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

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Cover Page



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Summary

This dissertation explores the circulation of Islamic legal ideas and texts across the Eastern Mediterranean and the Indian Ocean with a focus on the Shāfi‘ī school of Islamic law. There are four major inter-related historiographical problems in my mind: the Middle-East centric view of Islamic law; its intellectual dis-continuity in the post-classical phase; the histories of Shāfi‘īsm; and its historical reception along the Indian Ocean rim.

Since the early centuries of Islam, most followers of Islam have been non-Arabs, yet their contributions have remained largely unacknowledged. This study brings in their roles in formulating Islamic ideas in the second millennium CE. I delineate a “Shāfi‘īte cosmopolis of law” in which particular ideas and texts provided Muslims with a shared vocabulary and common grounds for juridical processes. The threads of this unified historical canvas derive from the increasing mobility of people and the processual globalization over a long period of time, especially during the thirteenth, sixteenth and nineteenth centuries. These three centuries of intensive globalization made remarkable impacts on Shāfi‘īsm, when its jurists had to address new historical demands. To elaborate on these points, I discuss at length five interconnected texts that were written in one of those centuries.

Minhāj, the first of the five, addressed new socio-political situations after the fall of the Abbasid Caliphate. Through an extensive exploration into the textual genealogy of Shāfi‘īsm and by accommodating multiple dissipating techniques, the text became a canon of the school. It systematized long-existing conflicts, especially between the Baghdadis and the Khurasanis. Its formulations, with slight deviations from earlier views or with assertions of the author’s own views, were driven by its regional and transregional settings. Although it revolutionized Shāfi‘īte thought, its transmission to the “peripheries” was mediated through the production of four commentaries in the sixteenth century. Of those *Tuḥfat* is the most distinctive commentary. It was written in Mecca, and spurred on new legalistic conflicts within the school with a Meccanized view of Shāfi‘īsm. Its incomprehensible methodology could also have contributed to it having a negative impact on its reception outside Arab lands. But the increased movements of some Arab communities and the arrival of many peripheral students in Hijaz were positive external forces in promoting its ideas.

One writer from the periphery who responded to many arguments of *Tuḥfat* had possibly been a student of its author. He wrote an indirect summary, *Fath*, which reflects several priorities of Muslims living outside the central Islamic lands. Its production and receptivity in the sixteenth century and afterwards reflect the decentralization of Islamic knowledge by what had been hitherto peripheral Muslim communities. *Fath* instigated a revived version of Islamic law with clear voices of their peripheral geographical, linguistic or cultural identities. The central roles that the heartland of Islam and the nucleus of Shāfi‘īsm had been playing in the intellectual and socio-cultural lives of non-Middle-Eastern Muslims world now began to be reimagined. The reception of *Fath* in the larger Shāfi‘īte cosmopolis indicates this. It gave rise in turn to two commentaries, *Nihāyat* and *I‘ānat*, which exemplify many features of this development in the nineteenth century. Responding to the modernist and political calls of the time, these last two texts effected a reconciliation of several conflicts

existing in Shāfi'ite 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 Shāfi'ite law.

These five interconnected texts also show a post-classical evolution within Islamic law. They tell us how and why they found innovative ways of exploring interpretive techniques to analyse earlier traditions of their school. Whether it is prioritization, Meccanization, assertion of geo-cultural specificities, or synthesis of conflicts, they all sought to stand within a “conservative” legal framework and yet also to prevent it from ultimate inertia. After the formative period of Islam, or more precisely of Shāfi'ite law, and related discourses in the so-called classical period, the “real” interesting progress happened later. *Minhāj* is the text that was actually canonized the school's views. Until then its ideas were unorganized and unsystematic. The authority of *Minhāj* among the Shāfi'ites reflects “the authority of a canon”. On this legitimacy *Tuḥfat* made its own space, like many of the contemporary commentaries. Its sensitivity to and engagement with most 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”. *Fath* made the formulations of *Tuḥfat* more simple and accessible to intermediate students of Islamic law. 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 Shāfi'ite law in the peripheries as well as in the heartlands of Islam. The text embodies the “democratization of law” across the Indian Ocean and Eastern Mediterranean worlds. Its reception and its democratisation produced further commentaries, such as *Nihāyat* and *I'ānat*, which also addressed the growing tensions of their times, especially those posed by the modern reformists and political entities.

All these constant engagements with specific contexts as much as with the longer tradition of Shāfi'ism are what make the post-classical textual *longue durée* of the school rather interesting. The formation of any discourse says nothing until the transformation it implies is analysed. The orientalist and Islamicist still produce volumes of literature on the first three or four centuries of Islamic law, but they ignore the ways in which that law found ways into the lives of practising jurists, scholars or students for more or less a millennium. A few recent scholars have partly remedied the situation with the help of Ḥanafite and Mālikite fatwa-collections and judicial registers. This dissertation shows the possibilities in Shāfi'ite contexts by exploring the positive legal texts themselves.

This leads me to the next problem: the history of Shāfi'ism in the post-classical period. The texts and ideas could obviously not travel by themselves in the textual *longue durée*, but people and their micro- and macro-networks enabled and expedited their dissemination. The constant division and unification inherent in the Shāfi'ite tradition encouraged the circulation of ideas and texts across its cosmopolis of law. The conflicts kept discussions alive and dynamic, whether between traditionalists and rationalists, Khurasanis and Baghdadis, Cairenes and Meccans, or the centres and the peripheries. In the historiography, such dynamics have been neglected. Also, credit for its dissemination has been given solely to the Yemenis, or even more exclusively to the Ḥaḍramīs. But, as I shall argue, they were not the only group to spread it. Many mercantile and scholarly networks contributed immensely to its diffusion, including Kārimīs, Egyptians, Syrians, Iraqis and Persians, until the fifteenth

century. In the sixteenth century the revived intellectual landscape of Mecca brought the socio-geographic and cultural spheres much closer together and generated another wave for it to spread. 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, al-Hindīs, Malays and Swahilis.

This facet of the development also addresses another dilemma of Indian-Ocean historians in their blanket generalisations and fleeting references to Shāfi'īsm. This research gives an explanation for the reasons behind the historical reception of the school. Apart from its potential internal elements, the micro- and macro-communities also contributed to making it a predominant legal stream among Muslims of the rim. This process happened mainly in the sixteenth century. Before that the Indian Ocean and the Mediterranean had been “oceans of laws” with many intermixed legal traditions within the Muslim community. In the course of time, the coastal belts were dominated by Shāfi'īsm. From the sixteenth century this was due to the increased mobility of scholars, migrants, warriors, refugees, slaves and prisoners.

The circulation of Shāfi'īte ideas was by no means a one-way journey. Although Middle-Eastern jurists introduced the school to the peripheries, those places soon developed “multiple Meccas” advancing Shāfi'īte ideas, and these led to “reverse journeys” of the ideas of the school back to the centres. This development is further exemplified in the nineteenth-century microcosm of Mecca, where *Fatḥ* attracted at least four commentators. Furthermore, this was not simply a reverse journey, because even scholars who were born and brought up in other peripheries wrote commentaries on such a peripheral text as *Fatḥ*. All these were unprecedented in the *longue durée* of Shāfi'īsm. The trajectory of *Fatḥ* and of Shāfi'īsm in general in this cosmopolis of law is thus multidirectional and the peripheries were not passive receivers of a legal tradition from a putative centre.

To the history of Islamic law the idea of the fuqahā-estate is crucial for the jurists who had positioned themselves in the Islamic realm, free from political, social and regional influences. Although they did not manage to materialize many elements and claims, the Shāfi'ītes did succeed in alienating themselves from the state. None of the authors of the texts under my focus associated with any political entities or took up any state-sponsored position, and they stand in sharp contrast to the “post-Mongol phenomenon” of the successful state over the estate. In relation to this I attempt throughout my research to identify the regional elements, customs and norms of each text. Against the general notion that positive legal texts give no room for such historical analyses of contexts, I shall make a modest attempt towards that end. My main goal in doing so is to “provincialize Islamic law” to the Middle East, inasmuch as its value was conceived and perceived by the peripheral communities.

The long intellectual genealogy of Shāfi'īsm, its vast terrain as a cosmopolis of law, the textual *longue durée* from the thirteenth-century *Minhāj* (or from the ninth-century *al-Umm*) to the late-nineteenth-century *Nihāyat* is thus a complex web of people, places, periods and perspectives in which multiple centres emerged, faded and/or functioned simultaneously. Its discontinuities fit into the ideas of chaos theory, and this encourages us to look for minor changes in distant times and places capable of generating large effects in other periods or areas in social, historical, and cultural processes.