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

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Conclusion

After completing my final draft of the previous chapters, I decided to relax by reading the latest general overview of a subject not altogether outside the area of my dissertation, Shahab Ahmed's *What is Islam?*.[1] That book left me with an immense feeling of pleasure, and I thought that if I had read it earlier I may have been able to present my arguments rather more powerfully. I feel it will remain a cornerstone for studying any aspect of Islam or Muslims for several decades and the scholars who read it and those who do not will find themselves in different camps. I shall take this opportunity to reflect on what I have been saying in my chapters in the light of some of Ahmed's suggestions.

This dissertation has explored the circulation of Islamic legal ideas across the Eastern Mediterranean and the Indian Ocean world in the second millennium, with a focus on the Shāfiʿī school of law. In the course of my analysis I have been dealing with four major historiographical lacunae: the Middle-East centric view of Islam; the intellectual discontinuity in the post-classical phase of Islamic law; the history of Shāfiʿīsm; and and its historical reception along the Indian Ocean rim. I shall reflect on each of these in turn.

Since the early centuries of Islam, most followers of Islam have been non-Arabs, and they have been instrumental in providing various dimensions to the basic formulation of the religion ever since. Yet their contributions remain largely unacknowledged. So my study tries to bring in their roles in formulating Islamic ideas across the centuries. Ahmed has explored the discursive interrelational matrix of the "Balkans-to-Bengal complex", in which the Arab lands are only one among many equally important regions. I have explored a "Shāfiʿīte cosmopolis of law", stretching from Damascus to Sulu, in which particular legal ideas and texts provided the Muslims with shared vocabularies and common grounds for scholarly and legalistic interactions. These they utilized meaningfully in their constant movements as traders, pilgrims, scholars, refugees or warriors.

The threads of this unified historical canvas come from the increasing mobility of persons and a processual globalization over centuries. Every century in its turn escalated the quantity and quality of mobility, but three centuries in particular have been acknowledged in human history for the very clear leaps towards reducing the distance between global extremities: the thirteenth, sixteenth and nineteenth centuries. All three centuries had a remarkable impact on Islam, and particularly on the history of Shāfiʿīsm, and all the five texts on which I have focused belong to one of them. The most intensive global interactions in these centuries through trade, culture, polity, and religion were the most attractive canvas for jurists to draw compromises and mild conflicts with the existing tradition. Unprecedented encounters with new communities, large-scale economic developments, socio-political setbacks and uprisings were some of the major markers of these centuries from which the Shāfiʿīte jurists could not exclude themselves. They addressed the new historical contexts in their articulations, and it will be wrong to stay in one particular region (such as the Middle East) as being the center for Shāfiʿīte ideas and for Islam more widely.

[1] Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton: Princeton University Press, 2015).

Minhāj was written immediately after the Mongol invasions of the Middle East which augmented the encounters with new entrants in every land. That text addressed the new political situation, standing within the tradition of Shāfiʿīte law and systematizing the long-lasting conflicts of opinions. As Ahmed writes, the thirteenth century is a period of "larger attitudinal *normalization* of the principle of agreeing to disagree" in which several long existing theological and legal conflicts were settled among the Muslims. They mutually recognized one another's legal methods and corpora of legal positions, even if the one contradicted the other. This also meant that each school comprehended its internal conflicts and made it relevant for students, scholars and practitioners of the law. This was further necessitated by the appointment of four equally important judges by the Mamlūks. Along the lines of the wider codification-processes initiated by the jurists of each school, *Minhāj* systematized the complementary and contradictory views of earlier jurists through an extensive exploration into its textual genealogy and by accommodating multiple dissipating techniques such as hierarchization and prioritization. Its formulations with slight deviations from earlier views or assertions of an author's own views were driven by the regional and transregional settings where it encountered the maritime world of the Eastern Mediterranean and the increasing presence of new entrants such as the Mongols from the Far East.

Its transmission to the South and Southeast Asian and East African parts of the Shāfiʿīte world was mediated in the sixteenth century by the production and dissemination of at least four famous texts of the school, all which were commentaries on it. Of those commentaries *Tuḥfat* is the most distinctive for its arguments and approaches. It was written in Mecca, and spurred on new legalistic conflicts within the school. Its production and reception coincided with many other developments in political, social, economic and cultural realms, such as the decline of the Mamlūks, the rise of the Ottomans and their conquest of the Middle East, the arrival of the Portuguese in the Indian Ocean, and increased travel towards Mecca and the Hijaz. The text presented a Meccanized view of Shāfiʿīsm, which determined the later engagements of numerous Shāfiʿīte scholars from South Arabia, the Hijaz, South and Southeast and Central Asia, and East Africa. Its complicated and incomprehensible methodology was hard to follow for primary and intermediate students of Islamic law, which could have had a negative impact on its receptivity outside Arab lands. But the increased movements of particular Middle Eastern communities and the arrival of many "new" students from the peripheries at educational centres in central-Islamic lands such as Mecca were positive external forces in promoting its ideas. It conversed with the cosmopolitan atmosphere of the city which had emerged from the arrival of a pilgrim-student-refugee nexus from the lands of South and Southeast and Central Asia, and from East Africa. The increasing role of the non-Arab communities in the heartland of Islam may well have persuaded the author of *Tuḥfat* to take very Arab-centric, Hijaz-focused and Meccanized attitudes towards Shāfiʿīte law and Islam in general. Its version of Shāfiʿīsm was not entirely acceptable in the peripheral regions of the Indian Ocean, but many students' encounters with the author himself and the massive migration of Yemenis facilitated its transmission along the oceanic rim.

In the same century, one whom we assume to have been a student of the author of *Tuḥfat* from a peripheral region responded to many arguments of his teacher by writing an indirect summary, *Fatḥ*. This text clearly reflects a response from peripheral Shāfiʿītes

occasioned by their academic travels and voyages.[2] In his summary the author addresses several problems and priorities of Muslims living outside the central Islamic lands by critically engaging with his own teacher. Its production and receptivity in the sixteenth century and afterwards reflect the decentralization of Islamic knowledge by what had been hitherto peripheral Muslim communities. *Fatḥ* (and many other works like it from South and Southeast Asia) instigated a revived and revised version of Islamic law and practice with clear echoes of the voices of their own geographical, linguistic or cultural identities. The central roles that the heartland of Islam in general and the nucleus of Shāfiʿī legal thought in particular had been playing in the intellectual and socio-cultural lives of Muslims of the non-Middle Eastern world now began to be questioned. The reception of *Fatḥ* in the larger Shāfiʿīte cosmopolis indicates this, and its commentaries *Nihāyat* and *Iʿānat* explicate multiple features of this development in the nineteenth century. In the furtherance of intensifying globalization towards possible formations of a global village in this century, Mecca stood as a temporal cosmopolis that brought together diverse people from all over the world, and also effected a reconciliation of several conflicts existing in traditional realms.

The trajectories of these texts demonstrate a constant participation of the peripheral communities from the Indian Ocean rim in Islamic law, and more particularly in Shāfiʿīte law which was widely followed in the coastal belts. In my dissertation, this becomes clear only from the sixteenth century due to the particular approach I followed on the textual *longue durée*. Otherwise, we can propose that scholars and jurists from the peripheries participated in the dissemination of Shāfiʿīte ideas as early as the thirteenth century. We see this with ʿAlā al-Dīn Aḥmad bin Muḥammad al-Hindī in the thirteenth-century, whom we mentioned in the third chapter. He studied in Damascus, obtained a professorship at Sayfiya Madrasa in Cairo, and composed legal hermeneutical texts in Shāfiʿīsm such as *Ghāyat al-suʾūl fī al-uṣūl*. The production of Shāfiʿīte texts as such is remarkably evident on the Indian Ocean rims of South Asia and Southeast Asia since the early fourteenth century, as the Terengganu Inscription of 1303 with its legal declarations and the texts such as *Qayd al-jāmiʿ* from Malabar show. These are only the cases of Shāfiʿīte law. If we consider jurists, texts, and ideas of other schools, we find clear evidence from as early as the mid-ninth century, when Islamic law was still organizing itself into doctrinal schools in the heartlands of Islam. Therefore it would be unfair for Islamic legal historians and Islamicists more broadly to continue to exclude this larger Muslim community who lived outside the Arab-Persian lands.

The interconnected texts from *Minhāj* to *Nihāyat* and *Iʿānat* via *Tuḥfat* and *Fatḥ* also show the post-classical evolution within Islamic law. A person cannot revise, edit, comment on, super-comment on, gloss, abridge, poetize, translate, or even simply transcribe a text written in a distant time or place without great intellectual effort and mastering its contents, language and discussions. These texts tell us how and why they found innovative ways of exploring interpretive techniques to survey, analyze and criticize the earlier traditions of the school in order to cater for the needs and priorities of their own particular contexts. Whether it is the canonization through hierarchization and prioritization, Meccanization, assertion of geo-cultural specificities, or synthesizing conflicts, they all sought to stand within the

[2] This argument is conceptually indebted to Pierre Bourdieu, "Intellectual Field and Creative Project," *Social Science Information* 8, no. 2 (1969): 89-119; Pierre Bourdieu and Jean-Claude Passerson, *Reproduction in Education, Society and Culture*, trans. Richard Nice (London: Sage, 1990).

"conservative" framework of the traditional legal system and yet also to prevent it from ultimate inertia. After the formative period of Islam, or more precisely of Shāfiʿīte law, and related discourses in the so-called classical period, the "real" interesting progress happened later.

Minhāj is the text that actually canonized the school's views. Until then its ideas were unorganized and unsystematic. To put it more provocatively, the whole Shāfiʿī *maḏhab* was "born" as a structured legal school only by the thirteenth century. *Minhāj* stood at the forefront of this "birth-moment" and its authority among the Shāfiʿītes reflects "the authority of canon". On its legitimacy *Tuḥfat* built its own space, like many of the contemporary commentaries. Its sensitivity to and engagement with most of the literatures produced with, before, and after *Minhāj* made it a complex text, hard to understand, but it stood as the final word for the highly educated scholars of the school. Its reception among them represents "the authority of a commentary". *Fatḥ* made the formulations of *Tuḥfat* more simple and accessible to intermediate students of Islamic law, whether they were affiliated to an institution or members of the general public. It had precision and simplicity, and its critical notes on earlier texts and its awareness of particular socio-cultural and geographical contexts contributed to the popularization of Shāfiʿīte law in the peripheries as well as in the heartlands of Islam, as much as the Shāfiʿītes own popularization of the text. The question of which came first or what caused what is a perennial question, as insoluble as the dilemma of prioritizing the chicken or the egg. The text embodies the "democratization of law" across the Indian Ocean and Eastern Mediterranean worlds. Its reception and its democratization produced further commentaries like *Nihāyat* and *Iʿānat* which also addressed the growing tensions of their times, especially those posed by the reformists and political entities.

All these constant engagements with specific times and places as much as with the longer tradition of Shāfiʿīsm are what make the post-classical textual genealogy of the school rather interesting. Deprecating them as unoriginal and sterile is a misplaced attitude. The formation of any discourse says nothing until the transformation it implies is analysed. The orientalists of olden days and modern Islamicists still produce volumes of literature on the first three or four centuries of Islamic law, but ignore the ways in which that law found ways into the lives of practising believers, scholars, judges or students for more or less a millennium. Their scholarship reflects what Foucault criticized in those who show their adherence to Marxism by limiting its history to the history of Marx's own statements.[3] He suggested that it is essential to see Marx as the originator of the discourse, not just the creator of a social theory, and that suggestion is very applicable also to Islamic legal historiography.

A few scholars in the last a couple of decades have partly remedied the situation, especially by looking into the fatwā-collections and judicial registers related to Ḥanafīsm and Mālikīsm. The contribution of my dissertation is to show that it has possibilities in Shāfiʿīte contexts, not by looking into the fatwā collections or registers of judges, but rather into the positive legal texts which themselves have been discarded as lacking any historical content for the society, culture or region of their time. The continuities and discontinuities and

[3] Michael Foucault, *Language, Counter-Memory, Practice*, trans. D.F. Bouchard and S. Simon, (Ithaca: Cornell University Press, 1977), 113-138; cf. Sudipta Kaviraj, "Marxism and the Darkness of History," *Development and Change* 23, no. 3(1992): 79-102 the quotes at 80.

regional historical elements explained in relation to each text thus open a new vista for further research, by taking the positive legal texts as sources of history.

This leads me to the next aspect that I have tried to tackle in this dissertation, the actual history of Shāfiʿīsm after the post-classical period. If the textual *longue durée* referred to earlier is one aspect of its spread across time and space, that is not the only one. The texts and ideas could obviously not travel by themselves. People and their micro- macro networks, their interests and conflicts enabled and expedited their dissemination. In the historiography, the intellectual dynamics have been neglected and credit has been given solely to the Yemenis, or more exclusively to the Ḥaḍramīs. I have argued that the constant division and unification inherent in the Shāfiʿīte tradition expedited the circulation of ideas and texts. The conflicts kept discussions alive and dynamic, whether between traditionalists and rationalists, Khurasanis and Baghdadis, Cairenes and Meccans, or the centres and the peripheries.

Yemenis were not the only group to spread Shāfiʿīte ideas and texts in the Indian Ocean world. In the thirteenth, sixteenth and nineteenth centuries the predominant mercantile and scholarly migrant networks immensely contributed to their diffusion. These disseminators included Kārimīs, Egyptians, Syrians, Iraqis and Persians from the thirteenth to the fifteenth centuries. Their interconnections set the stage for an early wave of the spread of the Shāfiʿī school to South Arabian and South and Southeast Asian and East African regions. In the sixteenth-century, the revived intellectual landscape of Mecca brought the socio-geographic and cultural spheres much closer and generated another wave of the spread of Shāfiʿī legal thought. The process was catalysed by some of the earlier groups along with new entrants such as Ḥaḍramī and non-Ḥaḍramī Yemenis, refugees from Ṣafawid Persia such as Khurasanis and al-Bukhārīs, al-Hindīs, Malays and Swahilis. There were scholarly-mercantile connections at nodal points such as Damascus, Cairo, Malindi, Zanzibar, Ḥaḍramawt, Malabar, Aceh, Java or Cape Town which explicate this. For such a mobility of scholarly networks and intellectual interactions the ocean functioned as a highway. The spread of Shāfiʿīsm across the Indian Ocean and Eastern Mediterranean should be understood to exemplify those composite characteristics.

This facet of my research addresses the dilemma of Indian-Ocean historians in their blanket generalizations and fleeting references to Shāfiʿīsm on the rim. It also gives an explanation for the reasons behind the historical receptivity of the school. From *Minhāj* to *Tuḥfat* to *Fatḥ* to *Nihāyat* and *Iʿānat*, the authors were very sensitive to the maritime contexts of trade and movements thanks to the locations where they lived and wrote their works. In a number of cases, we saw how each text articulated more flexible views on oceanic voyages and trade, at times even invalidating the viewpoints of other schools. We think of Nawawī's position on *khiyār al-majlis* in relation to a transaction conducted during a voyage. Although it will be too early to suggest that because of the liberal approaches of these authors and Shāfiʿītes in general on sea-related issues the school predominated the Indian Ocean rim, there is ample evidence to think in that direction. Two debates on the permissibility of eating seafood between Ḥanafītes and Shāfiʿītes quickly spring to mind: a) in the Mughal court of

Emperor Jahangir (r. 1605-1627); b) in Cape Town between the local Shāfiʿīte inhabitants and newly arrived Ottoman Ḥanafīte qāḍī Abu Bakr Effendi (1814–1880).[4]

Apart from such internal elements of Shāfiʿīsm, the micro-communities and macro-communities certainly contributed to making the school a predominant legal stream for Muslims along the rim. This dominance of the school happened mainly in the sixteenth century. Before that, the Indian Ocean and the Mediterranean had been an "ocean of laws" with many intermixed legal systems and traditions within the Muslim community, not to mention other communities and groups. The Mālikīte, Ḥanbalīte, Ḥanafīte, Shāfiʿīte, Ibāḍī, Shīʿīte, and many other evanescent schools of Islamic law coexisted there because of their crucial importance for Muslims from Tangier in North Africa to Canton in China. In the course of time, Mālikīsm was dominant in North Africa and Ibāḍīsm in Oman and part of Tanzania, while the rest of the Indian Ocean and Eastern Mediterranean was dominated by Shāfiʿīsm from the sixteenth century. The increased mobility of scholars, migrants, warriors, refugees, slaves and prisoners from Yemen, Persia, Khurasan, Egypt and the Swahili and Malay worlds was a significant factor in this development.

The circulation of Shāfiʿīte ideas was by no means any one-way journey through time or a simple "Arab export".[5] Although Middle-Eastern jurists introduced the school to the peripheral regions, those places soon developed "multiple Meccas" such as the Little Mecca at Ponnāni, with much significance given to the advancement of Shāfiʿīte ideas, and these led to "reverse journeys" of the ideas of the school back to the centres. The legacy of *Fatḥ* in the nineteenth-century Middle East attracted at least four commentators in a microcosm of Mecca, which exemplifies this development. The composition of *Iʿānat* represents a successful journey for a peripheral text. Furthermore, this was not simply a reverse journey, because even scholars who were born and brought in other peripheries wrote commentaries on such a peripheral text as *Fatḥ* in the nineteenth century, and they wrote them in Arabic. All these were unprecedented in the *longue durée* of Shāfiʿīte texts. *Nihāyat* of Nawawī al-Bantanī epitomizes this trend. Hence, the trajectory of *Fatḥ* and of Shāfiʿīsm in general in this cosmopolis of law is multidirectional and the peripheries were not passive receivers of a legal tradition from a putative centre.

In relation to this, I have attempted throughout the text to identify the regional elements, customs and norms of each text, an investigation that was primarily targeted at the Middle-Eastern texts. Despite the popular notion that positive legal texts give no room for such contextual analyses in a historical perspective, I made a modest attempt towards that end. My main goal in doing so was to "provincialize Islamic law", as it has been understood in the secondary literature, to the Middle East as much as identifying the value of Islamic law as conceived and perceived by the peripheral communities of Malabar, Java or Zanzibar. I do not know how successful I have been in this attempt (I may have become "periphery-centric"), but I do certainly know that more work is needed.

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[4] ʿAbd al-Sattār bin Qāsim Lahori, *Majālis-i Jahāngīrī*: *Majlis'hā-yi shabānah-'i darbār-i Nūr al-Dīn Jahāngīr : az 24 Rajab 1017 tā 19 Ramaẓān 1020 H.Q.*, ed. Arif Nawshahi and Mu'in Nizami (Tehran: Mīrās̲-i Maktūb, 2006), 80-118—I am thankful to Reza Huseini for this reference; Achmat Davids, "The Origins of the Hanafi-Shāfiʿī Dispute and the Impact of Abu Bakr Effendi," in *Pages from Cape Muslim History*, eds. Yusuf da Costa and Achmat Davids (Pietermaritzburg: Shooter & Shooter, 1994), 81-102.

[5] To quote Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The Chicago University Press, 2016). 10.

The long-standing historiographical construction of a distinct "customary law" by Islamicists, anthropologists, lawyers and area-specialists contrasted with a universal "Islamic law" proves to have been seriously misjudged, especially according to Ahmed's conceptualization when he articulates that what makes Islam is the "logic of internal contradictions". If we take this approach to analyse law itself (which often delineates a number of other seemingly "illegitimate" activities like drinking wine and the ideas as mysticism), the contradictions in legal understandings, practices and norms cannot be pitched one against the other. To rephrase his words, there are three elements to be considered: personal Islam; the elaboration of the discursive and paraxial content of Islam; the identification with the community of Islam. These three elements are *co-constitutive* of the human geographical and historical phenomenon of Islam and if someone identifies with these, an outsider cannot reject that person as non-Islamic or less-Islamic. The same rings true for law.

Against this starting point, I shall touch upon a few pitfalls in the scholarship of customary law *versus* Islamic law. Firstly, there has been a constant attempt to see the "peripheries" of Muslim world as exceptional in discussions of Islamic law versus customary law. The peripheries have often been portrayed as less Islamic, less scriptural and more spiritualistic or syncretic and custom-centric, a rhetoric which has dominated scholarship. As we saw with *Minhāj* and *Tuḥfat*, customs were always present in Islamic heartlands too and were even legitimized. Hence the juxtaposition of customs of a particular region against Islamic law is misleading, especially while both legal traditions often complement than contradict each other.[6] Moreover, this also explicates that there is nothing called Islamic law unless it is contextualized and provincialized. In addition, there has been an overemphasis in the scholarship of the last century on *adat*-law (as customary-law has been often called) against Islamic law, especially in the "Leiden school" of Indonesian legal studies.[7] *Adat* is one among many sources of laws and it functions with many extra-regional *adat*s, religious norms, state-introduced laws, etc.

The contradictions between both the laws, as articulated by scholars since Van Vollenhoven, are justified in the legal theory of both legal systems. For example, an *adat*-related poem from Jelebu reads:

> *Adat* hinges on religious law,
> Religious law hinges on the Book of God.
> If *adat* is strong, religious law does not oppose it,
> If religious law is strong, *adat* does not oppose it.
> The source of religious law is consensus,
> The source of *adat* is consensus.[8]

[6] Mohammad Hannan Hassan, "Islamic Legal Thought and Practices of Seventeenth Century Aceh: Treating the Others," (PhD diss., McGill University, 2014); Noor Aisha bte Abdul Rahman, "A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities," (MA thesis, National University of Singapore, 1989).

[7] See, for example: Peter J Burns, *The Leiden Legacy: Concepts of law in Indonesia* (Leiden: KITLV Press, 2004); F.D.E. van Ossenbruggen, "Prof.mr. Cornelis van Vollenhoven als ontdekker van het adatrecht," *Bijdragen tot de Taal-, Land- en Volkenkunde van Nederlandsch-Indië* 90 (1933): I-XLI; cf. Cornelis van Vollenhoven, *De ontdekking van het adatrecht* (Leiden: Brill, 1928).

[8] A Caldecott, "Jelebu Customary Songs and Sayings," *Journal of the Straits Branch of the Royal Asiatic Society*

Similarly, Article 71 of *Undang-undang Sungei Ujong* (Customs of Sungei Ujong) says:

> …*adat* confirms religious law as is said in the *ḥadīth*… "when *adat* has a strong position in a country, it serves as religious law", for the strength of *adat* is based on the consensus of all religious scholars and the Companions of the Prophet. For that reason, *adat* is strengthened, religious law is enforced, both are employed to the present day, unchanging down the generations, handed from our ancestors.[9]

Analogous jurisprudential rationalizations in many other customary laws were overlooked by earlier scholars of *adatrecht*, whereas they have been emphasized well recently by Southeast Asian scholars. In Islamic legal theory, as long as *adat* or *ʿurf* does not contradict the foundational structures of Islam, it would be binding even if it might go against the foundational views of a school. Shāfiʿīte legal theorists like al-Suyūṭī, Ibn al-ʿĀbidīn and many theorists of other schools, such as the Ḥanafīte ʿAbd Allāh bin Aḥmad al-Nasafī and the Mālikīte al-Shāṭibī, have all validated local customs as sources of law.[10]

The long intellectual genealogy of Shāfiʿīsm from one Nawawī to another Nawawī, the vast terrain of the Shāfiʿīte cosmopolis from Nawā to Java, the textual *longue durée* from *Minhāj* (or from *al-Umm*) to *Nihāyat* is thus a complex web of people, places, periods and perspectives that any generalization would call for exceptions to be identified. Many of my predicaments in using terms, concepts and so on remain largely unsolved, and that is one of the foundational problems that a student of global history has to encounter, especially when covering a large canvas of places (and in my case also of periods). Thus, there will be many alternative views and counter-arguments to my modest attempts to understand the continuity and discontinuity in Shāfiʿīsm since the thirteenth century and to analyse reasons why certain textual genealogies became more significant than others in the traditional legalist synthesis of texts and practices. Some objections I can see myself, and I would like to answer them in anticipation.

One of my prime arguments is centred on the idea of the fuqahā-estate. I elaborated how the Muslim jurists fashioned their identity themselves and positioned themselves in the Islamic realm, free from the influence of political, social and regional influences. Although they did not manage to materialize many elements and claims, the Shāfiʿītes did succeed in alienating themselves from the state. Since the thirteenth century, Shāfiʿīsm as such lost its exclusivity, and it often remained unpatronised, banned, deprecated or excluded from a number of entities such as the Mamlūks, Ṣafawids and Ottomans. Although many individual Shāfiʿītes associated with the state-mechanism at various points, the school itself never came to be regarded as the "official school" of any state, as Ḥanafīsm was regarded in the Ottoman Empire. All the authors of the texts under my focus, however, did not associate with any political entities or take up any state-sponsored positions, and they stand in sharp contrast to

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78 (1918): 3-41 at 26.

[9] Sir Richard Winstedt, P.E. Josselin de Jong, "A Digest of the Customary Law of Sungei Ujong," *Journal of the Malayan Branch Royal Asiatic Society* 27, no. 3 (1954): 61-62

[10] On how customs were legitimised and incorporated into Islamic law, see Gideon Libson, "On the Development of Custom as a Source of Law in Islamic Law,"*Islamic Law and Society* 4, no. 2 (1997): 131-155; Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of ʿUrf and ʿAdah in the Islamic Legal Tradition* (New York: Palgrave Macmillan, 2010).

the "post-Mongol phenomenon" of the successful state over the estate. I have substantiated this point in the second chapter, and throughout the dissertation I have sustained this notion implicitly or explicitly. However, one case that I have not discussed is the Sultanates of Aceh and Banjar (Kalimantan), both of which exclusively patronized Shāfiʿīte ideas and texts since the seventeenth century, if not earlier. The first three complete Shāfiʿīte texts available to us from the Malay world were commissioned by rulers in the seventeenth and eighteenth centuries: the first, *Ṣirāṭ al-mustaqīm* of al-Ranīrī, was written at the request of the Sultan Iskandar Muda; his daughter who later became queen, Ṣafiyat al-Dīn Tāj al-ʿĀlam, asked ʿAbd al-Raʾūf Sinkilī to write the second, *Mirʾāt al-ṭullāb*; and the third, *Sabīl al-muhtadīn* of Muḥammad Arshad al-Banjārī, was commissioned by the Banjar Sultan Taḥmīd Allāh bin Tamjīd Allāh. I could make excuses and present reasons, such as the insignificance of law compared to mysticism in the archipelago (Chapter 7), but I would still have to admit that these rulers, jurists and texts stand opposed to my arguments, and they represent a measure of genuine counterpoint to my work from that historical context. They also indicate towards what Ahmed has argued convincingly on the existence of a parallel ruler's law in "the Balkans-to-Bengal complex" in which rulers often functioned as an independent investigator (*mujtahid*) and jurist.

This leads me to a related point, in that I have paid less attention to the Shāfiʿīte texts from the Malay world written in Malay language. This is something of which I was aware, but I deliberately kept them aside because of the methodological line that I decided to follow in my research, that of tracing particular textual genealogies across time and place. None of these Malay works was a commentary or a summary within the textual-family on which I chose to focus, even though they did use many of *Minhāj*'s commentaries as sources. *Ṣirāṭ* utilized *Minhāj* and many of its commentaries, and Zakariyā al-Anṣārī's *Manhaj* is a significant source for *Mirʾāt al-ṭullāb*. And, *Sabīl al-muhtadīn* is a commentary on *Ṣirāṭ*. To work on these interconnected Malay legal texts of Shāfiʿīsm and the ways in which they agree and disagree with their Middle Eastern sources is an interesting possibility for my future research.

From a regional perspective, I strongly feel I should have given more attention to East Africa and South Africa than I did. I held back because I do not know Swahili, I am sure competent researchers would be able to shed more light into East African Shāfiʿīsm, especially before the nineteenth century, than I have done. Some intriguing issues deserving further investigation include people converting to Islam in order to escape enslavement by Arab traders (it was an offence to enslave free Muslims according to Islamic law), and the roles of old Muslim slaves in spreading the school, and of East African warriors such as Ethiopians in Malabar and Aceh. The same goes for South Africa, with the additional element of forced migrants, slaves and prisoners from the Malay world brought there by the Dutch and the English.

Questions about the activities of the Dutch and the English are another aspect I have not approached in this study, though I am of course aware of the European contribution to the spread and survival of the Shāfiʿīte school and particularly of the texts I have chosen. That the only fleeting references to the Europeans can be found in this dissertation was intentional. The school and its texts were being circulated centuries before the Europeans arrived and continued to be circulated decades after the Europeans left (to paraphrase a statement of

Engseng Ho made in another context). I deliberately avoided this subject, to make a humble statement towards the possibility of presenting a non-Eurocentric case for global history.

Nevertheless, I am fully aware of the European use of these texts in different colonial settings from East Africa to Southeast Asia. The non-Islamic "fuqahā" of European colonial states once did interfere with the Muslim legal administration, and these texts were thought to be instrumental in their projects from the mid-eighteenth century onwards. Our texts were translated into European languages in the nineteenth and early twentieth centuries. Those translations were an outcome of scholarly and political interest nurtured in different ways in Europe which can be explicated through a large body of correspondence, memoirs, reviews and discussions. This culminated in translations in four languages (Dutch, English, French, and German), which represent the western European colonial empires. In the introductions to these translations or related discourses, the authors recurrently state their intention to expedite culturally an efficient colonial legal administration for the Dutch East Indies, the British Empire or German East Africa. *Al-Muḥarrar*, the predecessor of *Minhāj*, was translated into Dutch and Javanese by the Dutch East India Company around 1750; *Minhāj* was translated into French by L.W.C. van den Berg in the 1880s; his translation was retranslated into English by E.C. Howard in 1914; *Tuḥfat* was partly translated into Javanese and Dutch by Dutch scholars; *Fatḥ* is said to have been translated into English around 1810 by British officials in Malabar, but I was not able to locate that work. I hope to consider these works and their implications to the textual *longue durée* of Shāfiʿīsm on another occasion.[11]

Although it may be obvious, I am aware that I have hardly looked into legal *practices*. Legal discourses are a completely different area for research than their implementation. My focus has been only on the intellectual side. We do not know if the rulings prescribed or proscribed in the texts had any impact in the social legal cultures of Muslims, although we can see that certain rulings did make changes. I think of the discussion in *Iʿānat* on the conduct of a feast in Mecca after a funeral and its limitations following Zaynī Daḥlān's fatwā, as Snouck Hurgronje confirmed, see Chapter 7. From this some may argue that the legal texts and law as such had little impact on social-legal practices and to suggest that law was marginal. But taking my cue from Ahmed's rejection of a "marginality thesis" for the history of philosophy in the Muslim world, I say that while jurists *do* law, many other people are affected by it, even though not to the extent that many Islamicists and legal historians have suggested, exaggerating that it is the sole framework of Islam, and taking a "legal-supremacist" approach.

And now to conclude. The modest aim of this dissertation has been to contribute to the ongoing discussions concerning the histories of postclassical Islamic law: Shāfiʿīsm; the long textual genealogies; Shāfiʿīsm in the Indian Ocean and the Mediterranean worlds for around a thousand years. The continuities and discontinuities in this long period and in widespread locations can be seen to fit in easily with ideas of chaos theory. That theory rejects the popular

[11] I have briefly engaged with these translations in two articles: Mahmood Kooria, "Two 'Cultural Translators' of Islamic Law and German East Africa," *Rechtsgeschichte-Legal History: Journal of the Max Planck Institute for European Legal History* 24 (2016): 190-202; idem, "Dutch *Mogharaer*, Arabic *al-Muḥarrar* and Javanese Law-Book: VOC's Experiments with Muslim Law, 1747-1767," *Itinerario: International Journal on the History of European Expansion and Global Interaction* (under review); cf. Hussin, *Politics of Islamic Law*.

notion that only large changes can generate large changes. It encourages us to look for minor changes in distant times and places that were capable of generating large effects in other periods or areas in social, historical, and cultural processes. The intellectual activities in postclassical Shāfiʿīsm can be appreciated as subtle changes made by its jurists long ago or far away which had impressive affects and effects on the textual *longue durée* of the school. The non-linear trajectories from *Minhāj* to *Nihāyat*, from Nawawī to Nawawī, from Damascus to Java, spanning time and place, are interconnected by degrees of an intellectual separation. Even so, as Lorenz tells us, "If the flap of a butterfly's wings can be instrumental in generating a tornado, it can equally well be instrumental in preventing a tornado."[12]

[12] Edward Lorenz, "Predictability: Does the Flap of a Butterfly's Wings in Brazil Set Off a Tornado in Texas?," *American Association for the Advancement of Science, 139th Meeting,* 1972.