# Introduction

The journeys of Islamic legal texts and ideas across the worlds of the Indian Ocean and the Eastern Mediterranean form the fulcrum of this book. With a focus on the Shāfiʿī school of Islamic law, it observes how and why the texts shaped, transformed, influenced and negotiated the legal lives and juridical thoughts of a significant community over a whole millennium, crossing many boundaries of place and time.

For most Muslims, legal and mystical works first written as much as a millennium ago are highly significant in their everyday lives alongside the foundational scriptures of the Qurʾān and the *ḥadīth* (Prophetic traditions). They all influence the ways in which they perceive and practise their religion. The circulation of Islamic knowledge depends on such texts, which as *kitāb*s retain a guiding power through the mediation of Islamic scholars. The disciplines of law, mysticism and theology provide them with an all-encompassing framework to teach, practise and disseminate what constitutes the main body of this knowledge system. In the ordinary lives of many Muslims, each legal and theological school or mystical order is a point of reference and a source of piety. It is an essentially curious question why such ancient texts from so distant a place should sustain their ring of relevance.

In the Indian Ocean and Eastern Mediterranean littoral that binds Asian and African continents together, Islam has had a remarkable impact in shaping the laws in circulation since the premodern period. From the ninth century onwards, Muslims have been an important force in the maritime circulations of commodities and communities, inspiring many scholars to identify the Indian Ocean as an "Islamic Sea" or "Muslim Lake" for its remarkable mélange of Arab, Persian, Indian, Swahili,



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Malay, Abyssinian and Javanese followers, who shaped and influenced its socio-economic aspects in variegated ways. Nuances of these multi-ethnic, multi-racial and multi-lingual historical developments provide fascinating analytical and exploratory avenues for global histories of law, religion and society. Specifically for the history of Islamic law, it is even more interesting for the fact that the majority of Muslims have historically been living in the so-called peripheries and have been practising Islamic laws (*aḥkām al-Islam*) from as early as 850 CE in such remote places as Guangzhou in China.[1] One wonders how they could have observed Islam and its laws from so far away, and if they retained that tradition over the course of time along with their coreligionists.

For Muslims living in the Indian Ocean and the Eastern Mediterranean littoral, the Shāfiʿī school of Islamic law has been one of the major lexicons that provide a shared vocabulary, whether in the Philippines, Syria, Indonesia, South Africa, Yemen, Tanzania, Kenya, Sri Lanka or Malaysia. The school is named after Idrīs al-Shāfiʿī (767–820), one of the leading jurists of early Islam, and it was established in the ninth century on the basis of the juridical approaches and teachings he had imparted during his peregrinations in present-day Iraq, Egypt, Yemen and Saudi Arabia. It is remarkable how his teachings a thousand years ago in those places found its largest following in the largest Muslim country, Indonesia, for example. This aspect relates to the historical influence of Islamic law in general and Shāfiʿīsm in particular among the Indian Ocean Muslims, and to the direct historical intellectual connections between these regions in terms of legal thoughts and practices.

How and why did Islamic law spread along the coastal belts from South|East Africa to South|East Asia, how did similarities occur and how did connections function? How and why did one particular school emerge as the standard form of law, and how did it develop into the fully fledged legal practice of those regions? What sort of materials and texts enabled the presence and persistence of law and its one school among them as one of the most important sources for better socio-religious lives? With these questions in mind, this book explores the legal arguments of jurists within the context of scholarly, political, economic and social connections at major nodal points in the Eastern Mediterranean and the

[1] See the account by a ninth-century Muslim traveller in Jean Sauvaget, *'Ahbār aṣ-ṣīn wa l-hind. Relation de la Chine et de l"Inde, rédigée en 851* (Paris: Belles Lettres, 1948), 7; Eusèbe Renaudot, *Ancient Accounts of India and China by Two Mohammedan Travellers Who Went to Those Parts in the 9th Century* (London: S. Harding, 1733), 7–8.

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Indian Ocean littoral: Cairo, the Levant, the Hijaz, Ḥaḍramawt, Malabar, Java, Zanzibar and Aceh between the ninth and twentieth centuries. It brings together such a large transregional and transtemporal canvas through a "textual cord" of Shāfiʿī cosmopolis with all its nuances and complexities. It traces the conjunctions and disjunctions across Islamic lands and between classical and postclassical Islamic laws through the prisms of circulatory legal texts, through the textual traditions differently developed with continuities and ruptures, and through their respective impacts on the contrasting intellectual landscapes of Muslims.

## OPENING THE GATE OF LAW

The textual cords of Islamic law are rooted in its long discursive and disciplinary practices. Authors of juridical texts, whether based in South | East Asia, Africa or the Middle East, aimed to be part of a longer discursive intellectual textual tradition, relating their writings to earlier texts, scholars and ideas, yet emphasising the contextual priorities of their own places and times. All these writings generally came under the disciplinary framework of *fiqh*, a crucial field for explaining the long Islamic scholarly tradition and for understanding law and legality as discussed in this book. It is a discipline that emerged primarily from the attempts to regulate the everyday life of a believer according to the individual or collective interpretations of the Qurʾān, Prophetic traditions and other scriptural sources of Islam.

In Islamic terminology two dominant terms are used to categorise legal knowledge generically: *Sharīʿa* and *fiqh*. Sharīʿa literally means way or path, but it has been used from early on as an umbrella term to refer to divine commandments and laws as evident in the foundational scriptures of Islam. The fiqh is human, scholarly interpretations of the Sharīʿa and is divided into three major subfields: *uṣūl al-fiqh* connotes legal theory; *furūʿ al-fiqh* refers to substantive law; and *takhrīj* denotes the process of interrelating them. These terms represent independent genres of Sunnī Islamic legal writing, especially *uṣūl al-fiqh* and *furūʿ al-fiqh*. This book is concerned with the *furūʿ al-fiqh*, and all the texts it focuses on belong to this genre unless stated otherwise. I use the terms fiqh and (Islamic) law interchangeably. There are other major genres of Islamic knowledge such as the Qurʾān and its exegesis (*tafsīr*); the ḥadīth; theology (*kalām*); mysticism (*taṣawwuf*). All these disciplines, along with additional fields such as logic, grammar, rhetoric and literature, are made sense of in terms of being ancillary to the fiqh. A Muslim jurist should study these areas and their texts, but only to sharpen juridical knowledge. This emic

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understanding of the entire Islamic knowledge and textual corpus is also entangled with some etic concerns. The Qurʾān per se is not helpful for any historical discourse unless it is interpreted in tafsīr. On the Indian Ocean rim, even up to the sixteenth century, we have no extant exegetical text. The same goes more or less for ḥadīths and theology. The case is slightly better for mysticism, whereas for law it is even more telling. We have fiqh texts written by the oceanic Muslims from as early as the fourteenth century.

Islamic law mainly evolved in the eighth and ninth centuries. In the eighth century the Islamic jurists were divided broadly into two groups. While "the guardians of traditions" (*ahl al-ḥadīth*) valued the traditions of the Prophet Muḥammad and the customs of Medina more than they valued reason, "the guardians of reasoning" (*ahl al-raʾy*) preferred legal rationality and a context-based analogical deduction (*qiyās*), juristic preference or equity (*istiḥsān*), consensus of opinion (*ijmāʿ*) and local custom (*ʿurf*). The former group was predominantly based in the Hijaz and the latter in Iraq. The "traditionalists" would eventually evolve as the Mālikī school, named after its leading jurist Mālik bin Anas (711–795), and the "rationalists" as the Ḥanafī school, named after its prominent jurist Abū Ḥanīfa (699–767). In an attempt to reconcile this legalistic division, the above-mentioned al-Shāfiʿī accommodated Mālik's standpoint of *istidlāl* (legal reasoning beyond *qiyās*) as a source of law and refuted Abū Ḥanīfa's idea of equity. His approach resulted in the school of Shāfiʿīsm, but against it there emerged the more traditional legal thought of Aḥmad bin Ḥanbal (780–855). In these entanglements between tradition and reason, what is interesting is that all four "founders" of their schools were known to one another as students or teachers. In fact, their relationships go beyond the Sunnī tradition. Jaʿfar al-Ṣādiq (c. 702–765), the founder of the Shīʿī school of Jaʿfarīsm, was a teacher of Abū Ḥanīfa; al-Shāfiʿī was a student of Mālik bin Anas; Aḥmad bin Ḥanbal was a student of al-Shāfiʿī. Such connections and disconnections mirror the pattern of the later tradition of Islamic law and particularly of Shāfiʿīsm. As much as every scholar belonged to their teacher, they all formulated their own independent ideas.

All these jurists, their followers, and many more shaped the hermeneutics of the fiqh and produced a vast corpus of legal texts, which deal with diverse legal questions referring to the past, the present and the future of Islamic tradition.[2] References to *the past* revealed their attempts

[2] Talal Asad, *The Idea of an Anthropology of Islam* (Washington, DC: Centre for Contemporary Arab Studies, Georgetown University, 1986).

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to place themselves in the long tradition of discourses of earlier texts and scholars. Contemporary contexts and references to a particular space and time constitute *the present*, and a vision of *the future* is embedded in their idea of constructing an ideal society. Since almost all fiqh texts engage with the same legal areas and interconnect past, present and future, they provide an opportunity for historians to understand how attitudes and mentalities of scholars changed on issues or themes over centuries. They not only exhibit continuity from the past to the future, but also enable us to identify discontinuities which had clear influences in a specific place and time, as exemplified by the present of a text. But did these law books actually reflect any changes in the last thousand years and did they engage with their local contexts?

Most early Islamicists believed that the freedom for *ijtihād*, "independent investigation", in Islamic knowledge system ended roughly around 900 CE with "the closure of the gate of *ijtihād*". The major Sunnī legal schools were thus restricted to four and all other legal streams were disqualified, arguably by a consensus of the jurists, and later scholars had to choose one of the schools and had freedom to investigate only while standing within a school. This general idea motivated many scholars to believe that "original" and "independent" legal thoughts ceased forever in the history of Islamic law, and "sterile commentarial literature" represented the increasing "decline of knowledge in our age".[3] In the last few decades, however, this approach has been questioned and scholars have argued convincingly that Islamic law indeed continued to be more dynamic and flexible in later centuries.[4] Many recent scholars researched the legal opinions of a number of schools, jurists and texts from the second millennium onwards, and one scholar has even identified a second formation of Islamic law in this millennium.[5]

[3] Muhammad Qasim Zaman, "Transmitters of Authority and Ideas across Cultural Boundaries, Eleventh to Eighteenth Centuries", in *The New Cambridge History of Islam*, vol. 3: *The Eastern Islamic World, Eleventh to Eighteenth Centuries*, ed. David O. Morgan and Anthony Reid (Cambridge: Cambridge University Press, 2010), 582–583; cf. H. A. R. Gibb, *Mohammedanism: A Historical Survey* (Oxford: Oxford University Press, 1949), 71; C. Snouck Hurgronje, *Mekka in the Latter Part of the 19th Century: Daily Life, Customs and Learning* (Leiden: Brill, 2007), 205.

[4] Wael Hallaq, "Was the Gate of Ijtihad Closed?", *International Journal of Middle East Studies* 16, no. 1 (1984): 3–41.

[5] The Ḥanafī school took the lead in this line of enquiry because of its prominence in the Ottoman Empire and in Central and South Asia. For example, see Guy Burak, *Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2015); Abdul Hakim I. Al-Matroudi, *The*

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The developments later in the history of Islamic law emblematise an urge for the stability and continuity of thoughts, institutions and values. The unbroken chains of scholars and students over centuries as much as the chains of their books and commentaries authenticate a *longue durée* of circulation. The links make the continuity of intellectual enquiry permanent and show the ways through which participants asserted themselves into the tradition. They always stretch back to previous scholars of the school, and through them to the Prophet, and ultimately to God. Yet within this unbroken chain of transmission there are frequent ruptures in legal ideas and texts. Indeed, at times discontinuity dominates the discussions and makes one particular scholar or text tower over the longer tradition and governs its course across time and space. Analogies for these ruptures can be found in the very early phases of Islamic law, when students often "stood against" the legal regimes of their teachers. Often points of disagreement erupted about rationality and traditionalism, a predicament that would remain instructive throughout Islamic legal history.

An obligation to subscribe to one school of thought did not force later jurists to accept blindly the legal ideas of their eponymous founders. They continued to engage with each issue critically, treating it as something new and providing a new perspective and juridical ruling. Sometimes this opposed what the founding figures thought and argued. Adherence to one school did not hinder its followers from intellectual activity or the urge to go beyond what was known and accepted. Setting up a constitution for a nation does not restrain its jurists, legislators or the like in later centuries from revisions and amendments. They might even introduce paradigm shifts into the whole framework of the nation itself. Similarly, standardising the four legal schools among Sunnīs and adhering to one of them did not lead to intellectual inertia in later centuries. Many jurists who were followers of a particular school openly contradicted several rules of its founding leaders.[6] In Shāfiʿīsm, the legal opinions of two later jurists, Rāfiʿī and Nawawī, were regarded as the most valid after the thirteenth century. The eponymous founder, al-Shāfiʿī, was often a distant reference point for authenticity among succeeding jurists when compared to Nawawī or Rāfiʿī, and their works at times diminished the importance

*Ḥanbalī School of Law and Ibn Taymiyyah* (London: Routledge, 2006); Haim Gerber, *Islamic Law and Culture, 1600–1840* (Leiden: Brill, 1999); Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996).

[6] Hallaq, "Was the Gate of Ijtihad Closed?", 11; Jackson, *Islamic Law and the State*, xxx.

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of the views of early jurists. Such an evolution of a discursive tradition made Islamic legal thought more vibrant in later centuries and generated intellectual continuity and discontinuity in legal theories and practices. The writing of commentaries is the most significant symbol of this evolution.

## *LONGUE DURÉE* OF TEXTS: COMMENTARIAL OCEAN

There are parallels between the history of Islamic legal texts and that of the oceans which can be read as historical phenomena of a *longue durée*. In his ground-breaking work on the Mediterranean, the French historian Fernand Braudel conceptualised the long and complex history of such geographical structures as oceans, and argued that geographical structures have a long-term and sustained history, one that is "almost silent and always discreet, virtually unsuspected either by its observers or its participants, which is little touched by the obstinate erosion of time".[7] The history of traditional Islamic texts is no different. A law book from the thirteenth or sixteenth century belonged to a longer textual tradition that in turn originated in the early ninth century. That genealogy has been sustained into the twenty-first century through recurrent textual progenies. In them the changes are also "almost silent and always discreet, virtually unsuspected either by its observers or its participants". This book thus moves from the geographical *longue durée* of Braudel to the *textual longue durée* that concerns minor but influential changes embodied in texts.[8] The core and corpus of these texts remain concrete across geography and chronology, but their meanings and rulings change almost imperceptibly. Those changes might remain unnoticed in their immediate contexts, but they have the potential to create a tornado of changes in the longer run.

A network of Islamic texts and communities connected nodal points, geographically and chronologically distant, through one or more textual cords. Two phenomena are crucial in this process: Islamic law as a genre and oceanic networks. Maritime networks enabled traders, travellers,

[7] Fernand Braudel, *The Mediterranean and the Mediterranean World in the Age of Philip II*, trans. Siân Reynolds (London: Collins, 1972), 1: 16.

[8] For a similar approach towards the ḥadīth texts, see Garrett Davidson, *Carrying on the Tradition: A Social and Intellectual History of Hadith Transmission across a Thousand Years* (Leiden: Brill, 2020); Joel Blecher, *Said the Prophet of God: Hadith Commentary across a Millennium* (Berkeley: University of California Press, 2017).

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scholars, sailors and slaves to transmit texts and ideas as much as those people depended on the networks to transfer commodities. The Muslim maritime itinerants carried the Islamic dogma with them as they travelled and prospered in these networks. In Islamic history there was an upsurge in the use of sea travel for trade and education as much as for war and pilgrimage.[9] Details of overseas educational travel from the earliest Islamic sources are sparse and hard to trace. While we do not know of actual events, it is clear from an oft-quoted saying that China was the farthest potential destination for educational travel among early Muslims.[10] It is therefore not surprising to find a practising Islamic community in Guangzhou in the middle of the ninth century, but how did they, or any other such Muslim community, connect with the developments and disseminations of Islamic teachings in the Islamic heartlands? Commentarial and oceanic networks provide the answers.

Writing a commentary to or a summary of a previous work was normal practice in Islamic juridical scholarship as early as the ninth century.[11] To write anything other than a commentary was exceptional since the eleventh century, and this practice dominated Muslim legal scholarship until the twentieth century. Even today it continues in different shapes and forms as virtual and hyper-textual commentaries. The popularity of commentaries (*sharḥ*, pl. *shurūḥ*) and supercommentaries (*ḥāshiya*, pl. *ḥawāshī*) was to a large extent the consequence of the spread of

[9] In a ḥadīth, the Prophet Muḥammad is said to have prohibited his followers from undertaking any oceanic voyages except for holy war (*jihād*) and obligatory pilgrimage (*ḥajj*). Abū Dāwūd Sulaymān bin al-Ashʿath al-Sijistānī, *Sunan*, ed. Shuʿayb al-Arnāʾūṭ and Muḥammad Kāmil Qurah Balalī (Beirut: Dār al-Risālat al-ʿĀlamiyya, 1994), 4: 145–146, no. 2489. This aspect has been overlooked in previous studies, although the prohibition seems to be only theoretical, for in practice it was not observed by Muslims. On the early Muslim engagements with the ocean, see Christophe Picard, *Sea of the Caliphs: The Mediterranean in the Medieval Islamic World*, trans. Nicholas Elliott (Cambridge, MA: Harvard University Press, 2018). However, he does not address the aforementioned ḥadīth.

[10] This is an Islamic proverb rather than a (fabricated) ḥadīth. For the broader picture, see Houari Touati, *Islam and Travel in the Middle Ages*, trans. Lydia G. Cochrane (Chicago, IL: Chicago University Press, 2010).

[11] In the tenth-century bibliographical survey of Ibn al-Nadīm we find many summaries and commentaries of legal texts from various schools. For the Shāfiʿī school, he mentions around ten summaries or commentaries on al-Shāfiʿī's works. When considering the number of legal texts available to him at that time, what he mentions are remarkable. Three to four centuries later the practice reached its zenith, when it was normal to write a commentary. Abū al-Faraj Muḥammad Ibn al-Nadīm, *al-Fihrist*, ed. Ibrāhīm Ramaḍān (Beirut: Dār al-Maʿrifa, 1994), 247–292 on legal texts of all schools; on the Shāfiʿī texts, 259–265; cf. Abū al-Faraj Muḥammad Ibn al-Nadīm, *Kitāb al-fihrist*, ed. Ayman Fuʾād Sayyid (London: Al-Furqan Islamic Heritage Foundation, 2009).

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educational centres (*madrasa*s) in the tenth century.[12] By the thirteenth century they had become a mark of intellectual activity, revived Islamic legal thought by making it intellectually vibrant, and connected distant communities of Muslims in their socio-legal journeys. This development resonated with the European legal tradition through the rise of glossators and commentators in the twelfth and fourteenth centuries respectively.

While teaching or reading texts, the jurists added material, such as the opinions of other scholars, solutions to new legal issues, disagreements with the author, or corrections to the original text. These were the essential characteristics of commentary writing. While commentaries provide interpretations for specific legal texts, supercommentaries or *ḥāshiya*s exhibit "an established scholarly practice reflecting the cumulative nature of Muslim scholarship". They became veritable encyclopaedias or veritable museums, recording excerpts or whole documents from works which may otherwise have been lost.[13] The margins of manuscripts had thus by the thirteenth century become the space for the expression of intellectual opinions of various lengths and strengths. Ibn Jamāʿa (1241–1333), a thirteenth-century Shāfiʿī scholar, gave advice on this practice:

> There is nothing wrong with writing important notes (*ḥawāshī*, *fawāʾid*, *tanbīhāt*) in the margins of a book one owns … Only important notes that pertain to the contents of the book in question should be given, such as notes that call attention to difficult or doubtful passages, allusions, mistakes, and the like. Problems and details that are alien to the contents should not be allowed to deface the book, nor should there be so many marginal notes that it becomes disfigured or the student is at a loss to find out where they belong.[14]

The commentaries of Shāfiʿī jurists were multi-layered and multi-formed in their production, dissemination and engagement, as will be explained in Chapter 2, with thirteen forms found around the Indian Ocean littoral. Some commentaries were written by less famous scholars in order to gain entry into the intellectual world, although such works are comparatively few. Those who did so wanted "to identify themselves with

[12] Unless I state otherwise, I use "commentary" for any sort of textual engagement with an earlier exemplar, whether it be a summary, supercommentary or poetic rendering.

[13] C. Gilliot, "Sharḥ", *Encyclopaedia of Islam*, 2nd ed.; John Esposito, ed. "Hashiyyah" and "Sharh", in *The Oxford Dictionary of Islam* (Oxford: Oxford University Press, 2003), 110 and 287.

[14] Muḥammad bin Ibrāhīm Ibn Jamāʿa, *Taḏkirat al-sāmiʿ wa al-mutakallim fī adab al-ʿālim wa al-mutaʿallim* (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2012), 133–134. The translation is from Franz Rosenthal, "Ḥāshiya", *Encyclopaedia of Islam*, 2nd ed.

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superstars in order to entice people into reading their works, even, or perhaps especially, when their ideas differed from those of the original author".[15] But most other commentators were already established scholars, who had an urge to engage critically with the standpoints and approaches of a particular text and its author or from a genuine admiration for particular scholars. The commentaries, supercommentaries and glossaries, interdependently and independently, provide an opportunity to understand the varied approaches of scholars from a number of different geographical and chronological contexts on a particular issue. Each such text has the advantage of exposing students to two or more intellects, that of the author of the base text and that of the commentator, glossator and/or supercommentator. Indeed, "it is only in writings of these commentators that it is possible to find the doctrines of the different schools expounded in their fullness".[16]

How did the commentaries revive legal thought in the different places and at the different times they were written, and how did they contribute to the intellectual development of the Shāfiʿī school? Why were increasing numbers of commentaries written on a text even when dozens of commentaries on it already existed? What made some commentaries more celebrated than others, and what do these texts tell us about the intensive discursive tradition of the Muslim communities in distant yet connected places and periods? By addressing this subset of questions vis-à-vis the Shāfiʿī textual cord this book explores how a text from the thirteenth century claiming to belong to a ninth-century tradition was repeatedly revived until the twentieth century by numerous scholars according to the needs of their own localities and their own times. On the basis of this textual *longue durée*, it becomes clear that the legal tradition of Islam, which has mostly been characterised as having lost its originality and individuality by the end of the so-called classical era, in fact continued to be discussed more thoroughly in the "postclassical era" than in the early centuries of Islam. It produced rigorous works in Shāfiʿīsm that set the frameworks of legal discourses for centuries to come. Commentary writing functioned as an effective juridical exercise, and communities throughout the Mediterranean and the Indian Ocean participated in this tradition with their own additions and versions, creating advances in the

[15] Jackson, *Islamic Law and the State*, 7.
[16] Abdur Rahim, *The Principles of Muhammadan Jurisprudence according to the Hanafi, Maliki, Shafiʿi and Hanbali Schools* (London: Lucaz, 1911), 33.

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legal tradition in a way that would appeal to a large following over several centuries.

In parallel and similar to the development of commentarial tradition, the reach of Islamic law also extended beyond borders. The Shāfiʿī school was born in Iraq, developed in Egypt, institutionalised in the Levant and the Caspian, and attracted followers in Malabar, Sumatra, Java, Zanzibar, Mombasa, Johor, Maguindanao and Cape Town. In the process, several historical communities took leading roles in circulating the school and its texts, such as the Egyptians, Hijazis, Ḥaḍramī and non-Ḥaḍramī Yemenis, Comorians, Ethiopians, Iraqis, Gujaratis, Acehnese, Javanese, Sudanese, Malabaris, Maqāssarīs, Malays, Persians, Swahilis, Syrians and Tamils. The school's main centres also changed over time according to shifts in socio-political and economic scenarios. By the late fifteenth and throughout the sixteenth century we see in the contexts of South|East Asia and Africa a surge in local centres for religious education, far from the prominent institutions at Mecca, Medina, Cairo or Damascus. Whether or not those famous centres had lost some of their prominence at this time, Muslims from the maritime littoral had clearly established their own hubs which attracted a significant group of students, teachers and jurists. Gradually these centres became famous in their respective subcontinents, not only as centres of education but also for advanced legal ideas and related textual production. They incorporated themselves into the wider sphere of Islamic intellectual discourse by generating commentaries, supercommentaries and abridgments.

There was increasing transmission of texts and ideas to and from the diverse lands of Islam and an active textual network developed which contributed to the spread of the Shāfiʿī school around the rim of the Indian Ocean and in its hinterland. All these historical processes depended on the maritime highways of the Indian Ocean, not just as passive routes for intellectual interaction but rather as active participants. Resonant with such fluidities, this book is concerned with both *transtemporal* and *transregional* spectrums of Islamic law. In terms of temporality, it moves beyond narratives surrounding the formation and developments of Islamic law in the classical period and explores the ways in which it circulated in the postclassical era, in the second millennium, from the thirteenth to the twentieth centuries. Spatially, it goes beyond the Middle-East-centric narratives of Islamic law and examines closely the Indian Ocean world to see how Islamic legal discourses spread and evolved in South|East Asia and Africa, yet in conversation with one another. Taken together, the study unravels the nuances of intellectual and legal exchanges among and

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between the Asian, African and Arab communities through the circulation of ideas, texts and institutions before and after the European expansions.

## LAW IN CIRCULATION

Humans are generally identified as rule-driven creatures, and the broadly defined legal systems have determined transregional, transcultural and interpolity exchanges since early recorded histories. This becomes especially evident in the last two millennia thanks to the extant records available from diverse religious, regional and imperial settings. Among religious traditions, law is widely recognised to have been central to Judaism and Islam as a corpus of meticulous instructions to regulate the everyday lives and behaviours of their followers. Elaborate and substantive rulings constituted historical and contemporary realities for them. In Islamic societies, law was a significant frame that regulated collective and individual lives. Although prescribed rules may not have been practised in their entirety, certain notions and segments of what was understood as Sharīʿa gained momentum among Muslims from the ninth century onwards. This prominence of law is not to say that it was the only source of authority or core and kernel of Islam, but it existed along with several other streams, including mystical, philosophical and theological perspectives. Even so, law prevailed as an imperative interpretative and instructive field, as we see in the writings of important Islamic figures such as Abū Ḥāmid al-Ghazālī (d. 1111) in the eleventh century, Ibn Taymiyya (d. 1328) in the thirteenth–fourteenth centuries, and Ibn Khaldūn (d. 1382) in the fourteenth century.[17] Despite the fact that their primary areas of religious, disciplinary and academic interests went beyond law and some of them even protested against the overemphasis on law, they affirmed its supremacy in their contemporary world as along with religion.

Western theorists only ambivalently identified this centrality of law among Muslim communities. European investigations into the Islamic social order and normativity started with the expansion of colonial

[17] Abū Ḥāmid al-Ghazālī, *Jawāhir al-Qurʾān wa duraruh* (Beirut: Dār al-Jīl wa Dār al-Āfāq al-Jadīda, 1988), 20–21; Taqiyy al-Dīn Ibn Taymiyya, *Siyāsat al-sharʿiyya* with its *Sharḥ* by Muḥammad bin Ṣāliḥ al-ʿUthīmayn, ed. Ṣāliḥ ʿUthmān al-Laḥḥām (Beirut: Dār Ibn Ḥazm and Dār al-ʿUthmāniyya, 2004); ʿAbd al-Raḥmān Ibn Khaldūn, *Muqaddima*, ed. ʿAbdullāh bin Muḥammad al-Darwīsh (Damascus: Dār al-Balkhī and Maktabat al-Hidāya, 2004), 2: 185–198; ʿAbd al-Raḥmān Ibn Khaldūn, *The Muqaddimah: An Introduction to History*, trans. Franz Rosenthal (New York: Pantheon Books, 1958), 2: 335 and 3: 3–30.

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regimes, and Afrasian practices of justice occupied the attention of many scholars of religion, law, language and cultures. When Max Weber branded the arbitrary role of law as *kadijustiz*, he had in mind the image of a legal system without rationality and unconstrained by rules.[18] Before and after him, several European scholars and jurists, such as Christiaan Snouck Hurgronje, Cornelis van Vollenhoven, Joseph Schacht and Georges-Henri Bousquet, filled in that image with details of executions and discourses of normative social orders among Muslims. Their writings resonated with accounts from earlier European itinerants of the administration of justice in the Muslim "Orient". Certain stereotypes emerged and were sustained as being synonymous with Islamic normative order. Some such ideas still prevail today. The nuanced investigations of historians, anthropologists, sociologists and philosophers were centred on questions about the ability of these norms and traditions to bequeath a coherent legal system, and the translatability and commensurability of Sharīʿa and fiqh as law. Is the phenomenal normativity among Muslims *legal*, or can law also be *Islamic*? These questions were connected directly to the very investigations on the fundamental physiognomies of law and its historical, cultural, authoritative roles in society.

Law has been defined diversely through interpretative, cultural, textual and praxeological frames. Differing from the Greek philosophical division between the natural world (*physis*) and human world (*nomos*) and the consequent separation of laws of natural science and the social sciences as human and physical laws, the discipline and the field of law have generally been established as an arena for engaging with a formalised and objectivised system of rules to guide human relations. Into this *human* world of law and its "open texture" enters Islam with its *divine* revelations as related logical reasonings in the form of Sharīʿa. It breaks the usual characterisations of law, and inserts epiphanies and prophecies as its prime source, as they were compiled in the Qurʾān and the Prophetic traditions with *ascribed* inflexible and timeless dogmas.

To what extent then can revelations and revealed texts with unquestionable authority be part of human law? The culturalist interpretations of law approached this question with an emphasis on textual analysis, whereas others identified law as "part of a distinctive manner of imagining the real", mediated by a textual corpus that helps in formulating a cultural

[18] For a critical engagement with this concept and its afterlife, see Intisar Rabb, "Against *Kadijustiz*: On the Negative Citation of Foreign Law", *Suffolk University Law Review* XLVIII (2015): 343–377.

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code of meanings to interpret the world through words with idiosyncratic legal sensibility.[19] Brinkley Messick combines textual, cultural and imaginative interpretations of the Sharīʿa and defines it as a textual polity that comprises "a conception of an authoritative text" and "a pattern of textual authority".[20] This book, attentive to these endeavours, demonstrates that the written texts ascribed to divine sources, written rules and unknown regulations, hermeneutical and ontological discourses, communities of interpreters and followers surrounding them, and historical praxis with material and metaphysical consequences, all presented a larger and longer continuum in which meanings of law were circulated both horizontally and vertically across geographical and chronological strata. In the process of time, the meaning of the laws varied between an ultimately divine law to the historical, human-experience terrain of laws.[21]

This dimension recognises Islamic law as a multiverse in both premodern and modern times, especially if seen through non-Western eyes. Discussions of law have very much centred on Western categorisations. From a non-Western (Global Southern) analytical, temporal and spatial view, we can understand how Islam and its laws present a cosmopolis of their own, in which multiple historical actors benefited, suffered, flourished, exploited and progressed. It breaks such monolithic images as *kadijustiz*, which prevailed in European academia, and presents multiple shades of law and justice discursively and administratively. In both juridical discourse and judicial practice, Islamic law stands outside the usual understanding of law as state-centric and imperial, or as state-sponsored projects for codifications and judicial institutions. Rather it appears more as an exclusive realm for jurists, for the fuqahāʾ estate. Broadly conceived, Islamic law as the interpretative mode of the fiqh did not have the same connotations and technical definitions in its interpretative, cultural, praxeological and textual worlds. Its meanings and implications changed as normative orders varied from place to place and over time within Muslim communities. What brought them

[19] Clifford Geertz, *Local Knowledge: Further Essays in Interpretative Anthropology* (London: Fontana Press, [1983] 2016), chapter 8: "Local Knowledge: Fact and Law in Comparative Perspective"; Baudouin Dupret, *What Is the Sharia?* (London: C. Hurst, 2018), esp. chapter 1: "A Concept and Its Contexts".

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

[21] For comparative, theorical and empirical views on this, see Paul Dresch and Hannah Skoda, eds. *Legalism: Anthropology and History* (Oxford: Oxford University Press, 2012).

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together was, this book argues, a geographically wider and chronologically longer *cosmopolis of Islamic law*.

The cosmopolis of law is an analytical frame that accommodates deep continuities, subtle changes and innovations and a *longue durée* of legal systems. Etymologically *cosmopolis* links the Greek *kosmos* (world) and *polis* (city). Usually it means a city inhabited by people, more precisely free males, from different regions. In philosophical discourses, however, it represents an interaction between the *cosmos* and the *polis*, between the orders of nature and society. It embodies different concepts in Greek, Chinese, Roman, Islamic, Hindu and Christian traditions in their attempts to elucidate interactions between these orders. The gist of all their arguments is that they narrativise a more orderly structure for society and for the world at large and relate meanings between the material and the metaphysical, the seen and the unseen, near and distant worlds. Any attempt to arrest socio-cultural, spiritual and political disorders in respective legal systems undoubtedly aims towards this goal. It aims for an ideal state, but history shows us that it mostly achieves the opposite. In his influential elaboration on cosmopolis, Stephen Toulmin demonstrates how the rationalist trend in the Renaissance (and its humanism) produced the Enlightenment that searched for certainty. He calls it the "Politics of Certainty" in the seventeenth century.[22] This "Counter-Renaissance" was entangled with ideas of cosmopolis as reflected in the earliest thoughts of the Enlightenment. Although this was a phenomenal development in that century through a prism of rationality, the underlying call for a definite order was reflected in other places and times. Disorder remains in terms of social and cultural practices, and even the idea of law itself seemed inevitably to display the nature of chaos. The internal dynamics of an idea targeted at terminating the disorder are embodied with conflicts and cohesions, invisible in the immediate present, but becoming inflamed in the long run.

A scrutiny of legal cultures across the globe sheds light on the idea. Theoretically longing for order remained the core aim of legalistic discourses, by either projecting the tradition or downplaying it in favour of rationality. In practice the final outcome varied, and particular systems of law in particular cultures achieved their goals more successfully than others. Disorder was condemned, but it existed and at times it even prevailed. It may not have led to such anarchy that law was eliminated,

[22] Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago, IL: Chicago University Press, 1992).

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yet it maintained an "orderly disorder" within or against the tradition of discourses. That explains the idea of a cosmopolis of law. In literary and cultural studies, the concept of a "cosmopolis" has been analysed well by scholars such as Sheldon Pollock, whose work on the "Sanskrit Cosmopolis" evoked the orders of nature and society in Sanskrit literature.[23] It implicates three additional aspects: a supraregional dimension; a prominence of political dimension; an actual qualification of Sanskrit.[24] Ronit Ricci advanced Pollock's approach by bringing in the role of religion and suggested that an Arabic cosmopolis replaced the Sanskrit one in South and Southeast Asia. Similar cosmopoleis existed around the rim of the Indian Ocean for other languages too, and a few historians have explored its usefulness as a conceptual frame for the dynamics of maritime commerce and hierarchical elements of urban networking since it also connotes "a multi-centered linked community based upon the pluralism of its member".[25] My idea of a legal cosmopolis corresponds closely to such conceptions, yet it differs from them in that my emphasis is first and foremost on legal cultures rather than on literary, linguistic and mercantile parameters.

In the cosmopolis of law, universalism, local contexts, supraregionality, religious traditions and networks, and the very question of law play crucial roles. Political structures, although indispensable for legal systems within or outside the parameters of legal pluralism, do not play a vital part in the Shāfiʿī cosmopolis that will be analysed in this book. That cosmopolis stood for a universal and divine law, free from political intervention; it stretched from the Eastern Mediterranean to the Eastern Indian Ocean; it

[23] Sheldon Pollock, *The Language of the Gods in the World of Men: Sanskrit, Culture, and Power in Premodern India* (Berkeley: University of California Press, 2006); Ronit Ricci, *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago, IL: University of Chicago Press, 2011).

[24] Pollock, *Language of the Gods*, 12.

[25] For other cosmopoleis, see Jos Gommans, "Continuity and Change in the Indian Ocean Basin", in *The Cambridge World History*, vol. 6: *The Construction of a Global World, 1400–1800 CE*, ed. Jerry H. Bentley, Sanjay Subrahmanyam and Merry E. Wiesner (Cambridge: Cambridge University Press, 2015), 182–209; for its application in the context of maritime commercial networks, see Anthony Reid, "Cosmopolis and Nation in Central Southeast Asia", *ARI Working Paper Series* 22 (Singapore: Asia Research Institute, 2004); Eric Tagliacozzo, "An Urban Ocean: Notes on the Historical Evolution of Coastal Cities in Greater Southeast Asia", *Journal of Urban History* 33 (2007): 911–932; the quote is from Kenneth R. Hall, "Ports-of-Trade, Maritime Diasporas, and Networks of Trade and Cultural Integration in the Bay of Bengal Region of the Indian Ocean: c. 1300–1500", *Journal of the Economic and Social History of the Orient* 53, no. 1 (2010): 116.

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practically disengaged with states in local contexts; it simultaneously sustained a tradition of internal political conflicts inherent to the Shāfiʿī school and the fuqahāʾ estate it associated with. What can be seen in this long-term historical journey of a legal cosmopolis is a "disorderly order". Toulmin's idea of a cosmopolis promulgates the urge of European intellectuals to bring order into the society, whereas Pollock's conception stands for a more open, flexible and aesthetic world. I combine them both into a legal cosmopolis, precisely because the law wanted to arrest disorder, which was sustained across time, bringing about minuscule changes capable of leading to dramatic ruptures far away in place or time.

Within the cosmopolis of law, we need to provincialise and disaggregate Islamic law as a monolithic, inflexible and timeless phenomenon as much as to identify its value as conceived and perceived by jurists in their specific contexts. This brings in the role of contextual elements influencing and even shaping the "contents" of law at large, and Islamic law in particular. To talk about "context" in the contents of Islamic law is also to provincialise Islamic law. Although extra-religious customs and norms in the opinions of a jurist may be more than plausible historically as regional impressions, scholars have been reluctant to assess the overall regional (especially Middle Eastern) framework in which the contextual assertions enter the body of Islamic law.[26] Is it possible to understand Islam and its laws delineated apart from Middle Eastern contexts? The implication of any attempt to answer this question is to evaluate the "Islamic" legal cultures of Muslims on a broad spectrum with close attention to the local contexts in which their law and legal texts were produced, survived and circulated.

To "provincialise" is imperative in examining the contexts of Islam during its long history, not necessarily because it resonates with recent postcolonial theoretical interventions targeted at the imaginary figure of Europe and the claims to generalise a universal human history.[27] Rather, this provincialisation addresses the deep-rooted racialist and deterministic taxonomies of provinces, zones and climates intrinsic to premodern Islamic thought. Long before such geopolitical categories as the Middle East and the Near East and their variants and synonyms came to dominate

[26] A telling exception would be Chibli Mallat, "From Islamic to Middle Eastern Law: A Restatement of the Field (Part I)", *American Journal of Comparative Law* 51, no. 4 (2003): 699–750; (Part II), 52, no. 1 (2004): 209–286.

[27] Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, NJ: Princeton University Press, 2000).

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European epistemologies, intellectuals from the regions in question understood the larger world in creative yet judgemental frames. For many of them, climate defined the way people looked, behaved, thought, ate, dressed and so on. This geoclimatic–human interconnection is familiar to Western audiences because of Montesquieu. But long before him, Islamic philosophers, geographers and historians such as Muqaddasī, Idrīsī, Birūnī and Ibn Khaldūn promulgated the idea of a reverberating repertoire of civilizations dependent upon the weather.[28] They analysed civilizations in terms of cultivable and habitable lands. These they divided into seven zones on the basis of their temperature: the hottest (zone one) stretched from West Africa to East Africa, to South Arabia, India, the Malay Archipelago, parts of China, Japan and Korea; the coolest region (zone seven) covered most areas around the North Sea, England, Europe, Russia and Central Asia; the central one (zone four) was moderate in every respect, including the lands from Tangier to Iraq, Syria, Amanus, Qazwin, Khurasan and Isfahan and also parts of Spain and Anatolia, which became centres of Islamic civilization.

This book does not aim to discredit the geoclimatic divisions, even though it does challenge an important misconception in which Islamic thought (including legal thought and history) evolved as part of a self-perceived privileged province vis-à-vis several other "uncivilized" ones. In their conception, the Indian Ocean and most Mediterranean areas come under the first and second zones, which are the most disparaged: the people in the first zone lack scholarship, law, religion; they "are closer to dumb animals than to rational beings" and have "less civilization than the other zones", according to Ibn Khaldun, a most zealous proponent.[29] He even goes on to say that "they frequently eat each other" and "they cannot be considered human beings." From these calumnies Arabia (places like the Hijaz, Yemen, Hadramawt, Ahqaf and Yamama) is excluded, despite it being geographically located in the first and second zones, because it is "bounded by the sea from all three sides" and the humidity from the sea influences its air and makes it "to some degree temperate".[30] The great irony of this statement is that other oceanic littorals do not

[28] Muḥammad bin Aḥmad al-Muqaddasī, *Aḥsan al-taqāsīm fī maʿrifat al-aqālīm*, ed. M. J. de Goeje (Leiden: Brill, 1906), 9, 58–62, *passim*; Muḥammad bin Aḥmad Abū al-Rayḥān al-Bīrūnī, *al-Qānūn al-Masʿūdī* (Hyderabad: Dāʾirat al-Maʿārif al-ʿUthmāniyya, 1954–56), 2: 549–579; Muḥammad al-Idrīsī, *Nuzhat al-mushtāq fī ikhtirāq al-āfāq* (Cairo: Maktabat al-Thaqāfat al-Dīniyya, 2002); Ibn Khaldūn, *Muqaddima*, 1: 133–200.

[29] Ibn Khaldūn, *Muqaddima*, 1: 146, 154, 190. Quoted translations are from Rosenthal, 1: 119, 122, 174–176.

[30] Ibn Khaldūn, *Muqaddima*, 1: 190.

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qualify for this privilege. This book challenges such prejudiced divisions and explicates their contributions to the kernel of Islam through engagements with law, scriptures and wider discourses, precisely the activities of which they are accused of being incapable. We must bear in mind that Ibn Khaldūn's observations on the early history of Islamic law have been highly influential in later Islamic legal historiography, so it is no wonder that the intellectual contributions of Indian Ocean Muslims have long been neglected. Once we *provincialise* the geoclimatic divisions and sequential universalisations to which they were predisposed by drawing examples from the oceanic region, then Islam and its thoughts and praxis emerge as contextualised counters in the grids of a larger historical boardgame, moving, capturing, felling, raising and checking one another through perpetual circulations.

The *longue durée* of legal systems has hardly been addressed in relation to discourses of law in premodern, non-Western societies. Most of the studies start with European expansions into Asian, African or American lands, and with European legal systems beginning to interact with those in their newly colonised lands. But Islamic law existed in theory and practice in many of these lands before the arrival of the Europeans, and it has continued to be relevant since the Europeans left. Particular textual corpora and their textual genealogy are our best examples for this. The legal texts of the *longue durée* are important indicators of continuity and rupture in the Islamic legal traditions and the diversity they embodied over long periods of time.

Beyond the state-centric views of law inherent in legal historiography, this book proposes a quadripartite division of the Islamic juridical corpus, consisting of a divine entity, fuqahāʾ estates, states and communities. The role and presence of God – very much at the centre of Islamic concepts of law – are not usually discussed in legal historiography. States have utilised this legal order, much as its jurists and their clusters have utilised the state, but it was not an exclusive possession of the states as it was in Western legal systems and Western colonised worlds. The fuqahāʾ estates dominated the discourse and praxis of Islamic law. This they did through the individual, collective and institutional settings in which they managed to adduce the Sharīʿa. Through various forms of authority and leadership, the fuqahāʾ estates united and divided the Muslim community at large, which had wider implications for the concepts and history of Islamic laws.

Relatedly, the well-established historiographical constructions of a distinct "customary law" and theoretical "customs as law" by jurists,

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Islamicists, historians, anthropologists and area specialists, which they set in contrast to a universal "Islamic law", prove to have been seriously misjudged. This is especially true when we agree to the recent suggestion that what makes Islam is its "logic of internal contradictions".[31] The contradictions in legal understandings, practices and norms should not be allowed to confront each other. We need to acknowledge the attempts of Muslims to identify their customs and practices within the frameworks of Islamic law through personal identification, elaboration of the discursive and paraxial contents, or identification with the community of Islamic law. These three elements are *co-constitutive* of the human geographical and historical phenomenon of Islam. If someone identifies with these, an outsider cannot reject that person as non-Islamic or less Islamic, even in the realm of law.

Regional legal norms have always been essential to assess many legal opinions of Islam, and those have been central to the broader legal cosmopolis. This is more explicit in the case of the Mālikī school, which argued for the legal practices of Medina to be taken as proper "Islamic" law. But there are also some fuqahāʾ from the Shāfiʿī and Ḥanafī schools who agreed that customs from any region have certain implications in legal judgments and ritual practices. This materialised in the acceptance of customs (*ʿurf*; *ʿādāt*) in legal theory.[32] In the Shāfiʿī case we see many jurists considering *ʿurf* as a valid source of law, something we see in postclassical texts for both substantive law and legal theory. The late acceptance of *ʿurf* as a source of law was preceded by a selective recognition of particular regional customs as law. Not all customs from all regions were considered to be law. Only those of a few regions enjoyed that privilege. Not until the legal theorists of Shāfiʿīsm incorporated regional customs as legitimate sources of law was there a way to remove confusions in identifying which customs could be seen as authentically "divine" law. It became more complex with an increased mix of new ethnicities introducing their customs into the Arab-dominated spheres of Islam. Each estate contributed to this process on different levels. The discussion of Shāfiʿī texts in this book identifies the regional elements, customs and norms of each text. There is a general notion that substantive legal texts give no

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

[32] For an elaboration on this process, see 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).

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room for such contextual analyses in a historical perspective. I shall attempt to show that they can do so.

Circulation is an especially important factor in this regard, not only in the historical process of legal texts and ideas but also as an analytical category in the Islamic legal cosmopolis. It helps identify the input of multiple contributors from different areas, without assuming the centrality of one group, place or institution over the rest. Taking on Bruno Latour's idea of "centres of calculation", Kapil Raj has conceptualised circulation in his global historical analysis of scientific exchanges between Europe and Asia in the seventeenth to nineteenth centuries. He identifies its relevance for historians to follow specific practitioners, skills, texts and instruments across continents and communities in "the *mutable* nature as much as of the men themselves, as the knowledge and skills they embodied, in the course of their geographical and/or social displacements".[33] In such exchanges, the historical actors engendered changes, modifications and recompositions in line with their trajectories and areas of circulation. The concept stands close to what many other contemporary historians have termed "connected history", "*histoire croisée*", "shared history" or "entangled history".[34] That overall approach pertains to this study conceptually as it chooses a long historical canvas and traces actors from distant lands who had worked together for the spread and scrutiny of Islam and its laws, instead of remaining passive recipients of a legal system imported from the Islamic heartlands.

Within legal historiography such historical exchanges between different regional, religious, temporal and imperial legal systems have been identified as examples of legal transplant, transfer, translation, transmission, diffusion, borrowing, *métissage*, hybridisation and creolisation, and many others. These categories do not help us find a comprehensive picture of the *longue durée* of exchange, as they mostly present and represent the early stages of contacts when legal ideas and texts were being diffused and transmitted, focusing on the modern period alone. Eventually, if not

[33] Kapil Raj, *Relocating Modern Science: Circulation and the Construction of Knowledge in South Asia and Europe, 1650–1900* (New York: Palgrave MacMillan, 2007), 226.

[34] For some of these approaches, see Sanjay Subrahmanyam, *Explorations in Connected History*, 2 vols. (Delhi: Oxford University Press, 2005); Michael Werner and Bénédicte Zimmermann, "Beyond Comparison: Histoire Croisée and the Challenge of Reflexivity", *History and Theory* 45, no. 1 (2006): 30–50; Ann Laura Stoler and Frederic Cooper, "Between Metropole and Colony: Rethinking a Research Agenda", in *Tensions of Empire: Colonial Cultures in a Bourgeois World*, ed. Ann Laura Stoler and Frederic Cooper (Berkeley: University of California Press, 1997), 1–56.

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immediately, the actors on both sides modify what is exchanged in order to cater for their individual and collective tastes, aesthetics and demands. These modified and recomposed outcomes are exchanged further in multiple directions, and the exchanges go on as long as the circulatory networks, sociabilities and spaces are sustained. In the legal circulations of Islam across the Indian Ocean and Mediterranean, laws, schools, texts and rules, and certainly also actors, places and periods, became modified in diverse ways. Whether or not any rules pre-existed their practices, their authority was respected through constant processes of negotiation and recomposition. The history of Shāfiʿīsm and the corpora of its commentaries during a millennium bear testimony.

## CONTRADICTORY CIRCLES OF STUDIES AND SOURCES

This book engages with five major and two minor burgeoning fields in historiography, with connected concerns over time and space. Of the major fields we have the global history of premodern law outside Europe, law that developed independently, correspondingly and sometimes in dialogue with European legal traditions; Islamic legal history outside the Middle East; the commentarial traditions of Islam and its laws and intellectual continuity and discontinuity in the postclassical phase; the history of Shāfiʿīsm; the historical reception of Shāfiʿīsm along the Indian Ocean and Mediterranean worlds. In the minor areas we have the history of education and book production along the oceanic littoral. I shall briefly explain the first two major fields while the remaining ones are self-evident.

The predominant trends in writing legal history consider the legal traditions of Afrasia or the world at large only when they encounter European colonial expansion. In the Atlantic and Indian Ocean littorals European expeditions have often been marked as starting points for legal investigations, whether in terms of sovereignty, empire building or legal pluralisms. The legal cultures and colonial regimes have been analysed as two sides of the same coin, beginning in the late fifteenth century and culminating in the nineteenth century. The insurmountable literature in the field ignores the rich legal traditions that circulated among the Afrasian communities before and after the arrival of the Europeans. In the last three decades scholars have started to explore nuances of the premodern legal cultures in diverse imperial, religious and regional spectrums, such as China, India and Ethiopia, as well as in Hinduism, Buddhism, Islam and Judaism. This book contributes to this field by taking

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one contemporaneous and widely followed legal tradition, that of Islam, from the oceanic rim that connects these places. A close reading of its juridical discourses reveals the imagined universalism and ingrained contextualism that premodern jurists from Asia and Africa promulgated in their ratiocinations.

Compared to the legal histories of other major regions and religions, Islamic law has attracted an enormous literature, to the extent that at first sight it appears that no aspect remains untouched or inadequately studied. There are many works dealing with diverse topics, but most of these studies are very much centred on the Middle East and North Africa, as broadly conceived.[35] Apart from a handful of studies, Islamic law in the premodern Muslim worlds outside the Middle East, in Sub-Saharan Africa or Southeast Asia, has been almost completely ignored. The historiography of Islamic law acknowledges the presence of Muslim communities in these regions mainly when dealing with European applications of Islamic law during colonial expeditions in the eighteenth century onwards.[36] Following in the footsteps of recent scholarship that examines the contributions of Muslim scholars from distant Asian and African lands to the central Islamic knowledge base since the premodern period, this book unravels the multidirectional circulation of Islamic law which has brought together several Malabari, Swahili, Javanese, Comorian, Sumatran, Malay and Ethiopian scholars with Egyptians, Syrians, Yemenis, Persians and Hijazis. The book shows that they produced, circulated and advanced laws of Islam in the premodern period, and that they continued to do so in the modern period.

Such a history of Islam is directly related to the postclassical developments of Islamic knowledge, particularly that of Shāfiʿī law, and more so in the Indian Ocean littoral. Contributions of this work to these major areas should be evident to the reader in the following pages, as well as adding to the history of education and of books, which are not the prime concern but interested scholars may find the discussions useful. By studying the simultaneous progress of a legal text on an intellectual level with the

[35] For a detailed recent overview, see Ayesha Chaudhry, "Islamic Legal Studies: A Critical Historiography", in *Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumee Ahmed (Oxford: Oxford University Press, 2018), 5–43.

[36] Good examples for this are several well-read textbooks in the field: Wael Hallaq, *The Origins and Evolution of Islamic Law* (New York: Cambridge University Press, 2005); Knut S. Vikør, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005); Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964).

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dissemination of a school of thought on a contextual level this book therefore demonstrates how Shāfiʿīsm spread and developed around the rims of the Indian Ocean and the Eastern Mediterranean in the second millennium. In the process, it engages with the global developments of the thirteenth, sixteenth and nineteenth centuries in the legal, educational, cultural, imperial and intellectual realms. The story that evolves in the form of commentaries and marginalia shed light on the transregional, transtemporal and transoceanic circulations of law in the premodern world, before any European or Western legal cultures colonised the global judiciaries.

Finding sources for such a large-scale study on the Islamic legal history of the Indian Ocean and Mediterranean rims with a focus on Shāfiʿīsm unravels contradictory situations in method and practice. On the one hand, materials are almost non-existent, but on the other, there is an unmanageable abundance. This consists of actual texts written as Shāfiʿī legal manuals, commentaries, glosses, marginalia and translations in the Middle East, South|East Africa and Asia, and Europe. In those vast corpora my prime resource for study has been the *Minhāj al-ṭālibīn* by Yaḥyā bin Sharaf al-Nawawī (thirteenth-century Damascus), and by extension some texts which function as commentary, autocommentary or supercommentary: *Tuḥfat al-muḥtāj* by Ibn Ḥajar al-Haytamī (sixteenth-century Cairo and Mecca); *Fatḥ al-muʿīn* by Zayn al-Dīn al-Malaybārī (sixteenth-century Malabar); *Nihāyat al-zayn* by Nawawī al-Bantanī (nineteenth-century Java and Mecca); and *Iʿānat al-ṭālibīn* by Sayyid Bakrī (nineteenth-century Mecca).

The five texts are supplemented by other works from the same authors and their contemporaries, their commentaries or marginalia produced in different contexts. The most useful among them are Nawawī's *Majmūʿ*, Ibn Ḥajar's *Fatāwā*, Malaybārī's *Ajwibat al-ʿajība*, Ramlī's *Nihāyat al-muḥtāj*, Sharbīnī's *Mughnī* (the latter two from sixteenth-century Cairo), Nūr al-Dīn al-Ranīrī's *Ṣirāṭ al-mustaqīm* (seventeenth-century Aceh) and Muḥammad Arshad al-Banjarī's *Sabīl al-muhtadīn* (eighteenth-century Kalimantan). All of these are substantive legal texts, although the general consensus among legal historians is that such texts, in contrast to the fatwā collections, do not provide extensive historical data relevant to their contexts and authors.[37] I question this consensus by showing how these texts enlighten us on their historical contexts.

[37] Fahad Ahmad Bishara, *A Sea of Debt: Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017; David Powers,

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I also utilise different biographical or hagiographical literature, giving preference to contemporary writings. In the premodern Middle East there are rich contemporary sources, such as biographical dictionaries (*ṭabaqāt*), biographies (*tarājim*) and chronicles (*tawārīkh*). Those of significant use are Nawawī's *Taḥḍīb al-asmāʾ wa al-lughāt*, Ibn ʿAṭṭār's *Tarjmat al-Nawawī* and the *Ṭabaqāt*s on Shāfiʿī jurists by Ibn Ṣalāḥ, Tāj al-Dīn ʿAbd al-Wahhāb al-Subkī, Ibn Qāḍī Shuhbah and Abū Bakr al-Muṣannif. The *ṭabaqāt*s with regional specialisations have also been useful, such as the one on Yemen by Ibn Samurat al-Jaʿdī. The sixteenth-century accounts of Mecca, *Bulūgh al-qirāʾ* and *Ghāyat al-marām* by ʿIzz al-Dīn ʿAbd al-ʿAzīz, *Nayl al-munā* by Jār Allāh bin Fahd, and the works of Quṭub al-Dīn al-Nahrawālī were useful for understanding the regional as well as transregional links of the city that functioned as a connection point for several regions and communes. Similar details can be found three centuries later in the accounts of Snouck Hurgronje and ʿUmar ʿAbd al-Jabbār for nineteenth-century Mecca. From this textual complexity, I have partially but carefully utilised the opportunities they provide for a better understanding of a Shāfiʿī cosmopolis of texts and ideas.

While these rich materials open a convoluted web of evidence, there is still a real scarcity of material for Muslims outside the Middle East. We have a few premodern legal texts from the Indian Ocean rim, but even fewer on legalistic practice, biography or textual history. However, I make use of whatever is available on the theme from a wide range of materials, including inscriptions, travel accounts, trade records, letters and documents. For sixteenth-century Malabar, I also have utilised Arabic historical accounts of the Portuguese incursions into the Indian Ocean littoral, *Tuḥfat al-mujāhidīn*, ascribed to the author of the *Fatḥ*, the contemporaneous *Fatḥ al-mubīn* by one Qādī Muḥammad al-Kālikutī, and *Maslak al-atqiyāʾ* by the uncle of *Fatḥ*'s author. I have supplemented this evidentiary corpus with accounts by contemporary Portuguese authors as well as later European, Arab and Indian sources. The situation becomes slightly better once we come to the nineteenth and twentieth centuries, when we have more biographical dictionaries from Southeast Asia and East Africa. Aboe Bakar Djajadiningrat's *Tarājim ʿUlamāʾ Jāwa*, Ali Hasjmy's *Ulama Aceh*, K. H. Siradjuddin Abbas' *Ulama Syafi'i dan kitab-kitabnya*, Abdallah Salih

"Fatwas as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez", *Al-Qantara*, 11, no. 2 (1990): 295–341; Nico Kaptein, "Meccan Fatwās from the End of the Nineteenth Century on Indonesian Affairs", *Studia Islamika: Indonesian Journal for Islamic Studies* 2, no. 4 (1995): 141–159.

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Farsy's *The Shafi'i ulama of East Africa* and three descriptive studies on Indian Shāfiʿīsm (one each in Arabic, English and Urdu) all include useful details. These materials are supplemented with archival materials, biographical information and popular writings available in translations or adaptations of the *Minhāj*, *Tuḥfa*, *Fatḥ*, *Nihāya* and *Iʿāna* in Tamil, Malayalam, Dutch, Urdu, English, Malay, Swahili and Bahasa Indonesia.

Many substantive legal texts mentioned above have been published, some even have critical editions. For initial readings, I depended on the critical or printed editions whenever available, but I cross-checked with manuscripts when citing or quoting directly from the principal texts under consideration. I tried my best to track down the original and best manuscripts of these works, most of which come from public and private collections in Leiden, London, Mecca, Damascus, Malabar, Aceh, Minangkabau, Java, Zanzibar and Somalia.[38] This cross-examination is important for analysing commentaries, because, as Johannes Pedersen has noted, in the culture of copying Islamic manuscripts copyists often included their own additions or corrections.[39] A multi-copied text thus often becomes a multi-distorted text, yet it also provides potential insights into the commentarial logic of its copyists and users. This increases the need for revising our approach to source criticism for Islamic legal texts. I made significant efforts to read original manuscripts and as many comparable manuscripts as possible against one another and the printed, critical editions. Such a comparative reading of the published versions of the texts vis-à-vis manuscripts has been very rewarding, especially as some recent critical editions are said to contain several mistakes.[40]

## OUTLINE OF CHAPTERS

By following the Islamic legal corpus that circulated among the Muslims in the postclassical period and across the Mediterranean and the Indian Ocean, this book explores the roots and routes of the Shāfiʿī school of law through time, over a millennium, and across thousands of miles. It explores how and why a network of Islamic texts connected nodal points, geographically and chronologically distant, through a single textual cord.

[38] For a detailed list, see the Bibliography.

[39] Johannes Pedersen, *The Arabic Book*, trans. Geoffrey French (Princeton, NJ: Princeton University Press, 1984), 47–49.

[40] See for example the list of errors pointed out in a recent version of the *Minhāj*, al-Asiri, "Corrections to Dar al-Minhaj's Minhaj al-Talibin", http://islamclass.wordpress.com/2013/03/29/corrections-to-dar-al-minhajs-minhaj-al-talibin/ (accessed on 5 March 2021).

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It investigates why and when the school appealed to the believers on the Indian Ocean rim, and why certain textual genealogies became more significant in the traditional legalists' synthesis of texts, for both the everyday religious lives of laypersons and the legal arguments of the jurists.

The first three chapters provide the analytical toolkit for my closer examination in subsequent chapters. The chapters contextualise the Shāfiʿī school from the angles of its people, its texts and their encounters. Chapter 1 examines the Islamic legal historical developments that facilitated the evolution of an order of jurists (the "fuqahāʾ estate") for whom the texts were a central component of juridical discourses and practices. Their networks enabled the transmission of legal textual ideas within and across regions through micro and macro scholarly communities. Situating the school parallel to or inside the networks of individuals and institutions, the chapter investigates the actors behind Shāfiʿīsm's appeal to a wider following, making it predominant around the Indian Ocean. Chapter 2 looks at the circulation of texts. It describes and analyses their centrality in juridical discourses, general architectures and characteristics of their production and circulation, and the major textual families of the school. It examines how specific legal texts enabled communication within different clusters of Shāfiʿīm, as well as within their contemporary sociopolitical, cultural and economic contexts. Chapter 3 considers the intellectual conflicts and cohesions rooted in the textual–scholarly nexus. It brings together the people (Chapter 1) and texts (Chapter 2) by analysing the architectures of encounters between them to see how the texts influenced people and how the people shaped the Shāfiʿī textual *longue durée* over a millennium and on a vast geographical canvas across the Eastern Mediterranean and Indian Ocean.

In the second part, four consecutive chapters follow one or two texts belonging to the *Minhāj* family: the *Minhāj* of Nawawī (1233–1277), the *Tuḥfa* by Ibn Ḥajar al-Haytamī (1504–1567), the *Fatḥ* by Zayn al-Dīn al-Malaybārī (1524 to *ca*. 1583); the *Nihāya* by Nawawī al-Bantanī (1813–1898); and the *Iʿāna* by Sayyid Bakrī (1850–1893). Using the *Minhāj* as a base, the discussion moves back and forth in time over a millennium in order to examine the internal dynamics, regional settings and transregional circulation of the interconnected texts. Chapters 4 and 5 address primarily temporal concerns on the development of Islamic law in the postclassical period. A closer examination of the two most important texts from the thirteenth and sixteenth centuries (the *Minhāj* and *Tuḥfa* respectively) reveals the nuances of commentarial tradition that evolved in

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the Islamic world and the ways by which the Muslim jurists communicated among themselves as well as with the wider world around them. Chapters 6 and 7 advance these temporal concerns further with investigations into the sixteenth and nineteenth centuries. But both chapters are additionally concerned with space in order to see the reception and advancement of the Shāfiʿī school in the Indian Ocean rim. Instead of being passive receivers of Islamic law imported to them from the central Islamic lands, I argue that they contributed to the legal tradition in their own ways. A closer study of the *Fatḥ* and its supercommentaries *Nihāya* and *Iʿāna* proves enlightening in this regard.

These four chapters also involve three broader aims: to follow the content and structure of a text at its formation and its reception within the tradition of Shāfiʿīsm; to trace regional contexts that could have influenced the text and its author; to connect the texts with wider networks of mobility, economy and intellectual developments in the school. Emic and etic approaches are combined to achieve these aims. Traditional narratives circulating within or around the school and its texts form the basis of the emic analysis, for they provide "internal" or "insider" perspectives. The primary and secondary sources on the regional and transregional contexts of the school and the texts in focus form the basis of the etic approach, in that they are "external" or "outsider" accounts of wider historical developments.

The final chapter takes the four principal texts together to analyse their translations into Afro-Eurasian languages from the eighteenth to twentieth centuries. With the appearance of several unprecedented actors with clear imperial agendas, this story of translations complicates the linear narrative of Islamic textual circulations. The texts became tools and agents of vernacularisation and colonisation, and the new set of actors advanced the textual *longue durée* and the fuqahāʾ estate to new levels that make the trajectory of these texts even more fascinating.

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