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

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Chapter 2

The Law of God in the World of Men

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

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

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

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

Fuqahā-Estate and its Autonomy

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

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

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

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

² From a passage cited from al-Shāfi‘ī by Muzanī, we see *fiqh* being counted as a separate discipline, like Qur’ānic exegesis, language studies, mathematics and *ḥadīths*. The eleventh-century Shāfi‘īte Khaṭīb al-Baghdādī (1002-1071) amasses many earlier opinions related to the definition and subject matter of *fiqh* as a clear discipline dedicated to the study of divine law; see Khaṭīb al-Baghdādī, *Ṣaḥīḥ al-faqīh wa al-mutaḥaqqiqh*, ed. ‘Ādil Ibn-Yūsuf al-‘Azzāzī (Riyadh: Dār al-Waṭan, 1997), especially 36-37.

³ Ibn Taymiyyat, *al-Siyāsāt al-shar‘iyyat* with its *Sharḥ* by Muḥammad bin Ṣāliḥ al-‘Uthmāyṅ, ed. Ṣāliḥ ‘Uthmān al-Laḥḥām (Beirut: Dār Ibn Hazam and Dār al-‘Uthmāniyyat, 2004)

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

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

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

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

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

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

⁷ Green, "Comparative Historical Analysis," 36.

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

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

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

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

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

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

¹⁰ Makdisi, “Guilds of Law,” 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁹ Tāj al-Dīn 'Abd al-Wahhāb ibn 'Alī al-Subkī, *Ṭabaqāt al-Shāfi'īyyat al-kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāhī and 'Abd al-Fattāh Muḥammad al-Ḥulw (Cairo: Maṭba'at 'Īsā al-Bābī al-Ḥalabī) 6: 202, 216.

²⁰ al-Ghazālī, *al-Ghazālī, Jawāhir al-Qur'ān wa duraruh* (Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīda, 1988): 20-21.

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

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

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

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

State and Estate

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

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

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

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

²⁵ Jackson, *Islamic Law and the State*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³⁶ Cited in Jackson, *Islamic Law and the State*, 33, 55

³⁷ On al-Tamīmī al-Ghazzī, see: Guy Burak, *Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015), 111-118; on al-Fārūqī al-Ramlī, Burak, *passim*; Kenneth M. Cuno, “Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Hanafi School,” *Studia Islamica*, 81 (1995): 121-152

³⁸ Burak, *Second Formation*.

³⁹ A gist of Burak’s argument is made earlier by Rudolph Peters in a short article, “What Does It Mean to Be an Official Madhhab? Hanafism and the Ottoman Empire,” in *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Baerman, Rudolph Peters, and Frank E. Vogel (Cambridge, MA: Islamic Legal Studies Programme, 2005), 147-158. But he does not generalize this as a post-Mongol development which happened all over the Islamic world, but rather confines himself to the Ottoman Ḥanafite context.

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

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

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

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

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

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

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

⁴¹ The quoted phrases are from Peters, “What Does it Mean to Be an Official Madhhab?,” 147

⁴² For an elaboration, see: Maribel Fierro, “The Qāḍī as Ruler” in *Saber religioso y poder político en el Islam* (Madrid: Agencia Española de Cooperación Internacional, 1994), 71–116; and her one reference: 'Abd al-Jalīl, “Kayfa sa'da fuqahā' al-Andalūsiyyūn: Yusūf bin Tashfin 'alā khal' mulūk al-tawā'if,” *Actas del IV Coloquio Hispano-Tunecino (Mallorca 1978)* (Madrid: Instituto Hispano-Arabe de Cultura, 1983): 7-24.

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

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

Loci of Legalistic Transmissions

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

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

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

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

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

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

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

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

⁴⁵ Jackson, *Islamic law and the state*.

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

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

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

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

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

⁴⁷ Gibb translated the term *fuqahā* as theologians, which is certainly inappropriate. He also avoided the sentences about the sultan and his subjects being Shāfi‘ītes. See Ibn Battuta, *Travels in Asia and Africa, 1325-1354*, trans. and selected by H.A.R. Gibb (London: George Routledge & Sons, LTD, 1929), 274. For the original sentences and terms, see: Abū ‘Abd Allāh Muḥammad bin ‘Abd Allāh Ibn Baṭṭūṭa, *Riḥlat Ibn Baṭṭūṭa: Tuḥfat al-nuẓẓār fī gharā’ib al-amṣār wa-‘ajā’ib al-asfār*, ed. Muḥammad ‘Abd al-Mun‘im al-‘Uryān and Mustafā al-Qaṣṣās (Beirut: Dār Ihyā’ al-‘Ulūm, 1987), 631-32.

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

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

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

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

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

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

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

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

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

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

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

⁵² Azyumardi Azra, *The Origins of Islamic Reformism in Southeast Asia: Networks of Malay-Indonesian and Middle Eastern ‘Ulamā’ in the Seventeenth and Eighteenth Centuries* (Honolulu: University of Hawai‘i Press, 2004), 95-96.

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

⁵⁴ A telling example comes from the Philippines. In the legal codes of the Sulu and Maguindanao Sultanates drafted in the eighteenth (and revised in the nineteenth century), the Shāfi‘īte texts, *Mir’āt al-tullāb* of ‘Abd al-Ra’ūf Sinkilī and *Minhāj* were primary sources.

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

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

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

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

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

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

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

Regional Customs as Laws of Islam

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

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

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

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

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

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

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

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

⁶¹ For a few traditional narratives, see: ; Aḥmad 'Abd al-Salām al-Indūnīsī, *al-Imām al-Shāfi'ī fī maḍhabayhi al-qadīm wa al-jadīd* (Cairo: 'Abd al-Salām, 1988), 433-605; Limīn Nājī, *al-Qadīm wa al-jadīd fī al-fiqh al-Shāfi'ī* (Riyadh: Dār Ibn al-Qayyim, 2007); Muḥammad ibn Radīd Mas'ūdī, *al-Mu'tamad min qadīm qawl al-Shāfi'ī 'alā al-jadīd* (Riyadh: Dār 'Ālam al-Kutub, 1996). Particularly in the case of *Minhāj*'s prioritization of old views over the new ones, see: Muḥammad Sumay'ī Sayyid 'Abd al-Raḥmān Rastāqī, *al-Qadīm wa al-jadīd min aqwāl al-Imām al-Shāfi'ī min khilāl kitāb Minhāj al-ṭālibīn: dirāsah muqāranat bi-ashhar al-maḍāhib al-fiqhīyat* (Beirut: Dār Ibn Ḥazm, 2005).

⁶² The first work is mentioned in al-Subkī, *Ṭabaqāt* 7: 183; Ḥajī Khalīfah Muṣṭafā Ibn 'Abd Allāh, *Kashf al-zunūn 'an asāmī al-kutub wa al-funūn* (Beirut: Dār al-Kutub al-'Ilmīyat, 2008), 1: 35, and the second one in: Shams al-Dīn Muḥammad al-Dahabī, *Siyar al-ālam al-nubalā'*, 14: 20: 463.

⁶³ Abū Muḥammad 'Abd Allāh al-Shamrānī, *Is'āf ahl al-'aṣr bi-aḥkām al-baḥr: Awwal mawsū'at fiqhīyah shāmilat li-aḥkām al-baḥr: aḥkām al-'ibādāt* (Riyadh: Dār al-Waṭan, 1999): 11.

⁶⁴ A only exception would be Mallat, “From Islamic to Middle Eastern Law”

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

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

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

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

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

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

Final Remarks

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

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

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

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