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

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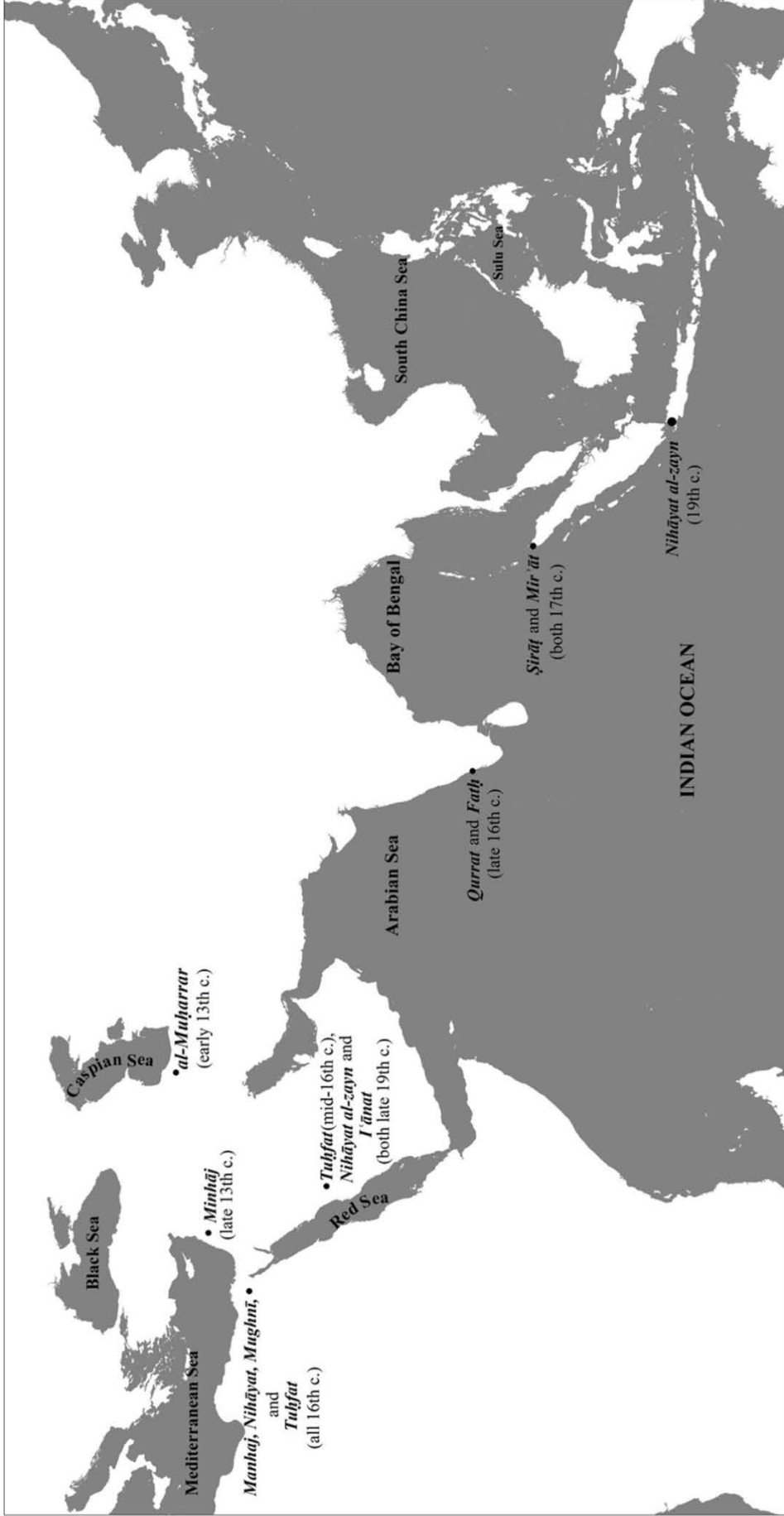


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MAP 4. Distribution of the major Shāfiʿite texts discussed in the book.

Section Two
The Texts

Introductory Remarks

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

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

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

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