn, *Tuḥfat al-ṭāmiʿīn fī tarjamat Fatḥ al-muʿīn* (Madras: City Press, 1929), 2-3.

[102] al-Malaybārī *Fath al-muʿīn*, Kannada translation (Mangalore: Marsin Bookstall, 2015).

[103] Information from a personal conversation.

translation was made in order to address many Shāfiʿītes in numerous localities of coastal South Canara, Uduppi and in the hinterland of Coorg, which all have a predominant Shāfiʿīte population, in contrast to the dominant Ḥanafītes in the rest of Karnataka State.

In the overwhelming Shāfiʿīte heritage of Sri Lankan Islam, *Fatḥ* has found its place in the religious educational centres.[104] The Makhdūm family, in a way that is similar to its genealogical parallels in the Coromandel Coast, has been extensively appropriated in the country and they have been influential in Islamic legal discourses in the nineteenth and twentieth centuries.[105] The Tamil translation of *Fatḥ* from Tamil Nadu must have been in circulation among the Tamil Shāfiʿīte population there through the "circulatory regime" of Tamil language and literature.[106] Indeed, I managed to trace the 1929-edition of *Fatḥ*'s Tamil translation (*Tuḥfat al-ṭāmiʿīn*) from a Sri Lankan university library which had catalogued and digitalized it under the "Islamic Heritage Collection". The establishment of "Arabic Colleges" since the late nineteenth century across the country and the revival of Islamic education certainly contributed to the dissemination of Shāfiʿīte texts and ideas. The ethnic Malay community largely depended on the Tamil Shāfiʿīte institutions and scholars for their religious necessities, for both communities shared the same Islamic legal ideas and norms which bound them together.[107] Particularly with Malabari Islamic scholars and institutions, the Sri Lankan Muslims had kept a close contact at least since the sixteenth century, and many of them are said to have been educated in Kerala for centuries, according to a local historian.[108]

Although its precise time of arrival is not known, *Fatḥ* was accepted well by the scholarly communities of the Malay world. Its legacy continues as it currently features in the traditional curricula and appears with several glosses, marginalia and in translation. The previously discussed matters of similar cultural, geophysical and economic components must have been a crucial factor in its wider reception in the archipelago. The curricula followed in the educational institutions across the Malay world from the sixteenth to the mid-nineteenth centuries are yet to be studied thoroughly. For the moment, if we follow the same method we did for Malabar (with the framework of Robinson) and the Hijaz in looking into the texts produced by eminent scholars of respective regions, the general tendency of the Malay world was to confine itself to the religious sciences, with less attention to the rational sciences, a fact that is analogous to the wider pattern over the Indian Ocean. Within the religious sciences, we saw that Malabar moved from a mystical orientation towards Islamic law, but the trend in Southeast Asia was in the opposite direction. The students (and thus their teachers) became

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[104] Ameer Ali, "The Genesis of the Muslim Community in Ceylon (Sri Lanka): A Historical Summary," *Asian Studies* 19 (1981): 65–82.

[105] As we see in the case of Shaykh ʿAbd al-Samad bin Muḥammad Ibrahim al-Makhdūmi (1912-1996), a noted Shāfiʿīte scholar of twentieth-century Sri Lanka.

[106] Torsten Tschacher, "Circulating Islam: Understanding Convergence and Divergence in the Islamic Traditions of Maʿbar and Nusantara," in *Islamic Connections: Studies of South and Southeast Asia,* eds. R. Michael Feener and Terenjit Sevea (Singapore: Institute of Southeast Asian Studies, 2009), 48-67.

[107] The first such Arabic college was Madrasatul Bari established in 1884 at Weligama in the Southern Province, followed by the ones in Galle (1892), Kinniya (1899), Maharagama (1913) and Matara (1915). See M.A. Nuhman, *Understanding Sri Lankan Muslim Identity* (Colombo: International Centre for Ethnic Studies, 2004), 28; Aboobacker Rameez, "The Ethnic Identity of Malays in Sri Lanka: The Challenges of Assimilation and Their Responses" (PhD diss., National University of Singapore, 2015), 280, 300, 329-330.

[108] Anuzsiya "Development of Education of Muslims": 70-72.

interested more in learning Sufism than law (*pace* al-Ranīrī's comment below), and the works produced in the following centuries demonstrate this. Indeed, the only two Islamic legal texts written, that also late in the seventeenth century, were very marginal to the number of Sufi works produced in the region in the period. All this is not to ignore the presence of Islamic law (both *uṣūl al-fiqh* and *furūʿ al-fiqh*) in the curricula of dayahs and pesantrens, along with rational sciences like logic, grammar and philosophy.[109] Indeed, *Fath* was taught widely in the nineteenth and twentieth centuries as a number of biographical entries on the Indonesian scholars indicate.[110]

In the early 1880s, L.W.C. van den Berg, who gained an extensive familiarity with the situation in Java while working as a government official for the practice of "Indische" languages and the Advisor for Eastern ("Oostersche") languages and Muslim law, listed the legal texts taught in the Javanese pesantrens. He says that *Minhāj*'s predecessor *al-Muḥarrar* is no more popular in the region, but *Minhāj* and its textual progenies appealed to the fuqahā-estate, especially *Tuḥfat*. He mentions *Fath* as the last "very popular text" among the Javanese scholars, who call it *Kitab Patakoelmoengin.*[111] Snouck Hurgronje undertook a similar exercise in Sumatran institutions.[112] A century later, Martin van Bruinessen conducted research in the Indonesian pesantrens and bookshops looking for *kitab kuning*s (In. "yellow books", which were used to refer to the traditional Islamic literary corpus taught at pesantrens). He has elaborated in an article how *Tuḥfat* has been overshadowed by other texts and "an Indonesian edition of this text does not even exist".[113] *Fath* and its two commentaries *Iʿānat* and *Tarshīḥ* (see Chapter 7) were widely circulated in the region, according to him. The first commentary was more popular than the second as "a major work of reference". In his book he further elaborates, with more details on other characteristics of the Indonesian Islamic legalistic and spiritual lives, but without any further elaboration on legal texts such as *Tuḥfat*, *Fath* and *Iʿānat.*[114] In addition to this, another important aspect to be noted is the almost complete absence of any legal texts in Palembang, according to a list prepared by G.W.J. Drewes. *Ṣirāṭ al-mustaqīm* of al-Ranīrī was the only legal text available there in the eighteenth and nineteenth centuries, and all other works deal with multiple themes like Sufism and dogma.[115] This tells us something about the general disciplinary orientation that scholars in the Malay Archipelago maintained, and it proves to be correct once we compare the list of works authored by the Acehnese scholars in the eighteenth and nineteenth centuries. While

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[109] Nūr al-Dīn al-Ranīrī, *Bustan al-salatin Bab II, Pasal 13*, ed. T. Iskandar (Kuala Lumpur: Dewan Pustaka 1966), 32-35; cf. M. Hasbi Amiruddin, "The Response of the *ʿUlamāʾ Dayah* to the Modernization of Islamic Law in Aceh" (MA thesis, McGill University, 1994), 47-49.

[110] For example, see Yūsuf al-Marʿashlī, *Nathr al-jawāhir wa al-durar fī ʿulamāʾ al-qarn al-rābiʿ ʿashar* (Beirut: Dār al-Maʿrifah, 2006), 526-527, 1619, 1475, 1659.

[111] L.W.C, van den Berg, "Het Mohammedaansche godsdienstonderwijs op Java en Madoera en de daarbij gebruikte Arabische boeken," *Tijdschrift voor Indische Taal-, Land- en Volkenkunde* 31 (1886): 533..

[112] C Snouck Hurgronje, *Het Leidsche Orientalistencongres* (KITLV, 1883), 57-59.

[113] Martin van Bruinessen, Martin van Bruinessen, "Kitab kuning: Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen tot de Taal-, Land- en Volkenkunde* 146, nos. 2-3 (1990): 226-269.

[114] Martin van Bruinessen, *Kitab Kuning, Pesantren dan Tarekat* (Yogyakarta: Gading Publishing, 2012).

[115] G.W.J. Drewes, *Directions for Travellers on the Mystic Path: Zakariyyā al-Anṣārī's Kitāb fatḥ al-raḥmān and its Indonesian adaptations: with an appendix on Palembang manuscripts and authors* (The Hague: Nijhoff, 1977) Appendix.

most scholars treat the seventeenth-century as the "golden age" of Acehnese history in many realms including intellectual activities, and they suppress the eighteenth century as a period of inertia, Erawadi has questioned this argument. He provided a long list of works written by the Acehnese ʿulamāʾ, among whom many were educated and active in Mecca.[116] However, their works deal with Islamic law only infrequently. Indeed this trend confirms what Nūr al-Dīn al-Ranīrī has said about the scholarly orientations of the Acehnese in the sixteenth century. His uncle came to Aceh to teach Islamic law, but had to return since the students were more interested in Sufism and related studies.[117]

Regarding *Fatḥ* in particular, an interesting development in Southeast Asian legalist spheres happened in the late nineteenth and early twentieth centuries with the wider reception its commentaries acquired. This has been pointed out by Van Bruinessen. *Iʿānat* grew into a text of invaluable significance for educational centres, legal discourses, and fatwās. Of late *Tarshīḥ* has also been utilized by the clusters in the archipelago. *Fatḥ* was translated into Javanese, Bahasa Indonesia/Malay. The Javanese translation is mentioned in Van Bruinessen's study, but I have not been able to locate it. It has been translated into Bahasa Indonesia/Malay more than once and has been reprinted regularly.[118] It would be interesting to ask how these translators address the question of nuanced contradictions between the Islamic law and customary laws, especially once they make a pure Islamic legal text accessible to everyone. Unfortunately, they do not address such gradations in the translations. Instead, they tend to rely on a literal adaptation of the legal contents without much engagement with contextual customs and traditions. However, the fatwā-compilations produced in the region or requested by its scholars for their counterparts in South Asia and Arabia are a better way to address these contractions, if not the translations of legal texts such as *Fatḥ*.[119] In a number of *fatwā*-collections produced by jurists from or in Southeast Asia *Fatḥ* and *Iʿānat* play an important role as major sources of reference.[120] Though very few scholars attempt to consult *Tuḥfat* for an in-depth analysis, *Fatḥ* and *Fatḥ al-qarīb* are the usual references. In *Ṣirāṭ al-mustaqīm* of Nūr al-Dīn al-Ranīrī, and in its commentary *Sabīl al-muhtadīn* by Muḥammad Arshad al-Banjārī, we find an extensive use of *Tuḥfat* along with other works of Ibn Ḥajar.[121]

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[116] Erawadi, *Tradisi, wacana, dan dinamika intelektual Islam Aceh abad XVIII dan XIX* (Jakarta: Departemen Agama RI, 2009). I am grateful to Amirul Hadi for his discussions with me on this issue, and for the book.
[117] al-Ranīrī, *Bustan al-salatin*, 33.
[118] For example, see Aliy Asʾad, *Terjamahan Fat-hul Muʾin* (Selangor: Klang Book Centre, 1988), 2 vols.; Abul Hiyadh, Terjamah Fat-hul Muʾin (Surabaya: al-Hidayah, 1993). 3 vols; Achmad Najieh, *Terjemah Fathul Muʾin Makna Jawa Pegon dan Indonesia* (Surabaya: al-Miftah, n.d.) 4 vols.
[119] I came across a manuscript of fatwa-requests and answers at the Madras Ashraf al-Mulk Library. In this, the questions are raised by scholars from Java to the muftīs on the Coromandel coast. The manuscript needs further study. Michael Laffan and Nico Kaptein have analysed a compilation of fatwas by the Middle Eastern scholars for the questions raised by the Shāfiʿītes of Southeast Asia.

[120] For example, see Muhammad Afifi Akiti, *Defending the Transgressed by Censuring the Reckless against the Killing of Civilians = Mudāfiʿ al-maẓlūm bi radd al-muhāmil ʿalā qitāl man lā yuqātil* (United Kingdom and Germany: Aqsa Press and Warda Publications, 2005), 38; Mohamad Atho Mudzhar, "Fatwa's of the Council of Indonesian Ulama: a study of Islamic legal thought in Indonesia, 1975-1988" (PhD diss., University of California Los Angeles, 1990), 79, 177.
[121] Muḥammad Arshad al-Banjārī, *Sabīl al-muhtadīn* (Mecca: Maṭbaʿat al-Mīriyyat, 1892).

We can easily understand from the Southeast Asian experiences that not only was *Minhāj* marginalized, but *Tuḥfat* itself was relegated to interest only a very limited number of scholars, when comparing the status of these two texts in relation to *Fatḥ*. Yet neither text disappeared from Malay legalist circles completely, at least until the end of twentieth century. We know that Hurgronje could access a copy of *Minhāj* from Sumatra in the late-nineteenth century, and another scholar from Aceh produced a translation of it into Jāwī in the mid-twentieth century.[122]

In the East African religious educational centres *Fatḥ* was also considered to be a significant text and was taught widely. The presence of several manuscripts of the text indicates its popularity and use among the predominant Shāfiʿīte clusters. The biographer of East African Shāfiʿītes Abdullah Saleh Farsy says: "Both the *Iʿānat* and the *Fatḥ* are well-known legal tracts and widely read in East Africa".[123] In Zanzibar, despite the strong presence of an Ibāḍī legal tradition, Shāfiʿīsm has been followed by the majority of Muslims and its scholars and educational centres received *Fatḥ* in quantities. In the nineteenth and twentieth centuries, Zanzibar became the "cultural and intellectual centre of East Africa", attracting fuqahā from all over the coast and the Comoro Islands, thanks to its increasing commercial development and the Busaidi Sultanate's supportive measures.[124] Besides the Lamu region (mainly Pate, and later Siyu), the Banadir coast, the Comoro Islands and Mombasa had also been centres of Shāfiʿīte legalism, often with their fuqahā affiliating with and shuttling back and forth to Zanzibar.

The most prominent East African Shāfiʿīte scholar from the late-nineteenth and early-twentieth century was ʿAbd Allāh Bā Kathīr. He is said to have learnt *Fatḥ* and its commentary *Iʿānat* from the commentator himself at Mecca. Bā Kathīr arrived at Mecca in 1888, after five years of *Iʿānat*'s composition and attended the lectures delivered by the commentator on this work. During his teaching career in Zanzibar and Lamu (Kenya), he taught texts of the author of *Iʿānat* such as *Durar al-bahiyyat*.[125] We have no specific witness of him teaching *Iʿānat* as such, but presume that he must have engaged with the text in his academic career. The continuing use of *Fatḥ* and *Iʿānat* for teaching has been recently reaffirmed in more than twenty-five religious educational institutions of Tanzania.[126]

In Somalia we find that *Qurrat* is used more widely than *Fatḥ*. Among the dozen and a half *mukhtaṣar*s/*matn*s generally in use by the Shāfiʿīte fuqahā for educational, juridical and fatwā purposes, as listed by the indigenous scholars Aḥmad al-Quṭubī and Muḥammad Shaykh Aḥmad, *Qurrat* has been mentioned along with *Minhāj* and *Fatḥ al-qarīb*.[127] *Tuḥfat*

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[122] Snouck Hurgronje, Indische Gids (review); ʿAbd al-Salam Mirasa, *Tarjama Minhāj al-Ṭālibīn*

[123] Shaykh Abdallah Salih Farsy, *The Shafʾi Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans. ed. and annotated by Randall L. Pouwels (Madison: University of Wisconsin, 1989), 95. The quote above is from a note by the translator.

[124] Randal Pouwels, "Introduction" to Farsy, *The Shafʾi Ulama of East Africa*, iii.

[125] Farsy, *The Shafʾi Ulama of East Africa*, 84.

[126] C. van de Bruinhorst, *"Raise Your Voices and Kill Your Animals", Islamic Discourses on the Idd El-Hajj and Sacrifices in Tanga (Tanzania): Authoritative Texts, Ritual Practices and Social Identities* (Leiden: ISIM and Amsterdam University Press, 2007), 115

[127] Aḥmad al-Quṭubī, "Turuq tadrīs al-Qurʾān al-karīm wa al-ʿulūm al-Islāmiyyat wa al-ʿArabiyyat fi al-Sumāl" (PhD diss., Omdurman Islamic University, 2000), 149-152; Muḥammad Shaykh Aḥmad Muḥammad, "al-

has been listed as one among five *mabsūṭ*s, together with *Nihāyat* of Ramlī, *al-Umm* of al-Shāfiʿī and two works of Nawawī, *Rawḍat* and *Majmūʿ*. Other general listed works taught and used in Somalia demonstrate that those are not so different from the ones in the Southeast or South Asian Shāfiʿīte clusters. Based only on these lists we are unable to prioritize the order of reception of one text over another. Further evidence is needed. Shaykh Aḥmad has provided the name of a possible commentary on *Qurrat*, entitled *Sharḥ Saʿīd bin Muʾallif [li] Qurrat al-ʿayn* [sic] *bi muhimmāt al-dīn* in 444 pages. He mentions that the name of neither the author nor the scribe is given in the text, and not even the date of composition. But from its title the text *a priori* can be taken as a commentary by Saʿīd bin Muʾallif. If it were possible to cross-check this text against existing commentaries, either against *Fatḥ* or *Nihāyat* of al-Bantanī, we might be able to make more interesting observations on the textual *longue durée* of Shāfiʿīsm. This would be especially so when relating it to a statement of Shaykh Aḥmad: "from the importance of the manuscript, it seems that it is a commentary on one of the legal texts circulated extensively in Somalia."[128]

For discovering the reception, perception, and usage of *Fatḥ* along with *Minhāj* among the East African Shāfiʿīte clusters, a passage from Farsy, when he talks about Sayyid ʿUmar bin Aḥmad bin Sumayt, is relevant:

> […] Also, his father taught him the entire *Fathu'l-Mu'in* at the same time that Sayyid Umar was teaching in the Malindi Friday Mosque. When he was teaching in the Malindi Mosque it was their usual practice for his father to teach him the very lesson he was going to teach in the mosque that same day.
> Many times he beseeched his father to instruct him in the *Minhaj* and his father refused, telling him, "The *Minhāj* is not a book on legal practice; rather, it is only a book of legal theory." After he had persevered a long time he was told to study it under the supervision of Sh. Abdallah.[129]

The acceptance of *Fatḥ* in the Central Asian regions is announced primarily through the marginal presence of Shāfiʿīte educational centres. Central Asia was mostly dominated by Ḥanafītes or Shīʿītes, and Shāfiʿīsm as such was limited after the early sixteenth century. In the Central Asian parts of Kurdistan, Shāfiʿīte Sunnīs form a minority group in relation to their Shīʿīte and Yezidi co-religionists on the subcontinent, mainly in Azerbaijan, Armenia and Georgia, Transcaucasia. In the nineteenth century some noted Shāfiʿīte jurists emerged in the region, thanks to their movement to Mecca. We see this with al-Kurdī, who wrote *ḥāshiyat* for *Tuḥfat*. Another important scholar was Muḥammad bin Sulaymān al-Kurdī, with whom the Sumatran scholar Muḥammad Arshad al-Banjarī (author of the previously mentioned Malay Shāfiʿīte text *Sabīl al-muhtadīn*) studied together with many other Indonesian students in the eighteenth century. He wrote a super-commentary entitled *al-*

Maḏhab al-Shāfiʿī fī al-Sumāl: Maʿālim wa malāmih min wāqiʿ al-tafāʿul al-bīʾī," *Majallat al-Sharīʿat wa al-Dirāsat al-Islāmiyyat* 9 (2007): 260-263.

[128] Aḥmad Muḥammad, "al-Maḏhab al-Shāfiʿī fī al-Sumal": 275-76.

[129] Farsy, *The Shafʿi Ulama of East Africa*, 102.

Ḥawāshī al-Madaniyyat on Ibn Ḥajar's other commentary called *Minhāj al-qawīm*.[130] Through people like them, who were educated in Mecca, *Fatḥ* must have arrived in Kurdish areas. In the South and Southeast Asian mélange there were many Kurdish teachers and colleagues with a historical continuity with Mecca and Medina. Thus, the transmission of a text like *Fatḥ* would not have been a matter of too big a metamorphosis. Southeast and South Asian scholars took the text to Mecca and from Mecca the Kurdish ʿulamāʾ took it to Kurdistan. The existence of a Kurdish ʿulamāʾ network and their travels along the Indian Ocean rim from South Africa to Southeast Asia is well established, and hence the movement of ideas and texts like *Fatḥ* is quite imaginable.[131] In similar vein, the spread of the text as well as other Shāfiʿīte texts to the Caucasus regions via the Meccan connections needs further study. The most important group in this network is that of the Daghistani scholars, particularly ʿAbd al-Ḥamīd al-Sharwānī, whom we met earlier. But definitely the school was present in the area much before.[132]

In the twentieth century, much of the Muslim population in areas of Central Asia and Caucasus were controlled by the Soviet Union and religious educational centres often completely stopped functioning or went underground. We see little reference to Shāfiʿīte texts such as *Fatḥ* being taught in the area. After the collapse of the USSR, there were constant political and social turmoils which overtook the smooth functioning of the madrasas. Intermittent revivals of madrasas caused Shāfiʿīte texts such as *Fatḥ* to be taught again. The partial revival of the Shāfiʿīte madrasas parallel to secular educational centres enabled *Fatḥ* to develop as compulsory reading for students of Islam in Kurdistan.[133] After their primary education in Islamic sciences, all students had to study *Fatḥ* either by itself or along with other texts.

Final Remarks

What we see historically reflected in intellectual engagements related to *Fatḥ* and its commentaries after the sixteenth century is the decentralization of Islamic knowledge by what had been hitherto peripheral Muslim communities. The central roles that the heartland of Islam in general and the nucleus of Shāfiʿī legal thought in particular played in the intellectual traditions and by extension in the everyday lives of Muslims of the non-Middle Eastern world began to be more fluid, when dual works such as *Qurrat-Fatḥ* and scholars such as Zayn al-Dīn or Nūr al-Dīn al-Ranīrī instigated a revived version of Islamic law and practice. I identify this phenomenon as a historical process of reimagining the centre by the Muslims from the fringes, a process that is reflected in the rise of metaphorical "Little Meccas" like Ponnāni. When educational migrants from the South and Southeast Asian coastal belts returned from

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[130] On Sulaymān al-Kurdī's connections with the Indonesian students, see Martin van Bruinessen *De Turcicis Aliisque Rebus Commentarii Henry Hofman Dedicati,* ed. Marc Vandamme (Utrectht: Instituut voor Oosterse Talen en Culturen, 1992), 205-227.

[131] For example, see Martin van Bruinessen, "The Impact of Kurdish 'Ulama on Indonesian Islam," *Les Annales de l'Autre Islam* 5 (1998): 83-106; idem, "A nineteenth-century Ottoman Kurdish scholar in South Africa: Abu Bakr Effendi", in Martin van Bruinessen, *Mullas, Sufis, and Heretics: The Role of Religion in Kurdish Society*; (Istanbul: Isis Press, 2000), 133-141.

[132] On manay Shāfiʿīte jurists from Daghistan, see Naḏīr al-Durkilī al-Tunī, *Nuzhat al-aḏhan fī tarājim ʿulamāʾ Dāghistān*, ed. and trans. Michael Kemper and Amri R. Sixsaidov (Berlin: Klaus Schwarz, 2004).

[133] I am grateful to Martin van Bruinessen for this information.

prime centres of Islamic learning such as Mecca to their homelands they generated a network of educational institutes along the Indian Ocean rim. By their frequent scholarly engagements through texts, lectures, fatwās and debates, many minor and major centres of learning acquired a distinguished position in the opinion of local Muslims. Their graduates managed to communicate with the wider spectrums of religious discourses through the same language, yet emphasising their own geographical and cultural priorities. Through all these a much more vibrant Islam came to the forefront of the socio-religious lives of these Muslims. In this their first and foremost reference point on different issues of their "discursive everyday life" became the locally known centres of Islam. That catalysed the formation of multiple centres along the Indian Ocean rim as opposed to one single centre for the whole Muslim community, though ritualistically that centre was still relevant. This historical development on the sixteenth and later centuries leads us to one essential reality, that Mecca has been reimagined and multiple Meccas have emerged.

The rise of these little Meccas along the Indian Ocean rim did not happen by direct delineation from the "original" Mecca. In different ways these centres and their fuqahā-estates asserted their scholarly genealogy with the ones in Mecca. Many South and Southeast Asian students and scholars tried to be disciples of Ibn Ḥajar and the like. While some of them did indeed succeed in gaining studentships with him, such as the Gujarati scholar Ṭāhir Patanī (d. 1578) and the Deccani Sufi Alī al-Muttaqī (d. 1567) of Burhanpur, others did not. They might claim themselves to have been disciples of Meccan scholars, or that claim was attributed to them. That is very clear in the hagiographies related to Zayn al-Dīn Jr.'s assumed scholarly journeys, especially if we connect with it the traditional narratives of Ibn Ḥajar's visit to "his student" at Ponnāni. This trajectory of popular narratives, along with the historical development of Ponnāni to become another Mecca, illustrate that the centre was being recreated in local places and alternative hubs were strongly engrained events and activities of the actual centre.

The consequences of this historical rupture were deep rooted. The Shāfiʿīzation process of the Indian Ocean rim was strengthened, and Malabar's story stands as a representative of it. I identify this as another wave in Shāfiʿīsm's global spread. Historically, it is explicit in the production of new legal texts that directly connect to the textual *longue durée* of the school. *Fatḥ* demonstrates this, with its obvious lineage to a Meccan voice which echoes with some alternation of priorities. It led to the emergence of religious elites on the Indian Ocean rim with much stress on the exclusivity of scholars, predominantly the Shāfiʿītes, who blended the peripheral cultural contexts to the broader trends. This was a distant product of the Meccanized scholarly vision presented by Ibn Ḥajar, in which scholars were asked to follow the dress codes that enable them to be identified in public spheres, and commoners were prohibited from wearing the same dress.[134] Although they followed such instructions, they also added new local dimensions to it befitting their socio-cultural customs. All these developments simply aimed at constructing a higher group or class of scholarly elites within the believing community by way of a *localization* process. This development resonates with what Iza Hussin has stated for a later period that Islamic law is a "transregional product,

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[134] Ibn Ḥajar, *Tuḥfat*, 3: 33-39; cf. Ibn Ḥajar, *Darr al-ghamāmat fī ḏarr al-ṭaylasān wa al-ʿaḏbat wa al-ʿamāmat* (Miṣr: Maṭbaʿat al-Saʿādat, n.d), of which several manuscripts are kept at Muḥammadiyya Library Chennai and Salarjung Museum Hyderabad.

rather than an Arab export, shaped by local political networks."[135] Accordlingly, scholars in the Indian Ocean arena from now on took on a separate identity, class, power and consciousness by virtue of their accomplishments.

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[135] Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016), 10.

Chapter 7
Nihāyat and *Iʿānat*: Multidirectional Journeys

> In this work hardly one proposition in a thousand is Sayyid Bakrī's own, but this is all the better for his reputation for orthodoxy, because making what is new is the work of a heretic. [....] If one should ask, what in the world can induce a learned man in such circumstances to add a new collection of glosses to the many existing ones?
>
> Snouck Hurgronje, *Mekka*, 205 on *Iʿānat*

We have been discussing how and why a non-Middle Eastern text reflected the wider phenomenon of the rise of multiple Meccas across the Muslim world. Within Shāfiʿīsm, I argued, *Fatḥ* from sixteenth-century Malabar represented the emergence of this alternative legalist discourse. In this chapter I explore its implications in the later discursive tradition of the school, focusing on two texts related to *Fatḥ* belonging to the *Minhāj*-family intellectually. Unlike the previous three chapters, this chapter does not limit itself to one text or commentary, nor does it focus on a particular regional setting.

In the nineteenth and twentieth centuries there was a huge increase in the reception of *Fatḥ* and its progenies. This positive response coincided with historic developments across the Islamic world and influenced them. I ask how the Shāfiʿīte fuqahā in the Indian Ocean and Eastern Mediterranean arenas perceived and received new texts such as *Fatḥ* and its commentaries in relation to their traditional texts. What facts led to *Fatḥ* being more and more favourably received in the nineteenth century? How is its reception reflected in Shāfiʿīte legalism? To what extent did its newness influence the textual *longue durée* of the school and broader developments in the Islamic world? I shall show that from the late-eighteenth to the nineteenth century there was a period of multiple syntheses for Shāfiʿīsm in terms of its geographical, intellectual and cultural realms, due to the new developments in many other arenas of the society. The existing internal and inherent divisions in the school were reconciled through constant efforts of scholars from the peripheries and from the centres of Islam. But this synthesis was soon to face a larger division in the Islamic world. On the verge of new trials from political entities and a few minor but radical sections of the community, the traditional block united as a single body against what they called *bidʿat* or false invention. In contrast to the existing literature on Islamic legal historiography, I argue that *Fatḥ*'s future journey represents a wider pattern in the nineteenth-century Islamic world. That pattern shows a major group of the intellectual community abstaining from state-sponsored codification processes and deprecating the so-called "modernist reforms". By answering the above questions I hope to substantiate this.

Towards achieving my aim, I focus on *Nihāyat al-zayn fī irshād al-mubtadiʾīn* (henceforth *Nihāyat*) by Nawawī al-Bantanī (1813-1898) and *Iʿānat al-ṭālibīn* (henceforth *Iʿānat*) of Sayyid Abū Bakr ibn Muḥammad Shaṭā al-Dimyāṭī (1850-1893), widely known as Sayyid Bakrī. I shall take both texts together; previously I have concentrated on one text at a time. It is necessary for me to do this to provide better substance for my argument on the synthesis in nineteenth-century Shāfiʿīsm. *Nihāyat* can be termed a peripheral text, and *Iʿānat* then represents the centre, with both works reflecting common trends of their time in bending the attitudes of many divisions in the school. I do not focus on the "regionality" of a particular

place or its political influences in the new developments as I have been doing earlier. I emphasize nineteenth-century Mecca only to argue that it is the time rather than the place that is embedded in forming a "traditionalist-legalistic bloc" against contemporary developments in religious and political spheres. In the first part I start by demonstrating that both these texts can be taken as both related and unrelated. Although they represent a super-commentary and a commentary on the same base-text, with many shared grounds of argument, they are different in themselves.

<div align="center">

I.

</div>

Genealogy Complicated

The two texts in focus in this chapter do not have a linear connection with *Fatḥ* and its base-text *Qurrat*. *Nihāyat* of Nawawī al-Bantanī is a commentary on *Qurrat*, whereas *Iʿānat* is *Qurrat*'s super-commentary via *Fatḥ*. In that sense the family relationship of the texts could be described as aunt and niece, to use kinship metaphors, in that they derive from the same *enate*, which is *Qurrat*. Yet physically they belong to the same *Fatḥ*-family and by extension intellectually to the *Minhāj*-family.

Many commentaries were written after *Fatḥ* (and *Qurrat*) in the nineteenth and twentieth centuries in the Middle East, an area that we did not cover in the previous chapter. From Mecca in particular we have four remarkable works from the nineteenth century: *Iʿānat al-mustaʿīn ʿalā Fatḥ al-muʿīn* (henceforth *Iʿānat al-mustaʿīn*) of ʿAlī bin Aḥmad bin Saʿīd al-Ḥaḍramī, widely known as Bā Ṣabrīn (d. 1887) completed on Saturday 15 November 1845; *Tarshīḥ al-mustafīdīn bi taṣḥīḥ Fatḥ al-muʿīn* (henceforward *Tarshīḥ*) of ʿAlawī bin Aḥmad bin ʿAbd al-Raḥmān al-Saqqāf (1839-1916); *Nihāyat* of Nawawī al-Bantanī; *Iʿānat* of Sayyid Bakrī. All these authors and texts seem to reflect the situation in Cairo three centuries earlier, when al-Anṣārī, al-Ramlī, Ibn Ḥajar and Khaṭīb al-Sharbīnī wrote commentaries on *Minhāj*. Now in Mecca, these new Shāfiʿītes engaged with *Fatḥ-Qurrat* in the same spirit. Of course the circumstances were much different than they were in sixteenth-century Cairo. Mecca had become a larger epitome of the contemporary Muslim world, bigger than the "new" city or region it used to be for Ibn Ḥajar and his assumed student Zayn al-Dīn Jr. Moreover, there was hardly a common source of inspiration for the four "commentators of *Fatḥ*". ʿAlī Bā Ṣabrīn had finished writing *Iʿānat al-mustaʿīn* five years before the author of *Iʿānat* was even born.

Of these four commentaries, *Iʿānat al-mustaʿīn* is the earliest. Its author ʿAlī Bā Ṣabrīn was a Ḥaḍramī born in Tarīm, who had travelled to Egypt and Mecca for his education. After studies, he taught at Jeddah for some years before he returned to Ḥaḍramawt. He reinstated the Yemeni legalist tradition through his works, such as *Ghāyat talkhīṣ al-murād min Fatāwā Ibn Ziyād*, a text based on the legal clarifications of the sixteenth-century Yemeni scholar Ibn Ziyād.[1] He must have studied *Fatḥ* in Mecca as the text was widely taught in Mecca, Medina,

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[1] On his other contributions and a detailed biography, see: Ahmad bin Hummam bin 'Ali al-Qanawi, *Manāqib al-Shaykh 'Ali bin Ahmad Ba Ṣabrīn*, MSS. al-Zahiriyya no. 364: 10. Also see: Yūsuf al-Marʿashlī, *Nathr al-jawāhir wa al-durar fī ʿulamāʾ al-qarn al-rābiʿ ʿashar* (Beirut: Dār al-Maʿrifah, 2006), 1: 881.

Yemen and many other parts.[2] Among his teachers there were Indians and Malays, such as al-Faqīh ʿAbd al-Ḥamīd Bakhsh al-Hindī, Aḥmad bin Muḥsin al-ʿAṭṭās, the muftī of Johor;[3] there his composition was used as a textbook at the time. In the introduction to *Iʿānat al-mustaʿīn* he elaborates on his intentions.

> When I decided to teach it [*Fatḥ*] for a few colleagues, God made the situation and atmosphere perfect for me and for them. But I could not find any materials on it, I mean, explaining its meanings. I do not know if anyone has written anything on it ever or spent time on it, although it deserves to be expounded for what it has presented…and it is one of the best texts to contemplate among plenty of other texts, especially for its being the mainstay of the school and for the clarity of its insinuations.[4]

He goes on to explain his methodology and sources for writing it. As a manuscript, his text was widely circulated during his lifetime itself.[5] It was utilized by many scholars of the nineteenth and twentieth century in their legalistic engagement and textual production. We find citations from it in renowned super-commentaries of *Tuḥfat* such as the one by ʿAbd al-Ḥamīd al-Sharwānī discussed earlier. Yet the work has never been printed and so is circulated only in manuscript.[6]

Tarshīḥ's author ʿAlawī al-Saqqāf was born and brought up in Mecca and became an important figure among the ʿAlawī Sayyids in the city. He wrote many other works, including one on the Sayyid lineage titled *Ansāb ahl al-bayt*, and another on the history of hierarchizing disputes among the Shāfiʿīte texts and scholars.[7] The latter text is an abridgment of Muḥammad al-Kurdī's *Fawāʾid al-Makkiyyat*, but he has made additions, including inserting the title of his own commentary on *Fatḥ* as one of the noted texts of the school.[8] In the introduction to *Tarshīḥ* he explains the relevance of *Fatḥ* and the need for a new commentary. He says that a few scholars have recently attempted to clarify *Fatḥ*'s meanings and oddities, but these could leave the reader confused, as the original text is too concise and precise and a

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[2] On the details of *Fath* being an important textbook in Hijaz and other places, see: al-Marʿashlī, *Nathr al-jawāhir*, 165, 407, 526, 527, 1475, 1619, 1659, 1826.

[3] Muḥammad Abū Bakr ʿAbd Allāh Bā Dhīb, *Juhūd fuqahā Ḥaḍramawt fī khidmat al-madhab al-Shāfiʿī* (Amman: Dār al-Fatḥ lil-Dirāsāt wa-al-Nashr, 2009), 2: 984.

[4] ʿAlī bin Aḥmad bin Saʿīd al-Ḥaḍramī, *Iʿānat al-mustaʿīn ʿalā Fatḥ al-muʿīn*, Dār al-Kutub al-Miṣrīyyat, MSS 1: 531, fol. 1v.

[5] For example, see a manuscript preserved at Dār al-Kutub al-Miṣrīyyat (1: 531). It was copied on 17 June 1853 (10 Ramadan 1269), seven years after it was first written. This manuscript travelled through a number of hands in the nineteenth century before it reached the collection of the Dar al-Kutub (today the Egyptian National Library and Archives), as a passage in its first page shows.

[6] I could locate one manuscript in Malabar at al-Azhariyya Library of Aḥmad Kōya al-Shāliyātī in two grand volumes. I learnt that there is another copy kept with Rāmantaḷi Taṅṅaḷ at Kannur, but I could neither access nor confirm this. Photocopies of Shāliyātī-manuscript are preserved at religious educational centres of Maʿdin Malappuram and Markaz Karantūr. Other manuscripts are in Cairo and Riyadh. The Cairene manuscript of Dar al-Kutub has been digitalized.

[7] For the details of his other works, see: Khayr al-Dīn al-Zarkalī, *Tartīb al-aʿlām* (Beirut: Dār al-Ilm li al-Malayīn, 2002), 4: 249; al- Marʿashlī, *Nathr al-jawāhir*, 1: 872-873.

[8] ʿAlawī al-Saqqāf, *Mukhtaṣar al-Fawāʾid al-Makkiyat fī mā yaḥtājuhu ṭalabat al-Shāfiʿīyyat*, ed. Yūsuf ʿAbd al-Raḥmān Marʿashlī (Beirut: Dār al-Bashāʾir al-Islāmiyat, 2004), 63

recent commentary is misleading.[9] This reproof was primarily targeted at *Iʿānat*. Both authors were colleagues in Mecca but apparently did not like each other.[10] The book is also written in a form for it to be printed, unlike earlier texts which were primarily designed to be circulated as manuscripts. He explains that the structure of the text in its printed form would show the original text at the top of the page, and his commentary underneath. After *Iʿānat*, *Tarshīḥ* became one of the most reliable commentaries of *Fatḥ* for teachers and students in the institutions of Shāfiʿīsm. This wider receptivity might be due to the fact that it was printed in the late-nineteenth century, facilitating its wide circulation among scholarly networks.

I have listed four texts written almost in the same time and in the same place. Why then did I choose *Nihāyat* and *Iʿānat*, two different texts? The answer is that *Iʿānat* is important since it has a higher status among Shāfiʿītes. Anyone who knows *Fatḥ* also knows this commentary, even if they might not know its base-text, *Qurrat*, or other commentaries.[11] Also it represents the wider region of "Middle-Eastern-ness" of two of the other commentaries, *Tarshīḥ* and *Iʿānat al-mustaʿīn*, in contrast to *Nihāyat*. *Nihāyat* is a "peripheral" commentary in the sense that it was written by a non-Middle Eastern scholar who primarily studied in Indonesia before he built a successful career in Mecca. *Fatḥ*'s "al-Hind-ness" was a facet that I highlighted as one of the reasons for its reception on the Indian Ocean rim, whereas this aspect becomes less significant once it comes to the Shāfiʿīte discourses of the nineteenth century. This becomes very clear if we read *Nihāyat* and *Iʿānat* closely together.

Life and Career of the Authors

Nawawī al-Bantanī and Sayyid Bakrī lived in Mecca at the same time, and wrote their respective texts *Nihāyat* and *Iʿānat* more or less contemporaneously. How familiar they were with each other, not to mention friendship, is a matter of doubt, to which I will come back later.

Nawawī al-Bantanī was an influential author and teacher widely appreciated in the Malay world for his commentary on the Qurʾān entitled *Marāḥ labīd li kashf maʿnā al-Qurʾān al-majīd*.[12] He was born and brought up in Tanara in Banten, West Java.[13] After an initial education at the *pesantren*s of Java and a short career of teaching in his hometown, he

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[9] ʿAlawī al-Saqqāf, *Tarshīḥ al-mustafīdīn bi taṣḥīḥ Fatḥ al-Muʿīn* (Matbaát Mustafa al-Bab al-Halabi, 1970), 2.

[10] ʿAlawī al-Saqqāf, *Mukhtaṣar al-Fawāʾid al-Makkiyat*, 63; especially, see the footnote of the editor in which it clearly names *Iʿānat* and specifies the bitter relationship between both authors.

[11] For example, one anthropologist who conducted surveys in more than twenty-five madrasas of Tanzania, notes that the commentaries *Iʿānat*, *Tarshīḥ*, and *Fatḥ* "are more popular than the original" *Qurrat*. See: Gerard C. van de Bruinhorst, *"Raise Your Voices and Kill Your Animals", Islamic Discourses on the Idd El-Hajj and Sacrifices in Tanga (Tanzania): Authoritative Texts, Ritual Practices and Social Identities* (Leiden: ISIM and Amsterdam University Press, 2007), 115.

[12] ʿUmar ʿAbd al-Jabbār, *Siyar wa-tarājim baʿḍ ʿulamāʾinā fī al-qarn al-rabiʿ ʿashar li al-Hijrat* (Jeddah: al-Mamlakat al-ʿArabiyyat al-Saʿūdiyat, 1982), 288 mentions the title of his *tafsīr* as *al-Tafsīr al-munīr li Maʿālim al-Tanzīl*. He also mentions that he was the author of around a hundred works.

[13] For his biography, the major sources are Aboe Bakar Djajadiningrat, *Tarājim ʿulamāʾ al-Jāwah*, Leiden University Special Collections, Or. 7111, unpaginated; C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning* (Leiden: Brill, 2007); Chaidar, *Sejarah pujangga Islam Syech Nawawi Albanteni, Indonesia* (Jakarta: Sarana Utama, 1978); cf. Alex Wijoyo, "Shaykh Nawawi of Banten: Texts, Authority, and the Gloss Tradition" (PhD diss., Columbia University, 1997); for recent studies on him, see Basri Basri, "Indonesian Ulama in the Haramayn and the Transmission of Reformist Islam in Indonesia (1800-1900)" (PhD diss., University of Arkansas, 2008), 74-109.

went to Mecca in 1828 aged fifteen and settled there until his death. Many Javanese scholars in the nineteenth century acted similarly due to increased scholarly travel across the Indian Ocean.[14] His life and career, as Alex Wijoyo in an extensive study on Nawawī's contributions puts it, "are particularly interesting not because they were unique, but precisely because in many respects they resemble those of other Jawi ulema".[15] Once he arrived in Mecca, he studied with at least three Jāwī scholars and three other prominent Arab teachers. The Javanese shaykhs were ʿAbd al-Ghanī al-Bima (1780-1854), Aḥmad Khaṭīb bin ʿAbd al-Ghaffār Sambas (1802-1872), and Aḥmad bin Zayd (d.?).[16] Among the non-Jāwī teachers the most relevant for our study is al-Sharwānī, the author of a famous commentary on *Tuḥfat*. The only text Nawawī studied with him was *Tuḥfat*.[17] For Nawawī the most important teacher was the Egyptian scholar Shaykh Yūsuf al-Sunbulawaynī (d. on or after 1867) with whom he studied for fifteen years. He is said to have travelled also to Medina to study with the Ḥanbalīte *ḥadīth* scholar Muḥammad Khaṭīb Dūmā, and to Egypt and Syria.[18]

His career in Mecca lasted for seven decades, during which he attracted many Indonesian students, mainly Javanese, Bantanese, and a few Indians.[19] He was renowned among Indonesian students for his learning and also for the stand he is assumed to have taken against Dutch colonialism. An anti-Dutch political stand is not evident from his writings, but it is a prevalent assumption among his hagiographers and followers (see below).[20] All his students returned to Indonesia and built careers locally and regionally as well known scholars and leaders. However, Nawawī al-Bantanī chose to remain in Mecca teaching and writing.

His audience was mostly composed of Indonesians, particularly Javanese, but Nawawī al-Bantanī wrote his books in Arabic. In the longer Shāfiʿīte intellectual tradition of Southeast Asia the scholars chose to write in Malay-Jāwī, or other local languages. Nawawī al-Bantanī was one of the few Javanese scholars who began writing legal texts in Arabic. That contributed to a construction of his legacy in the longer Southeast Asian tradition of Shāfiʿīsm. His choice of language was primarily an outcome of a synthesis between geography and law which happened in the nineteenth century. Its implications were interesting and far-reaching, as I shall explain later in this chapter. Apart from his commentaries on the Qurʾān and *Qurrat*, his works include mystical texts such as *Marāqī al-ʿubūdiyyat* (a commentary on *Bidāyat al-hidāyat* of al-Ghazālī), theological treatises such as *Qamiʿat al-tughyān ʿalā manẓūmat shuʿb al-īmān*, and ethical works such as *ʿUqūd al-lujayn fī bayān ḥuqūq al-zawjayn*. Many of these texts had entered the curricula of Southeast Asian *pesantren*s by the early twentieth century and still continue to be taught as respected *kitab-kuning*s. The wide popularity of his texts in religious education motivated one scholar to call

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[14] On the Indonesian scholars in Mecca and Medina, see: Basri, "Indonesian Ulama".

[15] Wijoyo, "Shaykh Nawawi of Banten," 29.

[16] Wijoyo, "Shaykh Nawawi of Banten," 72-73; Djajadiningrat, *Tarājim ʿulamāʾ al-Jāwah*, unpaginated.

[17] Hurgronje, *Mekka*, 186 and 269; ʿAbd al-Jabbār, *Siyar wa tarājim*, 72, 116 and 160

[18] ʿAbd al-Jabbār, *Siyar wa tarājim*, 288.

[19] His most famous non-Indonesian student was ʿAbd al-Sattār al-Dihlawī (1869-1936) of Indian origin. For a list of his important Indonesian students, see Wijoyo, "Shaykh Nawawi of Banten," 80-88.

[20] Chaidar, *Sejarah*, 40-41; Forum Kajian Kitab Kuning, ed. *Wajah Baru Relasi Suami-Istri: Telaah Kitab 'Uqud al-Lujjayn* (Yogyakarat: LKiS, 2001), 208

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him the "intellectual master" of *pesantren*s.[21] After the rise of female *pesantren*s and female ʿulamāʾ with critical readings of *kitab kuning*, the last text *ʿUqūd al-lujayn* was seen to be controversial for its clear male-chauvinistic elements and misogynistic arguments. A few female ʿulamāʾ brought out an annotated critical edition of it.[22]

Among Nawawī's non-Javanese teachers not mentioned above one in particular needs our attention, Aḥmad al-Dimyāṭī (d. 1853, Medina), who migrated from Damietta in Egypt.[23] From this small port in the Nile Delta, equally distant from Cairo and Alexandria, came a large number of Shāfiʿītes who were very influential in scholarly circles of Mecca, Medina and Cairo in the nineteenth and twentieth centuries. Apart from Aḥmad al-Dimyāṭī many Indonesian, Indian and Swahili students studied with those from Damietta, including ʿUthmān bin Muḥammad Shaṭā (d. 1878), ʿUmar bin Muḥammad Shaṭā (d. 1843-1912), al-ʿAzab al-Madanī, Muḥammad al-Sharbīnī, and Sayyid Bakrī (Sayyid Abū Bakr bin Muḥammad Shaṭā al-Dimyāṭī).[24] Most of them were either sons or grandsons of Muḥammad Shaṭā Zayn al-Dīn bin Maḥmūd bin ʿAlī (d. 1850), who migrated to Mecca at the end of the eighteenth century and began to teach at the Masjid al-Ḥarām and attracted many students.[25] Of these the most important, not only for the students of that time but also for the future history of *Fatḥ*, was his son Sayyid Bakrī, the author of *Iʿānat*.

When Sayyid Bakrī's was only three months old his father passed away. He grew up under the tutelage of his brother ʿUmar, who was seven years older. Even as a child Bakrī was known to be bright. He had memorized the Qurʾān at the age of seven, and followed that with many other *matn*-texts of law, logic, grammar, etc.[26] Later he studied with Aḥmad Zaynī Daḥlān (1816-1886), whom Snouck Hurgronje called the "Rector" of the Meccan University,[27] and wrote a *manāqib* (memorabilia) on his teacher titled *Tuḥfat al-Raḥmān fī manāqib Sayyid Aḥmad Zaynī Daḥlān*.[28] Nawawī al-Bantanī is also said to have studied with Daḥlān to get *barakat* (blessings).

After his education, Bakrī spent most of his time teaching, writing and reciting the Qurʾān. He mainly taught legal texts such as *Tuḥfat* and *Fatḥ* and many Indonesian, Hijazi, Egyptian and Swahili students attended his lectures. He also taught his own books, such as the commentary on *Fatḥ*. He commented on *Fatḥ* and also on *Tuḥfat* but he could not finish the *ḥāshiyat* on *Tuḥfat*, reaching only as far as the chapter of commercial law. That work remains

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[21] Abd Rahman, "Nawawī al-Bantanī: An Intellectual Master of the Pesantren Tradition," *Studia Islamika* 3, no. 3 (1996): 81-114.

[22] Forum, *Wajah Baru*; cf. Pieternella van Doorn-Harder, *Women Shaping Islam: Indonesian Women Reading the Qurʾān* (Urbana and Chicago: University of Illinois Press, 2006), 190-91, *passim*.

[23] ʿAbd al-Jabbār, *Siyar wa tarājim*, 288

[24] See ʿAbd al-Jabbār, *Siyar wa tarājim*, passim.

[25] Aḥmad al-Sibāʿī, *Tārīkh Makkat: Dirāsat fī al-siyāsat wa al-ʿilm wa al-ijtimāʿ wa al-umrān* (Riyadh: Taʾsīs al- Mamlakat al-ʿArabiyyat al-Saʿūdiyat, 1999), 644, 660-61.

[26] ʿAbd al-Jabbār, *Siyar wa tarājim*, 80 gives a list of the texts he memorized as a child.

[27] C. Snouck Hurgronje, "Een Rector der Mekkaansche Universiteit," *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* 36, no. 3 (1887): 344-395.

[28] Wijoyo, "Shaykh Nawawi of Banten," 74 explains the name of the author of this manāqib, Sayyid Bakrī, in brackets as Abū Bakr ʿUthmān bin Muḥammad Shaṭā. He mixes up Sayyid Bakrī's name (Abu Bakr) with that of his brother ʿUthmān. ʿAbd al-Jabbār does not mention such a text among the writings of Bakrī, see ʿAbd al-Jabbār, *Siyar wa tarājim*, 81. This however does not matter much because ʿAbd al-Jabbār does not mention many of his other works either.

unpublished. He dealt at least twice with the works of Ponnāni scholars. Apart from *Fatḥ*, he wrote a commentary on *Hidāyat al-aḏkiyāʾ* of Zayn al-Dīn Makhdūm Sr. entitled *Kifāyat al-atqiyāʾ wa minhāj al-aṣfiyāʾ*, the same text on which Nawawī al-Bantanī also has written a commentary.[29] His other works include two treatises on the legitimacy of following the old opinion of al-Shāfiʿī against the new one on the issue of organizing many congregational prayers on Friday in same locality, an unfinished commentary on the Qurʾān, and a compilation of his fatwās.[30] During his stay in Mecca, Snouck Hurgronje met Bakrī and has written about him briefly. Apparently Bakrī used to deliver lectures from his own compositions which he sent for publication afterwards.[31] What Hurgronje wrote about *Iʿānat* with a remark on its futility was qutoted at the beginning of this chapter, to which I shall shortly return.

Sayyid Bakrī died at the age of forty-three. He left three children, Aḥmad, Ḥusayn and Ṣāliḥ who all became famous scholars. Sadly, like his father, Bakrī also died while his children were very young. Their uncle ʿUmar looked after them, as he had done for Bakrī when his father had died forty years earlier. In this harsh situation, ʿUmar was supported by Bakrī's elder son Aḥmad (1882-1914), who also taught his two younger brothers.[32] But all of them eventually had a better life. Ṣāliḥ (d. 1950) did especially well as a close associate of the first king of Saudi Arabia ʿAbd al-ʿAzīz Ibn Saʿud (1875-1953) and he secured a successful career in the city after his extensive travels in India, and in Malayan and Arab lands.[33]

Sayyid Bakrī and Nawawī al-Bantanī both lived in the same city, were both taught by the same teacher, Zaynī Daḥlān, both studied the same text at almost the same time, but we have no clear evidence that they knew each other. They would at least have had plenty of chances to meet even if not for friendship, but just as many chances for not meeting. Nawawī remained mostly in the Javanese quarter. He taught students at his home, and never thought about teaching at the Holy Mosque where many Arab, Indian, Swahili and Javanese scholars were teaching. Hurgronje asked him why he did not teach at the Holy Mosque where many other Jawis less knowledgeable than him gave lectures. He answered modestly: "If they have attained such high honour, then assuredly they have earned it." He also said that his ugly clothes "did not accord with the distinguished appearance of the Arabic professors".[34] All these words not only indicate his modesty and humility, but also his detachment from other contemporary teachers in the city, even though he had contacts with most famous ones such as Zaynī Daḥlān. His Arabic was not fluent which may have been another factor separating him from possible confrères. From Sayyid Bakrī's viewpoint, his father had a strong

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[29] Sayyid Bakrī, *Kifāyat al-atqiyāʾ wa minhāj al-aṣfiyāʾ ʿalā Hidāyat al-aḏkiyāʾ ilā ṭarīq al-awliyāʾ* (Cairo: Maṭbaʿat al-ʿĀmir, 1885); Nawawī al-Bantanī, *Salālim al-fuḍalāʾ ʿalā Hidāyat al-aḏkiyāʾ ilā ṭarīq al-awliyāʾ* (Cairo: Maṭbaʿat al-Khayriyyat, 1886).

[30] For a list of his other works including the hagiography on Daḥlān, see al-Zarkalī, *Tartīb al-aʿlām*, 2: 48; ʿAbd Allāh bin ʿAbd al-Raḥmān al-Muʿallimī, *Aʿlam al-makkiyyīn min al-qarn al-tāsiʿ ilā al-qarn al-rābiʿ al-ʿashar al-hijrī* (Mecca and Medina: Muʾassasat al-Furqān li al-Turāth al-Islāmī, 2000), 1: 561; al-Marʿashlī, *Nathr al-jawāhir*, 1: 519; 858; ʿUmar Riḍā Kaḥḥālat, *Muʿjam al-muʾallifīn: Tarājim muṣannifī al-kutub al-ʿArabiyyat* (Beirut: Muʾassasat al-Risalat, 1985), 1: 444.

[31] Hurgronje, *Mekka*, 204-205.

[32] ʿAbd al-Jabbār, *Siyar wa tarājim*, 65-66.

[33] ʿAbd al-Jabbār, *Siyar wa tarājim*, 124-127.

[34] Hurgronje, *Mekka*, 290. On his lack of fluency in speaking Arabic, see 289.

connection with the Javanese since his chief assistant was a Javanese named ʿAbd al-Shakūr. Hurgronje has written in detail about the warm-hearted relationship between ʿAbd al-Shakūr and his benefactor Muḥammad Shaṭā.[35] The former ended up marrying the three daughters of the latter after their deaths in succession. In fact they were all sisters of Sayyid Bakrī. ʿAbd al-Shakūr was the one and only Javanese scholar in the city equal in standing to Nawawī al-Bantanī and it is quite possible that he initiated a connection between Sayyid Bakrī and Nawawī al-Bantanī. Even so, explicit evidence is lacking. Intellectually they swam in the same stream, as can clearly be seen in *Nihāyat* and *Iʿānat*.

Profiles of the Texts

Nihāyat was published as a single volume at the end of July 1881. Two years later *Iʿānat*'s was completed, on 27 August 1883, in four volumes. One volume was enough for a commentary of *Qurrat*, but a super-commentary via *Fatḥ* needed more space. Even so, there is a longer and broader range of discussion in *Nihāyat* than in *Fatḥ*.

In *Nihāyat* Nawawī al-Bantanī does not say what motivated him to write the text. All he says in the introductory part is that with this commentary on *Qurrat* of Zayn al-Dīn bin ʿAbd al-ʿAzīz bin Zayn al-Dīn al-Malaybārī al-Fannānī[36] he aims to help the colleagues "who are underprivileged like me." The use of the term "underprivileged" (*qāṣirīn*) could indicate the author's humility and modesty, which distinguished him among his contemporary scholars in the city. Hurgronje notes: "In social intercourse of any kind, he rather joins courteously in the conversation, than dominates it, and never starts any scientific discussion without cause given by others. An Arab, who did not know him, might pass a whole evening in his society without noticing that he was the author of about twenty learned Arabic works."[37] Such self-deprecating terms are usual in Arabic and Islamic texts to excuse possible deprivations and faults. A rather interesting comment on the term was given by an anonymous annotator (possibly Nawawī al-Bantanī himself) referring to "the pursuers of primary education".[38] From that we could infer that the text basically targeted Shāfiʿīte students at primary levels.

What is most interesting in *Nihāyat* is the way in which it attempts to incorporate itself, along with *Qurrat*, into the textual *longue durée* of Shāfiʿīsm. It reads: "Whatever is written in this book is none of my own. It is all taken from the *ʿibārat* of [previous] authors (May God make them useful to us! Amen)." He elaborates further that his main source of reference is *Nihāyat al-amal* of Muḥammad bin Ibrāhīm Abū Khuḍayr al-Dimyāṭī, a lesser known text in the school.[39] Muḥammad Abū Khuḍayr is another scholar from Damietta who lived and died in Medina and who contributed significantly to the Shāfiʿīte legal tradition. He was a student of Ibrāhīm al-Bājūrī (d. 1860) at al-Azhar University before he built up a career in Medina. His *Nihāyat al-amal* is an unconventional legal text, for it brings theology and

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[35] Hurgronje, *Mekka*, 303-305.

[36] The identification of Zayn al-Dīn as the son of ʿAbd al-ʿAzīz is a misunderstanding, as I discussed in Chapter 6.

[37] Hurgronje, *Mekka*, 290.

[38] Nawawī al-Bantanī, *Nihāyat al-zayn fi irshād al-mubtadiʾīn bi-sharḥ Qurrat al-ʿayn bi-muhimmāt al-dīn* (Cairo: Maṭbaʿat al-ʿĀmirat al-Sharafiyyat 1881), 2.

[39] Muḥammad bin Ibrāhīm Abū Khuḍayr al-Dimyāṭī, *Nihāyat al-amal li man raghib fī ṣiḥḥat al-ʿaqīdat wa al-ʿamal* (Cairo, 1895); MSS, Umm al-Qura University.

mysticism into legal discussions. The amalgamation of theology, mysticism and law has been a foundational characteristic for Aaron Spevack's idea of "archetypal scholars" in the Sunnī tradition.[40] In his analysis of al-Bājūrī and many of his predecessors, Spevack demonstrated how the same scholar combined these three disciplines in his career. All the scholars under his focus wrote separate texts in each field, and we rarely see anyone combining all the three in a single text. *Nihāyat al-amal* is such a text, one easily able to be identified as an "archetypal text", which seems an appropriate phrase in this context. Muḥammad Abū Khuḍayr depended for theological aspects on his teacher al-Bājūrī's commentary on *al-Jawharat al-tawḥīd* of Ibrāhīm al-Laqānī (d. 1632). For the mystical part he referred to *Iḥyāʾ ʿulūm al-dīn* of al-Ghazālī, supplementing it with Nawawī's al-*Adkār* and its summary by al-Suyūṭī for chants and prayers. For the legal discussions he mainly depended on the *Ghāyat*-family, on the commentary of al-Khaṭīb on *Ghāyat*, and on al-Bājūrī's super-commentary.[41] A closer reading of this text shows that Nawawī al-Bantanī took his arguments and articulations and even phrases and words in *Nihāyat* from there.

Yet al-Bantanī differs from Abū Khuḍayr's approach by not amalgamating too much theology and mysticism with law. *Nihāyat*'s main focus is on legal discussions, and so it stands close to the approach of Zayn al-Dīn in *Fatḥ* or other texts that we have discussed so far. These legal discussions are again taken from a set of other texts familiar to us, *Nihāyat* of al-Ramlī, and *Tuḥfat* and *Fatḥ al-jawād* of Ibn Ḥajar. He also used another *Nihāyat*, a commentary on *Ghāyat* of Abu Shujāʿ, and many unnamed super-commentaries.[42] From this we see that his statement, "whatever written in this book is none of my own, it is all taken from the ʿibārat of [previous] authors" sounds like a statutory confession for not writing "anything new". Even the statement itself is taken from Abū Khuḍayr's *Nihāyat al-amal* word by word.[43] Writing a commentary in this way on an earlier text is unprecedented in the textual tradition of the school and most commentators have been trying to articulate their ideas in their own words without depending on the exact quotations of earlier scholars. What then is the distinctive contribution of *Nihāyat*?

Before answering this question within an etic framework, let me briefly engage with the internal approach of the school that allows this sort of textual practice without any suggestion of outright plagiarism. This is not a means of keeping a "reputation for orthodoxy", nor to avoid "making what is new is the work of a heretic", as Hurgronje labels it in his passage quoted at the beginning of this chapter. Rather it was part of a different intellectual engagement developed in the eighteenth and nineteenth centuries in Southeast Asia as well as in the Middle East. Many followers of this new method rarely revealed their name or identity in the works they produced. It was an act of compiling different sources into a single coherent narrative in order to lead the reader to a variety of possible options and meanings. The compilers selected a particular theme and took portions from renowned texts of the school on the issue, and left it to the reader's choice and ability to prioritize, hierarchize which of the given opinions to follow. A good command of the legal maxims and textual history of the

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[40] Aaron Spevack, *The Archetypal Sunnī Scholar: Law, Theology, and Mysticism in the Synthesis of al-Bājūrī* (Albany: SUNY Press, 2014).

[41] Abū Khuḍayr al-Dimyāṭī, *Nihāyat al-amal*: 4; MSS: 5.

[42] Nawawī al-Bantanī, *Nihāyat*, 2.

[43] Abū Khuḍayr al-Dimyāṭī, *Nihāyat al-amal*: 4; MSS: 5

school was required for a right use of such texts; a beginner could use them with a high possibility of deviance. A Southeast Asian manuscript, possibly from eighteenth-century Aceh now kept at Leiden University Special Collections, is a good example of this method.[44] It deals with the legal issues of marriage, and draws passages from *Fatḥ*, al-Anṣārī's *Fatḥ al-wahhāb* and *Mirʾāt al-ṭullāb* of ʿAbd al-Raʾūf Sinkilī. The author is anonymous, but very clearly had a good command of the textual tradition of Shāfiʿīsm.

In his time Nawawī al-Bantanī followed this method in his engagements in his oeuvre, but also with his own additions. And not only in *Nihāyat* did he follow this method. His most controversial text, *ʿUqūd al-lujayn*, is an example of a compilation of passages from nine classical texts. There are many ways in which he differs from his predecessors when using the strategy. In earlier texts we do not see a foundational text when putting the passages together, whereas al-Bantanī followed the architectonic format of *Qurrat*. He compiled the passages as its commentary, clearly differing from the style and arguments of *Fatḥ*. The end product is *Nihāyat* which builds up a discursive narrative through thematic interconnections between different issues. Occasionally al-Bantanī provides additional glossaries to help the reader with problematic phrases or wordings. This might be because his target audience for the text was the "pursuers of primary education" he alluded to. Furthermore, I would argue that by taking a different route from his contemporary scholars in the city, who all wrote a commentary on *Fatḥ*, by choosing to write a commentary like *Qurrat*, is a way to demonstrate his aim of synthesising different intellectual streams of Shāfiʿīsm.

Moreover, *Nihāyat* paraphrases and decontextualizes its source texts as a valid legalist method to generate new legal opinions. It admits what has been done when we read: "Whatever accuracies this text has, it should be ascribed to these people." As I demonstrated with regard to the politics of giving citations, the organizing of multiple passages from authoritative texts and assigning them as possible interpretations for another text indicate that a systematic selection of meanings is consistent with an author's politics and preferences. It also demonstrates the urge of a scholar to show his and his text's intellectual close continuity to the larger textual tradition of the school.

Iʿānat of Sayyid Bakrī differs from *Nihāyat* in all these respects. In contrast to the latter, it adopts a more *conventional method* of writing super-commentary. In it he explains each word and ruling of the base-text in his own words and does not endeavour to cite earlier works as laboriously as *Nihāyat* does. About his self-doubt before he "felt at ease" in writing it, Sayyid Bakrī says in the introduction:

> While God gave me opportunity to read *Fatḥ al-muʿīn* to intelligent students in front of the Holy Mosque, I wrote some glosses (*hawāmish*) on the text, analysing its meanings and explaining the structure. I was able to finish it by the grace of God. Then, in the year [12]96,[45] a group of students asked me to repeat the teaching of the text exclusively (*tajrīd*) with the glosses, in order not to lose them. I hesitated to do so, as I was not the right person for it. But the students repeatedly asked me. I asked (*istakhartu*) God by the mediation of the Prophet. At last, I felt at ease.[46]

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[44] Leiden University MSS, or. 7204.

[45] Corresponding to 1879.

[46] Sayyid Bakrī, *Iʿānat al-ṭālibīn* (Cairo: Maṭbaʿat al-Mīriyyat, 1883), 1: 2.

It was a usual practice in the Islamic textual world for the author to dictate and even teach the text in Mecca. He finished writing it in 1883 and five years later, in 1888, a student from East Africa (ʿAbd Allāh Bā Kathīr, mentioned in the previous chapter) attended his lectures on this work and recounted his experience.[47] Hurgronje notes that he was one of the few scholars to read their own work as lectures.[48] On a related note, many Indonesian students too had attended his lectures on *Fath* and/or *I'anat*, as their biographical entries confirm.[49]

    Iʿānat is noted for its own simplicity of language, as well as for its simplifying of *Fatḥ*'s occasional linguistic complications. A significant contribution of *Iʿānat* is the way it adds to our own understanding of *Fatḥ*'s position in the *longue durée* of Shāfiʿīte legal formulations, which otherwise are overlooked. We become more aware of the peripheriness displayed in *Fatḥ*, through the commentary of *Iʿānat*, as it connects a number of rulings with the earlier works and viewpoints of the school. An example is our earlier discussion of how *Fatḥ* raised the problem to be solved about the Hindu "sultanate" of Zamorins of Calicut as a legitimate ruler equal to a Muslim ruler who was eligible to appoint and dismiss qāḍīs. On that point there are three layers of text: first, the one of *Qurrat*; second, the one of *Fatḥ*; third, the one of *Iʿānat*. *Qurrat* says only: "If a powerholder appoints an ineligible [as qāḍī], it is annulled."[50] *Fatḥ* comments: "**If a** sultan even if he is an unbeliever, or **powerholder**", thus adding the word "unbeliever" on which *Iʿānat* comments:[51]

> This maxim (*ghāyat*) is not mentioned in *Tuḥfat*, *Nihāyat* [of al-Ramlī], or other texts. It is problematic, because it is conditional for [the legitimacy of] a sultan that he is a Muslim. Therefore, the sultanate of an unbeliever is not valid and his leadership (*imāmat*) is not legitimate.[52]

On the one hand these three layers of text illustrate the textual *longue durée* of the school over time. On the other hand, *Iʿānat* tells us how *Fatḥ*'s articulations differ from its Middle Eastern counterparts or predecessors such as *Tuḥfat* and al-Ramlī's *Nihāyat*. This passage also shows how *Iʿānat* adds its own voice by standing against the articulation of *Fatḥ* by clearly stating that its addition of "unbeliever" contradicts the foundational viewpoint of the school on a legitimate sultan. *Iʿānat*'s dissent is understandable in its Middle Eastern political context, which is not very different from the contexts of *Tuḥfat* and al-Ramlī's *Nihāyat* in terms of religious affiliation of rulers: at both times the Ottomans were in control of the region.

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[47] Shaykh Abdallah Salih Farsy, *The Shaf'i Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans. ed. and annotated by Randall L. Pouwels (Madison: University of Wisconsin, 1989), 84.

[48] Hurgronje, *Mekka*, 204.

[49] For example, see al-Marʿashlī, *Nathr al-jawāhir*, 1475, 1619, 1659.

[50] In few editions of *Iʿānat* (not in the first edition), the wordings of *Fatḥ* "a sultan or a powerholder" have been identified as of *Qurrat*. It seems to be a mistake if we look in the other editions of *Qurrat* and *Fatḥ*.

[51] In **bold font** I give my translation of expressions the author quotes from the original text of *Qurrat*.

[52] Sayyid Bakrī, *Iʿānat*, 4: 253. A word of caution: in the later editions of *Iʿānat*, the phrase of *Qurrat* has been published erroneously making the term "sultan" a part of the core-text; thus: "**If a sultan** even if he is an unbeliever, **or powerholder**". This is incorrect and it might motivate one to argue that the emphasis here is not on the term unbeliever (*kāfir*) but is on the "powerholder" (*ḏū shawkat*). The first edition of *Iʿānat* cross-checked by Sayyid Bakrī himself and multiple editions of *Qurrat* do not consider the "sultan" as a part of the core-text. For the typographical error, see: Sayyid Bakrī, *Iʿānat al-ṭālibīn* (Cairo: Dār Ihyāʾ al-Kutub al-ʿArabiyyat, 1927), 4: 215.

Iʿānat also introduces new fatwās of contemporary scholars to its commentary. It adduces a fatwā of his teacher Zaynī Daḥlān on the issue of the ceremony after a funeral (see below). It incorporates recent developments in grammatical and literary cultures of the Arab world of the time. It also brings in elaborate discussions on a number of varying issues, not limiting itself to legal discourses alone. Hence, it amalgamates stories from Islamic history, Sufi teachings, and poems and quotations with legal implications. The prime focus of course is on Shāfiʿīte law and that too with an emphasis on the works of Ibn Ḥajar and al-Ramlī. It tries to synthesize their disagreements in particular issues, as I explain below.

Rejection or Reception?

Many major external changes at that time have contributed internally to making *Nihāyat*'s and *Iʿānat*'s legacy among the Shāfiʿītes; I will discuss those later in this chapter. One external change is the introduction of printing which dramatically improved the accessibility to Islamic texts, which before had been circulated as rare and expensive manuscripts, influencing the consumer's perception of both texts.

The first edition of *Nihāyat* was printed in 1881 and it has been reprinted many times since. Its acceptance probably has more to do with the scholarly personae of Nawawī al-Bantanī than with its contents and structure, although those are not negligible. Significant evidence comes from its very first edition where one named Sayyid Ḥammād al-Fayyūmī al-ʿAjmāwī wrote in an appendix that after al-Bantanī had finished writing this commentary, the Cairene publishers competed to secure publication rights.[53] In his endorsement, al-ʿAjmāwī writes further on the qualities of al-Bantanī as a pious and learned man. He writes hardly anything about the contents of *Nihāyat*, but only writes generally about the importance of legal texts and legal education. The following trajectories of *Nihāyat* also point towards this same phenomenon of stressing it to be a work of al-Bantanī, rather than that al-Bantanī was the author of *Nihāyat*. That was not the case with the other three texts we discussed in earlier chapters. Many of his works have been similarly studied, critically and uncritically, by traditional Shāfiʿītes and researchers, who often dedicated monographs on them. His works like *ʿUqūd al-lujayn*, *Naṣāʾiḥ al-ʿibād* and *Afʿāl al-ʿibād* for example, were focused on whereas *Nihāyat* mostly received only a passing reference.[54] In enumerating his works Hurgronje does not mention *Nihāyat*, or any of his legal texts. All he says is that he published a few books on law from Cairo among other texts.[55] This should be read along with the fact that Hurgronje names and discusses a few of his other texts, as well as with the fact that *Iʿānat* has recurrent references.

That does not in fact mean that *Nihāyat* was badly received by the Shāfiʿītes. *Nihāyat* has been a favourite text of the Indonesian ʿulamāʾ in *pesantren*s. Martin van Bruinessen, in his remarkable study on the *kitab kuning*s of the *pesantren* tradition, notes that the text "is

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[53] Endoresment of Sayyid Ḥammād al-Fayyūmī al-ʿAjmāwī to Nawawī al-Bantanī, *Nihāyat*, 393.

[54] Forum, *Wajah Baru*; Ahmad Asnawi, "Pemikiran Syekh Nawawi al-Bantani tentang Afʿāl al-ʿIbād: Perbuatan manusia" (MA thesis, IAIN Syarif Hidayatullah, 1984); Nury Firdausia, *Pendidikan moral dan spiritual dalam membangun karakter bangsa: Analisis kitab Nashoihul 'ibad karya Syaikh Nawawi al-Bantani* (Jakarta: Kementerian Agama RI, 2012).

[55] Hurgronje, *Mekka*, 291.

widely used" while *Qurrat* itself "never became popular".[56] Its many editions from different parts of Indonesia as well as from the Middle East substantiate this matter further.[57] Alex Wijoyo counts it as one of the most famous legal texts of al-Bantanī among the Indonesian Shāfiʿītes.[58] In this respect, its author's intention of communicating with "the pursuers of primary education" has materialized. Furthermore, *Nihāyat*'s synthesis of conflicting sub-schools of Shāfiʿīsm that I will discuss in a while also had wider intellectual implications in the later development of Southeast Asian Shāfiʿīsm in general and of Indonesia in particular.

Iʿānat's popularity is unquestionable, as our previous references clearly demonstrate. During Sayyid Bakrī's lifetime the text attracted students and teachers alike. The title page of its first edition tells us that it was known among its fans (muḥibbīn) in two other names: *Qūt al-muḥtājīn ilā ibrāz daqāʾiq Fatḥ al-muʿīn* and *Itqān al-muṭīʿīn fī bayān maʿānī Fatḥ al-muʿīn*, owing to its popularity in manuscript form.[59] Like the East African student Bā Kathīr, many African, Indian and Indonesian students later recounted and boasted that they attended the author's own reading of the text.[60] Bakrī had a short life (he died aged forty-three) but the text lived on and became one of the most reliable super-commentaries in the Shāfiʿīte world. In the first edition many people wrote poems and endorsements appreciating the author and the text, but that was not the case for *Nihāyat*. A scholar Muḥammad bin Yusuf Ḥusayn Khayāṭ wrote two poems set out at the beginning of the first volume. Aḥmad bin Muḥammad Zayn al-Faṭānī, a literary scholar and publisher from Pattani (present-day Thailand) writes in the fourth volume:

> Indeed *Iʿānat*'s merit is exquisite, a book
> In which verses are detailed, and scrupulous.
> A treasure of all riches and resources,
> Longing to get into it makes one wealthy.
> In it are inquests before which heads
> Of all intricacies drop and soothe.[61]

In the following decades, *Iʿānat* grew to be a favourite text of the Shāfiʿītes across the Indian Ocean and Eastern Mediterranean worlds. Wherever *Fatḥ* was taught, *Iʿānat* was referred to and highly valued. Its acceptance stretched from Middle Eastern centres such as Baghdad, Cairo, Damascus, Mecca, and Yemen to the East African and South and Southeast Asian worlds of Shāfiʿīsm. Many editions come from all these regions as evidence for this and it continues to be one of the prime references for Shāfiʿītes. In the longer textual genealogy of the school, *Iʿānat* stands as the last bastion that was generally accepted within the school. This is not to forget the fact that it also attracted critics, as we have mentioned previously with regard to *Tarshīḥ*, whose author believed that *Iʿānat* was flawed in many of its articulations.

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[56] Martin van Bruinessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu; Comments on a New Collection in the KITLV Library," *Bijdragen tot de Taal-, Land- en Volkenkunde* 146, nos. 2-3 (1990): 247.

[57] For a Middle East edition, see: Nawawī al-Bantanī, *Nihāyat al-zayn* (Beirut: Dār al-Kutub al-ʿIlmiyyat, 2002).

[58] Wijoyo, "Shaykh Nawawi of Banten," 173-174.

[59] Sayyid Bakrī, *Iʿānat*, 1: 2a [unpaginaged second title page].

[60] al-Marʿashlī, *Nathr al-jawāhir*, 1475, 1659.

[61] Poem of Aḥmad al-Faṭānī on Sayyid Bakrī, *Iʿānat*, 4: 3.

Both *Nihāyat* and *Iʿānat* were rarely taught as a textbook in former times, but I myself have been present in classes on *Iʿānat* in contemporary Shāfiʿīte circles. Instead, both texts were used to provide teachers and students with clarifications and explanations. Both texts have also been used as a source of fatwās, especially as *Iʿānat* contained legal clarifications by Meccan muftīs such as Zaynī Daḥlān on many comparatively later issues.

<center>II.</center>

Politics of a Time

Thanks to a number of remarkable developments in the nineteenth century, Mecca developed into more than the isolated place it used to be before the arrival of Ibn Ḥajar and more than the Islamic cosmopolitan hub it became after he had lived there in the sixteenth century. The dramatic changes in global politics, culture and technology as much as the internal dynamics of Islamic world led to the transformation of the city from a geographically determined location to a chronologically infinite space as a representative of its global position. The contexts and careers of *Nihāyat* and *Iʿānat* as well as their authors are affected by this expanded complexity of Mecca, a situation which is crucial for a better understanding of their politics.

Before explicating this development, we follow the conventional political narrative of the city as a place ruled by a specific polity, and state that it came under the dominion of the Ottoman Empire. But by the late-nineteenth century, Ottoman supremacy and the authority of their representative emirs were constantly questioned in the city more than before, often by the traditional Sharīfate. The Sharīfs were not alone in asking questions, for the ʿulamāʾ also actively took part in the conflicts for strong legal and theological reasons. There were many dramas; in the combats the Ottoman emirs or the Sharīfs were often arrested, betrayed or murdered in Mecca or Istanbul. To elaborate on this would require more space, and would simply follow the lines of a usual political history.[62] My interest in these developments is the motivations of eminent Shāfiʿīte scholars such as Shaykh al-Islam Zaynī Daḥlān in taking the side of the Sharīfs against the Ottomans. Strongly basing himself in the legalistic tradition of Shāfiʿīsm in particular and of Sunnīsm in general, Daḥlān vehemently opposed many reforms introduced by the Ottomans.[63] The dynastic legal codes and books (Tur. *ḳânûnnâme*s) brought by sultans were now forcefully implemented through the appointments of *qāḍī*s who were supposed to be members of the fuqahā-estate and represent the legal authority of the sultan. They also had to combine the Sharīʿat with the sultan's rules (Tur. *ḳânûn*), even though many rules were contradictory or underestimated the legal diversity within Sunnī tradition. The introduction of new dress codes and the abolition of slavery are examples of the issues that elicited resistance. The scholars in the city, as well as elsewhere in the contemporary traditional circles of Islam, opposed these reforms as "false innovations" (Ar. *bidʿat sayyiʾat*).

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[62] The details of the conflicts can be seen in Snouck Hurgronje, *Mekka*; cf. Alexander H. de Groot, "Tradition and Reform in Ottoman Mecca around 1884," in *Proceedings of the 2nd International Meeting on Modern Ottoman Studies and the Turkish Republic,* ed. E. van Donzel (Leiden: Nederlands Instituut voor het Nabije Oosten, 1989), 83-96.

[63] See Zaynī Daḥlān's *al-Futūḥāt al-Islāmiyyat baʿda muḍī al-futūḥāt t al-nabawīyat* (Mecca: al-Maktaba al-Mīriyyat, 1893) which opposes many of the Ottoman reforms, for example against the introduction of uniform for the Ottoman army.

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Raising all these issues, they sided with the Sharīfs in their fight against the sultan.[64] These discursive disagreements, though ostensibly political, were deeply grounded in Shāfiʿīte-Ḥanafīte approaches towards the changing situation and reforming measures.[65]

In this typical narrative of conflict between a central empire and its provincial machinery, with scholars taking part in one side or the other, we must ask where the texts *Nihāyat* and *Iʿānat* and their authors stand. We know that both authors studied with Daḥlān, and so it is quite possible that they all belonged to the same political stream. However, the story is rather more complicated than this conventional political narrative. In the case of *Nihāyat*, its author Nawawī al-Bantanī was not active in the politics or the social life of the city. Rather he restricted himself to the Javanese quarter, where he felt more comfortable teaching and interacting with his followers. Since the majority of his following and his disciples were Javanese, this was an added reason to assume that he belonged to the political undercurrents of Java. There the regionality of Mecca breaks, and it becomes a microcosm of the contemporary global political scenario. In the choices al-Bantanī made in life we see more of a Javanese aura than regional politics of Mecca. With regard to Java and the Javanese resistances against the Dutch colonialism, Mecca has been portrayed as "a refuge of rigid Islamic fundamentalism" in which al-Bantanī and his colleagues like Khaṭīb Aḥmad Sambas and Ḥājī ʿAbd al-Karīm supposedly had leading roles.[66] This is furthered by some of al-Bantanī's biographers who preferred to believe that he hated Dutch colonialism, although the facts are quite to the contrary.

In the wake of increasing colonialism across the Muslim worlds of Asia and Africa in the nineteenth century, a remarkable number of peripheral Muslims, among which their largest communities were in South and Southeast Asia, found a safe abode in Mecca, where non-Muslim political entities were strictly prohibited. Many of them aspired at least to reach Jeddah as an entry-point for the safe and sacred world they craved. Yet the place was not free from the presence of Dutch and British colonialists, directly through officials like Snouck Hurgronje or indirectly through informants and spies like Raden Aboe Bakar.[67] Without knowing they were there, a few "peripheral" anti-colonial Muslims arguably tried to mobilize support for their rebellious activities. In the case of Nawawī al-Bantanī, the rebels involved in the Banten Revolts of 1888 thought that if he and Ḥājī ʿAbd al-Karīm returned to the region and joined the "Holy War", the rebellion would succeed. This was the ground on which the Dutch colonial government thought of banning him from returning, an idea which Hurgronje protested against.[68] In a letter to the Governor General on 7 June 1889, Hurgronje argued that banning such an esteemed intellectual would affect the prestige of the government, and that Nawawī al-Bantanī himself did not have even the slightest inclination to return. He wrote:

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[64] de Groot, "Tradition and Reform," 92-93.

[65] For the Shāfiʿīte side of the story, see Daḥlān's *al-Futūḥāt al-Islāmiyyat*; cf. Hurgronje, "Een Rector".

[66] Aloysius Sartono Kartodirdjo, *The Peasants' Revolt of Banten in 1888: Its Conditions, Course and Sequel: A Case Study of Social Movements in Indonesia* ('s-Gravenhage: Nijhoff, 1966), 150.

[67] On both of them see Michael F. Laffan, "Raden Aboe Bakar: An Introductory Note Concerning Snouck Hurgronje's Informant in Jeddah (1884-1912)," *Bijdragen tot de Taal-, Land- en Volkenkunde* 155, no. 4 (1999): 517-542; Michael F. Laffan, "Writing from the Colonial Margin: The Letters of Aboe Bakar Djajadiningrat to Christiaan Snouck Hurgronje," *Indonesia and the Malay World* 31, no. 91 (2003): 358-380,

[68] Wijoyo, "Shaykh Nawawi of Banten," 89; cf. Kartodirdjo, *The Peasants' Revolt*, 201, citing Missive of the Consul of Djeddah, Sept. 4, 1889, no. 1079.

Nawawī is far too intelligent to meddle the least in a movement such as in Cilegon, and is too deeply grounded in orthodoxy as to approve such a spectacle as that in Cilegon. For without having ever tried to cooperate with the Government, he has striven against its most fanatical enemies, the base mystical orders.... Surely he and his circle belong to the elements with which the government could easily find a fruitful *modus vivendi*.[69]

Assuming that Nawawī al-Bantanī never tried to cooperate with the colonial government and his life presented a "fruitful *modus vivendi*" with it, we wonder if he articulated this position in *Nihāyat*, and find that in fact he did. One example is in the issue of a non-Muslim ruler's appointment of qāḍīs that we discussed earlier, where *Nihāyat* has a similar approach to Zayn al-Dīn although rather subtle. We mentioned earlier that *Qurrat* only says: "If a powerholder appoints an ineligible [as *qāḍī*], it is annulled." On this *Nihāyat* brings a detailed commentary, obviously depending on previous texts of the school. At the end of this discussion he says: "If people suffer from the rule of a woman, slave or a blind man (confirmed as such), his judgement will be necessarily annulled, but not [from the rule] of an unbeliever."[70] This is the only place where he addresses the issue of an unbelieving governor or ruler with regard to the issue, and it approximates the peripheral argument that Zayn al-Dīn made in his *Fatḥ* centuries earlier. For Nawawī the appointment of a qāḍī by an unbelieving political entity remained valid even if the people suffered from their rule. This ruling should be read along with the fact that he wrote this in the early 1880s, when the Dutch colonial government was moving towards recognizing Sharīʿat courts as legitimate legal units. His contemporary Ḥaḍramī-Javanese scholar Sayyid ʿUthmān ʿAlawī published a detailed monograph one year later explaining foundational judicial structures and rules of Shāfiʿīsm for judges and members of these religious courts.[71] Compared to Sayyid ʿUthmān's work, al-Bantanī's pronouncement is rather subtle. But in many other contexts *Nihāyat* is very explicit in explaining its political position. To understand that, we need to go beyond the conventional political narratives and to zoom into the internal dynamics of contemporary Islam, by showing how Wahhabi Islam was strengthened as a political movement, questioning the foundational features and elements of Sunnī Islam.

In that respect, *Iʿānat* follows the same path as *Nihāyat* in standing within a traditionalist narrative against the reformist and fundamentalist ideas propagated by the Wahhabis and the like. Before addressing this issue, it would be handy to have a brief note on *Iʿānat*'s political setting in the conventional frame. It does not agree with the position of *Nihāyat* on such rules as an unbeliever having authority over Islamic matters, and this certainly makes sense if we understand the text in its context. *Iʿānat*'s political view is not nearly as complicated or elaborate as the one of *Nihāyat*, because its author always belonged to the "abode of Islam". His father had migrated from Damietta to Mecca, where he was born and grew up. Yet both regions were set in the same imperial arena of the Ottomans, not much different from the contexts of al-Ramlī or Ibn Ḥajar in terms of the religious affiliation of

[69] Hurgronje, *Ambtelijke adviezen van C Snouck Hurgronje, 1889- 1936*, ed. E. Gobee and C. Adriaanse ('s-Gravenhage: Nijhoff, 1965), 3: 1982-83. The translation is from Wijoyo, "Shaykh Nawawi of Banten," 89-90.

[70] Nawawī al-Bantanī, *Nihāyat*, 380.

[71] Sayyid Uthmān bin ʿAbd Allāh bin ʿAqīl al-ʿAlawī, *al-Qawānīn al-sharʿiyyat li ahl al-majālis al-ḥukmiyyat bi taḥqīq al-masāʾil li tamyīz lahum al-ḥaqq min al-bāṭil* (Batavia, 1881).

contemporary rulers. His direct disapproval of *Fatḥ*'s position, and indirectly of *Nihāyat*'s too, on the issue of an unbeliever being a legitimate ruler is an epitome of this unchanged political context in which they hardly encountered a non-Islamic political entity. But the situation in sixteenth-century Malabar or nineteenth-century Java was very different. In conventional politics both texts thus differ in their standpoints.

However, *Nihāyat* and *Iʿānat* both firmly shared the same position, just like many other texts produced not only in the city but also across the Muslim word did, against the emerging political expressions of Islam entangled with attacks on traditional textualism. As much as both authors stood isolated from political entities in their places, they did not hesitate at all to subscribe to broader movements for defending the Islamic tradition in general and Shāfiʿīte law in particular. That kind of political stand is what makes their agreements more interesting, and it also again tells us that Mecca is not so much a place but rather a time that represents wider intellectual trends in the century.

Education during "Reform"
The role of Medina in the late-eighteenth century as a hub of revivalist thought has been well articulated by the scholars,[72] whereas Mecca's position remains to be studied. On the basis of my examination of the lives and contributions of some noted figures in the city, I presume that it was a bastion of traditionalist Islam and opposed much of the emerging "false innovations". It is too early to substantiate the evidence for a sharp distinction between the intellectual inclinations of the two cities, although the overall pedagogical and textual streams each city undertook indicate such a division. As I indicated at the beginning, at least four commentaries were produced belonging to the *Fatḥ*-family in and around the second half of the nineteenth-century in Mecca alone, and those are not insignificant works. Many commentaries and super-commentaries on a number of earlier texts of Shāfiʿīsm and of other Sunnī schools and on earlier theological texts were being constantly produced in the city. That again was not an exceptional trend for Mecca at that time. The broader trend reverberated along the Indian Ocean rim from South Africa to Southeast Asia. Zaynī Daḥlān published numerous treatises like *Fitnat al-Wahhābiyat* targeting the ideologies of Wahhābīsm, and many of his contemporaries as well as later scholars from Mecca joined him. The Indian scholar Muḥammad Bashīr al-Sahsawānī (1836-1908) countered arguments of Daḥlān in his renowned text *Ṣiyānat al-insān ʿan waswasat al-Shaykh Daḥlān*.[73] All these debates were centred around the traditional texts of Islam in general and Shāfiʿīsm in particular, and whoever stood along with Daḥlān it was a question of accepting traditional textual knowledge as authentic and vindicative. The ensuing polemics and debates laid much focus on traditional texts, whereas the Wahhābīs found them irrelevant for the claims they were making. Against this background, I argue that the pedagogical method of the Sunnīs became extremely text-centric in the nineteenth century in the wake of recurrent criticisms against it (see below).

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[72] John O. Voll, "Muḥammad Hayya al-Sindi and Muḥammad ibn Abd al-Wahhab: An Analysis of an Intellectual Group in the Eighteenth Century Medina," *Bulletin of the School of Oriental and African Studies*, 38 (1975); idem, "Hadith Scholars and Tariqahs: An 'Ulama' Group in the Eighteenth Century Ḥaramayn and Their Impact in the Islamic World," *Journal of Asian and African Studies* 15, nos. 3-4 (1980).

[73] Muḥammad Bashīr al-Sahsawānī, *Ṣiyānat al-insān ʿan waswasat al-Shaykh Daḥlān* (Cairo: Maṭbaʿat al-Manār, 1933).

The composition of *Iʿānat* and *Nihāyat* represent this scenario. In the city, *Fatḥ* was an important intermediate text for the aspirants of law, comprised of academic-pilgrims and pilgrim-students, which motivated many teachers to come up with commentaries, glosses and marginalia, often refuting the new claims made by the "reformists". Such author-scholars attracted more students than anyone else and the question was how close and deep they could stand to the textual *longue durée* of Islam. In *Iʿānat*'s case, the author was delivering lectures from his own commentary that had been published. That served to increase his personal fame and that of his text for it was deeply rooted in the tradition.

Like their predecessors, all these commentaries were written with an educational purpose in mind, and what was added now is the fact that publication and a wider circulation expedited the intensity of text-centrism. The growth in the number of students and their increased opportunities for travel between the central and the peripheral lands of Islam further accelerated the movement of newly published texts as well the old ones. In the broader Islamic world, many existing and newly founded religious educational centres utilized *Iʿānat* and *Nihāyat* together with *Fatḥ* and associated earlier texts such as *Tuḥfat* and *Minhāj* which were now also available in print. In the course of time, more specialists of these texts arose along the rim and some of them were known for being specialists of particular sections of one of the texts. For example, the principal teacher of Ribāṭ of Tarīm (est. 1887), ʿAbd Allāh bin ʿUmar al-Shāṭirī, became known among the Shāfiʿītes as a specialist of *Fatḥ* and he attracted students from Yemen and also from the regions of East Africa and Malaya.[74] The background to the fact that the Middle East still hosted a plethora of higher educational centres was that other commentaries on *Tuḥfat* and *Minhāj* were in wide circulation. Many students who finished learning *Fatḥ*, ventured to learn some other commentaries of *Minhāj* such as *Kanz al-rāghibīn* by al-Maḥallī before they finally ended up with *Tuḥfat*. Though the number of centres and students who actually engaged with *Tuḥfat* was limited, it was considered to be the supreme text and the highest mark of status which a legal aspirant of Shāfiʿīsm could reach. That then was linked to the rise in production of many super-commentaries on *Tuḥfat* from the Middle East. However, the usage of *Fatḥ* in fatwās or legal discourses in the Middle East is rather limited when compared to how much it is used in South and Southeast Asian situations. The Middle Eastern fuqahā generally consult the more "higher" or "prestigious" texts such as *Tuḥfat*.

Once *Nihāyat* and *Iʿānat* were printed and circulated, they began to take a vital place in the curricula. The Ḥaḍramī migrant ʿAlawī al-Saqqāf's *Tarshīḥ* is an explanatory critique of this development. It emerged as a response to the immediate reception of *Iʿānat* in educational circles. Its publication did not immediately have any damaging affect on traditional modes of education related to either of these texts; on the contrary it promoted them.

Question of Customs as Law

To substantiate that *Iʿānat* and *Nihāyat* were influenced by the Meccan customs and norms of the nineteenth century is difficult. This is primarily because Mecca was not an exclusive geographical legal space by that time, which was so different from its position in the sixteenth

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[74] ʿUmar bin Ḥāmid al-Jīlānī, "Mushārakat Fuqahāʾ Ḥaḍramawt fī Khidmat al-Fiqh al-Shāfiʿī," (Lecture at Nadwat al-Rifāʿīyatt, 1994) available at: https://archive.org/details/hadibaagil110_gmail_20160219 (accessed 16 August 2016).

century during the time of *Tuḥfat*. Furthermore, to restrict *Nihāyat* to be a Meccan text would be a inappropriate as much as to locate it in Java as an exclusive Javanese Shāfiʿīte text.

Certainly there is a continuity in the many claims that Ibn Ḥajar made with regard to the Meccanized version of Shāfiʿīsm, in which he took Meccan/Hijazi/Arab ideas of language and ethnicity as superior. Yet, there also are some remarkable discontinuities. Both authors also assert that other cultures and customs are not substandard provided that they remained within the purview of Islam in general and of the school in particular. In *Nihāyat*'s case, Nawawī al-Bantanī's obvious background and collaboration with Javanese cultures must have been a significant component in following this line. In Zayn al-Dīn he had an intellectual predecessor for this line of thought. Yet he did not address any Javanese customs that are portrayed by some of his contemporaries as completely unacceptable in Islam. His silence about regional customs and his reluctance to legitimize any of them again indicate a move to synthesizing geographical differences in law.

In *Iʿānat*, we find no explicit encounter with a problem in Egyptian and Arab/Hijazi identity that Ibn Ḥajar took up. This might have to do with the fact that *Iʿānat*'s immediate reference is *Fatḥ*, which followed the Meccan version of Shāfiʿīsm. It would be interesting to look at this issue in Sayyid Bakrī's own *ḥāshiyat* on *Tuḥfat*, but that is available only in manuscript form.[75] In *Iʿānat*, however, we do not see any conflict between Cairene and Meccan opinions. Instead, we are intrigued to notice the ways in which its author brings Ibn Ḥajar and al-Ramlī, and their respective works, together on the many issues. As an example we think of the way he dealt with *Fatḥ*'s addition of legitimizing an unbelieving ruler. He brought both *Tuḥfat* and al-Ramlī's *Nihāyat* together by saying that neither of them made such a claim. This also indicates another synthesizing process that I will discuss shortly.

If not actually legalizing local customs, *Iʿānat* viewed many current social and cultural debates in the city through the prism of the law. When discussing traditional ceremonies after a funeral, it has a long discussion on the practice of serving food at the deceased's house on the day of the death. It opposes this practice, referring to a recent fatwā as well as a ḥadīth in which the Prophet asked neighbours to provide food for the family of the deceased on that day. The author says that he came across a question and a fatwā on this very issue, and he cites both of them in detail. It was issued by Zaynī Daḥlān, the chief judge in the city. *Iʿānat* further informs us that Ḥanafīte, Ḥanbalīte, and Mālikīte muftīs also held the same opinion.[76] Hurgronje describes the general cultural practice in the city. On the day of the death after sunset many relatives and friends would come to the house of the deceased without being invited. Earlier it had been expected that food would be served to all of them, but after the fatwā that had stopped and only coffee would be served.[77]

This is a case of a customary practice being prohibited by *Iʿānat*. But there are also occasions when the text elaborates on historical events in the city. While discussing the ḥajj pilgrimage, the author gives an elaborate history of the Kaʿba following the traditional historical narrative: how Abraham and his son Ismael built the structure according to the instructions of the archangel Gabriel; how it was renovated and maintained by the early

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[75] I have not managed to access this manuscript.

[76] Sayyid Bakrī, *Iʿānat*, 2: 170-171.

[77] Hurgronje, *Mekka*, 161.

caliphs of Islam until modern times, and even renovations done while the author was writing the text.

> A restoration inside the Great Kaʿba took place in the month of Rabīʿ II, 1299 during the sultanate and caliphate of Mawlānā Sultan al-Ghāzī ʿAbd al-Ḥamīd II, whom God made succeed Mawlānā Sultan al-Ghāzī ʿAbd al-Majīd bin Maḥmūd bin ʿAbd al-Ḥamīd I. This renovation has been chronicled by [….] Mawlānā al-Ustāḏ al-Sayyid Aḥmad bin Zaynī Daḥlān in a poem.[78]

Iʿānat follows this with a poem that has a chronogram (following the *abjad*-alphabetic sequence) whose numeric calculation comes to 1299, which corresponds to the year 1882. On a side note, the life and contributions of Zaynī Daḥlān had a clear influence on *Iʿānat* not only in terms of all these notes and fatwās, but also by making it a role model for a pious believer and practitioner of Islamic law. The text's articulations at various points explicate this, and he is the only contemporary Meccan scholar who is regularly mentioned in it.[79]

III.

I have been suggesting throughout this chapter that *Nihāyat* and *Iʿānat* represent a synthesis of various sorts. Now is the time to examine two of those syntheses clearly explicit in the making, contents, and reception of both texts, an intellectual synthesis and a geographical-legal synthesis.

Intellectual Synthesis: Mecca with Cairo

We mentioned the author's statement in *Nihāyat* that "whatever is written in this book is none of my own, it is all taken from the *ʿibārat* of [previous] authors". Then we raised the question of what *Nihāyat* actually contributed if it does contain only quotations from earlier scholars. On the one hand it incorporates the existing methodology of compiling texts to formulate a coherent narrative with its policy of citations, and on the other hand it significantly contributes to healing a split existing in the school.

Ibn Ḥajar's *Tuḥfat* embodied the beginning and the dissemination of a Meccan version of Shāfiʿīsm, one which was taken further by Zayn al-Dīn in his *Fatḥ*. In this sub-division of the school, *Fatḥ*'s pronouncements were clearly opinionated, whereas in its base-text *Qurrat* the pronouncements were elusive and inexplicit. By taking *Qurrat* as the source for his engagement, Nawawī al-Bantanī tried to synthesize this split by bringing together opinions of Ibn Ḥajar and al-Ramlī into a single narrative. In the nineteenth century, this approach had a vital role but not in earlier times. I mentioned in Chapter 5 that a few scholars in the seventeenth and eighteenth centuries had endeavoured occasionally to merge together conflicting opinions of both streams, either by writing separate commentaries to *Tuḥfat* and *Nihāyat* of al-Ramlī or by devising new modes of reconciliation. But their voices were not loud enough to cross the deepened divisions of the school. In the nineteenth-century the

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[78] Sayyid Bakrī, *Iʿānat*, 2: 323.

[79] For another case see Sayyid Bakrī, *Iʿānat*, 2: 296-298 where the author cites the usual prayer of Daḥlān when he completed the Qurʾān at the end of Ramadan, the month of fasting.

Shāfiʿītes one after another engaged with this split more collectively to bring about reconciliation.

A remarkable work from this time which had this end in view is entitled *Fatḥ al-ʿalī bi jamʿ al-khilāf bayn Ibn Ḥajar wa Ibn al-Ramlī* and was written by a very young Ḥaḍramī scholar ʿUmar bin al-Ḥabīb Ḥāmid Bā Faraj Bā ʿAlawī (1836-1857). He was born in Tarīm but died young in Singapore at the age of twenty-one. The title indicates that it seeks reconciliation (*jamʿ*) of the disagreements between Ibn Ḥajar and al-Ramlī. He took more than 350 conflicting opinions from the texts of both the scholars, primarily from *Tuḥfat* and *Nihāyat*, and sought interpretations which would harmonize their divergences.[80] The book covered the section on ritual-laws, as he had access only to those chapters in *Tuḥfat* and *Nihāyat*. Despite his early death, his text must have circulated widely among Shāfiʿītes along the Indian Ocean rim since manuscript copies have been found in Singapore, Hyderabad and Ḥaḍramawt.[81]

There were other similar attempts in the nineteenth and early twentieth centuries, as more fatwās and texts including *Nihāyat* and *Iʿānat* explicate. ʿAlī Bā Ṣabrīn, the author of the first known commentary of *Fatḥ* entitled *Iʿānat al-mustaʿīn*, wrote a short but analogous work in the early nineteenth century at the start of his career. That work is entitled *Ithmid al-ʿaynayn fī baʿḍ ikhtilāf al-Shaykhayn* and in it he looks into a number of disagreements between Ibn Ḥajar and al-Ramlī. Unlike ʿUmar Bā ʿAlawī, he neither elaborates on the disputes nor refers back to the longer discourses in the school on each issue. He says that he was motivated to write this work during his journey across the Red Sea to Egypt in May 1844 after reading *Bushrā al-karīm* of Saʿīd bin Muḥammad Bā ʿIshn (d. 1854).[82] *Bushrā al-karīm* is a commentary on *Masāʾil al-taʿlīm*, a very famous text among Shāfiʿītes with the nickname "the Ḥaḍramī *Muqaddimat*" (*al-Muqaddimat al-Ḥaḍramīyyat*) by ʿAbd Allāh bin ʿAbd al-Raḥmān Bā Faḍl (d. 1512).[83] By writing a commentary on this renowned text Bā ʿIshn also engaged with the legalistic conflicts between the Meccan and Cairene versions of Shāfiʿīsm. ʿAlawī al-Saqqāf, the author the other commentary on *Fatḥ*, also joined the debate by writing an abridgement to Muḥammad al-Kurdī's *Fawāʾid al-Madaniyyat*, the pioneer text in this category of reconciliatory attempts from the eighteenth century. A larger work in this genre however came from an Iraqi Kurdish scholar Shaykh ʿUmar aka Ibn al-Qarahdāghī (d. 1926) who put together more than 1800 conflicting opinions of Ibn Ḥajar, al-Ramlī and Khaṭīb al-Sharbīnī in a volume entitled *al-Manhal al-naḍḍākh fī ikhtilāf al-ashyākh*.[84] All these texts exemplify attempts of the Shāfiʿītes throughout the nineteenth century to unite the confrontations among the jurists of the school.

It was an indirect response to many other developments within the Islamic tradition, especially as a consequence of the emergence of transregional sects and individuals who questioned the very existence of such a "tradition" of Islam. Here I am referring to the much-

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[80] ʿUmar bin Ḥāmid Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī bi jamʿ al-khilāf bayn Ibn Ḥajar wa Ibn al-Ramlī*, ed. Shifāʾ Muḥammad Ḥasan Hītū (Beirut: Dār al-Minhāj, 2010).

[81] Ḥasan Hītū, Introduction to Bā Faraj Bā ʿAlawī, *Fatḥ al-ʿalī*, 23-24.

[82] ʿAlī Bā Ṣabrīn, *Ithmid al-ʿaynayn fī baʿḍ ikhtilāf al-Shaykhayn* (Damascus: Dar al-Fikr, 1996), 3

[83] Saʿīd bin Muḥammad Ba ʿIshn, *Bushrā al-karīm sharḥ Masāʾil al-taʿlīm al-Muqaddimat al-Ḥaḍramīyyat* (Jeddah: Dar al-Minhāj, 2004).

[84] Shaykh ʿUmar al-shahīr bi Ibn al-Qarahdāghī, *al-Manhal al-naḍḍākh fī ikhtilāf al-ashyākh* (Beirut: Dār al-Bashāʾir al-Islamiyyat, 2007).

discussed Muslim "reformists" ranging from Muḥammad bin ʿAbd al-Wahhāb (1703-1792), Muḥammad al-Shawkānī (1759–1839), Sir Sayyid Aḥmad Khān (1817-1898), Jamāl al-Dīn Afghānī (1838/9-1897) to Muḥammad ʿAbduh (1849-1905). All of them set in motion their own movements, with or without influencing each other, but fundamentally questioning the ways in which Islam had been interpreted. Much has been written about them; in fact most literature on Islam in the nineteenth and twentieth centuries is about them. Because of that I shall not discuss their arguments.[85] For the moment suffice it to say that as these new entrants attacked the existing systems of Islamic scholarship, a major point of their criticism was Islamic law. If we trace the genealogy of their protests, their attacks differed in many respects from those of the earlier "reformists" who had figured in the tradition of Islamic law.

Ibn Taymiyyat, one of the prominent early reformists, is just one example. He is known for his criticisms against the general scholarly consensus of this time and their methods of practising Islamic law. Yet his disapproval was very much rooted in the frameworks and jurisprudential hermeneutics of Aḥmad bin Ḥanbal, the eponymous founder of the Ḥanbalī school. Indeed, Ibn Taymiyyat codified the Ḥanbalīte law in his *al-Muḥarrar* as similar to strands of *Minhāj* (or more precisely of al-Rāfiʿī's *al-Muḥarrar*) in Shāfiʿīsm. His ideas certainly had an enormous impact among the Ḥanbalītes through his students such as Ibn al-Qayyim (1292–1350), as well as among the jurists of other Sunnī schools, all of which existed at the time at varied levels. In the sixteenth century, however, Ibn Ḥajar refuted his claims using very harsh language. He called him an "extremely stupid person" (*jāhil ghāl*), "errant and deceptive" (*ḍāll wa muḍill*) and accused him of intellectual blindness, deafness and indecency.[86] Although Ibn Ḥajar's opinions had a wider impact in unifying other Sunnī scholars' views against Ibn Taymiyyat and Ibn al-Qayyim, his antipathy towards them was based on theological grounds more than on law. In legal matters, Ibn Taymiyyat's opinions only reaffirmed the Ḥanbalīte positions. In contrast to this, the nineteenth-century "modernist" reformists took a very radical step by refuting the very legitimacy of Islamic law as interpreted through the juridical corpuses and attacked the very bases of traditional scholarly practices. Although their theological and legal arguments can be traced back to Ibn Taymiyyat and the like, they distance themselves from the Ḥanbalī school, for they do not want to imply that they belong to any existing streams of Islamic law. They called themselves followers of a school vaguely defined as "school of the forefathers" (*maḍhab al-salaf*), and so they were known as Salafīs and their ideology as Salafīsm.

Traditional scholars certainly responded to them in many ways, a side of the story that has hardly been studied. Most traditionalists came up with bitter polemical arguments, targeting the personality and piety of these reformists, but a few attempted to counter the arguments rationalistically and professionally. Yet another stream tried to stress the merits and qualities of textual engagement by filling gaps targeted by the critics. The major

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[85] For a recent survey, see: Henri Lauzière, *The Making of Salafism: Islamic Reform in the Twentieth Century* (New York: Columbia University Press, 2016), 6-16; Safdar Ahmed, *Reform and Modernity in Islam* (London: I.B. Turis, 2013). For an analysis through legalistic perspective, see: Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muhammad Abduh and Rashid Rida* (Berkeley: University of California Press, 1966).

[86] Ibn Ḥajar al-Haytamī, *Fatāwā al-ḥadīthiyyat* (Beirut: Dār al-Maʿrifat, n.d.), 114-117; cf. Muḥammad bin ʿAbd al-ʿAzīz al-Shāyiʿ, *Ārāʾ Ibn Ḥajar al-Haytamī al-iʿtiqādiyyat: ʿArḍ wa taqwīm fī dawʾ ʿaqīdat al-salaf* (Riyadh: Darr al-Minhāj, 2006).

criticisms included lack of originality, coherence and uniformity in the tradition and the fuqahā's interpretations of scriptures, saying that they had arguably interpolated them for their own benefits.

All these criticisms against the tradition of fuqahā coincided with another critique, one from the political entities who had always been looking for a more coherent and unified version of Islamic law. Leading this call was none other but the Ottoman Caliphate, which had started its canonization process as early as the sixteenth century by introducing a particular version of Ḥanafīsm throughout the empire.[87] Since their attempts in that early phase to combine dynastic laws with Islamic law were particularly targeted at the Ḥanafī school of law, the resistance and support came from Ḥanafīte jurists. The responses of jurists of other schools, particularly of Shāfiʿītes who were predominant in the Hijaz at that time, are yet to be studied. When codification processes became more rigorous in the nineteenth century we see clear evidence of resistance from Shāfiʿīte quarters. They were involved with contemporary political conflicts between Mecca and Istanbul, in which Shāfiʿīte jurists like Zaynī Daḥlān took sides against the Ottomans. Hence, the codification attempts of the Caliphate became another justification of the conflict, if not the other way around, for the Meccan fuqahā-estate as well as in other Arab lands. These aspects have been studied well, so for our purposes it is enough to say that most of the Turkish codifiers thought that Islamic law was a total mess with no coherence or certainty. Some of their statements were so rhetorical that the very existence of Sharīʿat courts and related legal systems came under an increased threat, which was surmounted by the fall of the Caliphate.

Against this backdrop of internal and external criticism targeted at Islamic law in particular and the tradition in general, the practitioners and upholders of the traditional stream were moving towards more certainty in the diverse legal cosmopolis. All traditional scholars from different schools, intellectual streams, and mystical orders stood together to defend what they thought to be the true Islam. Thus we see in the broader Islamic world a number of different Sufi orders, legal schools, and theological sects which mostly came under the Sunnī banner merging together or standing as a single body against the "false innovations". On a few occasions we even see some Shīʿītes denouncing their sectarian faith, and joining the Sunnī stream, and fighting against the reformist ideas. At the forefront of such a unification of the traditional block in the mid-nineteenth century stood scholars such as Zaynī Daḥlān, who authored at least two books against the reformists.[88] The implications of this unified block were far-reaching, especially as we see a faster growth of "defensive Islam" among the traditionalists. That is something else which deserves further study.

Accompanying the internal unification of Shāfiʿīsm was a major division standing immediately under its nose, the split between the Meccan and Cairene versions of the school. That is precisely what Shāfiʿītes like the young ʿUmar Bā ʿAlawī we mentioned earlier tried to heal. A statement of Nawawī al-Bantanī at the beginning of *Nihāyat* should be read against this backdrop.

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[87] Guy Burak, *Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015).
[88] Zaynī Daḥlān, al-Durar al-Saniyyat fi al-Radd ʿalā al-Wahhābiyyat (Cairo: Idārat Muḥammad Efendi, 1882); idem, *Fitnat al-Wahhabiyyat* (Istanbul: Isik Kitabevi, 1978).

The majority of this is from *Nihāyat al-amal* of Shaykh al-ʿAllāmat Muḥammad bin Ibrāhīm Abū Khuḍayr al-Dimyāṭī, which is surely an abundant rivulet, *Nihāyat al-muḥtāj* and *Tuḥfat al-muḥtāj* of two diadems: Muḥammad al-Ramlī and Aḥmad bin Ḥajar. Both of them are undoubtedly two mainstays for later Shāfiʿītes.[89]

In the following pages of that text we see how the author makes moderate compromises between the Cairene and Meccan subdivisions by combining both authors into a single narrative. An example of this is in the case of mispronunciation of particular Arabic letters while reciting the al-Fātiḥat chapter in prayer, something we said earlier was a matter of disagreement between Ibn Ḥajar and the Cairene group. There *Nihāyat* takes the path of reconciliation:

> Then if the meaning changes, such as in giving *ḍamm* or *kasr* to the *tāʾ* of "anʿamta", if one did that intentionally and knew it was wrong, his prayer is invalid. If he had forgotten that he was in prayer or was not aware of its prohibition, his recitation will be invalid and he has to repeat it properly before *rukuʿ*. If not, his prayer will be invalid as mentioned above. All these [apply] only if he was able to pronounce the proper form and to learn it, as discussed above. So if he was incapable of the correct form and from learning it, then his prayer is completely legitimate and he can lead the prayer for the ones like him. […] If one who should be able [to pronounce] a correct *qāf* mispronounces it as *kāf*, as uncivil [*ajlāf*] Arabs do, his prayer is valid [even] with its abomination.[90]

Here *Nihāyat* takes a middle ground between *Tuḥfat* and *Nihāyat* of al-Ramlī. Although he follows the opinion of *Nihāyat* regarding the validity of the prayer with a mispronounced *qāf* despite a theoretical ability to pronounce it correctly, he condemns an intentional mispronunciation with the consequential changes in meaning. In this respect, he stands close to the approach of *Tuḥfat*. Yet *Nihāyat* stresses an ability or lack of it for an accurate pronunciation as well the opportunity to learn it, two issues which are inevitably limiting and therefore excusable in *Tuḥfat*. This blending of two streams giving each an equal importance is present throughout the text. Also this aspect points towards his awareness of many non-Arab speaking believers of Islam who were not able to pronounce many Arabic words and letters unless and until they went to religious educational centres.[91]

Iʿānat also follows closely this synthesizing method, especially because its author belonged to an Egyptian scholarly family that had recently migrated to Mecca. In the late-eighteenth and early-nineteenth century, there was already an "accusation" against Egyptian Shāfiʿītes residing in Mecca that they had been mixing Cairene opinions with ones of Mecca. This indictment was mainly raised by "truly Meccan" Shāfiʿītes disagreeing mildly at an

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[89] Nawawī al-Bantanī, *Nihāyat*, 2.

[90] Nawawī al-Bantanī, *Nihāyat*, 61. The *rukuʿ* is the act of bowing in the prayer.

[91] For example, see an ethno-linguistic study conducted among the Filipino Muslims, Sanuan I. Akkuh, "A Study of Arabic and Islamic Influence on the Sama Culture," (M.A. thesis, University of the Philippines, 1990), 59-60. The author says that most Sama Muslims find Arabic words difficult to pronounce and they spell it in an unorthodox way.

earlier stage of the attempts at reconciliation. The late-eighteenth century scholar Muḥammad al-Kurdī is a first person to note this:

> This [following on from the works of Ibn Ḥajar] is what Hijazi scholars have been doing lately. Then Egyptian scholars came to the Two Holy Cities, and they persisted in prioritizing Shaykh al-Ramlī in their lectures, to the extent that their opinions spread across both cities. Consequently, even the ones with comprehensiveness (*iḥāṭat*) on the opinions of both of them started to repeat them without determining preponderance (*tarjīḥ*).[92]

This lack of *tarjīḥ* is precisely what interested the author of *Iʿānat*. When discussing disagreements between Ibn Ḥajar and al-Ramlī, he chooses not to prioritize either of them. He neither limits himself to opinions from where he originated (Cairo) nor integrates those to the opinions of where he is living (Mecca). Rather he maintains the trend of his time, when traditional scholars where trying their best to bring about a reconciliation. In this respect he chooses to cite a particular fatwā that abandons *tarjīḥ* for another method, *takhyīr*. This fatwā is given by another Egyptian scholar, Aḥmad al-Dimyāṭī, who also built up a successful career in Mecca and was also a teacher of Nawawī al-Bantanī. In this long fatwā, al-Dimyāṭī mentions all the major texts written as commentaries and super-commentaries on *Minhāj* since the late-fifteenth century and addresses the problem of contradictory opinions.[93] He says that if the law-giver (muftī) cannot determine preponderance, then a selection (*takhyīr*) of one of them should be given. The selection process is interesting for what it implied personally and professionally for the life of a jurist, but it would require more space for an effective elaboration. Now it is enough to say that *Iʿānat* follows this method of *takhyīr* and endeavours to explicate a middle ground, minimizing the disagreements between both the sub-schools.

In the long run, this accommodation of Egyptian legal articulations with Meccan ones had a remarkable impact on the Southeast Asian Shāfiʿīsm, as later developments in religious educational institutions in Malaya, Indonesia and Singapore demonstrate, where both *Iʿānat* and *Nihāyat* circulate widely. From the early twentieth-century on we see the works of Meccan and Cairene Shāfiʿītes (including *Tuḥfat* and al-Ramlī's *Nihāyat*) being circulated and taught across the archipelago. This is not to suggest that *Iʿānat* and *Nihāyat* brought on this change alone, rather they reflect an urge and trend of the time to synthesize the internal conflicts of the school, and their reception in religious educational centres contributed to the acceptance of this synthesis.

Geo-Legal Synthesis: "Periphery" *in* **"Centre"**
Once we take the trajectories of *Iʿānat* and *Nihāyat* together with *Fatḥ* (or its base-text *Qurrat*) in the textual *longue durée* of Shāfiʿīsm, we cannot help but notice that there is another form of the synthesis. The geographical-cultural differences in law become less obvious under the umbrella of a more unified school.

Taking *Nihāyat* first, we see a major factor in its choice of language. The Southeast Asian fuqahā are known to write their works in Malay utilizing Jāwī (Malay written in Arabic

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[92] Sulayman al-Kurdi, *Fawa'id al-Makkiyyat*.

[93] Sayyid Bakri, *I'anat*, 1: 22.

script), or some other regional variant. The first available Shāfiʿīte legal text from the archipelago, *al-Ṣirāṭ al-mustaqīm* by Nūr al-Dīn al-Ranīrī, was written in 1634 in Malay with a strong influence of Acehnese. Because of its Acehnese predilection, an eighteenth-century scholar from Kalimantan Muḥammad Arshad al-Banjārī (1710-1812) was motivated to write a commentary on it called *Sabīl al-muhtadīn*, which is the third Shāfiʿīte text from the region. In between, ʿAbd al-Raʾūf Sinkilī (d. 1693) wrote *Mirʾāt al-ṭullāb fī tashīl maʿrifat al-aḥkām al-sharʿiyyat li Malik al-Wahhāb*, at the request of the Acehnese queen Ṣafiyat al-Dīn Tāj al-ʿĀlam (r. 1641-1675). All these works were in Malay, and we have many more legal texts from the region which were usually written in Malay or a local variant. This was part of a larger phenomenon that Ronit Ricci identified as the "Arabic Cosmopolis" in which the Arabic language and Arab cultural landscapes were localized by Muslim communities in South and Southeast Asia.[94] An important drawback of Ricci's articulation is that she ignores the works produced in Arabic in these regions as early as the fifteenth century. The Arabic works are more explicit in South Asia (and East Africa) than in Southeast Asia, where people continued to use linguistic variants highly influenced by Arabic. In the nineteenth-century there was a remarkable change when a few people began writing in Arabic. These writers were mostly recent Ḥaḍramī migrants, so it is no surprise that they made Arabic their first choice. But in Nawawī al-Bantanī we see a Javanese scholar, born, brought up and educated in many *pesantren*s of Java, and now beginning to write only in Arabic. This was a trend in the Malay world among scholars whether educated at Mecca and the Middle East in general or at home. It indicates a geo-cultural synthesis to which *Nihāyat* also contributed.

On another level, *Nihāyat* emphasizes the Shāfiʿīte textual *longue durée* mediated through *Qurrat*. Its dependence on *Qurrat* is noticeable for the fact such a peripheral text was not taken up by the peripheral scholars in their legalistic engagements. If we look at the texts mentioned at the beginning of *Nihāyat* as its major sources, they all belong to the sixteenth-century Middle East. This enables us to identify how *Qurrat* and *Nihāyat* connect to each other in the wider Shāfiʿīte textual tradition, by being strongly based on a non-Middle Eastern Shāfiʿīte text within its Middle Eastern origin. Although *Qurrat* does not admit its intellectual indebtedness to any text, *Nihāyat* takes up its genealogy very beautifully and asserts itself into the big Shāfiʿīte textual families. This view of Nawawī al-Bantanī makes him introduce a second layer of legalist writing culture in the peripheral world of Shāfiʿīsm communicating with its Middle Eastern counterparts. From the fifteenth century on, we see peripheral scholars writing legal pamphlets, commentaries, and abridgements for or based on many Middle Eastern legal texts. But we hardly come across any of them writing a commentary on a text written in their own region. That fact makes *Nihāyat* worthy of note as it takes *Qurrat* as its first point of reference and commentary, before it goes back to Middle Eastern texts for legalist elaborations. This commentary by a Javanese scholar written in Mecca is in some way an intellectual turning point for Shāfiʿīte legalist discourse, partially disconnecting it from its main reference points from the Middle-East by linking to an intermediate non-Middle Eastern text.

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[94] Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011).

In a similar vein, *Iʿānat*'s engagement with *Fatḥ* is also remarkable as it is characteristic of a wider trend in its time and context. Although many peripheral scholars have been writing works on Shāfiʿīsm, we do not see any scholar from the central Islamic lands engaging with them by composing a text. But this attitude also changed in the nineteenth century when we see many Arab scholars writing commentaries, super-commentaries or summaries on works written by Malabari, Swahili or Malay Shāfiʿītes. Thus *Iʿānat* represents this "reverse journey" of peripheral texts, which now have begun to influence new Shāfiʿīte scholarship as much in the centre as in the peripheries. Also it tells us that the textual transmissions between the Middle East and the rest of Islamic world were not unidirectional but multidirectional. The situation becomes even clearer once we follow the later reception of *Iʿānat* on the Indian Ocean rim, particularly in Malabar where *Qurrat* and *Fatḥ* were once produced.

This process towards a geo-legal uniformity under the traditional banners of one school should be viewed along with a consequential process, as the phenomenon of regional customs mildly asserted its distinct identity. Contradictions and reconciliations between local customs and an assumed universal religion had been in the air for some time, and they did not clearly break from each other in the Islamic world until the early twentieth century. This was in contrast to the trajectory of European legal humanists, especially the Dutch Elegant School, who asserted the importance and identity of customary laws against "universal" Roman and Canon laws.[95] In the Islamic world, the customs and religion as such did not create much of a predicament, primarily because "customs" were not fully understood as "laws". The "laws" of Islam itself (as in "Islamic law") resulted in a rather fluid legal system, in contrast to the "law" of Rome or the canonical tradition. The codification processes initiated by the Ottoman, British, Dutch and French empires, both in their homelands and in their colonies, presented a problem for the traditional scholarship of Islam, who now had to address or reassess their knowledge of "law" and "customs" within a less fluid, less diverse, and more formalized legal system. I shall address the implications in the Conclusion. The longer tradition of interconnectivity between Middle Eastern customs in Islamic law-books, mutual accommodation of customs and religions in positive legal corpuses, and theoretical justification of both practices in either "legal systems" were neglected once the proponents of customary law dominated the discourse. They separated and juxtaposed a single tradition. This development in colonial legal historiography, that "longed for" certainty and formalism, can be interpreted as a counter-productive development of the geo-legal syntheses which had occurred in Shāfiʿīte legal thought by the nineteenth century.

Circulation and Economy: Transformation of Transmission

In the light of these syntheses, particularly in the Shāfiʿīte world and generally in "traditional Islam" in the nineteenth century, we are inclined to ask what were the major financial sources of income for the fuqahā-estate, especially at a "chronological nodal point" like Mecca, where scholars protested against their Ottoman sultans. I suggest that in the Indian Ocean economy the transregional charitable networks operating increasingly since the sixteenth century still played a role in keeping scholarly enterprises in the city dynamic. Money came for them more

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[95] Randall Lesaffer, *European Legal History: A Cultural and Political Perspective*, trans. Jan Arriens (Cambridge: Cambridge University Press, 2012), 338-370; on the Dutch jurists' emphasis on *ius proprium* of Holland, its customary laws vis-à-vis the Roman jurisprudence, see 360-361.

from a broadly conceived lower stratum than from political and aristocratic entities above them. In that respect, the religious economy of the Holy City was not so different from what it was in the sixteenth or even the fifteenth century. But the pace and quantity of contributions had intensified for the benefit of its scholarly estate and its otherwise financially underprivileged population.

The British and Dutch and to an extent other western European colonial powers controlled the means and mobility of pilgrimage after steamships came on the scene with various regulatory measures. But still money was pumped into Mecca from the peripheries with no dramatic decrease; rather it increased. In earlier times many wealthy Muslims on the Indian Ocean rim owned ships, which they used annually to send charitable gifts, often collected from the poor as well as the rich, to Mecca. Once steamships came in and completely took over ocean transportation, those ship owners were marginalized and their ways of sending donations were almost blocked. But there was a measure of compensation and increased mobility thanks to the faster speed and increased tonnage of the new ships. They carried far more passengers than sailing ships and reached port more quickly. More pilgrims meant more donations from wealthy merchants, nobles and sultans for the city. For the later part of the century we see that Snouck Hurgronje has given detailed accounts of the donations made by sultans and nobles of the Malay world, as the "pilgrim shaykhs" exploited naive believers.[96] He also informs us about scholars like ʿAbd al-Shakūr of Surabaya to whom Javanese pilgrims paid enormous sums for his teaching, guidance, and awarding of licences: "The Sheikh pays no attention to the details of the source of income; his friends claim that he knows nothing about it and would forbid it if he did.... *wallāhu aʿlam*! (and God knows best!)."[97] ʿAbd al-Shakūr was a figure equal to (or not lesser than) Nawawī al-Bantanī and perfectly comparable in the way he managed to mobilize his income. Yet he chose rather meagre way of life, as Raden Aboe Bakr Djajadiningrat (c. 1854-1914) writes about his personal encounters with him. Djajadiningrat says that "he appears as a pauper, for he is indeed poor" and he did not pay any attention to his troubles and did not ask any of his children or servants to for assistances, "though there were many people prepared to attend to him."[98]

Pilgrims, students and pilgrim-students could be found in large numbers in nineteenth-century Mecca, with occasional influxes. Many eventually became permanent residents of the city, building strong careers there. The first editions of *Iʿānat* and *Nihāyat* can be taken as a microcosm of the transregional characteristics of the city. We find many instances of students and scholars from Africa to East Asia easily blending together with each other. A few endorsement poems given in the first and last volumes of *Iʿānat* are a good example of this. One is by Aḥmad Zayn al-Faṭānī, a Thai-Malay literary scholar who became an influential grammarian and publisher. He was appointed by the Ottoman government as a supervisor of a Malay press established in the city. [99] Another endorsement comes from his student

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[96] For this case, see: Hurgronje, *Mekka*, 274.

[97] Hurgronje, *Mekka*, 305.

[98] Djajadiningrat, *Tarājim ʿulamāʾ al-Jāwah*, unpaginated. The quoted translations are from Michael Laffan, "Raden Aboe Bakar; An Introductory Note Concerning Snouck Hurgronje's Informant in Jeddah (1884-1912)" *Bijdragen tot de Taal-, Land- en Volkenkunde* 155, no 4 (1999): 528.
[99] Hurgronje, *Mekka*, 306.

Muḥammad bin Yūsuf Ḥusayn al-Khayāṭ who also became influential in the city through the Madrasa al-Khayāṭ.[100] The cost of printing was taken on by someone called al-Ḥāj Abu Ṭālib al-Maymanī. He contributed also to the costs of *Nihāyat* which was co-funded by another possibly interesting figure from Kashmir, al-Ḥāj Fidā Muḥammad al-Kashmīrī.[101] Such benefactors enabled the sustenance of fuqahā's intellectual ventures despite their abstinence from state-sponsored positions.

The introduction, rise and massive use of printing presses by Muslims in the nineteenth century evoked ardent disputes among the fuqahā on whether its use was permitted. But printed editions provide otherwise unknown historical particulars of Shāfiʿīte texts.[102] As with steamships here is another technology making a significant contribution to the dissemination of Islamic legal texts, and to? other texts for that matter. In the first editions of *Nihāyat* and *Iʿānat* we are told how the authors both participated in the printing and marketing processes in close association with publishers, colleagues and friends. To seek a publisher Nawawī al-Bantanī is said to have travelled to Cairo in 1884, before any printing press had been established in Mecca.[103] He must have made this journey at the beginning of his career as an author-teacher. At the time of the publication of *Nihāyat* in 1881, Ḥammād al-Fayyūmī al-ʿAjmāwī tells us that publishers in Cairo rivalled each other to secure the publication rights.[104] That may be an exaggeration, for Ḥammād himself was apparently successful in securing them according to a publisher's note at the end of *Nihāyat*. For *Iʿānat* we know that Sayyid Bakrī worked closely with the publisher and he gives the dates and details of completing the editing and proofreading of each volume. Both texts were published in Egypt before the printing presses were established in Mecca. Many pilgrim-students took the texts of their author-teachers back to their homelands and disseminated them there through *pesantren*s, madrasas and libraries. Transmitting texts before the advent of this technology was difficult task because manuscripts were expensive to produce and acquire. Printing presses eradicated the problem and changed the course of Islamic textual dissemination. Particularly the history of Shāfiʿīte printed texts discloses many interesting aspects of broader transregional circulation of texts and the ideas in them.

Many copies of *Fatḥ*, for example, were circulating in educational circles in South Asia, which otherwise followed a strong Ḥanafīte legalistic curricula. It was also published in Delhi in the early-twentieth century as well as in Hyderabad and other Deccan regions. The quality and quantity of the copies, the publisher's notes and lexical marginalia, etc. of these editions, along with the ones printed from Malabar deserve further attention within a framework of Book History. We may take the Hyderabad edition as an example. That was certainly a city with a remarkable presence of Shāfiʿītes in the eighteenth and nineteenth centuries, if not earlier, mainly because new Yemeni migrants arrived in large numbers. The introduction and

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[100] Sayyid Bakrī, *Iʿānat*, 1: 1-2, 2a [unpaginaged second title page].

[101] For *Iʿānat*, see 4: 408; for *Nihāyat*, 393.

[102] On the impact of printing on Muslim culture, see: Francis Robinson, "Technology and Religious Change: Islam and the Impact of Print," *Modern Asian Studies* 27, no. 1 (1993): 229-51.

[103] Chaidar, *Sejarah*, 79-81.

[104] Nawawī al-Bantanī, *Nihāyat*, 393.

publisher's note is in Urdu and provides much historical information.[105] Its title page states that it is a second edition of a book printed first in Beirut, and that it was printed for free circulation. It declares *Fatḥ* to be "the last work among the considerable *matn*s (*al-kitāb al-akhīr min al-mutūn al-muʿtabarat*) of the Shāfiʿīte legal curricula". It also identifies the author as a student of Ibn Ḥajar of Mecca. In the introductory pages we read that it was printed under the auspices of many Hyderabadi fuqahā, especially Ṣāliḥ Bā Ḥaṭṭab and his son Sālim, each of whom was a "professor of theology and rational sciences at the prestigious Nizamiya University of Hyderabad." In the following pages, publisher provides a long description about the text's relevance as a work that has been printed many times in the Arab world and taught across Peninsular India and Southeast Asia. This edition with its use of Urdu and the encouragement of the Ḥaḍramīs exemplify the development of a composite culture, in which mingle the Yemeni Ḥaḍramīs, Deccani Shāfiʿīsm and subcontinental Urdu. Throughout its evolutionary trajectories, Urdu was primarily associated with Ḥanafīsm, though there are very rare cases when Urdu was used for Shāfiʿīte writings. This is one of those, one that was made possible by the Ḥaḍramī Shāfiʿītes who had settled in Hyderabad and utilized the possibilities of new technologies, as they always did.

This wider outreach does not mean that printing technology completely replaced the old form of textual transmission. Manuscripts contributed to retain their authority among the fuqahā clusters. An enormous number of manuscripts of *Fatḥ*, *Minhāj* and *Tuḥfat* are still kept in various collections on the Indian Ocean rim. They all contain their different marginalia and glosses, similar to the *taṣḥīḥ*-practice we discussed earlier. In some manuscripts we find occasional translations into Southeast Asian languages, including from Makassaris, Acehnese, Javanese. A closer look at such minute details of these translations would illustrate different localization processes of nineteenth and twentieth-century religious learning centres on the oceanic rim.

Final Remarks

By juxtaposing our reading of *Iʿānat* and *Nihāyat* we come to appreciate a number of different phenomena in the textual longue durée of Shāfiʿīsm. Primarily, both texts in relation to their dual base-text *Qurrat-Fatḥ* demonstrate that the transmission of Shāfiʿīte legal ideas, or Islamic ideas for that matter, were not unidirectional from a "centre" to a "periphery". Rather it was multidirectional in which many components of region, culture, norm and tradition played crucial roles. The nineteenth-century story of both *Iʿānat* and *Nihāyat* also illuminate the multi-layered processes of synthesis that the school went through. A major synthesis was in the intellectual realm, and the Cairene-Meccan division that existed was resolved by repeated efforts. A geo-legalistic synthesis was also evident in the articulations of both texts. These syntheses were a product of many criticisms that the "traditionalist bloc" of Islam had to encounter at the hands of Muslim reformists and rulers. In the course of time, however, they were *defeated* by the political rise of many "reformist" regimes. In the Kingdom of Saudi Arabia the Wahhabi ideology prevailed, and in the Republic of Turkey the Ottoman caliphate was banished. These two new political entities both exhibited extreme antipathy towards any

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[105] Zayn al-Dīn al-Malaybārī, *Fatḥ al-muʿīn* (Hyderabad: Markaz Taw'iyat al-Fiqh al-Islami, 2003); similar to this is an edition from Lahore, his *Irshād al-ʿibād ilā sabīl al-rashād* (Lahore: Maṭbaʿt Muṣṭafā, 1910).

suggestion of traditional customs, practices and intellectualism. On the intellectual level the ideas of "Muslim modernists" such as Jamāl al-Dīn Afghānī, Muḥammad ʿAbduh, and Muḥammad Rashīd Riḍā (1865–1935) predominated. Even so, traditional Muslim ideas survived and still continue disseminating Shāfiʿīte traditions and textualism in a number of different forms and ways. The increase in the establishment of religious educational institutions along the Indian Ocean rim around the mid-twentieth century is evidence for this.

On another level, the advent of printing technology into the world of textual-transmission of Islamic legalism has often been identified as a factor that contributed to the decline of the tradition of writing commentaries. Although that technology gave commentaries a boost at the beginning, scholars have argued that ultimately it put an end to this tradition. It seems to be that the diffusion of printed texts along with the general availability of multiple copies of commentaries and super-commentaries is a disincentive for students to extend the line of textual genealogy. Indeed it may have contributed towards the death of longue durée of legal texts. What is then clear is that the introduction of various technological devices, including print, audio, visual, social, and virtual media, has contributed to the decay of a traditional mode of communicating texts that had developed through the manuscript cultures. But those innovations have also led to an even more beneficial transformation, with "audio", "video" and "virtual" commentaries for texts now forming a "hyper-textual" genealogy for the centuries-old documents of Shāfiʿīsm. The technology has changed only the form. New technologies have motivated traditional textualists to explore new vistas of development to the advantage of their tradition.

Concluding Remarks

Minhāj's genealogy can be traced four centuries backward to *al-Umm* and six centuries forward to *Nihāyat*, although its ancestry and descendancy go even further backward and forward. This *longue-durée* of a Shāfiʿīte text connects a diverse array of lands, people, cultures, texts and periods through a shared set of legal ideas and vocabularies. Its direct and indirect commentaries like *Tuḥfat*, *Fatḥ*, *Nihāyat* and *Iʿānat*, together with many others, present us with a fascinating nexus of historical continuities and discontinuities.

Each text has made its own contributions to the *longue-durée* textual system of Islamic law through a number of unique ways. It has catalysed its progression, preventing it from reaching an ultimate state of rest, a rest in time supposed of being "sterile" and without "originality" and "independency". Standing within the deterministic legal system of Islam, the texts changed themselves as much as the legal ideas they discussed. Various external and internal forces contributed to their fruitful advancements. If a periodic pressure can lead to a periodic response in any social and natural system, then that is true also for the historical progression of texts with longer genealogies. Furthermore, the texts we discuss prove that nonperiodic or random pressure, such as canonization, precision and complexity, mobility, division and cohesion, did indeed produce many nonperiodic flowing in the legal complex of Shāfiʿīsm in time and place.

Minhāj's major contribution was its canonization and systematization of Shāfiʿīte law. Contesting the political entities and cultural trends of its time, the author endeavoured to make a universally applicable system of law. Yet he was very much influenced by contextual developments of his time and place, and hence many of his legal formulations can be analysed as political, economic, or even more aptly, pragmatic. I identify those subtle deviations which emerge from particular "politics and economy of prioritizations." The text found a wholehearted reception in many Shāfiʿīte clusters, although it took some time to reach South and Southeast Asia and East Africa. Its reception in the latter regions was mediated through its one commentary, *Tuḥfat*, written in sixteenth-century Mecca. If *Minhāj* had mended an existing division of the school (between Khurasanis and Baghdadis), *Tuḥfat* opened a division due to the random obligation on its authors to move from one place to another. This commentary caused a split in the school, the group from Mecca opposing the one from Cairo. It stood for a Meccanized version of Islamic law in which the Hijazi ways of ethnicity, language and culture were projected as the pristine representations of Islam. The text itself was written in a place where its author and his colleagues made powerful avowals of singling out their school as intellectually dominant. In other words, they Shāfiʿīzed Mecca as much as they Meccanized Shāfiʿīsm. This process, paradoxically, helped the future advance of the school to South and Southeast Asia and East Africa. There for believers Mecca was synonymous with Islam and now it had become synonymous with Shāfiʿīsm. A major component in this process was the massive migrations of the Ḥaḍramī and non-Ḥaḍramī Yemeni Shāfiʿītes, who found great solace in the arguments of Ibn Ḥajar, who promoted their Arab ethnicity, language and dress.

Tuḥfat's ideas influenced the scholars from the peripheries, which included third or fourth generations of Yemenis and others in the diaspora, but they did not subscribe to those ideas completely. They added their own voices and interpretations to the school affirming the significance of their lands to Islamic history as well as finding ways to disentangle their everyday problems within the Shāfiʿīte deterministic framework. *Fatḥ* is a text of that category. Written in sixteenth-century Malabar, it affirmed a number of different issues that the believers faced in the non-Arab, non-Middle Eastern rims of the Indian Ocean. The text as well as its author and his scholarly family thus prompted a reimagination of an educational centre of Islam outside the Middle East and the rise of "multiple Meccas". It also prompted recognition in Islamic law itself of the necessities and priorities of the contemporary place and time. Such attitudes, along with its simplicity and precision, contributed to its wider reception across the Shāfiʿīte cosmopolis from the Indian Ocean to the Eastern Mediterranean, as an intermediate textbook and a textual source of law. Thus, it attracted a number of commentaries, particularly in the nineteenth century. *Nihāyat* and *Iʿānat* belong to this group, and they furthered the ideas of *Fatḥ* in particular and of Shāfiʿīsm in general, catering for the new developments in their time. In the wake of increasing attacks on Islamic legal tradition from the "Muslim modernists" and political "legal codifiers", the whole traditional community united as a single body, healing many divisions that had existed in their long tradition. Two texts written by two scholars with origins in the periphery and in the centre, *Nihāyat* and *Iʿānat*, represent a multi-faceted process of synthesis in the nineteenth century and a commitment to resist a particular set of forces. "If the system is stable," Edward Lorenz would say, "its future development will then remain arbitrarily close to its past history".

Conclusion

After completing my final draft of the previous chapters, I decided to relax by reading the latest general overview of a subject not altogether outside the area of my dissertation, Shahab Ahmed's *What is Islam?*.[1] That book left me with an immense feeling of pleasure, and I thought that if I had read it earlier I may have been able to present my arguments rather more powerfully. I feel it will remain a cornerstone for studying any aspect of Islam or Muslims for several decades and the scholars who read it and those who do not will find themselves in different camps. I shall take this opportunity to reflect on what I have been saying in my chapters in the light of some of Ahmed's suggestions.

This dissertation has explored the circulation of Islamic legal ideas across the Eastern Mediterranean and the Indian Ocean world in the second millennium, with a focus on the Shāfiʿī school of law. In the course of my analysis I have been dealing with four major historiographical lacunae: the Middle-East centric view of Islam; the intellectual discontinuity in the post-classical phase of Islamic law; the history of Shāfiʿism; and and its historical reception along the Indian Ocean rim. I shall reflect on each of these in turn.

Since the early centuries of Islam, most followers of Islam have been non-Arabs, and they have been instrumental in providing various dimensions to the basic formulation of the religion ever since. Yet their contributions remain largely unacknowledged. So my study tries to bring in their roles in formulating Islamic ideas across the centuries. Ahmed has explored the discursive interrelational matrix of the "Balkans-to-Bengal complex", in which the Arab lands are only one among many equally important regions. I have explored a "Shāfiʿīte cosmopolis of law", stretching from Damascus to Sulu, in which particular legal ideas and texts provided the Muslims with shared vocabularies and common grounds for scholarly and legalistic interactions. These they utilized meaningfully in their constant movements as traders, pilgrims, scholars, refugees or warriors.

The threads of this unified historical canvas come from the increasing mobility of persons and a processual globalization over centuries. Every century in its turn escalated the quantity and quality of mobility, but three centuries in particular have been acknowledged in human history for the very clear leaps towards reducing the distance between global extremities: the thirteenth, sixteenth and nineteenth centuries. All three centuries had a remarkable impact on Islam, and particularly on the history of Shāfiʿism, and all the five texts on which I have focused belong to one of them. The most intensive global interactions in these centuries through trade, culture, polity, and religion were the most attractive canvas for jurists to draw compromises and mild conflicts with the existing tradition. Unprecedented encounters with new communities, large-scale economic developments, socio-political setbacks and uprisings were some of the major markers of these centuries from which the Shāfiʿīte jurists could not exclude themselves. They addressed the new historical contexts in their articulations, and it will be wrong to stay in one particular region (such as the Middle East) as being the center for Shāfiʿīte ideas and for Islam more widely.

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[1] Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton: Princeton University Press, 2015).

Minhāj was written immediately after the Mongol invasions of the Middle East which augmented the encounters with new entrants in every land. That text addressed the new political situation, standing within the tradition of Shāfiʿīte law and systematizing the long-lasting conflicts of opinions. As Ahmed writes, the thirteenth century is a period of "larger attitudinal *normalization* of the principle of agreeing to disagree" in which several long existing theological and legal conflicts were settled among the Muslims. They mutually recognized one another's legal methods and corpora of legal positions, even if the one contradicted the other. This also meant that each school comprehended its internal conflicts and made it relevant for students, scholars and practitioners of the law. This was further necessitated by the appointment of four equally important judges by the Mamlūks. Along the lines of the wider codification-processes initiated by the jurists of each school, *Minhāj* systematized the complementary and contradictory views of earlier jurists through an extensive exploration into its textual genealogy and by accommodating multiple dissipating techniques such as hierarchization and prioritization. Its formulations with slight deviations from earlier views or assertions of an author's own views were driven by the regional and transregional settings where it encountered the maritime world of the Eastern Mediterranean and the increasing presence of new entrants such as the Mongols from the Far East.

Its transmission to the South and Southeast Asian and East African parts of the Shāfiʿīte world was mediated in the sixteenth century by the production and dissemination of at least four famous texts of the school, all which were commentaries on it. Of those commentaries *Tuḥfat* is the most distinctive for its arguments and approaches. It was written in Mecca, and spurred on new legalistic conflicts within the school. Its production and reception coincided with many other developments in political, social, economic and cultural realms, such as the decline of the Mamlūks, the rise of the Ottomans and their conquest of the Middle East, the arrival of the Portuguese in the Indian Ocean, and increased travel towards Mecca and the Hijaz. The text presented a Meccanized view of Shāfiʿīsm, which determined the later engagements of numerous Shāfiʿīte scholars from South Arabia, the Hijaz, South and Southeast and Central Asia, and East Africa. Its complicated and incomprehensible methodology was hard to follow for primary and intermediate students of Islamic law, which could have had a negative impact on its receptivity outside Arab lands. But the increased movements of particular Middle Eastern communities and the arrival of many "new" students from the peripheries at educational centres in central-Islamic lands such as Mecca were positive external forces in promoting its ideas. It conversed with the cosmopolitan atmosphere of the city which had emerged from the arrival of a pilgrim-student-refugee nexus from the lands of South and Southeast and Central Asia, and from East Africa. The increasing role of the non-Arab communities in the heartland of Islam may well have persuaded the author of *Tuḥfat* to take very Arab-centric, Hijaz-focused and Meccanized attitudes towards Shāfiʿīte law and Islam in general. Its version of Shāfiʿīsm was not entirely acceptable in the peripheral regions of the Indian Ocean, but many students' encounters with the author himself and the massive migration of Yemenis facilitated its transmission along the oceanic rim.

In the same century, one whom we assume to have been a student of the author of *Tuḥfat* from a peripheral region responded to many arguments of his teacher by writing an indirect summary, *Fatḥ*. This text clearly reflects a response from peripheral Shāfiʿītes

occasioned by their academic travels and voyages.[2] In his summary the author addresses several problems and priorities of Muslims living outside the central Islamic lands by critically engaging with his own teacher. Its production and receptivity in the sixteenth century and afterwards reflect the decentralization of Islamic knowledge by what had been hitherto peripheral Muslim communities. *Fatḥ* (and many other works like it from South and Southeast Asia) instigated a revived and revised version of Islamic law and practice with clear echoes of the voices of their own geographical, linguistic or cultural identities. The central roles that the heartland of Islam in general and the nucleus of Shāfiʿī legal thought in particular had been playing in the intellectual and socio-cultural lives of Muslims of the non-Middle Eastern world now began to be questioned. The reception of *Fatḥ* in the larger Shāfiʿīte cosmopolis indicates this, and its commentaries *Nihāyat* and *Iʿānat* explicate multiple features of this development in the nineteenth century. In the furtherance of intensifying globalization towards possible formations of a global village in this century, Mecca stood as a temporal cosmopolis that brought together diverse people from all over the world, and also effected a reconciliation of several conflicts existing in traditional realms.

The trajectories of these texts demonstrate a constant participation of the peripheral communities from the Indian Ocean rim in Islamic law, and more particularly in Shāfiʿīte law which was widely followed in the coastal belts. In my dissertation, this becomes clear only from the sixteenth century due to the particular approach I followed on the textual *longue durée*. Otherwise, we can propose that scholars and jurists from the peripheries participated in the dissemination of Shāfiʿīte ideas as early as the thirteenth century. We see this with ʿAlā al-Dīn Aḥmad bin Muḥammad al-Hindī in the thirteenth-century, whom we mentioned in the third chapter. He studied in Damascus, obtained a professorship at Sayfiya Madrasa in Cairo, and composed legal hermeneutical texts in Shāfiʿism such as *Ghāyat al-suʾūl fī al-uṣūl*. The production of Shāfiʿīte texts as such is remarkably evident on the Indian Ocean rims of South Asia and Southeast Asia since the early fourteenth century, as the Terengganu Inscription of 1303 with its legal declarations and the texts such as *Qayd al-jāmiʿ* from Malabar show. These are only the cases of Shāfiʿīte law. If we consider jurists, texts, and ideas of other schools, we find clear evidence from as early as the mid-ninth century, when Islamic law was still organizing itself into doctrinal schools in the heartlands of Islam. Therefore it would be unfair for Islamic legal historians and Islamicists more broadly to continue to exclude this larger Muslim community who lived outside the Arab-Persian lands.

The interconnected texts from *Minhāj* to *Nihāyat* and *Iʿānat* via *Tuḥfat* and *Fatḥ* also show the post-classical evolution within Islamic law. A person cannot revise, edit, comment on, super-comment on, gloss, abridge, poetize, translate, or even simply transcribe a text written in a distant time or place without great intellectual effort and mastering its contents, language and discussions. These texts tell us how and why they found innovative ways of exploring interpretive techniques to survey, analyze and criticize the earlier traditions of the school in order to cater for the needs and priorities of their own particular contexts. Whether it is the canonization through hierarchization and prioritization, Meccanization, assertion of geo-cultural specificities, or synthesizing conflicts, they all sought to stand within the

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[2] This argument is conceptually indebted to Pierre Bourdieu, "Intellectual Field and Creative Project," *Social Science Information* 8, no. 2 (1969): 89-119; Pierre Bourdieu and Jean-Claude Passerson, *Reproduction in Education, Society and Culture*, trans. Richard Nice (London: Sage, 1990).

"conservative" framework of the traditional legal system and yet also to prevent it from ultimate inertia. After the formative period of Islam, or more precisely of Shāfiʿīte law, and related discourses in the so-called classical period, the "real" interesting progress happened later.

Minhāj is the text that actually canonized the school's views. Until then its ideas were unorganized and unsystematic. To put it more provocatively, the whole Shāfiʿī *maḏhab* was "born" as a structured legal school only by the thirteenth century. *Minhāj* stood at the forefront of this "birth-moment" and its authority among the Shāfiʿītes reflects "the authority of canon". On its legitimacy *Tuḥfat* built its own space, like many of the contemporary commentaries. Its sensitivity to and engagement with most of the literatures produced with, before, and after *Minhāj* made it a complex text, hard to understand, but it stood as the final word for the highly educated scholars of the school. Its reception among them represents "the authority of a commentary". *Fatḥ* made the formulations of *Tuḥfat* more simple and accessible to intermediate students of Islamic law, whether they were affiliated to an institution or members of the general public. It had precision and simplicity, and its critical notes on earlier texts and its awareness of particular socio-cultural and geographical contexts contributed to the popularization of Shāfiʿīte law in the peripheries as well as in the heartlands of Islam, as much as the Shāfiʿītes own popularization of the text. The question of which came first or what caused what is a perennial question, as insoluble as the dilemma of prioritizing the chicken or the egg. The text embodies the "democratization of law" across the Indian Ocean and Eastern Mediterranean worlds. Its reception and its democratization produced further commentaries like *Nihāyat* and *Iʿānat* which also addressed the growing tensions of their times, especially those posed by the reformists and political entities.

All these constant engagements with specific times and places as much as with the longer tradition of Shāfiʿīsm are what make the post-classical textual genealogy of the school rather interesting. Deprecating them as unoriginal and sterile is a misplaced attitude. The formation of any discourse says nothing until the transformation it implies is analysed. The orientalists of olden days and modern Islamicists still produce volumes of literature on the first three or four centuries of Islamic law, but ignore the ways in which that law found ways into the lives of practising believers, scholars, judges or students for more or less a millennium. Their scholarship reflects what Foucault criticized in those who show their adherence to Marxism by limiting its history to the history of Marx's own statements.[3] He suggested that it is essential to see Marx as the originator of the discourse, not just the creator of a social theory, and that suggestion is very applicable also to Islamic legal historiography.

A few scholars in the last a couple of decades have partly remedied the situation, especially by looking into the fatwā-collections and judicial registers related to Ḥanafīsm and Mālikīsm. The contribution of my dissertation is to show that it has possibilities in Shāfiʿīte contexts, not by looking into the fatwā collections or registers of judges, but rather into the positive legal texts which themselves have been discarded as lacking any historical content for the society, culture or region of their time. The continuities and discontinuities and

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[3] Michael Foucault, *Language, Counter-Memory, Practice*, trans. D.F. Bouchard and S. Simon, (Ithaca: Cornell University Press, 1977), 113-138; cf. Sudipta Kaviraj, "Marxism and the Darkness of History," *Development and Change* 23, no. 3(1992): 79-102 the quotes at 80.

regional historical elements explained in relation to each text thus open a new vista for further research, by taking the positive legal texts as sources of history.

This leads me to the next aspect that I have tried to tackle in this dissertation, the actual history of Shāfiʿīsm after the post-classical period. If the textual *longue durée* referred to earlier is one aspect of its spread across time and space, that is not the only one. The texts and ideas could obviously not travel by themselves. People and their micro- macro networks, their interests and conflicts enabled and expedited their dissemination. In the historiography, the intellectual dynamics have been neglected and credit has been given solely to the Yemenis, or more exclusively to the Ḥaḍramīs. I have argued that the constant division and unification inherent in the Shāfiʿīte tradition expedited the circulation of ideas and texts. The conflicts kept discussions alive and dynamic, whether between traditionalists and rationalists, Khurasanis and Baghdadis, Cairenes and Meccans, or the centres and the peripheries.

Yemenis were not the only group to spread Shāfiʿīte ideas and texts in the Indian Ocean world. In the thirteenth, sixteenth and nineteenth centuries the predominant mercantile and scholarly migrant networks immensely contributed to their diffusion. These disseminators included Kārimīs, Egyptians, Syrians, Iraqis and Persians from the thirteenth to the fifteenth centuries. Their interconnections set the stage for an early wave of the spread of the Shāfiʿī school to South Arabian and South and Southeast Asian and East African regions. In the sixteenth-century, the revived intellectual landscape of Mecca brought the socio-geographic and cultural spheres much closer and generated another wave of the spread of Shāfiʿī legal thought. The process was catalysed by some of the earlier groups along with new entrants such as Ḥaḍramī and non-Ḥaḍramī Yemenis, refugees from Ṣafawid Persia such as Khurasanis and al-Bukhārīs, al-Hindīs, Malays and Swahilis. There were scholarly-mercantile connections at nodal points such as Damascus, Cairo, Malindi, Zanzibar, Ḥaḍramawt, Malabar, Aceh, Java or Cape Town which explicate this. For such a mobility of scholarly networks and intellectual interactions the ocean functioned as a highway. The spread of Shāfiʿīsm across the Indian Ocean and Eastern Mediterranean should be understood to exemplify those composite characteristics.

This facet of my research addresses the dilemma of Indian-Ocean historians in their blanket generalizations and fleeting references to Shāfiʿīsm on the rim. It also gives an explanation for the reasons behind the historical receptivity of the school. From *Minhāj* to *Tuḥfat* to *Fatḥ* to *Nihāyat* and *Iʿānat*, the authors were very sensitive to the maritime contexts of trade and movements thanks to the locations where they lived and wrote their works. In a number of cases, we saw how each text articulated more flexible views on oceanic voyages and trade, at times even invalidating the viewpoints of other schools. We think of Nawawī's position on *khiyār al-majlis* in relation to a transaction conducted during a voyage. Although it will be too early to suggest that because of the liberal approaches of these authors and Shāfiʿītes in general on sea-related issues the school predominated the Indian Ocean rim, there is ample evidence to think in that direction. Two debates on the permissibility of eating seafood between Ḥanafītes and Shāfiʿītes quickly spring to mind: a) in the Mughal court of

Emperor Jahangir (r. 1605-1627); b) in Cape Town between the local Shāfiʿīte inhabitants and newly arrived Ottoman Ḥanafīte qāḍī Abu Bakr Effendi (1814–1880).[4]

Apart from such internal elements of Shāfiʿīsm, the micro-communities and macro-communities certainly contributed to making the school a predominant legal stream for Muslims along the rim. This dominance of the school happened mainly in the sixteenth century. Before that, the Indian Ocean and the Mediterranean had been an "ocean of laws" with many intermixed legal systems and traditions within the Muslim community, not to mention other communities and groups. The Mālikīte, Ḥanbalīte, Ḥanafīte, Shāfiʿīte, Ibāḍī, Shīʿīte, and many other evanescent schools of Islamic law coexisted there because of their crucial importance for Muslims from Tangier in North Africa to Canton in China. In the course of time, Mālikīsm was dominant in North Africa and Ibāḍīsm in Oman and part of Tanzania, while the rest of the Indian Ocean and Eastern Mediterranean was dominated by Shāfiʿīsm from the sixteenth century. The increased mobility of scholars, migrants, warriors, refugees, slaves and prisoners from Yemen, Persia, Khurasan, Egypt and the Swahili and Malay worlds was a significant factor in this development.

The circulation of Shāfiʿīte ideas was by no means any one-way journey through time or a simple "Arab export".[5] Although Middle-Eastern jurists introduced the school to the peripheral regions, those places soon developed "multiple Meccas" such as the Little Mecca at Ponnāni, with much significance given to the advancement of Shāfiʿīte ideas, and these led to "reverse journeys" of the ideas of the school back to the centres. The legacy of *Fatḥ* in the nineteenth-century Middle East attracted at least four commentators in a microcosm of Mecca, which exemplifies this development. The composition of *Iʿānat* represents a successful journey for a peripheral text. Furthermore, this was not simply a reverse journey, because even scholars who were born and brought in other peripheries wrote commentaries on such a peripheral text as *Fatḥ* in the nineteenth century, and they wrote them in Arabic. All these were unprecedented in the *longue durée* of Shāfiʿīte texts. *Nihāyat* of Nawawī al-Bantanī epitomizes this trend. Hence, the trajectory of *Fatḥ* and of Shāfiʿīsm in general in this cosmopolis of law is multidirectional and the peripheries were not passive receivers of a legal tradition from a putative centre.

In relation to this, I have attempted throughout the text to identify the regional elements, customs and norms of each text, an investigation that was primarily targeted at the Middle-Eastern texts. Despite the popular notion that positive legal texts give no room for such contextual analyses in a historical perspective, I made a modest attempt towards that end. My main goal in doing so was to "provincialize Islamic law", as it has been understood in the secondary literature, to the Middle East as much as identifying the value of Islamic law as conceived and perceived by the peripheral communities of Malabar, Java or Zanzibar. I do not know how successful I have been in this attempt (I may have become "periphery-centric"), but I do certainly know that more work is needed.

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[4] ʿAbd al-Sattār bin Qāsim Lahori, *Majālis-i Jahāngīrī: Majlis'hā-yi shabānah-'i darbār-i Nūr al-Dīn Jahāngīr : az 24 Rajab 1017 tā 19 Ramaẕān 1020 H.Q.*, ed. Arif Nawshahi and Muʾin Nizami (Tehran: Mīrās-i Maktūb, 2006), 80-118—I am thankful to Reza Huseini for this reference; Achmat Davids, "The Origins of the Hanafi-Shāfiʿī Dispute and the Impact of Abu Bakr Effendi," in *Pages from Cape Muslim History*, eds. Yusuf da Costa and Achmat Davids (Pietermaritzburg: Shooter & Shooter, 1994), 81-102.

[5] To quote Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016). 10.

The long-standing historiographical construction of a distinct "customary law" by Islamicists, anthropologists, lawyers and area-specialists contrasted with a universal "Islamic law" proves to have been seriously misjudged, especially according to Ahmed's conceptualization when he articulates that what makes Islam is the "logic of internal contradictions". If we take this approach to analyse law itself (which often delineates a number of other seemingly "illegitimate" activities like drinking wine and the ideas as mysticism), the contradictions in legal understandings, practices and norms cannot be pitched one against the other. To rephrase his words, there are three elements to be considered: personal Islam; the elaboration of the discursive and paraxial content of Islam; the identification with the community of Islam. These three elements are *co-constitutive* of the human geographical and historical phenomenon of Islam and if someone identifies with these, an outsider cannot reject that person as non-Islamic or less-Islamic. The same rings true for law.

Against this starting point, I shall touch upon a few pitfalls in the scholarship of customary law *versus* Islamic law. Firstly, there has been a constant attempt to see the "peripheries" of Muslim world as exceptional in discussions of Islamic law versus customary law. The peripheries have often been portrayed as less Islamic, less scriptural and more spiritualistic or syncretic and custom-centric, a rhetoric which has dominated scholarship. As we saw with *Minhāj* and *Tuḥfat*, customs were always present in Islamic heartlands too and were even legitimized. Hence the juxtaposition of customs of a particular region against Islamic law is misleading, especially while both legal traditions often complement than contradict each other.[6] Moreover, this also explicates that there is nothing called Islamic law unless it is contextualized and provincialized. In addition, there has been an overemphasis in the scholarship of the last century on *adat*-law (as customary-law has been often called) against Islamic law, especially in the "Leiden school" of Indonesian legal studies.[7] *Adat* is one among many sources of laws and it functions with many extra-regional *adat*s, religious norms, state-introduced laws, etc.

The contradictions between both the laws, as articulated by scholars since Van Vollenhoven, are justified in the legal theory of both legal systems. For example, an *adat*-related poem from Jelebu reads:

> *Adat* hinges on religious law,
> Religious law hinges on the Book of God.
> If *adat* is strong, religious law does not oppose it,
> If religious law is strong, *adat* does not oppose it.
> The source of religious law is consensus,
> The source of *adat* is consensus.[8]

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[6] Mohammad Hannan Hassan, "Islamic Legal Thought and Practices of Seventeenth Century Aceh: Treating the Others," (PhD diss., McGill University, 2014); Noor Aisha bte Abdul Rahman, "A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities," (MA thesis, National University of Singapore, 1989).

[7] See, for example: Peter J Burns, *The Leiden Legacy: Concepts of law in Indonesia* (Leiden: KITLV Press, 2004); F.D.E. van Ossenbruggen, "Prof.mr. Cornelis van Vollenhoven als ontdekker van het adatrecht," *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* 90 (1933): I-XLI; cf. Cornelis van Vollenhoven, *De ontdekking van het adatrecht* (Leiden: Brill, 1928).

[8] A Caldecott, "Jelebu Customary Songs and Sayings," *Journal of the Straits Branch of the Royal Asiatic Society*

Similarly, Article 71 of *Undang-undang Sungei Ujong* (Customs of Sungei Ujong) says:

> …*adat* confirms religious law as is said in the *ḥadīth*… "when *adat* has a strong position in a country, it serves as religious law", for the strength of *adat* is based on the consensus of all religious scholars and the Companions of the Prophet. For that reason, *adat* is strengthened, religious law is enforced, both are employed to the present day, unchanging down the generations, handed from our ancestors.[9]

Analogous jurisprudential rationalizations in many other customary laws were overlooked by earlier scholars of *adatrecht*, whereas they have been emphasized well recently by Southeast Asian scholars. In Islamic legal theory, as long as *adat* or *ʿurf* does not contradict the foundational structures of Islam, it would be binding even if it might go against the foundational views of a school. Shāfiʿīte legal theorists like al-Suyūṭī, Ibn al-ʿĀbidīn and many theorists of other schools, such as the Ḥanafīte ʿAbd Allāh bin Aḥmad al-Nasafī and the Mālikīte al-Shāṭibī, have all validated local customs as sources of law.[10]

The long intellectual genealogy of Shāfiʿīsm from one Nawawī to another Nawawī, the vast terrain of the Shāfiʿīte cosmopolis from Nawā to Java, the textual *longue durée* from *Minhāj* (or from *al-Umm*) to *Nihāyat* is thus a complex web of people, places, periods and perspectives that any generalization would call for exceptions to be identified. Many of my predicaments in using terms, concepts and so on remain largely unsolved, and that is one of the foundational problems that a student of global history has to encounter, especially when covering a large canvas of places (and in my case also of periods). Thus, there will be many alternative views and counter-arguments to my modest attempts to understand the continuity and discontinuity in Shāfiʿīsm since the thirteenth century and to analyse reasons why certain textual genealogies became more significant than others in the traditional legalist synthesis of texts and practices. Some objections I can see myself, and I would like to answer them in anticipation.

One of my prime arguments is centred on the idea of the fuqahā-estate. I elaborated how the Muslim jurists fashioned their identity themselves and positioned themselves in the Islamic realm, free from the influence of political, social and regional influences. Although they did not manage to materialize many elements and claims, the Shāfiʿītes did succeed in alienating themselves from the state. Since the thirteenth century, Shāfiʿīsm as such lost its exclusivity, and it often remained unpatronised, banned, deprecated or excluded from a number of entities such as the Mamlūks, Ṣafawids and Ottomans. Although many individual Shāfiʿītes associated with the state-mechanism at various points, the school itself never came to be regarded as the "official school" of any state, as Ḥanafīsm was regarded in the Ottoman Empire. All the authors of the texts under my focus, however, did not associate with any political entities or take up any state-sponsored positions, and they stand in sharp contrast to

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78 (1918): 3-41 at 26.

[9] Sir Richard Winstedt, P.E. Josselin de Jong, "A Digest of the Customary Law of Sungei Ujong," *Journal of the Malayan Branch Royal Asiatic Society* 27, no. 3 (1954): 61-62

[10] On how customs were legitimised and incorporated into Islamic law, see Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law,"*Islamic Law and Society* 4, no. 2 (1997): 131-155; Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of ʿUrf and ʿAdah in the Islamic Legal Tradition* (New York: Palgrave Macmillan, 2010).

the "post-Mongol phenomenon" of the successful state over the estate. I have substantiated this point in the second chapter, and throughout the dissertation I have sustained this notion implicitly or explicitly. However, one case that I have not discussed is the Sultanates of Aceh and Banjar (Kalimantan), both of which exclusively patronized Shāfiʿīte ideas and texts since the seventeenth century, if not earlier. The first three complete Shāfiʿīte texts available to us from the Malay world were commissioned by rulers in the seventeenth and eighteenth centuries: the first, *Ṣirāṭ al-mustaqīm* of al-Ranīrī, was written at the request of the Sultan Iskandar Muda; his daughter who later became queen, Ṣafiyat al-Dīn Tāj al-ʿĀlam, asked ʿAbd al-Raʾūf Sinkilī to write the second, *Mirʾāt al-ṭullāb*; and the third, *Sabīl al-muhtadīn* of Muḥammad Arshad al-Banjārī, was commissioned by the Banjar Sultan Taḥmīd Allāh bin Tamjīd Allāh. I could make excuses and present reasons, such as the insignificance of law compared to mysticism in the archipelago (Chapter 7), but I would still have to admit that these rulers, jurists and texts stand opposed to my arguments, and they represent a measure of genuine counterpoint to my work from that historical context. They also indicate towards what Ahmed has argued convincingly on the existence of a parallel ruler's law in "the Balkans-to-Bengal complex" in which rulers often functioned as an independent investigator (*mujtahid*) and jurist.

This leads me to a related point, in that I have paid less attention to the Shāfiʿīte texts from the Malay world written in Malay language. This is something of which I was aware, but I deliberately kept them aside because of the methodological line that I decided to follow in my research, that of tracing particular textual genealogies across time and place. None of these Malay works was a commentary or a summary within the textual-family on which I chose to focus, even though they did use many of *Minhāj*'s commentaries as sources. *Ṣirāṭ* utilized *Minhāj* and many of its commentaries, and Zakariyā al-Anṣārī's *Manhaj* is a significant source for *Mirʾāt al-ṭullāb*. And, *Sabīl al-muhtadīn* is a commentary on *Ṣirāṭ*. To work on these interconnected Malay legal texts of Shāfiʿīsm and the ways in which they agree and disagree with their Middle Eastern sources is an interesting possibility for my future research.

From a regional perspective, I strongly feel I should have given more attention to East Africa and South Africa than I did. I held back because I do not know Swahili, I am sure competent researchers would be able to shed more light into East African Shāfiʿīsm, especially before the nineteenth century, than I have done. Some intriguing issues deserving further investigation include people converting to Islam in order to escape enslavement by Arab traders (it was an offence to enslave free Muslims according to Islamic law), and the roles of old Muslim slaves in spreading the school, and of East African warriors such as Ethiopians in Malabar and Aceh. The same goes for South Africa, with the additional element of forced migrants, slaves and prisoners from the Malay world brought there by the Dutch and the English.

Questions about the activities of the Dutch and the English are another aspect I have not approached in this study, though I am of course aware of the European contribution to the spread and survival of the Shāfiʿīte school and particularly of the texts I have chosen. That the only fleeting references to the Europeans can be found in this dissertation was intentional. The school and its texts were being circulated centuries before the Europeans arrived and continued to be circulated decades after the Europeans left (to paraphrase a statement of

Engseng Ho made in another context). I deliberately avoided this subject, to make a humble statement towards the possibility of presenting a non-Eurocentric case for global history.

Nevertheless, I am fully aware of the European use of these texts in different colonial settings from East Africa to Southeast Asia. The non-Islamic "fuqahā" of European colonial states once did interfere with the Muslim legal administration, and these texts were thought to be instrumental in their projects from the mid-eighteenth century onwards. Our texts were translated into European languages in the nineteenth and early twentieth centuries. Those translations were an outcome of scholarly and political interest nurtured in different ways in Europe which can be explicated through a large body of correspondence, memoirs, reviews and discussions. This culminated in translations in four languages (Dutch, English, French, and German), which represent the western European colonial empires. In the introductions to these translations or related discourses, the authors recurrently state their intention to expedite culturally an efficient colonial legal administration for the Dutch East Indies, the British Empire or German East Africa. *Al-Muḥarrar*, the predecessor of *Minhāj*, was translated into Dutch and Javanese by the Dutch East India Company around 1750; *Minhāj* was translated into French by L.W.C. van den Berg in the 1880s; his translation was retranslated into English by E.C. Howard in 1914; *Tuḥfat* was partly translated into Javanese and Dutch by Dutch scholars; *Fatḥ* is said to have been translated into English around 1810 by British officials in Malabar, but I was not able to locate that work. I hope to consider these works and their implications to the textual *longue durée* of Shāfiʿīsm on another occasion.[11]

Although it may be obvious, I am aware that I have hardly looked into legal *practices*. Legal discourses are a completely different area for research than their implementation. My focus has been only on the intellectual side. We do not know if the rulings prescribed or proscribed in the texts had any impact in the social legal cultures of Muslims, although we can see that certain rulings did make changes. I think of the discussion in *Iʿānat* on the conduct of a feast in Mecca after a funeral and its limitations following Zaynī Daḥlān's fatwā, as Snouck Hurgronje confirmed, see Chapter 7. From this some may argue that the legal texts and law as such had little impact on social-legal practices and to suggest that law was marginal. But taking my cue from Ahmed's rejection of a "marginality thesis" for the history of philosophy in the Muslim world, I say that while jurists *do* law, many other people are affected by it, even though not to the extent that many Islamicists and legal historians have suggested, exaggerating that it is the sole framework of Islam, and taking a "legal-supremacist" approach.

And now to conclude. The modest aim of this dissertation has been to contribute to the ongoing discussions concerning the histories of postclassical Islamic law: Shāfiʿīsm; the long textual genealogies; Shāfiʿīsm in the Indian Ocean and the Mediterranean worlds for around a thousand years. The continuities and discontinuities in this long period and in widespread locations can be seen to fit in easily with ideas of chaos theory. That theory rejects the popular

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[11] I have briefly engaged with these translations in two articles: Mahmood Kooria, "Two 'Cultural Translators' of Islamic Law and German East Africa," *Rechtsgeschichte-Legal History: Journal of the Max Planck Institute for European Legal History* 24 (2016): 190-202; idem, "Dutch *Mogharaer*, Arabic *al-Muḥarrar* and Javanese Law-Book: VOC's Experiments with Muslim Law, 1747-1767," *Itinerario: International Journal on the History of European Expansion and Global Interaction* (under review); cf. Hussin, *Politics of Islamic Law*.

notion that only large changes can generate large changes. It encourages us to look for minor changes in distant times and places that were capable of generating large effects in other periods or areas in social, historical, and cultural processes. The intellectual activities in postclassical Shāfiʿīsm can be appreciated as subtle changes made by its jurists long ago or far away which had impressive affects and effects on the textual *longue durée* of the school. The non-linear trajectories from *Minhāj* to *Nihāyat*, from Nawawī to Nawawī, from Damascus to Java, spanning time and place, are interconnected by degrees of an intellectual separation. Even so, as Lorenz tells us, "If the flap of a butterfly's wings can be instrumental in generating a tornado, it can equally well be instrumental in preventing a tornado."[12]

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[12] Edward Lorenz, "Predictability: Does the Flap of a Butterfly's Wings in Brazil Set Off a Tornado in Texas?," *American Association for the Advancement of Science, 139th Meeting,* 1972.

Summary

This dissertation explores the circulation of Islamic legal ideas and texts across the Eastern Mediterranean and the Indian Ocean with a focus on the Shāfiʿī school of Islamic law. There are four major inter-related historiographical problems in my mind: the Middle-East centric view of Islamic law; its intellectual dis-continuity in the post-classical phase; the histories of Shāfiʿīsm; and its historical reception along the Indian Ocean rim.

Since the early centuries of Islam, most followers of Islam have been non-Arabs, yet their contributions have remained largely unacknowledged. This study brings in their roles in formulating Islamic ideas in the second millennium CE. I delineate a "Shāfiʿīte cosmopolis of law" in which particular ideas and texts provided Muslims with a shared vocabulary and common grounds for juridical processes. The threads of this unified historical canvas derive from the increasing mobility of people and the processual globalization over a long period of time, especially during the thirteenth, sixteenth and nineteenth centuries. These three centuries of intensive globalization made remarkable impacts on Shāfiʿīsm, when its jurists had to address new historical demands. To elaborate on these points, I discuss at length five interconnected texts that were written in one of those centuries.

Minhāj, the first of the five, addressed new socio-political situations after the fall of the Abbasid Caliphate. Through an extensive exploration into the textual genealogy of Shāfiʿīsm and by accommodating multiple dissipating techniques, the text became a canon of the school. It systematized long-existing conflicts, especially between the Baghdadis and the Khurasanis. Its formulations, with slight deviations from earlier views or with assertions of the author's own views, were driven by its regional and transregional settings. Although it revolutionized Shāfiʿīte thought, its transmission to the "peripheries" was mediated through the production of four commentaries in the sixteenth century. Of those *Tuḥfat* is the most distinctive commentary. It was written in Mecca, and spurred on new legalistic conflicts within the school with a Meccanized view of Shāfiʿīsm. Its incomprehensible methodology could also have contributed to it having a negative impact on its reception outside Arab lands. But the increased movements of some Arab communities and the arrival of many peripheral students in Hijaz were positive external forces in promoting its ideas.

One writer from the periphery who responded to many arguments of *Tuḥfat* had possibly been a student of its author. He wrote an indirect summary, *Fatḥ*, which reflects several priorities of Muslims living outside the central Islamic lands. Its production and receptivity in the sixteenth century and afterwards reflect the decentralization of Islamic knowledge by what had been hitherto peripheral Muslim communities. *Fatḥ* instigated a revived version of Islamic law with clear voices of their peripheral geographical, linguistic or cultural identities. The central roles that the heartland of Islam and the nucleus of Shāfiʿīsm had been playing in the intellectual and socio-cultural lives of non-Middle-Eastern Muslims world now began to be reimagined. The reception of *Fatḥ* in the larger Shāfiʿīte cosmopolis indicates this. It gave rise in turn to two commentaries, *Nihāyat* and *Iʿānat*, which exemplify many features of this development in the nineteenth century. Responding to the modernist and political calls of the time, these last two texts effected a reconciliation of several conflicts

existing in Shāfiʿīte realms. The trajectories of these texts demonstrate a constant participation of the peripheral communities from the Indian Ocean rim in Islamic law, and more particularly in Shāfiʿīte law.

These five interconnected texts also show a post-classical evolution within Islamic law. They tell us how and why they found innovative ways of exploring interpretive techniques to analyse earlier traditions of their school. Whether it is prioritization, Meccanization, assertion of geo-cultural specificities, or synthesis of conflicts, they all sought to stand within a "conservative" legal framework and yet also to prevent it from ultimate inertia. After the formative period of Islam, or more precisely of Shāfiʿīte law, and related discourses in the so-called classical period, the "real" interesting progress happened later. *Minhāj* is the text that was actually canonized the school's views. Until then its ideas were unorganized and unsystematic. The authority of *Minhāj* among the Shāfiʿītes reflects "the authority of a canon". On this legitimacy *Tuḥfat* made its own space, like many of the contemporary commentaries. Its sensitivity to and engagement with most literatures produced with, before, and after *Minhāj* made it a complex text, hard to understand, but it stood as the final word for the highly educated scholars of the school. Its reception among them represents "the authority of a commentary". *Fatḥ* made the formulations of *Tuḥfat* more simple and accessible to intermediate students of Islamic law. It had precision and simplicity, and its critical notes on earlier texts and its awareness of particular socio-cultural and geographical contexts contributed to the popularization of Shāfiʿīte law in the peripheries as well as in the heartlands of Islam. The text embodies the "democratization of law" across the Indian Ocean and Eastern Mediterranean worlds. Its reception and its democratisation produced further commentaries, such as *Nihāyat* and *Iʿānat*, which also addressed the growing tensions of their times, especially those posed by the modern reformists and political entities.

All these constant engagements with specific contexts as much as with the longer tradition of Shāfiʿīsm are what make the post-classical textual *longue durée* of the school rather interesting. The formation of any discourse says nothing until the transformation it implies is analysed. The orientalists and Islamicists still produce volumes of literature on the first three or four centuries of Islamic law, but they ignore the ways in which that law found ways into the lives of practising jurists, scholars or students for more or less a millennium. A few recent scholars have partly remedied the situation with the help of Ḥanafīte and Mālikīte fatwa-collections and judicial registers. This dissertation shows the possibilities in Shāfiʿīte contexts by exploring the positive legal texts themselves.

This leads me to the next problem: the history of Shāfiʿīsm in the post-classical period. The texts and ideas could obviously not travel by themselves in the textual *longue durée*, but people and their micro- and macro-networks enabled and expedited their dissemination. The constant division and unification inherent in the Shāfiʿīte tradition encouraged the circulation of ideas and texts across its cosmopolis of law. The conflicts kept discussions alive and dynamic, whether between traditionalists and rationalists, Khurasanis and Baghdadis, Cairenes and Meccans, or the centres and the peripheries. In the historiography, such dynamics have been neglected. Also, credit for its dissemination has been given solely to the Yemenis, or even more exclusively to the Ḥaḍramīs. But, as I shall argue, they were not the only group to spread it. Many mercantile and scholarly networks contributed immensely to its diffusion, including Kārimīs, Egyptians, Syrians, Iraqis and Persians, until the fifteenth

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century. In the sixteenth century the revived intellectual landscape of Mecca brought the socio-geographic and cultural spheres much closer together and generated another wave for it to spread. The process was catalysed by some of the earlier groups along with new entrants, such as Ḥaḍramī and non-Ḥaḍramī Yemenis, refugees from Ṣafawid Persia, al-Hindīs, Malays and Swahilis.

This facet of the development also addresses another dilemma of Indian-Ocean historians in their blanket generalisations and fleeting references to Shāfiʿism. This research gives an explanation for the reasons behind the historical reception of the school. Apart from its potential internal elements, the micro- and macro-communities also contributed to making it a predominant legal stream among Muslims of the rim. This process happened mainly in the sixteenth century. Before that the Indian Ocean and the Mediterranean had been "oceans of laws" with many intermixed legal traditions within the Muslim community. In the course of time, the coastal belts were dominated by Shāfiʿism. From the sixteenth century this was due to the increased mobility of scholars, migrants, warriors, refugees, slaves and prisoners.

The circulation of Shāfiʿite ideas was by no means a one-way journey. Although Middle-Eastern jurists introduced the school to the peripheries, those places soon developed "multiple Meccas" advancing Shāfiʿite ideas, and these led to "reverse journeys" of the ideas of the school back to the centres. This development is further exemplified in the nineteenth-century microcosm of Mecca, where *Fatḥ* attracted at least four commentators. Furthermore, this was not simply a reverse journey, because even scholars who were born and brought up in other peripheries wrote commentaries on such a peripheral text as *Fatḥ*. All these were unprecedented in the *longue durée* of Shāfiʿism. The trajectory of *Fatḥ* and of Shāfiʿism in general in this cosmopolis of law is thus multidirectional and the peripheries were not passive receivers of a legal tradition from a putative centre.

To the history of Islamic law the idea of the fuqahā-estate is crucial for the jurists who had positioned themselves in the Islamic realm, free from political, social and regional influences. Although they did not manage to materialize many elements and claims, the Shāfiʿites did succeed in alienating themselves from the state. None of the authors of the texts under my focus associated with any political entities or took up any state-sponsored position, and they stand in sharp contrast to the "post-Mongol phenomenon" of the successful state over the estate. In relation to this I attempt throughout my research to identify the regional elements, customs and norms of each text. Against the general notion that positive legal texts give no room for such historical analyses of contexts, I shall make a modest attempt towards that end. My main goal in doing so is to "provincialize Islamic law" to the Middle East, inasmuch as its value was conceived and perceived by the peripheral communities.

The long intellectual genealogy of Shāfiʿism, its vast terrain as a cosmopolis of law, the textual *longue durée* from the thirteenth-century *Minhāj* (or from the ninth-century *al-Umm*) to the late-nineteenth-century *Nihāyat* is thus a complex web of people, places, periods and perspectives in which multiple centres emerged, faded and/or functioned simultaneously. Its *dis*continuities fit into the ideas of chaos theory, and this encourages us to look for minor changes in distant times and places capable of generating large effects in other periods or areas in social, historical, and cultural processes.

Samenvatting

In dit proefschrift bestudeer ik de ontwikkeling van islamitische rechtsideeën aan de hand van de verspreidingsgeschiedenis van islamitische wetteksten. Mijn onderzoek bouwt voort op de historiografische observatie dat de islamitische rechtsgeschiedenis wordt gedomineerd door zowel de zogenaamde islamitische "kernlanden" van het Midden Oosten als de zogenaamde "klassieke" periode van de eerste islamitische eeuwen. Om deze eenzijdige benadering te doorbreken, richt ik me in deze studie heel specifiek op de verspreiding van één van de vier islamitische rechtsscholen: de Shafiietische rechtsschool. Het was juist deze rechtsschool, die pas tijdens de post-klassieke periode én juist in de "perifere" kustgebieden van de Indische Oceaan dominant wist te worden.

Al snel na zijn ontstaan bestond de meerderheid van de islamitische gemeenschap uit niet-Arabieren. Dit onderzoek richt zich dan ook op de enigszins verwaarloosde betekenis van deze meerderheid in de constructie van het Shafiietische recht. Ik gebruik daarbij het concept van een "Shafiietische rechtscosmopolis": een gemeenschap van juristen waarbinnen zich een gemeenschappelijk rechtsvocabulaire en een gemeenschappelijke basis voor juridische procedures konden ontwikkelen. Daarnaast hanteer ik voor een goed begrip van de sociale context waarbinnen teksten werden gereproduceerd het nieuwe concept van een *fuqahā-estate*. Hier gaat het om een relatief vrije en autonome gemeenschap van Shafiietische juristen die zich, heel anders dan hun Hanafietische collega's in de post-Mongoolse sultanaten, wel degelijk buiten de greep van de staat wisten te houden.

Hoogtepunten in het doorgaande constructieproces van de Shafiietische rechtsschool waren periodes van relatief intensieve globalisering in de dertiende, de zestiende en de negentiende eeuw. Juist in tijden van toenemende menselijke mobiliteit en interculturele wisselwerking nam de druk op bestaande rechtssystemen toe en werden die, waar nodig en waar mogelijk, aan de veranderende behoeftes aangepast. In deze studie staat dan ook het fluïde karakter van het Shafiietische recht centraal. Dit wordt aangetoond aan de hand van een gedetailleerde analyse van vooral de structuur en de inhoud van vijf wetteksten die voor de verspreiding en ontwikkeling van de Shafiietische rechtsschool van groot belang zijn gebleken.

De eerste tekst is de dertiende-eeuwse *Minhāj al-ṭālibīn* van Yaḥya bin Sharaf al-Nawawi. Nawawi behandelt daarin op diepgravende wijze de ontstaansgeschiedenis van de Shafiietische rechtstraditie. Het bleek een aantrekkelijke tekst omdat allerlei uiteenlopende juridische interpretaties, vooral die tussen de scholen van Baghdad en Khorasan, overzichtelijk in kaart worden gebracht. Juist dit alomvattende, systematische karakter van de *Minhāj* zorgde er waarschijnlijk voor dat deze in de Shafiietische canon werd opgenomen. De canonieke status laat echter onverlet dat de *Minhāj* nadrukkelijk de sporen draagt van de tijd, de omgeving en de persoonlijk opvattingen van de auteur. Op die manier bewerkstelligde deze tekst ook de ingrijpende verandering van diezelfde Shafiietische canon.

Het was vooral in de zestiende eeuw dat Shafiietische ideeën zich over de Indische Oceaan konden verspreiden. Het was ook in deze tijd dat de verschillende Shafiietische rechtsdomeinen meer met elkaar in contact kwamen waardoor er een sterke behoefte aan

zowel systematisering als lokale toepassing ontstond. De Shafiietische rechtsschool verspreidde zich verder langs de kustgebieden van de Indische Oceaan, maar begon daar nu pas als dominante school wortel te schieten. Dit geschiedde op de eerste plaats door de toenemende mobiliteit van o.a. handelaren, pelgrims en geleerden, maar ook door het ontstaan en de verspreiding van juridische commentaren. In mijn proefschrift behandel ik vier van deze commentaren.

Het eerste, wellicht meest karakteristieke commentaar van deze tijd betreft de in Mekka geschreven *Tuḥfat al-muḥtāj* van Ibn Ḥajar al-Haytami. Het Mekkaanse karakter en de complexe methodiek van deze tekst lokte echter nieuwe interpretatieconflicten uit en maakte de tekst buiten de Arabische wereld niet erg aantrekkelijk. Dankzij de toegenomen mobiliteit van Arabische groepen en de toevloed van niet-Arabische moslims naar Mekka kon de *Tuḥfat* zich toch over de Indische Oceaan verspreiden.

Een van de schrijvers uit de zogenaamde periferie die reageerde op veel van de ideeën van de *Tuḥfat* was mogelijk een student van de auteur. Het gaat om de *Fatḥ al-muʿīn* van Zayn al-Din al-Malaybari uit India. Malaybari schreef een vereenvoudigde versie en een korte samenvatting van de zo complexe *Tuḥfat*. Bovendien gaat hij daarbij heel specifiek in op de juridische problemen van moslims buiten de islamitische kerngebieden van het Midden Oosten. De populariteit van deze niet-Mekkaanse *Fatḥ* laat zien hoe de wet in de zogenaamde islamitische periferie een autonome ontwikkeling kon doormaken. Net als eerder bij de *Minhāj* en de *Tuḥfat*, blijkt ook de *Fatḥ* een product van de tijd, de omgeving en de persoonlijke opvattingen van de auteur. Bovendien creëerde de *Fatḥ* een geheel eigen dynamiek doordat het weer twee andere invloedrijke commentaren voortbracht: de negentiende-eeuwse *Nihāyat al-zayn* van de Javaanse geleerde Nawawi al-Bantani en de *Iʿānat al-ṭālibīn* van de in Mekka werkzame Sayyid Bakri. Ook in deze twee commentaren zien we opnieuw hoe de juridische interpretaties aan de specifieke behoeftes van tijd en ruimte werden aangepast. Dit alles rechtvaardigt de conclusie dat niet alleen de meer bekende Arabische juristen uit Jemen en de Hadramaut, maar ook de tot nu toe obscuur gebleven juristen uit de zogenaamde islamitische periferie, i.e. van het post-klassieke Zuid- en Zuidoost-Azië, een significante bijdrage hebben geleverd aan de ontwikkeling van het Shafiietisch recht. Alleen door het islamitische recht te historiseren en te provincialiseren kunnen we de islamitische rechtsgeschiedenis ontdoen van het nog steeds vigerende Arabo-centrisme. Het resultaat is een geheel nieuw perspectief van vele kleine Mekka's, met elkaar verbonden, maar ook met ieder een eigen dynamiek!

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Curriculum Vitae

Mahmood Kooriadathodi was born on 18 March, 1988 in Puzhakkattiri in Kerala, India. He pursued his undergraduate and post-graduate studies at Darul Huda Islamic University, University of Calicut, Jawaharlal Nehru University and Leiden University. Currently he is a research fellow at the International Institute for Asian Studies (IIAS) and African Studies Centre (ASC), Leiden. He has published a few articles and has edited a volume with Michael Pearson entitled *Malabar in the Indian Ocean: Cosmopolitanism in a Maritime Historical Region* (Oxford University Press, 2017).

Propositions

1) Circulation of Islamic ideas intensified across the Indian Ocean and the Eastern Mediterranean worlds in the increasing globalizations of the thirteenth, sixteenth and nineteenth centuries with significant impacts on Shāfiʿīsm. It enabled and strengthened a "cosmopolis of Shāfiʿīte law" with shared legal vocabularies, texts, ideas and practices.

2) In "the post-classical phase" of Islamic law the thirteenth-century *Minhāj* systematized, structured and hierarchized the diverse rulings of the Shāfiʿīte school. By doing so it became the canon of the school.

3) If *Minhāj* demonstrates canonical authority, its sixteenth-century commentary *Tuḥfat* shows a commentarial authority. Its indirect summary *Fatḥ* inserted a "peripheral" voice to the textual *longue-durée* as an emblem of the multidirectional journeys of Islamic law. *Nihāyat and Iʿānat* in the nineteenth century furthered such journeys with multiple syntheses of geo-legal divisions.

4) Crucial to the circulation of Islamic legal texts was the fuqahā-estate that believed in its autonomy vis-à-vis the state and the larger laity. Its idea of a powerful estate and a powerless state was not very different from the contemporaneous European royal-religious linkage.

5) Global History is one way towards becoming a global citizen, provided that one does not label one's insularity as global.

6) History (and Humanities and Social Sciences in general) is a way to get out of one's comfort zones, as if it is a study "by infidels for infidels" (Crone and Cook, 1977: viii). Only that the line between fidelity and infidelity is too thin.

7) If a butterfly in Brazil can really cause a Tornado in Texas, Mathematics can provide a most useful framework to analyse the past across period and place.

8) Historically citations and footnotes are political, economic, diplomatic and/or parochial.

9) Minority rules the majority, be it in democracy, colonialism, or Islamic law. Otherwise, England and Holland would not have been so small.

10) Not only do comparisons make one unhappy; connections too cause sorrow *in time*.

11) Just as Shāfiʿīte text-centrism emerged in the tenth century, when students had to produce a *taʿlīq* ("doctoral dissertation") defending the school's opinions based on previous texts, so also this dissertation on the circulation of such texts may be seen as nothing more than a *taʿlīq*.