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## **Cosmopolis of law: Islamic legal ideas and texts across the Indian Ocean and Eastern Mediterranean Worlds**

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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 Qur’ān 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 *kitābs* through the mediation of ‘*ulamā*’. 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 Qur’ān 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, Shāfi‘ism.

The prime focus will on *Minhāj al-ṭālibīn* of Yaḥyā bin Sharaf al-Nawawī, a thirteenth-century legal manual of Shāfi‘ism, and then by extension on some texts which function as a commentary, supercommentary or summary: *Tuḥfat al-muḥtāj* of Ibn Ḥajar al-Haytamī; *Fath al-mu‘īn* of Zayn al-Dīn al-Malaybārī; *Nihāyat al-zayn* of Nawawī al-Bantanī; *I‘ānat 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 Shāfi‘ite 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 Shāfi‘ism 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 Shāfi‘ī 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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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<sup>1</sup> 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).

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

<sup>3</sup> Shelomo D. Goitein, *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza* (Berkeley: University of California Press 1967).

<sup>4</sup> Gerald R. Tibbetts, *Arab Navigation in the Indian Ocean before the Coming of the Portuguese being a Translation of Kitāb al-fawā'id fī uṣūl al-baḥr wa-l-qawā'id of Aḥmad b. Mājīd 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.<sup>5</sup> 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.<sup>6</sup> 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 Shāfi‘īsm among coastal Muslims.<sup>7</sup> Shāfi‘īsm 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.<sup>8</sup> 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 Shāfi‘ī 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 Shāfi‘īsm spread and developed around the rims of the Indian Ocean and the Eastern Mediterranean.

Another major problem arises when looking into the historiographies of Shāfi‘īsm 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.<sup>9</sup> 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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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> See for example: ‘Abd al-Ghafūr ‘Abd 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.

<sup>9</sup> 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-Islām* as early as 850 CE or even earlier.<sup>10</sup>

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-tashrī‘ 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 (*madāhib*), and finally the era of imitation (*taqlīd*).<sup>11</sup> Whatever comes afterwards is less interesting in *tārīkh al-tashrī‘*. 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-tashrī‘* 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 Shāfi‘ism 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.<sup>12</sup> 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 Shāfi‘ism and trace how it is trajected into the thirteenth, fifteenth and nineteenth centuries respectively.<sup>13</sup> Yet, it is all an

<sup>10</sup> 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 9<sup>th</sup> 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.

<sup>11</sup> For example, see Muḥammad Khuḍarī, *Tārīkh al-tashrī‘ al-Islāmī* (Cairo: Dār al-Fārūq li all-Istithmārāt al-Thaqāfiyat, 2009); Mannā’ Khalīl al-Qaṭṭān, *al-Tashrī‘ wa al-fiqh fī al-Islām: Tārīkh wa manhaj*, and ‘Iddat Jalūl Muḥammad, *Madkhal lī dirāsāt al-tashrī‘ al-Islāmī* (Wahrān : Dār al-Gharb lī al-Nashr wa al-Tawzī‘, 2005); ‘Abd al-Raḥmān Ṣābūnī, Khalīfah Bābīkr and Maḥmūd Muḥammad Ṭanṭāwī, *al-Madkhal al-fiqhī wa tārīkh al-tashrī‘ al-Islāmī* (Cairo: Maktabat Wahbah, 1985).

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

<sup>13</sup> Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā b. Sharaf al-Nawawī in the Shāfi‘ī 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.<sup>14</sup> 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 Shāfi'īte fiqh, while K. Mohammed Bahauddeen discusses contributions from the whole of India.<sup>15</sup> Through a descriptive approach both these dissertations survey many Shāfi'ī legal texts produced locally, mainly on the Malabar Coast. They are disconnected from the existing academic discourses on Islamic law in general or on Shāfi'īte law in particular and they resemble the style of the archaic *ṭabaqāt*-literature of the school. Indeed, there are three proper *ṭabaqāt*s, 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.<sup>16</sup> Still, both studies function as a good starting point and help us understand many biographical and bibliographical details of Indian Shāfi'īte 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”.<sup>17</sup> 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).

<sup>14</sup> Heinz Halm, *Die Ausbreitung der safi'ītischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert* (Wiesbaden: Ludwig Reichert, 1974).

<sup>15</sup> Ḥusayn C.S., “*Musāhamāt 'ulamā' Kayralā fī al-adab al-fiqh bī al-lughat al-'Arabiyyat*” (PhD diss., University of Calicut, 2004); K. Mohammed Bahauddeen, “The Development and Impact of Shāfi'ī School of Jurisprudence in India” (PhD diss., Jamia Millia Islamia, 2011).

<sup>16</sup> Aboe Bakar Djajadiningrat, *Tarājim 'Ulamā' Jāwa*, Leiden University Special Collections, Or. 7111; K.H. Siradjuddin Abbas, *Ulama Syafi'i dan Kitab-Kitabnya* (Jakarta: Pustaka Tarbiyah Baru, 2012 [1975]); 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).

<sup>17</sup> 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-Shāfi‘ī’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.<sup>18</sup> 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 (*hajj*).<sup>19</sup> 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.<sup>20</sup> 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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<sup>18</sup> Renaudot, *Ancient accounts*, 7-8; Sauvaget, *Ahbār aṣ-ṣīn*, 7.

<sup>19</sup> Abū Dāwūd Sulaymān ibn al-Ash‘ath al-Sijistānī, *Sunan*, ed. Shu‘ayb al-Arna‘ūt and Muḥammad Kāmil Qurah Balālī (Beirut: Dār al-Risālat al-‘Ālamiyyat, 1994), 4: 145-146, no. 2489.

<sup>20</sup> 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 Qur’ān and its exegesis (*tafsīr*); *ḥadīth* and related sciences (*‘ulūm al-ḥadīth*); theology (*al-kalām*); mysticism (*taṣawwuf*). The Qur’ān *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 *ḥadīths* 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 Shāfi‘ism 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 Shāfi‘ite *fiqh* texts deal with four legal concerns about social and religious life: rituals; commerce; marriage; crime.<sup>21</sup> The scholars and the texts discussed those themes referring to the past, the present and the future.<sup>22</sup>

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 *I‘ānat 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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<sup>21</sup> ‘Abd al-Wahhāb Ibrāhīm Abū Sulaymān, *Tartīb al-mawḍū‘āt al-fiqhiyyat wa munāsabatuh fi al-madhāhib al-arba‘t* (Mecca: Jāmi‘at Umm al-Qurā, 1988), 59-69.

<sup>22</sup> 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.”<sup>23</sup> 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.”<sup>24</sup> 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”.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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*, *istihsān* (juristic equity) and *urf* (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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<sup>23</sup> C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning* (Leiden: Brill, 2007), 205.

<sup>24</sup> H.A.R. Gibb, *Mohammedanism: A Historical Survey* (Oxford: Oxford University Press, 1949), 71.

<sup>25</sup> 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.

<sup>26</sup> Haim Gerber, *Islamic Law and Culture, 1600-1840* (Leiden: Brill, 1999).

<sup>27</sup> Wael Hallaq, “Was the Gate of Ijtihad Closed?,” *International Journal of Middle East Studies* 16, no. 1 (1984): 3-41.

<sup>28</sup> 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.<sup>29</sup>

With regard to Shāfi'ism, the works of Fachrizal Halim, Mathew Ingalls, Aaron Spevack, and Alex Wijoyo represent this same trend.<sup>30</sup> Looking at the lives and careers of four eminent figures of the Shāfi'ite 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 Shāfi'ite biographical dictionaries from the Mamlūk era.<sup>31</sup> 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 Shāfi'ite 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]."<sup>32</sup> 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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<sup>29</sup> 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-Qarāfi*. (Leiden: Brill, 1996).

<sup>30</sup> 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).

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

<sup>32</sup> 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-ra’y*), who preferred legal rationality and a context-based analogical deduction (*qiyās*), juristic preference or equity (*istiḥsān*), consensus of opinion (*ijmā’*) and local custom (*urf*). 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-Shāfi‘ī (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 Shāfi‘ism, but there emerged against it the more traditional legal thought of Aḥmad bin Ḥanbal (780–855).<sup>33</sup> 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. Ja‘far al-Ṣādiq (c. 702–765), the founder of Shī‘ite Ja‘farism, was a teacher of Abū Ḥanīfa; al-Shāfi‘ī was a student of Mālik bin Anas; Aḥmad bin Ḥanbal was a student of al-Shāfi‘ī. Such connections and disconnections mirror the pattern of the later tradition of Islamic law, and particularly of Shāfi‘ism: 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 *madhhab* 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 *madhhab* openly contradicted some specific rules of the *muḥtadid-imām* in terms of concrete rules.<sup>34</sup> Sometimes jurists contradicted the eponymous fathers of their own *madhhab* or of other *madhabs* as much as they criticized other older scholars.

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

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

<sup>34</sup> 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.<sup>35</sup> For the Shāfi'ite school, he mentions around ten summaries or commentaries on al-Shāfi'ī'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.<sup>36</sup>

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 (*madrasas*) 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”.<sup>37</sup> 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 Jamā'at (1241-1333), a thirteenth-century Shāfi'ite scholar, wrote about this practice:

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<sup>35</sup> Ibn al-Nadīm, *al-Fihrist*, ed. Ibrāhīm Ramaḍān (Dar al-Ma'rifat, 1994), 247-292 on legal texts of all schools; on the Shāfi'ite texts, 259-265; cf. idem, *Kitāb al-fihrist*, ed. Ayman Fu'ād Sayyid (London: Al-Furqan Islamic Heritage Foundation, 2009).

<sup>36</sup> Cl. Gilliot, “Sharḥ,” *Encyclopaedia of Islam*, 2<sup>nd</sup> ed.

<sup>37</sup> John L. Esposito, “Sharḥ” and “Ḥāshiya,” *The Oxford Dictionary of Islam*.

There is nothing wrong with writing important notes (*ḥawāshī, fawā'id, 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.<sup>38</sup>

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.”<sup>39</sup> 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.”<sup>40</sup> As for Shāfi'īsm, 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.<sup>41</sup> When surveying the Shāfi'īte *ḥawāshī*, Ahmed El Shamsy demonstrated the importance of this genre to understand trends and evolutions in Islamic legal scholarship.<sup>42</sup>

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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<sup>38</sup> Cited in Franz Rosenthal, “Hāshiyā,” *Encyclopaedia of Islam*, 2<sup>nd</sup> ed.. The original quote can be found in Muḥammad ibn Ibrāhīm Ibn Jamā'at, *Taḍkirat al-sāmi' wa al-mutakallim fī adab al-'ālim wa al-muta'allim* (Beirut: Dār al-Bashā'ir al-Islāmīyah, 2012), 133-34.

<sup>39</sup> Jackson, *Islamic Law and the State*, 7.

<sup>40</sup> Abdur Rahim, *The Principles of Muhammadan Jurisprudence according to the Hanafi, Maliki, Shafi'i and Hanbali Schools* (London: Lucaz, 1911), p. 33.

<sup>41</sup> Halim, *Legal Authority*.

<sup>42</sup> Ahmed El Shamsy, “The Hāshiyā in Islamic Law: A Sketch of the Shāfi'ī Literature,” *Oriens* 41, no. 3-4 (2013) 289–315.

commentary”.<sup>43</sup> For our purposes, the number of intellects increases as the number of commentaries increases. Against this background, I shall attempt 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 Shāfi‘ī 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.<sup>44</sup> 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.<sup>45</sup> More precisely, we need to know how Islamic law of one school (Shāfi‘īsm) 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 Shāfi‘īsm 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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<sup>43</sup> 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.

<sup>44</sup> For example, see Brannon Wheeler, “Touching the Penis in Islamic Law,” *History of Religions*, 44, no. 2 (2004), 89-119.

<sup>45</sup> 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-‘Ālamgīriyya*,” in *Iran and Islam: In Memory of the Late Vladimir Minorsky*, ed. C.E. Bosworth (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 Shāfi‘ī 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”.<sup>46</sup> 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.<sup>47</sup> Sebastian Prange also studied premodern Arab-Islamic networks of the Indian Ocean, but with a focus on Malabar, a micro region.<sup>48</sup> Azra mapped scholarly networks of the Malay world in the seventeenth and eighteenth centuries focusing on the contributions of Acehnese and Makassari scholars.<sup>49</sup> Hussin has compared the Islamic legal reforms in the nineteenth- and

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<sup>46</sup> 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.

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

<sup>48</sup> 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).

<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> If we leave aside the mathematical algorithm, it

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<sup>50</sup> 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).

<sup>51</sup> 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.

<sup>52</sup> 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.<sup>53</sup>

These long processes of continuity and minuscule changes which have large future impacts have been analysed by Talal Asad from 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.<sup>54</sup> 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

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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.

<sup>53</sup> 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*.

<sup>54</sup> 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 Shāfi‘īsm.

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.<sup>55</sup> 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 empire 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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<sup>55</sup> 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.<sup>56</sup> 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...<sup>57</sup>

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.”<sup>58</sup> 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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<sup>56</sup> Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: Chicago University Press, 1992).

<sup>57</sup> Cited in Toulmin, *Cosmopolis*, 66

<sup>58</sup> Toulmin, *Cosmopolis*, 67.

chapter.<sup>59</sup> 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 surveyed by Jos Gommans.<sup>60</sup> 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.<sup>61</sup>

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 Shāfi'ite 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 Shāfi'ite 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 'ulamā' 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 'ulamā' dealt with knowledge-production in those lands.<sup>62</sup>

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<sup>59</sup> 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*.

<sup>60</sup> 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.

<sup>61</sup> Pollock, *Language of the Gods*, 12.

<sup>62</sup> 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 *‘ulamā’-a’yān* 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 *hāshiyats* make it clear that textual transmission stands very close to the concerns of book history. I shall explore not only intellectual transmission through Shāfi‘ite 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.<sup>63</sup> 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.<sup>64</sup> 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).

<sup>63</sup> 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.

<sup>64</sup> 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 ‘Adī,” *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.<sup>65</sup> 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 Ashrafiya Library in Damascus.<sup>66</sup> 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 distributors of Arabic texts; Omar Khalidi explained this well in his guide to the Arabic and Persian manuscript-collections in India.<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> 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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<sup>65</sup> Franz Rosenthal, *The Technique and Approach of Muslim Scholarship* (Rome: Pontificium Institutum Biblicum, 1947).

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

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

<sup>68</sup> In Pfeiffer's works the references to South Asia are mostly in passing, whereas 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*.

<sup>69</sup> 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.<sup>70</sup> I shall attempt to trace some aspects of this maritime movement of texts, particularly of Shāfi'ite 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.<sup>71</sup>

## 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 Shāfi'ism 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 Shāfi'ite 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), *Fath* of Zayn al-Dīn al-Malaybārī (sixteenth-century, Malabar), *I'ānat* 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 *Majmū'*, Ibn Ḥajar's *Fatāwā*, al-Malaybārī's *Ajwibat al-'ajibat*, 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-Banjārī'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.<sup>72</sup> 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*, *tahḍīb* were my major literary sources, and of those I made significant use of Nawawī's *Tahḍīb al-asmā' wa al-lughāt*, Ibn 'Aṭṭār's *Tarjmat al-Nawawī*, the *Ṭabaqāts* of Shāfi'ite jurists written by Ibn Ṣalāḥ, Tāj al-Dīn 'Abd al-Wahhāb bin 'Alī al-Subkī, Ibn Qāḍī Shuhbah and Abū Bakr al-Muṣannif. The *ṭabaqāts* with regional specializations have also been useful, such as the one on Yemen

<sup>70</sup> 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.

<sup>71</sup> 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).

<sup>72</sup> 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-Ja'dī. The sixteenth-century accounts of Mecca *Bulūgh al-qirā'* and *Ghāyat al-marām* of 'Izz al-Dīn 'Abd al-'Azīz, *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 'Umar 'Abd 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 Shāfi'ite 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 'Ulamā' 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 Shāfi'ism 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*, *Fath*, *Nihāyat* and *I'ānat* 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.<sup>73</sup> But I do wish to pinpoint the dangers engendered in that methodology, especially since traditional scholars point out mistakes in “critical editions”.<sup>74</sup> 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.<sup>75</sup>

<sup>73</sup> Taking cue from McGann, *Modern Textual Criticism*, 4-5.

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

<sup>75</sup> 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.<sup>76</sup> 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; *furū' 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 *furū' 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 *furū' 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 *furū' 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*.<sup>77</sup> 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, Shī'ite and Ibādī schools, or only with members of one particular school. If there were many schools, I call them a "cluster", such as the Shāfi'ite 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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<sup>76</sup> See for example: Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991), who gives those quotations of Dias and Julius Stone.

<sup>77</sup> 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 Shāfi‘ītes 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*.<sup>78</sup> 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 Shāfi‘īsm across national, continental and even oceanic borders. Yet the differences within this “Shāfi‘īte 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 Shāfi‘īsm 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/Shāfi‘īte 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.<sup>79</sup> 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. Shāfi‘īsm is the best example for the continuum between the Eastern

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<sup>78</sup> 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.

<sup>79</sup> 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.<sup>80</sup> 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 Shāfi‘ites 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 Shāfi‘ism; 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 Shāfi‘ism 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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<sup>80</sup> 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 Shāfi'ite 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 Shāfi'ite 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 Shāfi'ite 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 Shāfi'ized as much as the school was Meccanized, raising protests from a Cairene Shāfi'ite cluster. The school became divided, with a Meccan version against a Cairene one. The Shāfi'ites 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-mu'īn* 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 Shāfi'ism. This factor also contributed to its successful reception among the later Shāfi'ites.

Two works written after Zayn al-Dīn's work represent its success: *Nihāyat al-zayn* by Nawawī al-Bantanī al-Jāwī and *I'ānat 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 Shāfi'ism. Cultural, intellectual and geographical divisions were to be reconciled, and the *Nihāyat* and the *I'ānat* 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 Shāfi‘ism 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.