Imagine. Yourself. In a ship. In a premodern port. A time before steam engines and satellite systems would propel and guide the ships. Entirely dependent on sails and winds.

On the deck. Waving adieu to all the loving and loved bodies and minds. Slowly the shore and land become an imagination, like your memory. No idea when or where you will land next, because land itself becomes a notion. Water is your reality. Wind is your engine. Stars are your guide.

Keep alive the hope of land, distance and time. That hope in turn depends on the wings of the winds, the whines of the waves. Hope as your captain does. In the next few weeks, months or a year one becomes like a worm on the wood. Floating over a bottomless ocean. Uncertainties dictate behaviours. Civility and cruelty converge. Recollections of the past and imaginations of the future merge. One becomes nothing but a beast caged up along with many others. Memory and hope offer etiquettes of present behaviour, or visions of civility, love, lust and fear. A human interpretation of divine intervention. Stands on the thresholds: Islamic Law in Circulation.

Yet free yourself from claustrophobia. After all, you are on the ocean. In a ship of imagination, one that voyages through time and place, at a safe distance from the past. It is about to lift anchor. For a long journey crossing borders, carrying peoples of many nations, criss-crossing centuries. A journey of thousands of nautical miles and a thousand years entangled with lives of people, faiths, laws and languages. Observe the routes of this vessel, ebbs and flows of the ocean, together with many figures and forms of the bygone eras.

The voyage is in the Indian Ocean and the Mediterranean. Between Aleppo, Alexandria, Malindi, Malabar, Maluku, Java, Colombo, Cape Town, to name but a few. Without following a chartered and unidirectional route. Multidirectional, transtemporal and transregional. This freedom comes with restrictions too. Of law and life. Law of life. Law regulates the tidal swings of human civilisations. If not for it, the ship might run aground, hit coral reefs, wreck, along with your breath and valuables.

In the vast freedom of mobility, the ship anchors in a few places for a bit longer. To gather supplies, and for you to explore new terrains together. Sometimes you can join caravans and travel inland before you head back to the ship. When the ship is anchored, do disembark, get on shore, wander around, dare to venture inland to hinterlands, observe those places and people closely. That observational knowledge would offer fodder for your journey forward and backward.

In this long voyage of about 450 pages, people from all over the Indian Ocean and Mediterranean accompany you. Not only from shores and islands, but also from mainlands and hinterlands. Some fellow travellers might disappear during the caravan rides, to make a home out of the arid lands, and to disrupt the existing laws of life and norms there. Many return, as you have to! New entrants in the ship come up with new ideas, texts, commodities but also with new predicaments. From Damascus, from Cairo, from Isfahan, from Delhi, as much as from Jakarta, Mombasa, Lisbon, Cochin, Amsterdam and London.

The journey lasts over a millennium. From the ninth century to the twentieth. The timescale is like spacetime, shrinking and expanding. Your journey has the hope of land, a destination, an orderly world, a progression of time, but they waver all the time, like the ship, dependent on the whims of winds.

Forget your thalassophobia! Get ready to set sail on the mast! Listen to a poem, attributed to al-Shāfiʿī from the ninth century. One of your fellow masters on this ship:

> *There is no rest in residence for a person of culture and intellect,*
> *so travel and leave where you are residing!*
> *Travel! You will find a substitute for what you're departing.*
> *And strive! The beauty of life is in striving!*
> *I've seen water become stagnant if it's still*
> *become pure if it runs, but not if it doesn't flow.*
> *The lion cannot hunt if it doesn't leave the den,*
> *the arrow will not strike without leaving its bow.*
> *If the sun stood still in its heavenly orbit*
> *It would tire people, Arabs and non-Arabs.*
> *Gold is dirt when first found in its lands,*
> *Oud is but another wood in its oodles.*
> *If one travels, the destination is honoured*
> *If one travels, he is honoured like gold.*[1]

[1] al-Imām al-Shāfiʿī, *Dīwān* (Beirut: Dār al-Kutub al-ʿArabī, 1996), 53–54.

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,

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.

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

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).

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*

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.

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).

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 dissseminations 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).