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

Kooriadathodi, M.

Chapter 4

Minhāj: Its Word and World

In *sharḥ* embraced Nawawī's *Minhāj*
Refinement of rules and sharīʿat
Stays the text with no equivalent
Spurs all narrators with exegesis
—al-Ahdal, *Sullam al-mutaʿallim*: 619

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

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

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

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

I.

Genealogy Connected

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

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

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

[2] ʿAzīz, "Ḥayāt al-Imām," 302.

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

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

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

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

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

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

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

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

Nawawī: Profile as the Author of *Minhāj*

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

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

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

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

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

[11] Ibn al-ʿAṭṭār, *Tuḥfat*.

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

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

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

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

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

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

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

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

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

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

Career of *Minhāj*: An Internal Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[32] Nawawī, *Minhāj*, 66.

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

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

Minhāj puts the same discourse in a different way:

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

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

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

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

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

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

[35] Nawawī, *Minhāj*, 64-65.

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

Constructing the Legacy

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

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

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

[37] *Minhāj*, ed. al-Ḥaddād, 13

[38] Ibn al-ʿAṭṭār, *Tuḥfat*, 47.

[39] al-Sakhāwī, *al-Manhal*, 29.

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

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

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

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

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

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

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

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

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

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

[45] al-Subkī, *Ṭabaqāt*, 8: 398.

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

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

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

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

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

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

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

II.

Politics of the State versus Estate

The context of *Minhāj*'s author is Damascus at a time of many drastic socio-political changes. Earlier in this chapter I mentioned that Nawawī was born in Nawā, which once was an important Islamic educational centre and had been noted in the narratives of pre-Muḥammadan prophets of Islam. But the place's significance had decayed in the thirteenth century due to the political decline of Seljūq Turks, who had earlier patronized and confirmed some stability for Syrian political and economic aspirations. After the Seljūqs, the Ayyūbids and Mamlūks took control of the region in sequence. Since both these kingdoms shifted their capital to Egypt, the minor regions of the Eastern Mediterranean lost their geopolitical importance to the new centres of political economy. In 1225, the contemporary historian Yāqūt al-Ḥamawī remarked that Nawā is "a small town of the Ḥawrān", though earlier it was the capital of the region.[49] That is why Nawawī moved from Nawā to Damascus, which still had not lost its prime position in Islamic scholarly networks. He spent almost his entire life in the Levant or the Eastern Mediterranean hinterlands. Damascus contributed immensely to his intellectual development.

This time of many transitions for almost all socio-cultural and economic realms of the Levant saw the mantle of political structures getting crushed. The three-century long era of the ʿAbbāsid Caliphate in particular and the glory of Arab political-cultural power centred in Baghdad in general were brought to an end by the attacks of the Mongols. The outer core of social structures was affected by the collapse of political power, though not deeply. When Nawawī arrived in Damascus in the early 1250s, not only were the ʿAbbāsid-Mongol wars tightening around Transoxiana and Khurasan leading to the final sacking of Baghdad, but also the Seventh Crusade was intensifying, the Ayyūbid dynasty of Syria and Egypt was collapsing, the Mamlūks were rising to power, with many external hindrances from the amīrs at Damascus and internal strife in which the first queen Shajar al-Durr (d. 1257) and sultan ʿIzz al-Dīn Aybak (d. 1257) caused each other's death. Just before the final fall of the ʿAbbāsids, while the military of the caliphate was busy fighting the Mongols outside the capital, Baghdad as such was in a peaceful state. Educational and intellectual activities were in full strength. The intellectual rivalry within its fuqahā-estate between the members of the Shāfiʿīte and the Ḥanafīte clusters had become more vehement in its academies, creating undercurrents among all the Middle Eastern legalists. Standing on either side, the

[49] Shihāb al-Dīn Abū ʿAbd Allāh Yāqūt al-Ḥamawī, *Kitāb Muʿjam al-buldān* (Beirut: Dār Ṣādir, 1977), 5: 306.

intelligentsia came out more openly to support their school and oppose the other. Some of them wrote books specifically highlighting the qualities of their school over their opponent's. The ensuing intellectual conflicts between the Sunnī and Shīʿīte clusters from 1258 to 1386 added another aspect to the debate.[50] Once the caliphate collapsed, it is doubtful to what extent the fuqahā-estate was worried or even concerned about the fall of *just one* political structure. They had their own reasons to keep their eyes closed, as the rulers had hardly paid attention to their prime concerns earlier. For example, when the crusaders captured Jerusalem more than a century ago, the then caliph Aḥmad al-Mustaẓhir (d. 1118) did not care about it at all and the Qāḍī of Aleppo incited people to violence, and they eventually broke the pulpit and throne of the caliph into pieces.[51] In other words, the fuqahā-estate and state were functioning independently from each other with their own respective concerns. The notion that the estate immediately paid attention to the fall of caliphate by abandoning their intellectual concerns would be false. Although many members of the estate were massacred during the Mongol invasions, they remained as a group with internal rivalries at their core.

Nawawī's immediate responses to such developments are unknown as he was just a student, but certainly these historical circumstances influenced *Minhāj*'s legalist articulations. During his education and afterwards he renounced any political structures, unlike his colleagues who always sought some kind of *mansab*. Though *al-Muḥarrar* had also been written in the thirteenth century, it was under cultural and political circumstances completely different from the ones surrounding *Minhāj*. When the former was penned the Islamic Caliphate was still in power. That was not the case with the latter, and this shift in the political scenario had implications for the legal conceptualizations of *Minhāj*.

Nawawī was more inclined to side with beliefs in the autonomy and independence of the fuqahā from the influences of the state. The only attachment with power-structures that he had was through his teachers who provided him with lodging and a stipend. By the 1260s, Damascus had come under the Mamlūks, who controlled the city and its surroundings through a governor. The Mamlūk sultan Baybars is supposed to have said of Nawawī that he was afraid of the rulings Nawawī might announce.[52] In a letter to the sultan who threatened the Damascene ʿulamāʾ for their lack of attention to the war against the non-Muslims, Nawawī wrote: "I am not worried about your threats or [about anything] bigger than that." He further wrote: "It is mentioned in the reply [to my previous letter] that jihād is not an exclusive duty of the military. We also do not claim it is. But jihād is a communal obligation. If the sultan maintains a fixed army, and they have bread and salary from the government treasury, other subjects are exempted [from jihād]."[53] The previous letter was related to the poor living conditions that Syrians were facing in that year due to a scarcity of rain, loss of crops, and deaths of cattle. Nawawī and his colleagues had wanted to draw the sultan's attention to this issue.

[50] The forthcoming study of Tariq al-Jamil will engage with such conflicts, see Tariq al-Jamil, *Power and Knowledge in Medieval Islam: Shi'i and Sunni Encounters in Baghdad* (London: IB Tauris, 2016).

[51] William Muir, *The Caliphate: Its Rise, Decline, and Fall; from Original Sources* (London: Religious Tract Society, 1891), 578.

[52] al-Isnawī, *Ṭabaqāt*, 1: 827

[53] This very interesting letter is cited in its complete form in Ibn al-ʿAṭṭār, *Tuḥfat*, 101-104.

What is the significance of these two letters regarding the juridical engagements of a scholar like Nawawī who produced such celebrated texts as *Minhāj*? Both the letters help us comprehend the relationships between an individual, society, polity and most importantly, the fuqahā-estate that were crucial to the production and reception of a legal text. In the divisions which existed there, the scholarly estate and their institutions acquired remarkable power, not very different from the tripartite division of power between state, church and university since the thirteenth century in Europe. Once the situation had become tense between Nawawī and the estate on the one side and the sultan on the other, many *aʿyān*s of the city approached Nawawī requesting him to visit the sultan and ease those tensions. He refused, but wrote to the *aʿyān* explaining clearly the responsibilities of a sultan and how he should be committed to the Muslim community.[54] In the same letter and all the other letters he wrote to the state and its representatives, he repeatedly asserted and reminded them of the duties and rights of the scholarly community, especially when the sultan does not fulfil what is expected of him. In another context, he also encountered the state arguing for the rights of fuqahā in particular when the state decided to prohibit them from teaching at more than one institute. All these clearly illustrate how the fuqahā-estate believed in and negotiated for its autonomy at religious, social, and even political levels. At the economic level importance derives from the scholarly-mercantile connections. Could this approach have influenced or been reflected in the legal articulations of *Minhāj*? To this question I turn my attention now.

Politics of Prioritization

In the existing historiography of Islamic law, the *fiqh* texts have not been generally taken as a source for historical analysis.[55] The reason for this is that there are comparatively few references to a specific place or time for proscriptions in the normal tradition of Islamic legalism. Scholars like David Powers and Baber Johansen have demonstrated that the *fatwās* offer many possibilities for social historians.[56] Yet the positive legal texts have not yet been taken as a source for socio-political, cultural history nor have they been analysed to see how they reflect changes in society. Certainly such texts are deeply rooted in and reflective of their historical contexts, even if they display a universal outlook and the discursiveness of *longue durée*. A convincing argument would require much space, but for now I adduce only a few certain examples related to the political sphere.

In the section on war and trade in the *Minhāj* we can identify the influence of ruptures in Shāfiʿīte legal thought that substantiate a discontinuity in putting forward or prioritizing certain legal rulings over others, and also substantiate continuity in particular issues. With regard to wars, al-Shāfiʿī took it for granted that the problematic term "jihād" as a monolithic phenomenon. In the chapter in his *al-Umm* entitled *Kitāb al-jihād*, his student al-Muzanī replaced the term with *al-siyar* which literally means "procession" or "march". *Siyar* is a

[54] For the letters, see Ibn al-ʿAṭṭār, *Tuḥfat*, 99-113.

[55] This is not to ignore the fact many scholars have utilized such an extensive literary corpus to study the intellectual history. But most of them have still ignored the socio-political contexts that positive legal texts contain.

[56] For example, see Barber Johansen, "Legal Literature and the Problem of Change: The Case of Land Rent," in *Islam and Public Law*, ed. Chibli Mallat (London: Graham & Trotman, 1993), 29-47; David S. Powers, "Fatwas as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-century Fez," *Al-Qantara: Revista de Estudios Árabes* 11 (1990): 295-342.

broader term that includes many forms of war including jihād. Only a war against violent non-Muslims constitutes a jihād, whereas attacks on non-violent non-Muslims, or on violent Muslims fall under different categories. A time when the Muslims were fighting each other under the leadership of Ayyūbids or Mamlūks, and also together battling against the crusaders, gave *Minhāj* all the motivation to follow the categorization of Muzanī, that was reinvented by al-Ghazālī and al-Rāfiʿī. To come to the point, what stand does *Minhāj* take in these ongoing wars?

Nawawī did not take part in the crusades or in the fights between the Syrian Ayyūbids and Egyptian Mamlūks, as that correspondence with the sultan demonstrates. How is his inattentiveness towards the crusades and the stability of the Mamlūks with the decline of Ayyūbids reflected in *Minhāj*? Both historical contexts have influenced its legal conclusions through a process that I identify as the "politics of prioritization". By this I mean that the text prioritizes certain rulings over those put forward by an earlier text in addressing the immediate context. Such prioritization has a deep influence on the temporal context of politics, war, trade, culture and society. The philological formulations, selection and deselection of terms and phrases, argumentative structures, and additional information similar or dissimilar to an earlier text all contribute to the politics of prioritization. Let me elaborate with examples.

In the section on war, it chooses not to cite the Qurʾānic verses, "fight against the polytheists collectively" and "fighting has been made obligatory to you", cited in *al-Muḥarrar*.[57] Though *Minhāj* generally avoids citing Qurʾān or *ḥadīth*s, it occasionally does do so, in a case that has its own politics.[58] In the context of the author's reluctance as well as many of his colleagues to fight against the crusaders, this deselection makes its mark. Furthermore, *al-Muḥarrar* raises a question about the legal position of war during the time of Prophet Muḥammad, about whether or not it was an individual or a communal obligation, whereas *Minhāj* directly states that it was only a communal obligation.

Beyond these formulations, selections and deselections, the prioritization implied in its hierarchization-scheme also demonstrates contextual temporalities. *Al-Muḥarrar* says that even if a person fears Muslim robbers on the way to jihād, he has to go for war, according to the valid (*ṣaḥīḥ*) opinion; *Minhāj* imposes on this as a more valid (*aṣaḥḥ*) ruling.[59] In another context, in the discussion on whether or not a son or debtor should retreat from a war after it started if the parents or a lender withdraws permission, *al-Muḥarrar* says that it is forbidden to withdraw, according to the *aṣaḥḥ* opinion; but, *Minhāj* pushes it further as an *aẓhar* ruling.[60] It also happens the other way round. *Al-Muḥarrar* states that the *aẓhar* opinion on a truce between Muslims and non-Muslims with a false term is invalid, whereas *Minhāj* rules its invalidity as only the *ṣaḥīḥ* opinion.[61] Similarly, *al-Muḥarrar* says that a warrior can

[57] al-Rāfiʿī, *al-Muḥarrar*, 446; the verses are from Qurʾān 9: 36 and 2: 216 respectively.

[58] For example, see the chapter on purity in Nawawī, *Minhāj*, 68.

[59] al-Rāfiʿī, *al-Muḥarrar*, 447; Nawawī, *Minhāj*, 518.

[60] al-Rāfiʿī, *al-Muḥarrar*, 447; Nawawī, *Minhāj*, 519.

[61] al-Rāfiʿī, *al-Muḥarrar*, 459; Nawawī, *Minhāj*, 530.

consume fruits from booty according to the *aṣaḥḥ*, a ruling that *Minhāj* identifies as only *ṣaḥīḥ*.[62]

On many occasions *Minhāj* deals with different categories or terminologies of *al-Muḥarrar* as a single category. After a military victory, a protected person (*ḏimmiyy*) is allowed to participate in a truce of taxation (*jizyat*) even if they insert a clause on their right to maintain an existing temple or church in the new Muslim land. *Al-Muḥarrar* says: a) if they do not insert such a clause, the *ashbah* opinion is that they should be prevented in the Muslim lands; b) if it is their land according to the truce, the *aẓhar* opinion is that they should not be prevented, but be allowed not only to maintain an existing worship-place but even to build a new one; c) according to the *aṣaḥḥ* opinion, they should be prevented from building any equivalent (*musāvāt*) structure nearby a Muslim one; d) if they perpetrate blasphemous activities against Islam, such as condemning the Qurʾān or Muḥammad, according to the *aqrab* ("closest") opinion the mentioned conditions for a truce will have been broken, but otherwise not. All these four rulings, that could connote different priorities for *al-Muḥarrar*, have been identified in *Minhāj* under a single category (*aṣaḥḥ*).[63] Occasionally we see the opposite, when a single term of *al-Muḥarrar* has been put under different categories in *Minhāj* in a way that caters to its paraphernalia of disputes and politics of prioritization.

Philological niceties show a noteworthy side of its politics. Many issues that *al-Muḥarrar* presents as "not allowed" or "allowed" have been replaced in *Minhāj* as "it is forbidden" or "it is meritorious". *Al-Muḥarrar* uses the expression *laysa lahu* "cannot" to stop a debtor who has reached a deadline for his repayment going on jihād without permission from his creditor, whereas *Minhāj* uses *ḥarām* "prohibited".[64] For forbidding jihād without the permission of Muslim parents, the former says it is not sanctioned (*lā yajūz*).[65] There are theological implications for these legal terms: prohibition (*ḥarām*) is one of the five foundational Islamic commandments (*aḥkām*), one that is sinful to offend and avoiding it is mandatory. But if someone does something categorized as what *cannot* or is *not allowed* to be done it is not necessarily sinful.

All these contradictions on the one hand show the terminological integrity of *Minhāj* in relation to earlier text(s), as discussed earlier.[66] On the other hand, it also explains the politics and subjectivity implied in its schemes of hierarchization and prioritization. Once we look into the parallel primary sources from thirteenth-century Damascus, or the Middle East in general, we understand that the Muslim involvements in the counter-crusades were not as simple as has been portrayed in previous literature. The historiography of crusades tends to show the Middle Eastern Muslim world as a single block against the Christendom, ready to engage in the conflict at any point. The reluctance of Nawawī and his colleagues from the fuqahā-estate to participate in the war is a clear illusration of another side of the Middle Eastern Muslim attitude to the crusades. *Minhāj*'s prioritization of certain rulings over other

[62] al-Rāfiʿī, *al-Muḥarrar*, 450; Nawawī, *Minhāj*, 522.

[63] al-Rāfiʿī, *al-Muḥarrar*, 457-58; Nawawī, *Minhāj*, 528.

[64] Nawawī, *Minhāj*, 519.

[65] It should be noted that on many other occasions *Minhāj* follows the same terms of *al-Muḥarrar* such as *lā yajūz* or *laysa lahu*. For example, both the texts say that it is not allowed/sanctioned (*lā yajūz*) to give protection to a non-Muslim spy who would bother the Muslims. Nawawī, *Minhāj*: 523.

[66] *Al-Muḥarrar* does not elaborate on any of the technical terms it accommodates.

ones provided a chance for some to disengage from the battle. Such politicized prioritizations and disagreements clearly reflect dissenting voices within the Islamic world during the crusades.

From another point of view, *Minhāj*'s voice was not a lone voice. During the lifetime of its author, the text was recognized among scholars along with his known stand on the crusades and its position on the laws of jihād. This shows that its arguments did ring a bell with a large audience who took an anti-war stand. We should keep in mind that this was the time of the seventh, eighth and ninth crusades and the Battle of ʿAyn Jālūt. As Nawawī defended himself in legal terms that jihād is *only* a communal obligation, the text's legal rulings with prohibitions, allocations and prioritizations acted as a tool of legitimacy for reluctant Muslims to abstain from war, rule against immodest behaviour towards their non-Muslim subjects, or maintain societal norms and values even in the thick of the war. In the later years of discursive tradition, the text also had its influence in fatwās and practices of scholars, militia, and laypersons as a prominent point of reference. Its juridical opinions were often consulted by the counter-crusaders, including sultans.[67] Since the Mamlūks mostly followed the Shāfiʿī school as now "codified" by Nawawī's works, among which *Minhāj* held a distinguished position, its rulings held significance in the ongoing wars.

Pedagogical Contexts

In this period of drastic transition in the region following the Mongol invasions, the high-culture of aristocrats (*umarāʾ* or *aʿyān*) and scholars underwent a series of crises. In the inner-core, the usual remnants of socio-political expansions had been shattered. Thousands of lives had been lost, and it was not only architectural edifices and public places that had tumbled down, but the cultural institutions like books and libraries also suffered inestimable ruin. The colossal manuscript collections of Baghdad in particular and of the Middle East in general were devastated. Survivors recount that so many books were thrown into the Tigris River that they formed a bridge that would support a man on horseback, and that the waters of the Tigris ran black with ink and blood.[68] The impacts of these setbacks on Damascus and particularly on the Shāfiʿīte legal circles are yet to be studied, how they were damaged by the wider catastrophes in the Middle East or protected under the defensive shield of the Mamlūks.

While the norms and modes of both the school and the estate since the mid-thirteenth century played a crucial role in the acceptance of *Minhāj*, an interesting question arises about the context and form that expedited its sub-transdiscursivity. As we have said, it was written after the caliphate's collapse. That enabled the later scholarly communities living under a decentralized political world of Muslims to easily relate to its legal opinions. The context of internal political turmoil in which it was written continued in the Muslim world in the following centuries, even though there were attempts to centralize and monopolize the Islamic

[67] For example, in the late-1280s, the officers urged the Mamlūk sultan Qalāwūn to consult the jurists about the invalidity of a treaty that he had signed with Acre. They thought that if the jurists declared the treaty invalid, they could wage war against the crusaders and dislodge them from the region. But the sultan did not consult the jurists as he did not want betray his oath. The chronicler-cum-administrator Abū al-Fidā provides a detailed first-hand account of Qalāwūn's expeditions: Abū al-Fidā, *al-Mukhtaṣar fi akhbār al-Bashar* (Constantinople, Dār al-Ṭibāʿat al-ʿĀmirat al-Shāhānīyat, 1869), 2: 321; cf. Amin Maalouf, *The Crusades through Arab Eyes*, trans. Jon Rothschild, (London: Al Saqi Books, 1984), 255-56.

[68] Michael Harris, *History of Libraries in the Western World* (Metuchen: Scarecrow Press, 1984), 85.

political sphere under one caliphate. A few highly centralized political entities rose in different parts of the Islamic world (such as the Ilkhanate in Central Asia), but the absence of a generally acceptable caliph and increasing infights became the norm of the Muslim community. The contextual influences on the legal formulations and conclusions of *Minhāj* thus appealed to later generations. Also, its form discussed above attracted later scholars. As the best jurist is the best systematiser so the best legal text is the one best hierarchized for students and followers. Therefore both Nawawī and *Minhāj* could be taken as the final word in the school. It quenched the thirst of the later jurists through its systematic hierarchization, prioritization of the finest opinions within the school and rectification of mistakes in prior text(s). The increasingly institutionalized madrasa-system and high professionalization of the discipline (fiqh) and its sub-discipline (Shāfiʿīte fiqh) were crucial components in expediting the shift.

Minhāj is also a concise text-book of the Shāfiʿīte school, as much as it aims to codify the school's laws. With both targets in mind, Nawawī had taken a prior text that has been recently celebrated among the Shāfiʿītes as his point of principal reference. It was his launchpad to engage with all the literature and discourses that had appeared so far in the school. The institutional function of the text, especially conversing with the context, also motivated the author in his selections. The contemporary high-culture of Islamic scholarly world involved particular texts being taught, reread and consulted for legal rulings, with an emphasis on exact wordings and phrases, by memorizing them entirely or partially. The institutionalized educational centres like madrasas, and the professionalization of the judiciary and law-giving sought precise texts more than elaborate ones to commit to memory and use at the "right" points, for which *Minhāj* was preferred. It says of *al-Muḥarrar*:

> It is one of the most important or *the* most significant [work] sought. But it is too thick to memorize for the majority of the contemporaries, save some exceptional folk. So I thought of abbreviating it to about half of its size in order to smooth memorization along with what I add to it from beneficial materials, if Allah wishes.[69]

The pedagogical function in its particular context is further clarified in its title, which could be translated as "Pathway to Aspirants and Support for Law-givers". This addresses not only students, but also teachers, judges (*qāḍī*) and law-givers (*muftī*). In other words, it aims at all the members of the fuqahā-estate interested to be an audience for Shāfiʿīte law.[70] That *Minhāj* chose the typology of abridgement (*mukhtaṣar*) is worthy of elaboration in relation to the estate. Why was it written as an abridgment to a previous text instead of an "independent" and "original" work? The main answer rests in the Islamic organization and the presentation of a legal text in two ways: a) the importance of the formal structure for organizing a *matn*, *sharḥ*, etc.; b) the significance of structuring the form of a text in which typologies like *mukhtaṣar* and *mabsūṭ* feature. The objective structure is what matters in the first approach, whereas the

[69] Nawawī, *Minhāj*, 64.

[70] In the title, *Minhāj al-ṭālibīn*, *ṭālib* literally means a seeker, but generally connotes a student. The usual plural is *ṭullāb*, but here he used *ṭālibīn* which includes all general aspirants of Islamic law.

latter is more related to the subjective orientation, pre-occupation and/or intention of the author. In this, the author's design and structure of the functions of a text have implications.

Underneath this textual discursive tradition, certain functional matters are implied. To come up with an "original" and "independent" work was almost impossible according to the traditional methods of the Islamic scholarly community. It was a "conservative system" that "does not vary with time", as Edward Lorenz said.[71] A new work would always have an intricate approach to getting accepted among the wider high culture of the estate. This problem could be disentangled by writing commentaries to an established work. Though an abridgment, *Minhāj* does not just cut out or paraphrase sentences, paragraphs or sections; rather it is a critical engagement to outshine the work on which it depends. For this it had to consult almost all the noted legal texts, not only those of the Shāfiʿī school but those from other schools as well. It helps to obviate the difficulties in the system through its own commentarial dissipative processes, "thereby making the equations nonconservative".

As for the wide literary corpus related to *Minhāj* it is important to ask for whom it was written. The answer rests in the contemporary Islamic educational centres and their teaching cultures. It has been taught in these centres since the late-thirteenth century and still continues to be one of the significant texts that a student of Shāfiʿīte law can learn. The academic institutions that by now had become an integral part of a normative order of fuqahā-estates strongly demanded more legal texts with particular features, and urged teachers and graduates to write commentaries on existing texts according to changing social, cultural and political contexts. A particular text was taught word-by-word during which teachers implied multiple possible meanings suitable to the requirements of the time and space. This process of teaching and learning, in which the interpretations of a teacher and the consequent intellectual digestive articulations of a student when there was no satisfactory clarification in existing legal literature, led to this production of voluminous textual progenies. Either the teacher himself or the student took the driving seat for seeing the outcome in written form.

Regarding the acceptance and use of *Minhāj* in the Yemeni educational system in the nineteenth and twentieth centuries, Brinkley Messick provides a detailed picture, one which portrays the text's journey across the Shāfiʿīte cosmopolis. He says that it was one of the *maḥfūẓat* that a student had to memorize entirely once they graduated from their primary education in Qurʾān schools.[72] It was often the first text that a student of Shāfiʿīsm had to study after the initial stage of memorizing Qurʾān and many students learned it from their parents itself. This we see in the introductory words to a biographical entry about a Yemeni scholar:

> The learned scholar and man of letters, the bright and sagacious ʿAbd al-Raḥmān, son of ʿAlī, son of Nājī, al-Ḥaddād, the Shāfiʿī, the Yemeni, the Ibbi, was born in the town of Ibb in the year 1293 [1876] and received instruction from his father, in Shāfiʿī jurisprudence [beginning with] *Minhāj*.[73]

[71] Edward Lorenz, "Deterministic Nonperiodic Flow," *Journal of the Atmospheric Sciences* 20, no. 2 (1963): 131.

[72] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993).

[73] Muḥammad ibn Muḥammad Zabārah, *Nuzhat al-naẓar fī rijāl al-qarn al-rābiʿ ʿashar* (Ṣanʿā': Markaz al-Dirāsāt wa-al-Abḥāth al-Yamanīyah, 1979), 347-48—cited in Messick, *The Calligraphic State*, 20.

This practice continued up to the late twentieth century, as Messick's ethnographical expositions demonstrate. He provides a detailed account of the process of memorization and its role in the pedagogical traditions of Islam and Yemen. Shāfiʿīte students mostly learnt *Minhāj* by heart together with *Ghāyat* of Abū Shujāʿ, although the latter was less central in many places in the course of time. Thus all over the Indian Ocean rim Yemen's educational realm stands out as the place where *Minhāj* enjoyed prominence for so long. Precisely because of this, we do see many students from other parts of the rim coming to Yemen and studying *Minhāj* exclusively. In Ḥaḍramawt, ʿAbd al-Raḥmān bin Muḥammad bin Ḥusayn al-Mashhūr (d. 1902) taught *al-Mughnī*, *Fatḥ al-Wahhāb*, and *Minhāj*, and many East African students such as the renowned ʿAbd Allāh Bā Kathīr learnt these texts with him.[74] Only in Ḥaḍramawt do we notice the simultaneous presence of many specialists of the text. There were more than ten specialists at a time, and many students ventured to study the same text with most of them.[75]

Finally, we ask why and how *Minhāj* was selected for such an intensive teaching of Shāfiʿī school. Certainly, there were many other legal texts taught. Even so, besides the features already mentioned, *Minhāj* showed a greater precision compared with earlier texts of the school and that was a major attraction. The earlier texts like *al-Umm*, *Nihāyat, Basīṭ*, *al-Muḥarrar*, etc. were grandiose, to the extent that they could not be taught in a convenient amount of time for the student or the teacher. *Minhāj* in that sense too was very precise and straight to the point without much loquaciousness. Yet, some teachers found that it lacks precision in some parts with many unnecessary phrases, usages and juridical problems, leading them to write further abridged versions. That is why *Manhaj al-ṭullāb* of al-Anṣārī became another successful text in the fifteenth century.[76]

III.

Unification of Two *Ṭarīq*s

In the previous chapter, I pointed out the conflict-ridden intellectual tradition of Shāfiʿīsm that helped its growth and spread over time and space. By the time that *Minhāj* had been formulated, the predominant division was between the Baghdadi/Iraqi and the Khurasani/Iranian streams of the school. This split has been recently discussed by Fachrizal Halim, although he does not explain what actually constituted each sect against the other in terms of law or tradition.[77] He says that the Khurasanis had a more rationalistic approach in contrast to the Iraqis who prioritized a traditionalistic line, yet "despite jurists of each *ṭarīqa* holding certain communal methods of interpretation, this did not preclude them from

[74] Shaykh Abdallah Salih Farsy, *The Shaf'i Ulama of East Africa, ca. 1830-1970: A Hagiographic Account*, trans. ed. and annotated by Randall L. Pouwels (Madison: University of Wisconsin, 1989), 88-90. Abdullah Ba Kathīr studied from him between June 3—mid-August, 1897.

[75] Farsy, *The Shaf'i Ulama of East Africa*,152.

[76] *Manhaj al-ṭullāb* has eight full commentaries including the one by al-Anṣārīhimself entitled *Fatḥ al-Wahhāb bi Sharḥ Manhaj al-ṭullāb* (this became another success in scholarly circles attracting more than twenty super-commentators), two partial commentaries on the Introduction, four marginalia, five abridgements and a poetic version.

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

producing different or even conflicting legal opinions." A division such as this becomes hardly comprehensible. Earlier we quoted Nawawī who differentiated between Khurasanis and Baghdadis in terms of general characteristics and methods. It is worth quoting again for the details it provides concerning a possible framework of division:

> Our Iraqi companions are more reliable in transmitting al-Shāfiʿī's statements (*nuṣūṣ*), his school's principles (*qawāʿid*), and our previous companions' opinions (*wujūh*). Mostly their transmission is stronger than the one by the Khurasanis, who are mostly better in their behaviour (*taṣarruf*), research (*baḥth*), derivation (*tafrīʿ*), arrangement (*tartīb*) and in matters that require determining preponderance between two *qawl*s.[78]

This contrasting of the two groups is rather fluid since these features as stated can be found interchangeably in the biographical dictionaries of both Iraqi and Khurasani Shāfiʿītes. Nevertheless, we see that Nawawī provides an entry-point to further researches on the division if we read this passage closely. The Baghdadis were more concerned with the foundations and principles of the school and its eponymous founder, whereas the Khurasanis were more interested in the later developments and new attempts at interpretation. Halim argued that Nawawī attempted to amalgamate both streams by providing the most valid rulings and bringing to an end for the Khurasani-Baghdadi division.

A major motivation for this amalgamation or canonization process was the contemporary urge from both the legal estate and the political system to limit the "official" Sunnī schools into a manageable variety. With the multiplication of independent legal schools and sub-schools, a conclusive judgement or ruling on a matter had become inattainable and the available corpus of authorities was incomprehensible. Attempts to limit the range of legal opinions within Islam have been in the air ever since the eighth century.[79] At various points the ʿAbbāsids made moves towards a codification process, which found no success, and the Mongol invasions finally curtailed any further aspirations of that kind. The Ayyūbids and then the Mamlūks also made a few attempts, evoking both protest and support from different members of the estate. This motivated the scholars of each school to "rectify" their legal system and to make it more practical and explicable. In the thirteenth century, the Shāfiʿīte scholars were busy with the same project. Then the question in front of them was what actually Shāfiʿīte law was, which was spread across many texts, disciples and versions. In *al-Muḥarrar* al-Rāfiʿī tried to give an answer, by setting out opinions within the school hierarchically. But, Nawawī found him and his work imprecise and inaccurate.

The usage of the term "*al-muḥarrar*" as the title of al-Rāfiʿī's book, and the later legacy of al-Nawawī among the Shāfiʿītes as "*al-muḥarrir* of the school", possibly reflect a drive

[78] Nawawī, *al-Majmūʿ*, 1: 112.

[79] ʿAbd Allāh Ibn al-Muqaffaʿ (d. 757) proposed to the then ʿAbbāsid caliph al-Manṣūr (r. 754-775) to codify the Islamic law. The caliph was unsuccessful in bringing it about. At one point, he approached Mālik bin Anas with an offer to cancel all other legal thoughts than Malik's, to writing his *al-Muwaṭṭaʾ* in gold, and to keep it inside the Kaʿba. Malik rejected this offer saying that the Prophet's Companions are all over the world and he does not want to stand against their legal opinions. S. D. Goitein, "A Turning Point in the History of the Muslim State (A propos of the *Kitāb al-ṣaḥāba* of Ibn al-Muqaffaʿ)," in *Studies in Islamic History and Institutions* (Leiden: Brill, 1968), 149-167; J. E. Lowry, "The First Islamic Legal Theory: Ibn al-Muqaffaʿ on Interpretation, Authority, and the Structure of the Law," *Journal of the American Oriental Society* 128, no. 1 (2008): 25–40.

towards canonization in their time, at least as the traditional narratives portrayed them and their contributions. Ibn Taymiyyat (d. 1328), a famous Ḥanbalīte who lived in Damascus immediately after Nawawī's time, entitled his legal text *al-Muḥarrar* also.[80] The term "muḥarrar" is derived from the infinitive *taḥrīr* which has various meanings associated with editing. The active noun *muḥarrir* would mean "editor" and the passive noun *muḥarrar* "edition". Nawawī defined at the word as "refined and confirmed" (*al-muhaḏḏab wa al-mutqan*).[81] All these should be read along with a major development in the Mamlūk dominion in the thirteenth and early fourteenth century. The sultan Baybars had finally accepted the four Sunnī schools as legitimate legal systems in his kingdom and appointed judges for each school.[82] This move was widely appreciated by jurists with reservations, for it recognized the legal pluralities inherent in Islamic tradition instead of projecting a single legal system or thought under the control of the state. This official recognition of multiple schools must simultaneously also have contributed to the drive towards a canonization among jurists for their respective schools mentioned earlier.

Coming from Damascus, without siding with the divisions of Baghdad or of Khurasan by default, Nawawī had been geographically fortunately placed to take a neutral stand in the debate between the two *ṭarīq*s. *Muḥarrar* was accepted in Damascus, together with Shāfiʿīte works from Iraq and Egypt, which shows that the city's Shāfiʿīte cluster kept an open mind in the existing debates, or at least was reluctant to side with either group. For Nawawī, the legal thoughts of Iraq and Khurasan were inseparable and both traditions presented some correct and some incorrect interpretations of the founder's teachings. This situation complemented the existing debates on globalization in the thirteenth century, and proves that geographical boundaries faded away in transregional religious legal discourses. A scholar from the shores of the Caspian Sea engages with a text written in the eleventh-century Baghdad, and another scholar from the shore of the Eastern Mediterranean furthers the discourse. The intellectual concordat is thus not mere religiosity in terms of a monolithic faith. Rather there is a continuity and unification of scholarly discourses cutting across social, political and cultural differences, a process which intensified in the highly globalized spirit of the thirteenth century in contrast to the previous eras. Nawawī's residence in Damascus proved to be rewarding, and he utilized this advantage with *Minhāj* and other legal texts, by subscribing into the foundations of the school and not into any sub-school through them. As an aside we note that this trajectory of Nawawī and his location in Damascus when dealing with a split between Khurasan and Baghdad is analogous to the trajectory of the school's founder. Al-Shāfiʿī's own experience four centuries earlier when he moved to Egypt involved doing away with the predominant Ḥanafīte rationalism in Iraq and the Mālikīte traditionalism in Medina. An obvious difference is that al-Shāfiʿī had first-hand experiences of both the debates and the places, whereas Nawawī's understandings were more text-based and transmitted through lines of teachers.

[80] Ibn Taymiyyat, *al-Muḥarrar fī al-fiqh: ʿalā maḏhab Aḥmad Ibn Ḥanbal* (Beirut: Dār al-Kutub al-ʿIlmīyat, 1999).

[81] Nawawī, *Daqāʾiq*, 26.

[82] Yossef Rapoport, "Legal Diversity in the Age of Taqlīd: The Four Chief Qāḍīs under the Mamluks," *Islamic Law and Society* 10, no. 2 (2003): 210–28

In *Minhāj*, Nawawī does not directly engage with this discursive division of the school. In other works, especially in his *al-Majmūʿ*, he elaborates on different opinions of scholars, either from the stream of Khurasan or of Baghdad, and tries to prioritize one ruling over another on the basis of his own researches and establishes it as the opinion of the school or of its founder. He does not go into such debates or discussions in *Minhāj*, but rather sticks to one final judgement. Those who were familiar with his other legal texts would find it easy to understand why he judges in *Minhāj* a ruling to be *aṣaḥḥ* or *maḏhab* over other opinions, and to understand why he chooses the *ṭarīq* of the Khurasanis or the Baghdadis for that ruling.

In this respect *Minhāj* exhibits a transregionality in its legalistic judgements, one that enabled it to stand above two regional *ṭarīq*s which had adhered to particular streams of thoughts and traditions for at least two centuries. This broader spatial canvas contributed to its wider reception and circulation among the later Shāfiʿītes.

Economy of the Text: Estate and Oceanic Space

The households of Damascus must have offered a fine economic basis for *Minhāj*'s future journey, since many ruling and civil elites patronized contemporary learning there or tried to acquire it themselves. In return, the scholars attempted to secure patronage for their teaching or writing. In the specific case of *Minhāj* or Nawawī, however, we do not have evidence for any such patronage. He always tried to escape from any system of power into the comfort of the estate. Even so, his teaching at the madrasa and his transmission of books could not escape the attention of existing households, which craved power and status through patronizing any form or product of knowledge. If not during his lifetime, his works were glorified not only for their contents but also for such metaphysical attributes, such as *barkat* (talismanic power). A family who inherited his books is said to have "kept two of them for blessings (*li al-tabarruk*)".[83]

Personally, Nawawī led a modest life with almost no income and patronage for a long period of his career. For food, he fasted throughout his life without eating or drinking at all in daytime; he ate only a trifling dinner after the night prayer and drank a cup of water before dawn. During his education he depended on his father for food who brought him dry bread and figs from his agricultural land in the village. When he was asked why he does not take food from Damascus, he replied that the city's lands are filled with religious endowments which are not handled legally for such purposes as cultivation. He also added that the food from there is grown on sharecropping system, the legitimacy of which is questioned by jurists.[84] He hardly wore decent clothing and hardly cleaned himself. A colleague complained to him about this. He remained unmarried, for he believed that marriage would distract him from the pursuit of knowledge. Due to this ascetic way of life, he did not have to depend on any *aʿyān* or amīr for patronage, and that also contributed to constructing his legacy among the fuqahā-estate. Towards the end of his life, he took up a position as the head of the famous Ashrafiyya College of Tradition, yet he refused to take a single penny as salary.[85]

[83] Chamberlain, *Knowledge and Social Practice*: 137.

[84] al-Ḏahabī, *Taḏkirat*, 4: 1472; cf. Halim, *Legal Authority*, 20

[85] al-Subkī, *Ṭabaqāt*, 8: 397.

Whether he was working independently or affiliated to a madrasa, he was always a firm member of the fuqahā-estate. In his case, the distinctions and interactions between an individual, estate, society and state were very clear. Through the letters quoted earlier that he wrote to the sultan he managed to consolidate a consensus from other renowned scholars in the city who also were either affiliated with other Sunnī schools or held positions in the central mosques and institutions.[86] Thus, instead of the patronage from civil or military elites, the effective functionality of the estate and its recognition of Nawawī's scholarly stature must also have been crucial external components for ensuring that the text of *Minhāj* survived and succeeded.

Coming more closely to economic aspects, the place of *Minhāj* in the context of the maritime space of the Levant or the Eastern Mediterranean shore is rather important. After the collapse of the ʿAbbāsid caliphate at the hands of the Mongols, the Ayyūbids and Mamlūks fought each other to control Egypt and Syria, and the Crusades that had started two-centuries earlier were continuing even more viciously than before. All this political and military unrest had affected the economic world of the Middle East which relied so much on maritime trade. Even more closely, the Madrasa al-Rawāḥiyyat where he studied had been established by a rich merchant whose wealth came from maritime trade.[87] While Nawawī was writing *Minhāj*, did he or could he have turned his eyes away from these economic situations? In other words, does the text reflect those issues and did they determine its legalist conclusions?

If we read closely *Minhāj*'s discussions on trade, we cannot help but notice some contextual influence on its judgements and articulations. Similar to the politics of prioritization I discussed above, in it is evidence for an "economy of prioritization": it deals with ruptures in the Shāfiʿīte tradition by putting forward new laws or prioritizing certain legal rulings over others which are highly influenced by the requirements of the contemporary economic context.

Trade as such has been a concern of Shāfiʿīsm from the time of *al-Umm*, a text which spends more than a thousand pages to discuss commercial laws.[88] *Minhāj* also reflects this tradition of the school. To elucidate the ruptures let us take the cases related to trade with unbelievers and maritime commerce. In Islamic law, al-Shāfiʿī is the first scholar to set the theocratic-geographical category of the "abode of Islam" (*dār al-Islām*) against the "abode of war" (*dār al-ḥarb*); it was a classification that had long consequences in the theoretical elaborations of later generations of jurists, not only in relation to war but also to other aspects including trade.[89] Many early Shāfiʿīte jurists ruled that Muslims could trade only with Muslims. But in *Minhāj*, Nawawī redefines the category of Muslim, and according to him, it

[86] The other signatories were Abū Muḥammad ʿAbd al-Raḥmān bin Abū ʿUmar (leader or *shaykh* of Ḥanbalīsm), Abū Muḥammad ʿAbd al-Salām bin ʿAlī bin ʿUmar al-Zawawī (leader of Mālikīsm), Abū Ḥāmid Muḥammad bin ʿAbd al-Karīm al-Haristanī (*khaṭīb* of Damascus), etc. Ibn al-ʿAṭṭār, *Tuḥfat*, 101-104.

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

[88] See Muḥammad bin Idrīs al-Shāfiʿī, *al-Umm*, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (Mansura: Dār al-Wafāʾ, 2001), vols. 4 and 5.

[89] See Ridwan al-Sayyid, "*Dar al-Ḥarb* and *Dar al-Islam*: Traditions and Interpretations," in *Religion between Violence and Reconciliation*, ed. Thomas Scheffler (Wurzburg: Ergon Verlag, 2002), 123-133. For an analysis of juridical codification of jihad with closer attention to four schools of Islamic law, see Edgard Weber, "La Codification Juridique du Jihad," in *Religion between Violence and Reconciliation*, ed. Thomas Scheffler (Wurzburg: Ergon Verlag, 2002), 135-163.

includes everyone who lived in a *dār al-Islām*, whether s/he is Christian or Jew, as long as they do not express enmity to Islam and pay the poll tax. In this category, *Minhāj* includes even the apostates, who are otherwise sentenced to death. Many jurists do not agree with him on this opinion.[90] Yet this deviation of *Minhāj* owes as much to the realities of Mediterranean trade in his time as to the intrusions of the Mongols overland. The frequent onslaughts by and occasional alliances with the Mongols had a huge impact on large cultural and economic realms of Islam that stretched from the Mediterranean to China. It became part of a new dominion identified as Pax Mongolica. Although the Mamlūks managed to ally with one section of the Mongols, the Golden Horde established by Batu Khan (d. 1255), their increasing influence around the Black Sea and by extension in the Persian Gulf and Mediterranean was beyond the control of Mamlūks.[91] The new commercial axis from the Persian Gulf to the Black Sea developed in the late thirteenth century became so crucial to the overall existence of any community which lived around the sea, from the Indian Ocean to the Mediterranean. The legal deviations of Nawawī are thus hardly surprising and it becomes more explicit once we look into his treatment of maritime trade.

In the network of trans-continental maritime trade, once we compare and contrast the contents of *al-Muḥarrar* and *Minhāj*, some discontinuities catch our attention. Although the predominant framework of *Minhāj* follows the traditional legal narrative theme of writings of including al-Shāfiʿī, Muzanī, al-Juwaynī, al-Ghazālī and al-Rāfiʿī, it also occasionally differs from their viewpoints. Familiarity with the oceanic world was comparatively less in the case of al-Ghazālī, al-Muzanī and al-Rāfiʿī since they lived in the hinterlands, which were connected to distant oceans through long-running rivers. But when we come to *Minhāj* and most of its commentaries and super-commentaries, the scenario drastically changes, as Nawawī lived in a city not very far from the Eastern Mediterranean shore. Many of his commentators led their lives in coastal townships; the textual descendants of *Minhāj* demonstrate a good amount of evidence for scholarly-mercantile interconnections, not only in theoretical discourses but also in actual situations. A simple example is how *Minhāj* brings the sea into a discussion of a traveller's obligations for prayer. Neither al-*Muḥarrar* nor any previous Shāfiʿīte text mention a believer praying when travelling overseas, whereas Nawawī clearly states that the seafarer must follow the same rules as on an overland journey, with an additional ruling that the speed of the journey does not alter the concession.[92]

This maritime aspect is clearer when we look at his approach on the right to cancel a transaction before both parties leave each other. This legal right, called *khiyār al-majlis*, is rejected in the Ḥanafīte and Mālikīte schools, but is permitted by the Shāfiʿītes. *Minhāj* has dedicated a chapter on this right but does not engage with its rejection in other schools or related discourses, something it does not do usually. In *al-Majmūʿ* Nawawī provides an elaborate justification for the Shāfiʿīte position.[93] The issue of maritime trade was the reason

[90] Abraham Udovitch, "Religious Law, Secular Documents and the Economic Realities of the Medieval Islamic World," LUCIS Annual Lecture at Leiden University, 05 March 2015.

[91] Virgil Ciocîltan, *Mongols and the Black Sea Trade in the Thirteenth and Fourteenth Centuries*, trans. Samuel Willcocks (Leiden: Brill, 2012); Nicola Di Cosmo, "Black Sea Emporia and the Mongol Empire: A Reassessment of the Pax Mongolica," *Journal of the Economic and Social History of the Orient* 53, nos. 1-2 (2010): 83-108.

[92] Nawawī, *Minhāj*, 253.

[93] On a discussion on this, see Halim, *Legal Authority*, 115-120.

for the Ḥanafītes to reject the appropriateness of *khiyār al-majlis* by raising the status of parties conducting business on a ship. In those circumstances they would not depart from each other until the ship reached shore, and that might take up to a year. But for al-Nawawī such a long voyage is not a justification for suspending the normal concession, and in *Minhāj* he succinctly states that the customary right of *khiyār* is maintained however long it takes the parties to depart from one another:

> If they stay for long, or stay and move, *khiyār* endures for them. The departure depends on custom.[94]

By specifically mentioning moving location together and the dependence on customary practices to define the perameters of togetherness and separation he accommodates what is appropriate during an ocean voyage, when it would take an unusually long time for separation. In *al-Majmūʿ*, he elaborated on this issue:

> Al-Bayhaqī narrated a *ḥadīth* from Ibn Mubārak who said: "Two contracting parties have *khiyār* as long as they have not separated." I [Nawawī] have confirmed that al-Bayhaqī narrated these stories (*asāṭīr*) with *isnād* from ʿAlī bin al-Madāʾinī, from Ibn ʿUyayna, that this is the *ḥadīth* of the people of Kūfa, narrated from Ibn ʿUmar, that the Prophet said: "Two contracting parties have *khiyār* as long as they have not separated."[95] He said that the people of Kūfa transmitted the *ḥadīth* to Abū Ḥanīfa. But Abū Ḥanīfa said: "This is not always the case; how would you explain if the contract is on a ship?" Ibn al- Madāʾinī said that God asks one on what he says. Al-Qāḍī Abū al-Ṭayb and associates said that Abū Ḥanīfa and Mālik objected to all the ḥadīth above. Mālik said that only Ibn ʿUmar narrated the *ḥadīth*. Abū Ḥanīfa said that they could not accept it since it does not explain the case while the contract is on a ship, because both parties could not be separated. Mālik said: "The practice among us in Medina contradicted the *ḥadīth*. The jurist of Medina did not acknowledge the practice of *khiyār al-majlis*." The *maḏhab* of Mālik is that he would leave any *ḥadīth* that contradicts the practice of the people of Medina. But our associate said that these *ḥadīth*s are all *ṣaḥīḥ*, therefore Abū Ḥanīfa's and Mālik's refusal to accept these *ḥadīth*s are unacceptable as it is equal to discard the correct, trusted, and elaborated practice.
>
> As for the objection of Abū Ḥanīfa regarding the case while on a ship, we would say that the *khiyār* of parties continues as long as they still remain together on the ship, even if [the voyage] lasts for a year or more. I have already explained the case and the evidence from the *ḥadīth* above. As for Mālik's position, he derived his isolated opinion from other jurists. Therefore his opinion to abandon the *ḥadīth* that contradicts the practice of the people of Medina cannot be accepted. How can this *maḏhab* be justified given the fact that the jurists who narrated the report [about *khiyār al-majlis*] were no longer present at the time of Mālik, nor during the period before him when they were concentrated in Medina or Hejaz. The fact is that the jurists who narrated the report were already spread all over different locations with each of them carrying parts of the report. They did not

[94] Nawawī, *Minhāj*, 219.

[95] Nawawī brought together plenty of *ḥadīth*s with similar contents in favour of the *khiyār al-majlis*, and this is one of the last *ḥadīth*s he cited. See Nawawī, *al-Majmūʿ*, 9: 218-220.

> share the report with each other, yet they transmitted the same report. How can Mālik insist that each Muslim follow the jurists of Medina? This issue had been thoroughly discussed in the field of legal theory (*uṣūl al-fiqh*). It was also not true that the jurists of Medina were in agreement regarding the non-existence of *khiyār al-majlis*. One of the prominent jurists of Medina, Ibn Abī Ḏaʾib, who was one of Mālik's contemporaries, disagreed with Mālik about this case. He expressed his disagreement to the extent that Mālik would repent of holding his opinion. How then can agreement of the jurists of Medina be justified?[96]

With his strong criticism on the legal theory of Mālikītes, who always prefer practices of Medina and on the judgments of Abū Ḥanīfa, Nawawī pushes to maintain the legitimacy of the right of *khiyār*. When applied in maritime trade it always involved a long term investment. Entangling it with those uncertainties clearly stems from his understanding of actual practices of maritime trade as well as his expertise in legal theory. He has strong evidence from *ḥadīth*s for his argument, and he believes that the Mālikītes and Ḥanafītes ignore that evidence, just as they refute "the correct, trusted, and elaborated practice".[97]

In contrast to the earlier Prophetic traditions that forbid ocean voyages except for holy-war and pilgrimage, we now notice how legal rulings underwent changes, conceptually accommodating maritime circumstances, including ones involving mercantile affairs. The legal texts since the thirteenth century thus endeavour to justify the ʿulamāʾ's involvement in trade, and the *Minhāj* is a classic example in this regard. The continuities, discontinuities and ruptures in mercantile affairs on the Mediterranean, and by extension on the Indian Ocean, have an impact on the legalistic conclusions of *Minhāj*, and its arguments in effect accelerated the spread of the school along the coastlands.

This legal transformation happened, on the one hand, by incorporating much pre-Islamic or customary maritime norms of trade. The Roman and provincial legal systems had a great influence in the making of the Islamic legal system, as convincingly explained by Patricia Crone.[98] Though Crone's arguments addressed mainly social and familial structures, the same systems had their implications for the laws of commercial contracts and the principles of nautical rights. *Minhāj*'s discussions on shipping procedures exemplify this legal continuity of Roman influence which sustained its currency in Muslim legalist circles.[99] On the other hand, the evolving Islamic legal system took into account the increased mobility of traders in the twelfth and thirteenth centuries in the Indian Ocean and the Mediterranean worlds. The predominance of Muslim merchants influenced the legal conclusions of *Minhāj*

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[96] Nawawī, *al-Majmūʿ*, 9: 220-221. This translation is largely depended on Halim, *Legal Authority*, 117 who used this passage to discuss a completely different concern of al-Nawawī. However, I have serious reservations about the accuracy of this translation when I compare it with the original of *al-Majmūʿ*, 9: 220-221. Yet, I can use it for its overall content for our present concern is sufficiently comparable with the original.

[97] For a debate on the *khiyār al-majlis* among the early jurists and al-Shāfiʿī's viewpoint on this, see Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 159-161. He speculates that al-Shāfiʿī got this idea of *khiyār al-majlis* from local customs of Mecca.

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

[99] On this issue, a rather convincing perspective has been put forward by Hassan Khalilieh in his comparative study of Islamic and Byzantine maritime laws: Hassan S. Khalilieh, *Admiralty and Maritime Laws in the Mediterranean Sea (ca. 800-1050): The* Kitāb Akiriyat al-Sufun *vis-a-vis the* Nomos Rhodion Nautikos (Leiden: Brill, 2006).

in particular and Islamic legal corpuses in general. To exemplify, *Minhāj* provides legitimacy for the trade in unseen objects, something that the maritime context of long-distance commerce required.. From a historical philological perspective, the general trend of new merchandise entering into legal discussions had its impact on *Minhāj*. The wider economic significance and social acceptance of significant products from the East, such as porcelain, sandalwood and black pepper, find a place in the text. To exemplify, he prescribes that *ḥanūṭ* scent used for embalming should be dropped into the clothing and the body when dressing a corpse.[100] In *al-Daqāʾiq al-Minhāj*, he explains that *ḥanūṭ* is a well-known scent used exclusively for corpses, and was made from white and red sandalwood, camphor, and other aromatics.[101] In the Prophetic tradition, only camphor is mentioned for embalming, and *ḥanūṭ* is a later addition arising from the new familiarity with Eastern aromatics, which were eventually legitimized.

Minhāj mostly follows the rulings of *al-Muḥarrar* for the treatment of traders during a war. Yet it disagrees with *al-Muḥarrar* on the issue of firing, besieging or attacking a non-Muslim installation if a Muslim or a merchant is there unexpectedly. In a discussion on *jizyat* taxation, both texts say that a non-Muslim trader should be conditionally allowed to enter the Hijaz (Mecca, Medina, Yemama and the surroundings, places which are usually prohibited for non-Muslims) even if the goods are not important.[102] But a difference emerges in the unexpected situation in an attack in terms of prioritization: *al-Muḥarrar* says an attack is allowed even in that situation according to the *aẓhar* opinion, while *Minhāj* makes it a more powerful *maḏhab* opinion.[103] Let me explain why this happens.

Studies on traders' participation in the crusades are limited. Even so, we know that mostly traders abstained from the ongoing wars in order to secure their economic interests. Many crusades were happening in and around the Mediterranean, but trade continued despite these interruptions. What we know of maritime trade from the Geniza records or other sources does not explain a clear-cut fluctuation in the mobility of goods interrupted by the war.[104] This shows that none of the fighters, at least in the Islamic world,[105] wanted to intimidate the merchants. The standpoints of *Minhāj* and *al-Muḥarrar* in maintaining the consensus demonstrate that they did not want to change the existing norms of war in relation to the traders, despite their religious affiliations. As for the particular disagreement in prioritizing seen in *Minhāj*, if we look deeply into the context in which it was written, we can understand that there were temporary ups-and-downs in the Mamlūks' position towards Christian merchants and Mongols. Between the fourth crusade (1202-1204) and the recovery of Constantinople (1261), the Egyptian and Byzantine mercantile connections were

[100] Nawawī, *Minhāj*, 330 (ed. haddad); al-Rāfiʿī, *al-Muḥarrar*, 83.

[101] Nawawī, *al-Daqāʾiq*, 49.

[102] Nawawī, *Minhāj*, 526; al-Rāfiʿī, *al-Muḥarrar*, 455.

[103] Nawawī, *Minhāj*, 520; al-Rāfiʿī, *al-Muḥarrar*, 448.

[104] For example S.D. Goitein, "Mediterranean Trade Preceding the Crusades: Some Facts and Problems," *Diogenes* 15, no. 59 (1967): 57 says: "it was common for Muslims and Arabic speaking Jews to travel in Christian ships during the twelfth century". We have no evidence to believe that this multi-cultural character of ships and mercantile initiatives changed by the thirteenth century.

[105] There are incidents of the crusaders or Christian corsairs attacking merchants irrespective of their religious affiliations.

interrupted.[106] Traders as such were considered to be part of the problem. The same attitude was extended to a few Mongols when the warriors began to engage in trade, or the traders took to military activities.[107] Thus, *Minhāj*'s prioritized harsh stand makes sense. It also proves to be another part of what I call as the "economy of prioritization", similar to the politics of prioritization discussed earlier.

The politics and economy of prioritization, visible in *Minhāj* and its subtle deviations from the existing legal perspectives, stand in close proximity to the approaches of a pragmatist. As I demonstrated through examples, *Minhāj*'s viewpoints are contextually motivated, subtly anti-foundational and accommodative of alternative perspectives within its principal concerns of canonizing and systemizing Shāfiʿīte law. These factors are arguably linked to a legal-pragmatic view on the issues it deals with, as any pragmatist does in the socio-cultural intellectual world to make oneself useful to the wider society. Such subtle deviations within the Islamic legal tradition provide more chances for future enquiries in order to see how and why a jurist decides to take a different path within the substantive laws.[108]

Circulation of Commentaries: *Minhāj*'s Journeys

While all these facets show the influence of the maritime world on *Minhāj*, we need to examine its reception in the worlds of the Mediterranean and the Indian Ocean. We mentioned that *Minhāj* attracted many commentaries. With regard to the text itself we discussed how commentary writing had become a normal practice as an "independent" and "original" scholarly work, and how and why the Islamic legalistic pedagogy required its participants to follow this pattern. Even then, the question arises why scholars did not go back to the foundational works of the school written by al-Shāfiʿī himself or his immediate disciples. An answer to this question is not possible if we do not recognize two factors: a) the functional modes of textual discursive tradition; b) the typologies that *Minhāj* constructed in the thirteenth century. The Islamic discursive tradition historically maintained a set of discourses together with its own rationality, styles of reasoning, concerns and/or regulations embodied in the texts, practices and institutions. Therefore, "anyone wishing to argue within the Islamic tradition, must start with them, even if only to argue against them",[109] and the commentators' case was not different. Regarding the typology of *Minhāj*, it brought an intellectual revival in the whole setting of the *maḏhab* itself from which no later scholar could easily break away. The previous frames of the school set in the eighth to the tenth centuries were no more relevant, but the ones which emerged in the thirteenth century became far important. This is not related to the question of whether or not *ijtihād* (independent investigation) existed in the

[106] Angeliki Laiou, "Byzantine Trade with Christians and Muslims and the Crusades," in *The Crusades from the Perspective of Byzantium and the Muslim World*, ed. Angeliki Laiou and Roy Mottahedeh (Washington, D.C: Dumbarton Oaks Research Library and Collection, 2001), 188-189.

[107] Ciocîltan, *Mongols and the Black Sea Trade*, 15, 30-34.

[108] A guiding study in this direction is Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (Syracuse, New York: Syracuse University Press, 2015); cf. Sherman A. Jackson, "Legal Pluralism Between Islam and the Nation-State: Romantic Medievalism or Pragmatic Modernity?," *Fordham International Law Journal* 30, no. 1 (2006): 158-176.

[109] Ovamir Anjum, "Islam as a Discursive Tradition: Talal Asad and His Interlocutors", *Comparative Studies of South Asia, Africa and the Middle East* 27(2007): 662l; cf. Talal Asad, *The Idea of an Anthropology of Islam* (Washington, DC: Center for Contemporary Arab Studies, Georgetown University, 1986).

post-classical era, although it did continue to be practised in varying degrees. The contribution of *Minhāj*-like texts in the thirteenth century stood within the parameters of an established framework and facilitated a conversation within the otherwise "conservative" divine law of Islam. In making such an attempt, the previous foundational principles of Islamic law and related texts of earlier scholars stood at the centre. So the possibility of a conversation with that tradition generated a historical continuity, discontinuity and ruptures in the legal textual culture for it. The writing of *Minhāj* and its reception epitomize this pattern and that is what made the text so much more important to later scholars than any previous texts. This simultaneous engagement with a long tradition and awareness of present contexts were legitimized by the specialists of jurisprudence (*uṣūl al-fiqh*) in the following centuries, as we see with Nawawī's opinions becoming the most dependable ones in the school.

Underlying all these developments in the popularity of *Minhāj* was the transition of the Shāfiʿīte legalist centre from Khurasan and Baghdad to the Eastern Mediterranean regions. Following the dominance of the Shīʿīte Fāṭimids at the end of the tenth century and due to a number of different underlying reasons, the epicentres of Shāfiʿīsm had moved from Egypt to Baghdad and Khurasan. But after the Mongol invasions, both cities and their surroundings were destroyed almost entirely politically and culturally. In this vacuum, Cairo and Damascus advanced significantly and attracted a large number of scholars. The acceptance of texts such as *Minhāj* led to the development of Damascus as a strong centre of the school which outshone all others. The arrival of new students to study *Minhāj* and other texts of Nawawī either from the author himself or from his students led to the appearance of new "text-families" and "text-specialists".[110] Along with other features of Islamic knowledge networks and educational systems, these textual communities contributed to the hermeneutics of reading *Minhāj* differently through numerous *ḥawāshī* and *mukhtaṣars*. This led to the predominance of the Damascene cluster of Shāfiʿīsm over the Khurasani-Baghdadi ones from the late-thirteenth to the late-fourteenth centuries.

The quantity and diversity of texts related to *Minhāj* in circulation, transcending geographical and chronological boundaries, reveal its remarkable sub-transdiscursivity. It attracted numerous scholars of the Shāfiʿī school who communicated with it constantly according to their specializations and their geographical and chronological priorities. This also illustrates a number of different historical realities of the textual culture of Islamic legal tradition. Within the fuqahā-estate and its Shāfiʿīte clusters in Damascus and Cairo there were individual scholars who were specialists on particular texts in their teaching and commentaries. For *Minhāj*, scholars such as ʿIzz al-Dīn Muḥammad Ibn Jamāʿat (d. 1367), Sirāj al-Dīn ʿUmar bin ʿAlī Ibn al-Mulqin (d. 1401), and Abū al-Ḥasan Muḥammad al-Bakrī al-Ṣīddīqī (d. 1545) were distinguished experts on its various complexities. They wrote multiple commentaries (al-Bakrī al-Ṣīddīqī wrote four commentaries [111]) incorporating revisions in style, presentation, content and focus. They also guided contemporary and future generations of scholars in how differently it could be read philologically, politically, socially and culturally as well as its primary legal concerns. Most of these individual specialists of

[110] Ibn al-ʿAṭṭār, *Tuḥfat*.

[111] Those are: *Kanz al-Rāghibīn fī sharḥ Minhāj al-ṭālibīn, al-Maṭlab fī sharḥ al-Minhāj, al-Mughnī sharḥ al-Minhāj,* and *Sharḥ Minhāj al-ṭālibīn.*

Minhāj became sorts of epicentres for the hermeneutical potential it evoked in the spheres of teaching, law-giving, judicial procedures, everyday rituals and customary practices. Not only the students or teachers of *Minhāj* relied on such textual experts of their time, but even judges, writers and lawgivers approached them, as numerous biographical literatures confirm.

In different places specialist text-families for particular legal works could be found. For *Minhāj* we have remarkable families such as al-Bulqaynī in Cairo, in which a grandfather,[112] father and son all engaged with the text at various points of time. The families of Qāḍī Shuhbah in Damascus[113] and al-Bakrī al-Ṣīddīqī in Cairo[114] are other examples. Many such text-families for *Minhāj* did not make only one textual contribution, but rather repeatedly dealt with it, catering for the increasing demands from different quarters with several interests. As the sources converse together fluently, the fame and acceptance of individual specialists for *Minhāj* led to the recognition of family experts. This must have been not merely a source of social status, but equally a source of income through teaching, copying, publishing, law-giving and clarifying doubts. Specializing on a text such as *Minhāj* created groups occupied with texts within the academic cultures of the fuqahā-estates in their respective regions.

Most of these commentators and abridgers were based around Damascus, Cairo and Yemen, and *Minhāj* began to replace the older texts existing in the school for educational purposes. Particularly in Yemen, *Minhāj* replaced *Muhaḏḏab*, which was a celebrated work in Shāfiʿīte legal circles as the *ṭabaqāt* biographers and Yemeni historians like Ibn Samurat (d. 1190) confirm.[115] The members of Shāfiʿīte clusters of the Yemeni, Egyptian and Syrian fuqahā-estates extensively engaged with the text by copying, teaching, learning, commenting, and abridging. The majority of *Minhāj*'s textual progenies written before the sixteenth century came from these regions. According to the list provided by Muhammad Sha'ban, in the fourteenth century it attracted ten commentaries, in the fifteenth century thirty-five, in the sixteenth century fifteen, in the seventeenth century six, and in the eighteenth to twentieth centuries ten.[116] In this cornucopia of commentaries, the ones of Jalāl al-Dīn Maḥallī, Ibn al-Ḥajar al-Haytamī, and Shams al-Dīn al-Ramlī appealed to copious super-commentators.[117] As

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[112] Sirāj al-Dīn ʿUmar bin Raslān al-Bulqaynī (d. 1402) wrote *Taṣḥīḥ al-Minhāj*, commenting on the last quarter of the book on criminal law (*al-jirāḥ*) so extensively that it alone has five volumes, and another volume on the part on marriage. His son Jalāl al-Dīn ʿAbd al-Raḥmān (d. 1421) wrote only as far as the "book" on expenditures (*al-kharāj*). His grandson Qāsim (d. 1457) wrote an independent commentary.

[113] Taqī al-Dīn Abū Bakr bin Aḥmad Ibn Qāḍī Shuhbah (d. 1447), the author of the renowned *Ṭabaqāt al-Shāfiʿīyyat*, wrote an unfinished commentary as far as the chapter *khulʿ* and named it *Kifāyat al-muḥtāj ilā tawjīḥ al-Minhāj*. His son Badr al-Dīn Abū al-Faḍl Muḥammad (d. 1469) wrote two extensive commentaries: *Irshād al-muḥtāj ilā tawjīḥ al-Minhāj* and *Bidāyat al-muḥtāj ilā sharḥ al-Minhāj* in two volumes.

[114] Jalāl al-Dīn Muḥammad Aḥmad al-Bakrī al-Ṣīddīqī (d. 1486) wrote a commentary and an annotation. His son Abū Al-Ḥasan Muḥammad (d. 1545) wrote four commentaries mentioned above (footnote 95). Both of them also wrote separate supercommentaries on the commentary of *al-Maḥallī*.

[115] On the receptivity of *Muhaḏḏab*, see ʿUmar bin ʿAlī bin Samurat al-Jaʿdī aka Ibn Samurat, *Ṭabaqāt fuqahāʾ al-Yaman*, ed. Fuʾād Sayyid, (Cairo: Maṭbaʿat al-Sunnat al-Muḥammadiyyat, 1957), 125-133. On the supersedure of *Minhāj* and other works of Nawawī, see ʿAbd Allāh al-Hibshī, Ḥayāt al-adab al-Yamanī fī ʿaṣr Banī Rasūl (Yemen: Manshūrāt Aḍwāʾ al-Yaman, 1980), 54.

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

[117] Maḥallī attracted fourteen. Ibn al-Ḥajar's commentary outshined them all as it attracted more than thirty super-commentators mainly from the Central Asian, South Arabian and Indian Ocean regions. We shall discuss this in the next chapter together with other important commentaries.

we saw with *Minhāj*'s incorporation of maritime trade and merchandise, the commentaries and super-commentaries also engaged with legal implications of new situations, mobility and products which appeared by the end of the fifteenth century. Coffee is a clear example. Although it must have been familiar already to residents in South Arabia, it never found a place in the Middle Eastern sources until then. By the sixteenth century, when coffee consumption had spread to Egypt and other parts of the Islamic world, Islamic jurists wrote treatises or additional commentaries discussing whether or not it was to be treated as a narcotic.[118] Similarly changing concerns in the maritime world were reflected in the ongoing circulation of commentaries on *Minhāj*.

Seeing this vast number of texts of Islamic law, it is worth reverting to the discussion we raised in Chapter 3 with regard to the question of any possible reference to the circulation of Shāfiʿīte legal treatises across the Indian Ocean rim before the sixteenth century. To recap: we have evidence from the South Asian coastal belt for Shāfiʿīte productions of intellectual texts, but not from other parts of the rim. One of the earliest Arabic texts written in Malabar is a Shāfiʿīte text entitled *Qayd al-jāmiʿ* by a shadowy author Faqīh Ḥusayn bin Aḥmad, about whom we do not have many details. The local scholars assume that it is the same Faqīh Ḥusayn that Ibn Baṭṭūṭa met during his visit to the region. Nevertheless, the text has survived through several manuscripts and printed editions. It deals with issues of marriage and divorce according to the Shāfiʿīte school. Another Shāfiʿīte text comes from fifteenth-century Sindh, and it is precisely related to *al-Muḥarrar*, the predecessor of *Minhāj*. It is called *Kashf al-durar fī sharḥ al-Muḥarrar* by Shihāb al-Dīn Aḥmad bin Yūsuf al-Sindī, and it is one of only two known commentaries on *al-Muḥarrar*.[119] We also do not have any biographical details about this author, but his patronymic al-Sindī clearly indicates his homeland or where he was based. Both *Qayd* and *Kashf al-durar* are evidence for the circulation of Shāfiʿīte legal texts along the Indian Ocean rims of South Asia prior to the sixteenth century. From Southeast Asia, the earliest Shāfiʿīte legal text we get is from the seventeenth century, *Ṣirāṭ al-mustaqīm* of Nūr al-Dīn al-Ranīrī.

What about the circulation of *Minhāj* in these regions? We have no evidence for any textual transmissions related to it in South, Southeast Asia or East Africa up to the mid-sixteenth century. However, we see many jurists from these areas increasingly engaging with the text since then and the number increases dramatically in the following centuries. So how did this text reach there and communicate with the fuqahā-estates there? In the next chapter, I shall explore this mechanism by arguing that this transmission was mediated by the commentaries, primarily the ones from Mecca and Cairo in the sixteenth century.

Final Remarks

Minhāj's significant intellectual contribution to the "conservative" Islamic tradition is its attempt to obviate the difficulties of a long existing tradition through multiple dissipative techniques and its end result in canonization of the school. Through extensive exploration into

[118] C. van Arendonk, "Kahwa," *Encyclopaedia of Islam*, 2nd ed.; cf. Ralph Hattox, *Coffee and Coffeehouses: The Origins of a Social Beverage in the Medieval Near East* (Seattle: University of Washington Press, 1985).

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

its textual genealogy it brought about changes and thus "prevented [sic] the system from ultimately reaching a state of rest", as Lorenz says.

It owes its production and reception to the institutional dynamics that the fuqahā-estate encouraged in the Islamic world, reacting to changing social, religious, economic and political conditions. Its extensive textual transmission stimulated the longer discursive tradition of the Shāfiʿīte clusters, bringing about standardized, hierarchized and systemized legal rulings, notions, and even norms. It rectified many inaccuracies in the judgements of *al-Muḥarrar* which pioneered the canonization process in the school. By virtue of its time and place in thirteenth-century Arab world, or more precisely in late-thirteenth-century Damascus, it was infused with normative scientific requirements including the method of recursive argument which continued within the longer tradition of Shāfiʿīte legal discourses. It also catered to the pedagogical expectations of the time in becoming incorporated into the longer tradition of the school.

The strategy of prioritization and the very act of canonization that *Minhāj* upheld was strongly influenced by the socio-cultural and politico-economic contexts that I have identified as the politics and economy of prioritization. That concept helps us analyse most dry, positive, legal texts as a source for social, cultural, and economic history. In giving attention to the problems of war and trade at the time of the crusades and Mamlūk counter-crusades it illustrates political aspects of prioritization. Its author's familiarity with the mercantile worlds of the Eastern Mediterranean and his living not far away from the maritime world motivated him to take a more "ocean-friendly" approach, seen as *Minhāj*'s economy of citations. These engagements and disengagements of the text with existing rules and laws were deeply rooted in the longer textual tradition of the school over more than four centuries. Reciprocating such a tradition through the estate and its textual cultures and institutional frameworks made remarkable impacts on the broader worlds of the Mediterranean and the Indian Ocean through its commentaries and other textual progenies.