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

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Chapter 1

Textual *Longue-durée* of Islamic Law

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

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

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

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

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

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

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

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

Islamic Law, Micro-Networks and Schools

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fuqahā-Estate: An Abode of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Al-Umm and *Mukhtaṣar*: Common Ancestry

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tanqīḥ Family

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

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[53] Nawawī, *Tahḏīb al-asmāʾ*, 1: 3.

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

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

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

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

Tanbīh Family

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

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

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

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

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

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

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

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

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

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

[61] al-Shīrāzī, *Ṭabaqāt*, 124.

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

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

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

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

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

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

Muhaḏḏab Family

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

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

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

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

[69] al-Subkī, *Ṭabaqāt*, 4: 228-229.

[70] al-Subkī, *Ṭabaqāt*, 4: 222.

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

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

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

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

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

Ghāyat Family

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

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

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

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

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

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

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

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

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

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

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

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

Wasīṭ Family

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

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

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

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

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

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

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

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

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

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

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

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

[86] al-Ghazālī, *al-Wasīṭ*, 1: 103.

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

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

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

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

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

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

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

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

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

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

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

[95] al-Ghazālī, *Jawāhir*: 22.

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

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

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

Minhāj Family

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

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

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

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

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

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

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

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

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

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

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

Final Remarks

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

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

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

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

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