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**The American University in Cairo**  
School of Humanities and Social Sciences

**Texts, Language, and History in the *Madhab*-Law Tradition:**

**A Study of the Shāfi'i School**

A Thesis Submitted by

Tarek Ghanem

Submitted to the Department of Arab and Islamic Civilizations  
May 2020

In partial fulfillment of the requirements for  
The degree of Masters of Arts  
in ARBS

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School of Humanities and Social Sciences

Texts, Language, and History in the  
*Madhab*-Law Tradition:  
A Study of the Shāfi‘ī School

A Thesis Submitted to

The Department of Arab and Islamic Civilizations

In Partial Fulfillment of the Requirements

For the Degree of Master of Arts

By  
**Tarek Ghanem**

Under the supervision of  
Dr. Ahmad Khan

**May 2020**  
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## Abstract

This thesis advances the study of the legal literature from the *madhhab*-law tradition by way of studying the Shāfi‘ī literary tradition and its two most authoritative classics. These two works are al-Nawawī’s (d. 676/1278) digest *Minhāj al-tālibīn* and Ibn Ḥajar al-Haytamī’s (d. 974/1567) commentary on it, *Tuhfat al-minhāj*. This study will provide a typology of the development of the Shāfi‘ī juristic texts. The typology is based on an indigenous and coherent periodization centered around an analysis of the intellectual and social developments within the Shāfi‘ī legal tradition, not the classical Eurocentric periodization scheme. The main objective of this typology is to present a coherent theory of texts that can serve our understanding in two main ways. First, it will help situate these texts within overarching discursive developments in the Shāfi‘ī legal tradition. Second, it will contribute to a coherent understanding of how discursive arguments emerged, interacted, and transpired across time and space. More specifically, it will help us understand how and why these works emerged at the time, what social and scholarly functions they served, what role language and nomenclature played in serving these functions, how they acquired their authoritative status, and what overarching conversations they engaged with.

The Shāfi‘ī *madhhab* is a discursive tradition that can be understood from multiple perspectives. I analyze the particularities of its intellectual history through a historiographical lens to trace how agreements and disagreements, both internal and external, were managed by jurists and through texts. Starting with the eponymous founder, Muḥammad b. Idrīs al-Shāfi‘ī (150-204/767-820), I present a coherent narrative of the interpretive developments of the Shāfi‘ī

literary tradition as a ‘story of books.’ This narrative will elucidate how and why literary genres, juristic operations, and particular texts emerged, with a special focus on how to situate *Minhāj* and *Tuhfa* in Shāfi‘ī literary history.

Both al-Nawawī’s digest *Minhāj* and Ibn Ḥajar’s commentary on it, *Tuhfa*, will be analyzed textually. I will analyze each text, its genealogy, the reasons it was authored, its particular linguistic and terminological makeup, juristic objectives and achievements, and examples from its juristic trajectory that demonstrate its different functions. A central interest of this thesis is how each of the texts represent and contribute to the development of the genres of digests (*mukhtaṣarāt*) and expansums (*muṭawwalāt*). The authors’ innovations in the realm of juristic terms (*al-muṣṭalaḥāt al-fiqhiyya*) will be investigated to prove the centrality of these terms to their juristic projects.

## Introduction

Every day at the strike of 9 am, as soon as the security guards of the Egyptian House of Fatwa unlock the gates of their public service office which is located across from a bustling highway, al-Darasa district, Cairo, a flow of individuals rushes into the small yard outside the office building. Eager for a religious legal opinion to settle personal matters, they form a short queue. They come with different questions, varying between marriage, inheritance, or commercial conflicts. By midday, the place is crammed and loud, without a space to sit. The crowd includes women carrying and dragging toddlers, elderly men in wheelchairs, and young men in shorts and ponytails. Seeing the demand for fatwas, and the fact that fatwa issuing has become “a worldwide media phenomenon,” the same Egyptian House of Fatwa also provides its services via email, text message, and by phone.<sup>1</sup> It also mediates its services through popular primetime TV and radio programs. The Shāfi‘ī legal school, which is the main focus of this thesis, was historically predominant in Egypt. However, in an attempt to fight “a multifarious production of ‘religious knowledge’ that has consistently lacked any axis of authority,” the website of the Egyptian House of Fatwa explains that its current juristic methodology consists instead of following the four Sunni schools of laws (*madhhabs*).<sup>2</sup> The webpage adds that, “it acknowledges

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<sup>1</sup> Muḥammad Khalid Masud, Brinkley Morris Messick, and David Stephan Powers, *Islamic Legal Interpretation: Muftis and their Fatwas* (Cambridge: Harvard University Press, 1996), 29. In comparison to the currently highly institutionalized and corporatized approach of the current Egyptian House of Fatwa, this book also claims that issuing fatwas in the premodern world was carried out in a more un-institutionalized fashion, and “in diverse social and historical setting [that] served to stimulate the development of sharī‘a from below and in response to the specific needs of particular Muslim communities.” See: Ibid., 4.

<sup>2</sup> Wael Hallaq, *Sharī‘a: Theory, Practice, Transformations* (Cambridge, UK: Cambridge University Press, 2009), 469.



as part of their juristic education.<sup>7</sup> This tradition exists in Yemen, Egypt, Kazakhstan and other places where Shāfi‘ism is taught and practiced. Outside the Mosque of al-Azhar, a book seller takes a picture to post on social media of a new client posing and smiling while carrying a box of a newly purchased new 10-volume edition of Ibn Ḥajar’s (d. 974/1567) *Tuhfat al-Muhtāj*. *Tuhfa* is the second of the two books that this thesis will study and is considered by post-classical scholars one of the most authoritative Shāfi‘ī legal commentaries.

Whether in religious life, family and laws, or education, Islamic law and the *madhhab*-law tradition continue to play a central role in the social life and daily practice of Muslims. Yet, despite their significance, “We know very little about how, exactly, Islamic law came to acquire its classical form, and even less about why.”<sup>8</sup> Recent contributions have focused on Islamic law’s relationships with the wider sociopolitical and cultural contexts and institutions, including studying the process of law-formulation and law-determinacy in the Ḥanafī school, unveiling the ‘grammar’ of Islamic law and its works in context,<sup>9</sup> the interplay between Shari‘a, politics and materiality,<sup>10</sup> among others. In specific, Al-Azem’s recent work on the Ḥanafī school and its most authoritative texts is particularly important to this thesis, especially since it also studies the of the most authoritative legal manual and commentary within that tradition. In addition, it

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<sup>7</sup> For more on this, see how open competitions are held with prizes are successful memorizers: “Ikhtitām musābaqat fī ḥifẓ Minhāj al-ṭālib lil-Imām al-Nawawī fī Maqadīshū”, *al-Ṣūmāl al-Jadīd*, accessed on November 2019: <http://alsomal.net/%D8%A8%D8%A7%D9%84%D8%B5%D9%88%D8%B1-%D8%A7%D8%AE%D8%AA%D8%AA%D8%A7%D9%85-%D9%85%D8%B3%D8%A7%D8%A8%D9%82%D8%A9-%D9%81%D9%8A-%D8%AD%D9%81%D8%B8-%D9%85%D9%86%D9%87%D8%A7%D8%AC-%D8%A7%D9%84%D8%B7%D8%A7/>

<sup>8</sup> Ahmed El Shamsy, *The Canonization of Early Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 3.

<sup>9</sup> Brinkley Messick, *Sharī‘a Scripts: A Historical Anthropology* (New York: Columbia University Press, 2018).

<sup>10</sup> Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago: The University of Chicago Press, 2016).

examines the legal process surrounding the creation and adoption of these two works and the social contexts that produced them.<sup>11</sup> In contrast, the Shāfi‘ī *madhhab* continues to be understudied, especially with regard to the totality of its literary tradition, its legal mechanisms, late process of determining why certain texts are authoritative, and, more importantly, the wider cultural and social institutions that produce and affect them. This thesis alone cannot resolve all of these issues. Still, I hope that my work on the Shāfi‘ī *madhhab* and its two most authoritative texts will complement Al-Azem’s valuable contribution, especially since there is no study on the history of the Shāfi‘ī school and its literary tradition.

This thesis examines how juristic theory and processes interact within the Shāfi‘ī literary tradition, how the school’s doctrine and authority were achieved, and how they interacted with socio-political, cultural, and intellectual conditions in Mamluk Egypt and the Levant between the seventh/thirteenth and tenth/sixteenth centuries. In specific, I will address how these interactions played out within two periods in the Shāfi‘ī *madhhab*: a period known as the ‘era of verification’ (*taḥqīq*), in which the functionaries of the school filtered and verified the previously unmanageably expansive legal corpus; and the ‘era of glosses’ (*‘aṣr al-ḥawāshī*), in which numerous multi-volume commentaries on authoritative texts were penned and became the new main genre for jurisprudential innovation. As a case study, this research project will textually examine the two most authoritative works in the Shāfi‘ī literary tradition: (a) al-Nawawī’s (d. 676/1278) digest *Minhāj al-ṭālib*. and (b) Ibn Ḥajar al-Haytamī’s (d. 974/1567) commentary on it, *Tuḥfat al-minhāj*. As such, the thesis will examine Shāfi‘ism in the middle period (between the seventh/thirteenth and the tenth/sixteenth centuries) through unpacking its two seminal texts in

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<sup>11</sup> Talal Al-Azem, *Rule-Formulation and Binding Precedent in the Madhhab-Law Tradition* (Leiden: Brill, 2017).

ways that will shed light on the legal tradition's intellectual and literary history and the influence of political and socio-cultural institutions on *iftā'*.

In so doing, the objective of this research project is to answer the following questions: How was the legal doctrines of the Shāfi'ī school formulated and formalized? What literary, linguistic, terminological, and juristic activities went into this process? What kind of intellectual history did this process produce? And since, according to both Schacht and Calder, Islamic law is a jurists'--as opposed to judges'--law, how did jurists (*fuqahā'*, sing. *faqīh*), especially late ones like Ibn Ḥajar, canonize their legal corpus?<sup>12</sup> Did the professionalization of jurists under the Mamluks and Ottomans affect such processes? More importantly, were there certain social needs and judicial, educational, and political changes that resulted in a shift in the function and scope of legal *ijthād* within the confines of Shāfi'ī *madhhab*?

In specific, I will attempt to: (1) study the history of the Shāfi'ī literary tradition, with a focus on the juristic processes that led arriving at its doctrines and authoritative texts; (2) provide a textual study of the aforementioned pair of texts, with a focus on their genealogy, linguistic and terminological content, and juristic contribution, and; (3) build on recent scholarship to discover the relationship between such juristic developments and their wider epistemic, socio-political, and cultural environment.

I hope that this thesis will contribute to a better understanding of the Shāfi'ī literary tradition, its dynamics, the role of language and terminology within it, the different roles different texts and genres played, and the social cultural elements that affected this tradition

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<sup>12</sup> Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 5 and 209; Norman Calder, "Law," in Seyyed Hossein Nasr and Oliver Leaman (eds.), *History of Islamic Philosophy*, (London-New York: Routledge, 1996), 986.



between between the seventh/thirteenth and the tenth/sixteenth centuries. By this, I hope to contribute to bridging the gap of understanding how post-classical Islamic law functioned, in both the eras of verification (*‘aṣr al-taḥqīq*) and commentaries (*‘aṣr al-ḥawāshī*).

## Theoretical and Methodological Notes

This thesis posits that studying the Shāfi‘ī *madhhab* as a tradition, based on the postulations of Alasdair MacIntyre and Talal Asad, reaps several benefits.<sup>13</sup> Together, their contributions have helped develop the notion of an Islamic tradition. Among these benefits is recognizing and emphasizing the discursive nature of such religious legal structures. Hence, this leads to acknowledging the importance of identifying the roles of debates and disagreements in *madhhab*-law structures, from their foundation onward. As it is not the scope of this thesis to engage with the external arguments, this thesis will not engage with the external discourses of

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<sup>13</sup> Although MacIntyre defined the term in several of his writings, the most comprehensive and relevant definition he provides of a tradition is arguably the following, “a tradition is an argument extended through time in which certain fundamental agreements are defined and redefined in terms of two kinds of conflict: those with critics and enemies external to the tradition who reject all or at least key parts of those fundamental agreements, and those internal, interpretative debates through which the meaning and rationale of the fundamental agreements come to be expressed and whose progress a tradition is constituted”; Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Duckworth: University of Notre Dame Press, 1988), p. 12.

the *madhhab*-law tradition in relation to Shāfi'ism.<sup>14</sup> As for the internal discourses within the Shāfi'ī *madhhab*, the Shāfi'ī juristic tradition emerged out of a special historical moment that was characterized by inter-denominational Sunni tensions. These tensions were mainly between the rationalist school of Abū Ḥanīfa; the scripturalist approach of the school of Imām Mālik, with its emphasis on the role of oral communal culture of the 'practice of the people of Madīna' ( *'amal ahl al-Madīna*); and the primacy of consensus, which was championed by Ibn 'Ulayya, who is one of al-Shāfi'ī's main interlocutors, among other forces.<sup>15</sup> It is the purpose of Chapter One to trace other tensions and to investigate how the founding rationale was revisited through time.

A second benefit of MacIntyre's postulation is to recognize that, as is the case in other intellectual traditions, *madhhabs* integrate rational and moral elements. The moral elements were adequately substantiated by Hallaq.<sup>16</sup> One pertinent example of the rationality of these traditions is their inherit relation to Legal Theory (*uṣūl al-fiqh*); a discipline that is concerned with systematizing the interpretation of scriptural sources of Islamic law as well as creating an

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<sup>14</sup> It suffices here to mention that external inter-*madhhab* debates constitute the well-known genres of apologia and the explanation of inter-*madhhab* disagreements, or *ikhtilāf*. Both of these genres include 'offensive' and 'defensive' literature in all *madhhabs*, and the Shāfi'ī *madhhab* is no exception. To give a general overview of inter-*Madhhab* apologia, for an example of works attacking Shāfi'ī jurisprudence from the Mālikī perspective, see: Muḥammad al-Labbād al-Qayrawānī, *Kitāb al-radd 'alā al-Shāfi'ī*, edited by 'Abd al-Maguid b. Ḥamda (Tunisia: Dār al-'Arab lil-Ṭibā'a, 1986). For a work on the superiority of the Shāfi'ī *madhhab* and its jurisprudential methodology, see: Muṣṭafā al-'Arūsī, *al-Anwār bahiyya fī bayān aḥaqīyyat madhhab al-shāfi'īyya* (Cairo: Dār al-Iḥsān, 2019). Arguably the most extensive intra-*madhhab* defense of the scriptural proofs of the Shāfi'ī school and those of al-Shāfi'ī's opinions is al-Nawawī's *al-Majmū'*, which will be discussed in Chapter Two; Yahyā b. Sharaf al-Dīn Al-Nawawī, *Al-Majmū'*, edited by Shaykh Najīb al-Muṭī'ī (Jaddah: Maktabat al-Irshād, n.d.). In defense of the 'new' and 'old' opinions of the founder of the Shāfi'ī school, see the important treatise of Ibn al-Qāṣṣ, which will be discussed later on in this chapter: Aḥmad Ibn al-Qāṣṣ, *Nuṣrat al-qawlayn lil Imām al-Shāfi'ī*, edited by Māzin Sa'd al-Zabībī (Damascus: Dār al-Bayrūtī, 2009).

<sup>15</sup> El Shamsy, *Canonization*, 224.

<sup>16</sup> This idea that morality has always been an essential part to Islamic law is at the heart of Hallaq's *Sharī'a: Theory, Practice, Transformations*, where he criticizes many academic theses' perception of Islamic law as being void of any moral dimension. See: Wael Hallaq, *Sharī'a: Theory, Practice, Transformations* (Cambridge, UK; New York: Cambridge University Press, 2009), 10.

interpretive canon that focuses on producing formal legal reasoning.<sup>17</sup> *Uṣūl al-fiqh* is an essential part of all *madhhabs* aiming to provide an objective and critical process that governs legal deduction.<sup>18</sup> *Uṣūl al-fiqh* is especially central to how the Shāfi'ī *madhhab* started and evolved, since its own founder has authored what some claim is the first work of Legal Theory in Islam in his famous *al-Risāla*. In addition to *uṣūl al-fiqh*, other forms of rationalizing the legal operations within the *madhhab*-law tradition include the 'meta'-*madhhab* principles of overarching objectives of Shari'a (*maqāṣid al-sharī'a*)<sup>19</sup> and operational legal maxims that govern legal deduction within the *madhhabs*.<sup>20</sup>

The third benefit is acknowledging that sharing a linguistic, in specific terminological, patrimony is essential to the founding and progress of a legal tradition. As El Shamsy points out, creating common terms was important to the Shāfi'ī *madhhab* since its very beginning.<sup>21</sup> The genre and the role juristic terminologies (*muṣṭalahāt fiqhiyya*) is a central focus of this thesis and will be examined in Chapters Two and Three.

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<sup>17</sup> Intisar Rabb, "Islamic Law Through Legal Canons" in *Routledge Handbook of Islamic Law*, edited by Khaled About El Fadl, Ahmad Atif Ahmad, Said Fares Hassan (New York: Routledge, 2019), 2017.

<sup>18</sup> For an overview of *uṣūl al-fiqh*, see B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni uṣūl al-fiqh* (Cambridge: Cambridge University Press, 1997).

<sup>19</sup> These hierarchical objectives are five and concern the protection of faith, property, life, progeny, and intellect, in that order.

<sup>20</sup> These legal maxims are: (1) certainty will not be overturned by doubt, (2) hardship must be elevated, (3) matters will be judged by their purposes, (4) harm must be removed, and (5) custom has the weight of the law. For an explanation of these maxims and how these function in the the Shāfi'ī *madhhab*, see; 'Abd Allah b. Alī al-Damlījī Suwaydān, *Sharḥ al-qawā'id al-khams al-latī yanbanī 'alayha al-fiqh 'alā madhhab al-imām al-Shāfi'ī* (Cairo, Dār al-Iḥsān, 2018); also see Jalāl al-Dīn al-Suyūṭī, *al-Ashbāh wa al-naẓā'ir fī qawā'id wa furū' al-Shāfi'iyya*, edited by (Beirut: Dār al-Kutub al-Ilmiyya, 1983), 7-8.

<sup>21</sup> "The Shāfi'ī school that grew around al-Shafi'ī's paradigm of law in the third/ninth century was thus primarily a discursive institution, rooted in a central corpus of texts and shared techniques for its analysis. These were transmitted and developed in a burgeoning secondary literature and spread rapidly to other legal schools, inaugurating a process of convergence that would eventually culminate in the creation of a common terminological and methodological basis in Sunni thought"; El Shamsy, *Canonization*, 224-226.

Fourth, I am encouraged by several recent works that bring together insights from religious anthropology and textual studies of legal texts to reveal new insights about legal religious traditions and their actors. One example is Messick's *Sharī'a Scripts* that studies the performative dimension of a textual tradition within Zaydism, combining an ethnography of text-based writing and reading activities with a philological study.<sup>22</sup> Also drawing on Nakissa's recent monograph, I am interested in benefiting from his insights into combining practice theory and hermeneutics theory in order to arrive at a better understanding of religious legal traditions on their own terms.<sup>23</sup> Since traditions consist of signs (of mental attributes, e.g. piety) and effects (action and structures onto the material world, e.g. the structure of studying a juristic manual), hermeneutic theory offers insights into grasping a holistic picture of how religious juristic traditions operate. In specific, it can offer insights into understanding why representatives of these traditions have an important religious and spiritual standing. As Nakissa asserts, "In the Islamic tradition, it is expected that religious scholars obey God by acting in accordance with His rules/intentions. Since religious scholars act in accordance with God's rules/intentions, their actions are effects of God's rules/intentions... Given this situation, God's mental attributes can be inferred from the obedient action (including statements) of religious scholars."<sup>24</sup>

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<sup>22</sup> Brinkley Messick, *Sharī'a Scripts: A Historical Anthropology* (New York: Columbia University Press, 2018). Of particular interest to this paper, the book pays attention to the social context of legal texts, whether library or archival, the transition from oral to written in the legal spheres, and how the legal rankings and authorities were constituted. Of interest here is how Messick builds on Geertz's conception of Shari'a as a form of "local knowledge" and is connected to an intellectual tradition: Messick, *Shari'a*, p. 26. Through exploring the interaction between the doctrinal juristic writing ("library") and how these rules were encountered in action in the local judicial system ("archive"), Messick provides an important portrayal of a lived legal tradition. Also, a major intersection between his work and this thesis is his exploration of the independent juristic preferences of Zaydī jurists that fall outside the established position of their school (*ikhtiyārat*), which is similar to preferences of Imam al-Nawawī which I examine in Chapter Two.

<sup>23</sup> Aria Nakissa, *The Anthropology of Islamic Law: Education, Ethics, and Legal Interpretation at Egypt's Al-Azhar* (New York: Oxford University Press, 2019).

<sup>24</sup> Nakissa, *The Anthropology*, 44.

Muslim scholars from the *madhhab*-law tradition offer guidance to their followers through both articulating rules (i.e. *madhhab*-specific doctrines, guidelines, dispensations, etc.) and instilling and embodying mental attributes (piety, scrupulousness in implementation of actions, and intentions). It is the attempt to enrich one's religious life of the adherents by way of arriving at, instilling, and acting on God's mental attributes, as embodied in the actions and statements of religious jurists and scholars, that represent the religious dimension of the *madhhab*-tradition. Whether these attributes are encountered by direct encounters with jurists in educational or judicial settings or through texts, this dimension is what gives importance to their social and religious life. This understanding is in line with how jurists see their work and social/religious role. They are seen as representatives of the God; whether on the level of *ijtihād* or below that, as individuals attempting to reach God's rule on any given legal question for the sake of their stakeholders.<sup>25</sup> It is also because of the importance of this dimension that all biographies of author-jurists and jurists include a section on their piety and religiosity. The three biographies of the central figures of this thesis, al-Shāfi'ī, al-Nawawī, and Ibn Ḥajar, provide a vivid picture of the interconnection between their personal piety and impersonal juristic reasoning.

Below is a Literature Review followed by an overview of the Framework of the Thesis.

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<sup>25</sup> For example, al-Shāfi'ī asserts, "On the whole, a *muftī* is a teller on Allah's behalf (*mukhbir 'an Allah*) just like a prophet. He is a deputy of Shari'a (*muwaqqi' lil-al-sharī'a*) in relation to the action of the religiously responsible individuals (*mukallaḥīn*) based on his own judgment in the same way a prophet does. His ruling is upon the Umma is enforceable, based on the authorization of being a vicegerent (*khalīfā*), just like a prophet." See: al-Shāfi'ī, *al-Muwāḥḥaḥāt fī uṣūl al-sharī'a*, edited by Aḥmad Muṣṭafā Qāsim al-Ṭaḥṭāwī and Sayyid Zakariyyā al-Ṣabbāgh (Cairo: Dār al-Faḍīla, n.d.), 3:270.



## Literature Review

Despite a number of well-received scholarly works in the field of Islamic law, the long-established preoccupation with the formative period continues. Comprehensive treatments of the dynamics and discourses of Islamic law in the late classical pre-modern era are scarce. Legal studies of the late period, inter-disciplinary or otherwise, suffer a noticeable gap, which this work hopes to bridge with regard to certain aspects of the Shāfi'ī school. Due to its wide application and official adaptation by the Ottomans and (some) Mamluks, the Ḥanafī school may have attracted more scholarly attention than all others. This thesis will highlight the process of discursive canonization in the Shāfi'ī literary tradition, weaving insights from intellectual history with textual analysis.

Hallaq's central argument in *Shari'a: Theory, Practice, Transformations*, a critique of the post-classical decline paradigm that permeates Islamic legal studies, is that Islamic law is constructed on moral grounds, not those of the power of the state. The scope of this book intersects with the study of post-classical Shāfi'ism, since it engages with the concept of the emergence and the development of legal schools (in all their successive iterations, whether study circles, personal schools or discursive doctrinal institutions) is based on social morality and concern for the metaphysical. And due to their financial or semi-independence, the jurists were able to attend to their duty of deriving legal rulings based on religious sources and functioning as mediators between the government and the people. Since both al-Nawawī and Ibn Ḥajar are author-jurists who worked within the structures of the *madrasa* that swept the Muslim world

after the Seljuqs, especially under the Mamluks and Ottomans. His assessment of the era is important, as he affirms the existence of an equilibrium during that period between men of the pen and those of the sword. “The ruling elite received cooperation of the scholars and their promotion of their legitimacy, while the scholars received a salary, protection, and the full right to apply the law as they saw fit... the judges applied the *fiqh* as the Sharī‘a and its author-jurists and *muftis* required.”<sup>26</sup> This is especially the case with the Shāfi‘ī school since it continued to develop outside state-sponsorship, for different reasons. This investigation will engage Hallaq’s arguments, which claims that Islamic legal scholarship, including the Shāfi‘ī school, enjoyed independence from the power of the state under both the Mamluks and early Ottomans. However, the exclusion of the Shāfi‘ī *madhhab* from being the main *madhhab* in Egypt and the Levant weakened the development of jurisprudence of interpersonal transactions (*mu‘āmalāt*), vis-a-vis matters of worship (*‘ibādāt*).

A work that focuses on the formative period, offering an insightful analysis on the emergence and continuation of the discursive Shāfi‘ī community, is El Shamsy’s *The Canonization of Islamic Law*. This monograph provides a valuable study of the canonization project of Imam al-Shāfi‘ī, meaning how he gave scripture, especially *ḥadīth*, hermeneutic authority in the jurisprudential process. The term ‘canonization’ is multivalent, and it emerged in a particular Western context. Its use in other religious and legal traditions is problematic. I use

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<sup>26</sup> Wael Hallaq, *Sharī‘a: Theory, Practice, Transformations* (Cambridge, UK; New York: Cambridge University Press, 2009), 149.



the term ‘canonization’ cautiously.<sup>27</sup> The early process of canonization did not make certain legal texts by al-Shāfi‘ī standard authoritative texts. Rather, it positioned prophetic traditions as a whole as primary textual sources for legal interpretation. Here, El Shamsy agrees with Shacht and Brown that this adaptation of prophetic traditions constitutes canonization.<sup>28</sup> El Shamsy’s book champions ‘radical individualism’ of the jurists over the legal tradition of Medina which is based on communal culture. Distraught with the sacralization of communal tradition (‘*amal*’) of early Mālikism, the book depicts Imam al-Shāfi‘ī’s solid theorization, creativity and radical individualism as expressed in a confident authorial voice; a subject that directly connect with later attempts of rule formulation and the introduction and role of the commentarial genre. Another important relevance of this work to this research project is how later generations of Shafi‘īs follow the methodology of their eponymous founder, albeit critically, through what he terms ‘secondary canonization.’<sup>29</sup> This secondary process of canonization was later performed by successive Shāfi‘ī jurists who inferred authoritative rulings and selected authoritative texts by scholarly process that followed a methodology, was inspired by the science of *ḥadīth*, and was influenced by historical, cultural and juristic developments. As we shall see below the process of juristic verification that performed by al-Nawawī and al-Rāfi‘ī in the seventh/thirteenth century is akin to a canonization of juristic opinions; not books or a category of scriptural source.

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<sup>27</sup> For an examination of the term canonization and its introduction to Islamic Studies, especially *ḥadīth* studies, see: Jonathan Brown, *The Canonization of Al-Bukhari and Muslim: The Formation and Function of the Sunni Ḥadīth Canon* (Boston; Leiden: Brill, 2007), 21-46. In it he examines the emergence of the term in the Biblical tradition and its introduction into literary and legal studies. He also shows how it is used historically in two different ways: as a criterion between truth and falsehood and a fixed collection of standardized texts. He highlights the differences between using term in the Western context and other cultural and civilizational contexts and traces the use of the term in Islamic and Ḥadīth Studies.

<sup>28</sup> Brown, *Canonization*, 33.

<sup>29</sup> El Shamsy, *Canonization*, 225.

Fachrizal's study of Imam al-Nawawī, one of the two central figures of this research project, represents an important contribution to Islamic legal studies. With its focus on a single jurist and on analyzing why his influence was so important to his juristic school, it provides a valuable understanding of how al-Nawawī achieved his eminent status within the Shāfi'ī school. It closely examines his efforts in reviewing, reevaluating, rearranging, refining, and reconciling the school's entire legal corpus of the Shāfi'ī school that was produced up until his time. In specific, its main contribution lies in its examination of the story of how al-Nawawī reconciled the legal opinions the understudies Iraqi and Khurasanian hermeneutical sub-schools (*tarīqas*); a long overdue research project in understanding the legal and intellectual history within the Shāfi'ī legal tradition. In specific, the book studies the influence of al-Nawawī's teacher, Ibn al-Ṣalāḥ (d. 643/1245) on him. The crux of the book, which directly relates to my work on post-stabilization canonization, affirms that the same personal and doctrinal authority that was at the heart of establishing the *madhhabs*, especially the Shāfi'ī one, was "extended to later jurists who lived during the post-formative period, such as al-Nawawī, and for the same reasons, that is, in order to structure and stabilize legal dispositions in the Muslim community."<sup>30</sup> Al-Nawawī's authority, based on which Ibn Hajar and other later *mujtahids* rely, is due to his superb achievement of filtering and drastically minimizing the expansive legal pluralism that existed before him through the above mentioned sub-schools. Al-Nawawī embarked on such a momentous project, first, for the practical purpose of enabling his fellow jurists to arrive at legal opinions that are endorsed by the *madhhab*'s hermeneutical principles easily and, second, by way of elaborating on his legal methodology in his longer works.

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<sup>30</sup> Fachrizal A. Halim. *Legal Authority in Premodern Islam: Yahyā b. Sharaf al-Nawawī in the Shāfi'ī school of Law* (London; New York: Routledge, 2015), 5.

One of the main findings of Fachrizal's book that is relevant to this thesis is the influence of Shāfi'ī *fiqh* master--who is more famed for his erudition in Ḥadīth--Ibn al-Ṣalāḥ (d. 643/1245) on al-Nawawī. Ibn al-Ṣalāḥ was the teacher of al-Nawawī's teacher. Ibn al-Ṣalāḥ had many influences on al-Nawawī's hierarchy of *ijtihād*, an influence that was not traced by either Hallaq or Calder in their magisterial examination of the hierarchy of *ijtihādīc* juristic authority.<sup>31</sup> Ibn al-Ṣalāḥ's lasting influence on al-Nawawī is not only in his *ḥadīth*-guided approach to law, but, more importantly, his own outlook and trajectory with regard to reconciling the two Shāfi'ī sub-schools and typologies of *iftā'* and *ijtihād*. In the same way, Ibn al-Ṣalāḥ's influence on al-Nawawī's most celebrated *ḥadīth* works is well established, especially on al-Nawawī's commentary on *Ṣaḥīḥ Muslim*, one can easily trace a parallel and obvious impact from Ibn al-Ṣalāḥ's al-Nawawī *fiqh*. In specific, we can easily trace the influence of Ibn al-Ṣalāḥ's discourse on the etiquettes of seeking and issuing fatwas from his book on *Adab al-muftī wa al-mustaftī* on the main structure of the typology of *mujtahids* in al-Nawawī's introduction to *Majmū'*. This legal influence has not been traced or studied before.

In addition, al-Nawawī's lasting contribution to the Shāfi'ī school consists in him, first, becoming an authorial axis, whose work on *ḥadīth* authentication was dedicated to authoritatively providing textual proofs to his legal positions. It is for this reason that he later became called 'the authenticator (*muḥaqqiq*) of the *madhhab*'. Second, He also reconciled the legal differences between the two Shāfi'ī sub-schools, the Iraqi and Khurasanian. This project was one of the concerns of Ibn al-Ṣalāḥ. Al-Nawawī also used his chain of transmission of the

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<sup>31</sup> Wael Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 2-14; Norman Calder, "Al-Nawawī's Typology of Muftīs and its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3, no. 2 (1996): 137-164.

juristic works both sub-schools which connects to Ibn al-Ṣalāḥ to authenticate and verify the their legal opinions. Through a process of preponderance that examines both the text (*matn*) and transmission (*isnād*) of legal opinions of previous scholars (in yet another resemblance to verification of *ḥadīth* reports), al-Nawawī was able to deliver his lasting juristic contribution. Another resemblance to the science of Ḥadīth that Fachrizal highlights is the centrality of biographical studies to the rule-formulation efforts of al-Nawawī. This included a process of rewriting “the life history and achievements of other high-caliber jurists who, despite their close affinity with al-Shāfi‘ī, found their membership in the Shāfi‘ī madhhab called into question.”<sup>32</sup>

In this thesis, I shall provide a clear differentiation of the terms of *tarjīḥ* within the Shāfi‘ī school which seem to have escaped previous scholars working on Shāfi‘ism in the Middle Period, including Halim. For example, the term *aẓhar* (lit. more manifest) does not only mean the most distinctive legal view, but is also specific to the process of *only* weighing between the opinions of the eponymous founder alone. There are few other variations that are covered in Chapter Two.

Al-Azem’s textual analysis of the process of rule-formulation and legal precedence in the *madhhab*-tradition represents an important and relevant contribution. It focuses on closely studying a pair of the most authoritative texts in the Ḥanafī school, Qudūrī’s Compendium and Ibn Quṭlūbughā’s commentary on it. Both in its structure and focus, this book is an inspiration for this thesis. Al-Azem’s central argument is that the most salient feature of the *madhhab*-law structure is the binding authority it furnishes on the genre of legal commentaries; especially through the processes of rule-formulation (*tarjīḥ*) and law-determinacy (*tashīḥ*). Al-Azem goes

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<sup>32</sup> Halim, *Legal Authority in Premodern Islam: Yahyā b. Sharaf al-Nawawī in the Shāfi‘ī school of Law* (London; New York: Routledge, 2015), 112.

beyond Hallaq and Calder in their study of juristic hierarchy, situating this conceptual legal institution within the broader (internal) periodization of Ḥanafī *madhhab*, its commentarial tradition, and the process of jurisprudential reasoning. He provides an expansive and careful reading of the textual developments of Islamic law. It also provides valuable terminological investigations and engagements with the commentarial tradition, to which Ibn Ḥajar's *Tuhfa* belongs. Al-Azem asserts that "writings in this genre may contain much originality and legal value, and should not be dismissed due to an assumed lack of 'independence.'"<sup>33</sup> Other relevant aspects from this monograph include the meaning and function of a *madhhab*, main characteristics of the madhhab-law system, the typology of juristic authority, periodization of sources, and survey of legal arguments. Its investigation of the problems arising from the quadruple four-tier judicial systems that were introduced by the Mamluks, a development that urged jurist-authors to formulate and determine preponderant juristic rules for both jurists and judges, is of central relevance.

As for the Arabic secondary sources, 'Ukāsha's study of the fatwas and their impact on the Mamluk society in Egypt and the Levant, *Al-fatāwa al-dīniyya wa atharuhā fī mujtama' Miṣr wa al-Shām: 'aṣr ṣalāṭīn al-Mamālīk*, is an extensive and comprehensive study. Its coverage of form and contents of fatwas from the period is very helpful, including the sample fatwas. He also provides an exposition of the official and unofficial fatwa-issuing bodies (mosques, *madrasas*, etc), an exhaustive survey and list of the names, brief biographies, fatwa collections, *madhhab*, and tenure of *muftīs* (including women *muftīs*, the most famous among them is 'Āisha al-Bā'uniyya (d. 922/1517), and an examination of the creation of an official and

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<sup>33</sup> Al-Azem, Talal. *Rule-Formulation and Binding Precedent in the Madhhab Law Tradition* (Leiden: Brill, 2017), 20.

specialized house for *iftā'*, i.e. Dār al-‘Adl. There is a survey of subjects and impacts of different fatwas; varying between political (e.g. high profile appointments, sacking, legitimizing war waging), religious (related to managing endowments, Christians, new cultural innovations, prohibiting extravagant women clothing that mimics the wives of the Mamluk princes), economic (protesting increase in taxes or allowing them, endorsing change of currency used, etc.), and even environmental. The book’s direct relevance is that it examines Imam al-Nawawī’s fatwas and his encounter with the Mamluk Sultan, al-Zāhir Baybars (d. 676/1277), to endorse a fatwa to force the population to contribute to fight the Moghul armies. The book culminates in several important findings, including the conclusion that the Shāfi‘īs constituted more than fifty percent of all *muftīs*, that two families of Shāfi‘ī judges dominated the official *muftī* seats, and that at times fatwas enjoyed influence that surpass those of the Mamluk sultans themselves.<sup>34</sup>

With its special technical focus and comprehensiveness, al-Khaṭīb’s *Ikhtiyārāt al-imām al-Nawawī allatī tafarrad bihā min al-madhhab al-Shāfi‘ī* examines the special juristic preferences (*ikhtiyārat*, sing. *ikhtiyār*) of al-Nawawī. *Ikhtiyārāt* is a special term. It indicates differing with both Imām al-Shāfi‘ī and the established opinion within the *madhhab*, and coming up with a new evidence-based opinion. At the heart of this work is a subtle but important distinction between preponderance (*tarjīh*) and *ikhtiyār*. As the author emphasizes, there is an important but subtle difference between the two, one that caused Ibn Ḥajar to scorn jurists who heedlessly equate the two.<sup>35</sup> This book’s significance lies in several areas. First, it surveys and

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<sup>34</sup> Ṭal‘at ‘Ukāsha, *Al-fatāwa al-dīniyya wa atharahā fī mujtama‘ Miṣr wa al-Shām: ‘aṣr ṣalāṭīn al-Mamālīk* (Cairo: ‘Ayn lil Dirāsāt al-Ijtimā‘iyya wa al-Insāniyya, 2018), 335.

<sup>35</sup> Quoted from Ibn Hajjar al-Haytamī, *al-Fatāwa al-fiqhiyya al-Kubra*, 4:187, in Sālim b. Ahmad b. Abī Bakr Al-Khaṭīb, *Ikhtiyārat al-Imām al-Nawawī allatī tafarrad bihā min al-madhhab al-Shāfi‘ī: dirāsa muqārana* (Amman: Dār al-Nūr al-Mubīn lil-Nashr wa al-Tawzī‘, 2016).

studies all the *ikhtiyārāt* of al-Nawawī from all his books, including *Minhāj*. The book proves and examines the idea of the fragmentation of independent legal reasoning (*tajzu' al-ijtihād*) by a qualified scholar, in this case it is al-Nawawī is this relevant to revisit the hierarchy of juristic *ijtihād*. This practice transforms *ijtihād* into a compartmentalized process that is applied vertically; which is still radical and involves differing with the established opinions of the *madhhab*. The preponderant opinion among the majority of scholars is that this topic-specific *ijtihād* is permissible. In his authoritative gloss *Jam' al-jawāmi'* on Shāfi'ī jurisprudence (*uṣūl*), Shaykh Ḥasan al-ʿAttār (d. 1250/1835), asserts,

(The permissibility of the fragmentation of *ijtihād* is the preponderant opinion) Means that it so happened that for some individuals, the ability of performing *ijtihād* concerns certain chapters, like ordained inheritance quotes (*al-farā'id*). This is acquired by way of knowing its evidence through one's own inference (*istiqrā'*) or from a 'complete *mujtahid*' and then to examine the evidence. With regard to the opinion of those who prohibit it, it is probable that there might be contradicting evidence among the evidence which he [i.e. the fragmentary *mujtahid*], unlike in the case of someone who is aware of all evidence and has examined them.<sup>36</sup>

This is central to the theme of the transformation of *ijtihād* in later eras, especially during and after the commentarial period. I will further engage with this concept, along with the emergence of 'narrational *ijtihād*' in Chapter Three. Equally importantly, as this book shows that the commentator who traces (*yatataba'*) al-Nawawī's *ikhtiyārat* the most is Ibn Ḥajar, the author of commentary on Nawawī's *Minhāj* that this thesis will be studying.

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<sup>36</sup> Ḥasan al-ʿAttār, *Ḥāshiyat al-ʿAttār 'alā jam' al-jawāmi'* (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 2:225.

## Framework of the Thesis

The introduction of this thesis demonstrates the continuous relevance of Islamic law and the *madhhab*-law tradition in contemporary Muslim life. It also highlights the need to study the later period of this history and the existing gaps in Islamic legal and intellectual history. It identifies the gaps in studying the post-classical period in the Shāfi‘ī school and its juristic, authorial, literary, and socio-cultural developments. In addition to the thesis statement, and the specific questions that this research project will interrogate, the Introduction also includes a Literature Review and this Framework of the Thesis.

Chapter One, titled The Legal and Literary Tradition, examines the main methodological and epistemic components of the Shāfi‘ī *madhhab*. The aim here is to provide a typology of the Shāfi‘ī juristic literature that expresses a coherent theory of Shāfi‘ī texts. My objective is to answer the following set of questions: what debates and discourses did the central texts in the Shāfi‘ī literary tradition come out of, how the course of the development of the *madhhab* influenced them, why certain texts gained a high status, and how and why they were composed. This typology will be based on a periodization that is based on the internal logic and timeline of this literary tradition itself, not the standard European periodization format. This typology is a concise yet overarching description of juridical methodologies of this legal school, their development, and how this was translated into specific textual projects. I will attempt to unpack the historical development of the *madhhab* as a ‘story of books’ that is undergirded by eight internally characterized interconnected periods that respond to different scholarly and juristic



needs (not the standard periodization scheme adopted in the Western academia). I will also examine why the Shāfi‘ī school came to agree to not to integrate the legal works that preceded al-Nawawī in its process of rule-formulation and law-determination.

Chapter Two studies the most authoritative legal digest in the Shāfi‘ī *madhhab*, al-Nawawī’s *Minhāj al-ṭālibīn*. This chapter focuses on studying the two main aspects that this thesis argues allowed *Minhāj* to enjoy such a status: first, its linguistic character and the effective and innovative terminological system and; second, its juristic methodology and accomplishments. Firstly, the chapter will include a short biography of the author, an exposition of *Minhāj*’s contents, the author’s intention behind composing it, and its intended uses. Secondly, this chapter will move its focus into analyzing the linguistic and terminological systems of al-Nawawī, which is at the heart of the authorial objectives of *Minhāj*. This chapter will attempt to trace the genealogy of such terms especially from al-Nawawī’s other books. In addition, it will study and offer the findings of a handful of books that studied this terminological system, in order to provide both analytical and statistical insights on the use of these terms. Thirdly, this chapter will move to investigate *Minhāj*’s legal methodology and provide examples of its juristic verification, al-Nawawī’s engagement with the two Shāfi‘ī hermeneutic sub-schools of the Khursanians and the Iraqians, and the reception of *Minhāj*. The chapter concludes with examining al-Nawawī’s lasting contribution on the Shāfi‘ī *madhhab*.

Chapter Three is a textual study of the most celebrated Shāfi‘ī commentary on *Minhāj*, *Tuḥfat al-muḥtāj* of Ibn Ḥajar al-Haytamī, the most authoritative late work in the school. First, the chapter will provide a brief contextual biography of Ibn Ḥajar, in addition to a description of his positionality within the ‘commentarial circle’, a circle of late Shāfi‘ī jurists and

commentators who came to represent the most authoritative circle in the post-classical era of the Shāfi‘ī school under the Ottomans. I will also engage with debates regarding the status of the *Tuhfa*, its competition with al-Ramlī’s *Nihāyat al-muḥtāj*, as well as the other works from that period. Second, this chapter will analyze the linguistic and terminological makeup of this commentary, in an attempt to demonstrate the specific functions and innovations of this commentaries from that era. This will include a study of two works that are dedicated to studying the terms of *Tuhfa*. Third, this chapter will study the juristic contributions of Ibn Ḥajar, including his inferences, verifications, and evidentiary defense of Shāfi‘ī doctrines. This will include multiple examples representing different juristic functions. I will also compare Ibn Ḥajar’s and al-Nawawī’s approaches to *ijtihād*.

The thesis will end with a conclusion summarizing and weaving together the different findings from its three chapters.

## CHAPTER ONE

The Shāfi‘ī Legal and Literary Tradition:

Towards a Theory of Texts

## CHAPTER ONE

### The Shāfi‘ī Legal and Literary Tradition:

#### Towards a Theory of Texts

The aim of this chapter is to provide a typology of the Shāfi‘ī literary tradition. This typology will help articulate a coherent theory of texts of the Shāfi‘ī juristic tradition. Such a typology is crucial to understanding the positionality of al-Nawawī’s digest, *Minhāj al-ṭālibīn*, and Ibn Ḥajar’s commentary on it, *Tuhfat al-minhāj*, the two main focuses of this thesis, within the Shāfi‘ī textual tradition. The suggested is based on an ‘indigenous’ periodization scheme that is, first, representative of the major juristic concerns and operations of each period and, second, is identifiable among Shāfi‘ī scholars. This periodization stems from the internal juristic, educational, and judicial needs of the Shāfi‘ī school. Hence it is believed to be effective in understanding the intellectual arguments and discourses that books from every period speak to. As such, the main purpose of this typology will be two-fold. First, to identify the overarching juristic and literary process of this literary and intellectual tradition across time and space. Second, to understand how and why the two books that are at the heart of the textual study of this thesis came to enjoy their authoritative positions. This typology of the Shāfi‘ī literary timelines is divided into two main parts: first, early Shāfi‘ī textual production prior to al-Nawawī and, second, from al-Nawawī’s time onward.

## The Shāfi‘ī Literary Traditions: A Story of Books

The Shāfi‘ī school is one of the four juristic schools of Sunni Islam, alongside its Ḥanafī, Mālikī, and Ḥanbalī counterparts. As is the case with the three others, it is named after its eponymous founder, Muḥammad b. Idrīs al-Shāfi‘ī (150/767-204/820). Each of these legal schools is called in Arabic *madhhab*, literally an established pathway. *Madhhab* is a technical term that came to acquire multiple meanings. Its three most common meanings are (1) the totality of a school of law, (2) a doctrine of such a school, and (3) an interpretive opinion or adopted by a qualified jurist.<sup>37</sup> Within Islamic studies, several Islamicists have offered different perspectives on how *madhhabs* developed historically. These perspectives vary between being regional, personal, or individual-then-doctrinal schools, to a guilds, or corporate entities.<sup>38</sup> Despite having the Qur’an and *ḥadīth* as the center of their interpretive operations, each of these schools represent a unique jurisprudential and literary tradition. Each of the *madhhabs* also enjoys a different genealogy,

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<sup>37</sup> There are other variations of the technical meaning of the term. For example, within the Shāfi‘ī school, Imām al-Nawawī uses this term in *Minhāj* in a specific sense, meaning the adopted positions of both subschools, the Khurasanian and the Iraqi, based on either (a) an opinion (*qawl*) of al-Shāfi‘ī, (b) the opinions (or *awjuh*) of al-Shāfi‘ī’s Companions (*aṣḥāb*), or a combination of the two. See: ‘Arafāt ‘Abd al-Raḥmān al-Maqdī, *Tabṣirat al-muḥtāj bi mā khaṭiya min muṣṭalaḥ al-Minhāj* (Kuwait: Dār al-Ḍiyā’, 2014), 96.

<sup>38</sup> The first scholar to address the gradual development of *madhhabs* is Melchert. See the introduction in: Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden; New York: Brill, 1997). Hallaq’s work on the subject objected to Schacht’s postulation that *madhhabs* are geographical entities. See: Wael B. Hallaq, “From Regional to Personal School of Law? A Reevaluation,” *Islamic Law and Society* 8:1 (2001). As for the notion of *madhhab* functioning as guilds, it was proposed by Makdisi and further developed by Jackson. See: George Makdisi, “The Guilds of Law in Medieval Legal History: An Inquiry into the Origins of the Inns of Court,” in *Zeitschrift Für Geschichte Der Arabisch-Islamischen Wissenschaften*, (ed.) Fuat Sezgin (Frankfurt am Main: Institut für Geschichte der Arabisch-Islamischen Wissenschaften an der Johann Wolfgang Goethe-Universität, 1984); Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi* (Leiden: E. J. Brill, 1996).

history, geographical influence, juristic and doctrinal authorities, and shared terminology.

Whether a collective school of law, an individual jurist, a teacher or a judge, the functionaries of these Islamic juristic schools saw themselves as vehicles for divinely inspired law. They also saw education as an essential aspect of their mission. To serve their scholarly, pedagogical and juristic objectives, these schools created elaborate and complex educational and scholarly structures to transmit and authorize their doctrines and curricula. These structures came to systematically derive, disseminate, and verify their evidence and precedence-based doctrines that are derived from the Islamic scripture via their jurisprudential methodology.

These complex structures of the *madhhabs* represent time-honored processes and doctrines. Based on Horner's assertion, all traditions share the following: matters of ideas that are passed on from generation to another, the process through which they are passed on, and a reservoir of “specialness”, or expertly-produced intellectual products or artifacts. This assertion is consistent with the above-cited understandings of the different meanings of a *madhhab*: first, as a doctrine, second, as a methodological process of juristic verification followed to arrive at these doctrines and, third, as a preserved collection of expert’s opinions, respectively. Some of these aspects of the *madhhab*-law traditions are neither clear-cut nor adequately studied. In specific, this research project is interested in how these three elements intersect within the Shāfi‘ī literary tradition. That is, what is the process through which the Shafi‘ī *madhhab* arrived at its doctrines and where are they contained? How did the Shafi‘ī literary and juristic tradition arrive at those doctrines? And how did this *madhhab* deal with its reservoir of legal opinions? In

specific, the second half of this chapter will provide a survey of the Shāfi‘ī literal with a focus on exploring it as a story of books. Consequently, it will examine how and why certain periods in this intellectual history were characterized by a central juristic operation culminating in a certain book.

### The Shāfi‘ī Literary Tradition: Stories, Cycles, and Texts

The first step towards exploring the typology of the Shāfi‘ī literary tradition is to examine the relation between its main juristic genres. Norman Calder’s assertion that Islamic law is a jurists’—as opposed to a judges’—law is an important starting point for this examination of the library of the Shāfi‘ī *madhhab*. He argues that the two main types of legal writings in Islamic law are legal digests (*mukhtaṣarāt*) and expansums (*mabsūṭāt*, or *muṭawwalāt*).<sup>39</sup> There are other views that emphasize the role of judges (*qādīs*), like Coulson’s.<sup>40</sup> Some scholars, like Hallaq, suggest that tension between the two professions was a creative force that played a role in the development of legal writings within the *madhhab*-tradition since its beginnings.<sup>41</sup> This continuous tension eventually, and creatively, led to the later hierarchy of relied-upon (*mu‘tamad*) doctrines, which was achieved through the process of preponderance or rule-formulation (*tarjīḥ*) of juristic opinions. Despite there being many important types of juristic writing, from collections of fatwas, legal distinction (*furūq*), cognate and similar issues (*al-ashbāh wa al-naẓā‘ir*), the ‘legal verses’ (*āyāt al-aḥkām*), topical treatises, poetic renditions of

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<sup>39</sup> Norman Calder, “Law,” in Seyyed Hossein Nasr and Oliver Leaman (eds.), *History of Islamic Philosophy*, (London-New York: Routledge, 1996), 986.

<sup>40</sup> Noel J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964).

<sup>41</sup> For more on this see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 26-38 and Wael Hallaq, *The Origins and Evolution of Islamic* (Cambridge: Cambridge University Press, 2005), 57-68.

legal manuals (*nuzūm*, sing. *naẓm*), and legal prophetic traditions (*aḥādīth al-aḥkām*), the Shāfiʿī legal history advanced as a spiral-like interplay between digests and expansums. This interplay culminates in the two most authoritative works within this literary tradition, al-Nawawī's digest, *Minhāj al-ṭālibīn*, and Ibn Ḥajar's expansum, his commentary on that digest, *Tuhfat al-muḥtāj*. This following section of this chapter will examine the literary history of the Shāfiʿī *madhhab* as a continuous and dialectical narrative leading to both works.

### On Traditions and Their Founding Rationales

I will move now to engage with the founding rationale of the Shāfiʿī *madhhab* and the role of language within this tradition. The radical founding moment of the Shāfiʿī school of law that claimed to treat interpretive demands of that moment and consisted in two aspects: first, an articulation of a hierarchy of the sources of legal operations and, second, a reconceptualization of the revelation (*waḥy*) as a direct and continuous divine communication anchored in the Arabic language and its rules, as well as prophetic Sunna.<sup>42</sup> As for the first aspect, the hierarchy of the foundational sources (*uṣūl*, sing. *aṣl*), according to *al-Risāla*, the sources of this hierarchy are: (1) The Qur'an; (2) Prophetic actions and tradition, or Sunna; (3), Scholarly consensus (*ijmāʿ*), especially for matters that are directly addressed in either of the first two; (4) the recorded opinion of a Companion (*qawl al-ṣaḥābī*), especially when there is no known disagreements with

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<sup>42</sup> El Shamsy, *Canonization*, 223.



it; and (5) scripture-based analogical deduction (*qiyās*).<sup>43</sup> Describing the way the Shāfi‘ī school came together to form a tradition around this source-based interpretive method, El Shamsy portrays this founding moment, which resulted in the emergence of a scholarly legal tradition that shares a terminological and methodological bases, as follows,

The Shāfi‘ī school that grew around al-Shafi‘ī’s paradigm of law in the third/ninth century was thus primarily a discursive institution, rooted in a central corpus of texts and shared techniques for its analysis. These were transmitted and developed in a burgeoning secondary literature and spread rapidly to other legal schools, inaugurating a process of convergence that would eventually culminate in the creation of a common terminological and methodological basis in Sunni thought. Al-Shāfi‘ī’s paradigm found its niche within this wider movement. The solution that it offered to the crisis of normative tradition consisted of an elitist scripturalism... As a result, Islamic law was transformed from a communal venture, based on an organic link to revelation through shared tradition, to a science of interpretation that soon became embedded in a discursive community of scholars.<sup>44</sup>

This passage is relevant for two reasons. First, it emphasizes how terminological and methodological cohesion is key to solidifying a tradition, especially at its birth. As Chapters Two and Three will demonstrate, the invention and sharing of terminological conventions and methodological norms are essential aspects to the advancement and the stabilization of the Shāfi‘ī school from the seventh/thirteenth to the tenth/seventeenth centuries. Both aspects, terminological and methodological cohesion, are essential to carrying on and advancing

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<sup>43</sup> Al-Shāfi‘ī explains this hierarchy by stating: “Knowledge is of two types, adherence or deduction. Adherence of the Book. If not, it is of the Sunna. If not, it is the opinion of the majority of our early generation (*salaf*), for which we know of no contestation. If not, then a *qiyās* that is based on the Book of Allah, Mighty Majestic. If not, based on the Sunna of the Messenger of Allah, Allah’s blessings and peace be upon him. If not of the majority of the early generation, for which we know of no contestation”; Muḥammad b. Idrīs al-Shāfi‘ī, *al-Umm*, (Beirut: Dār al-Fikr, 1990) 1:170.

<sup>44</sup> El Shamsy, *Cananization*, 225.

interpretative conversations between jurists and restoring the doctrinal and authoritative structures of a given tradition. Second, since the founding rationale of the Shāfi'ī school was embodied in a discursive community, this then highlights the importance of understanding the dynamics of such a community. In other words, studying how this discursive community was formed and their relations is an important aspect of studying a juristic tradition.

### Intra-Communal Relations

There are two aspects of the Shāfi'ī school that demonstrate the previously mentioned relational dimension of a tradition. First, there is an established hierarchy of authority (*marātib al-fuqahā'*) to perform different juristic innovations and issues based on the qualification of a given jurist, including forms of *ijtihād*. This hierarchy is classified into five categories, and in later periods into six.<sup>45</sup> Calder studied this hierarchy and concluded that it was important to the continuation of the *madhhab*-tradition, especially since higher rank scholar-jurists used to train lower-ranking

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<sup>45</sup> Norman Calder, "Al-Nawawī's Typology of Muftīs and its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3, no. 2 (1996), 162. Calder studied the classic five main categories of this hierarchy in "Al-Nawawī's typology of Muftīs". Among the few important findings he stresses is that loyalty to a *madhhab* and to the idea that only the founder of the school is an absolute *mujtahid* was in some sense liberating, "because they did not have to return to the original texts." Also, neither the education nor the sense of liberation was completely blind adherence (*taqlīd*) (p. 162). Calder also stressed how higher level author-jurists took on an educational function by educating newer *muftīs*. However, some later Shāfi'ī scholars, like 'Alī Bakathīr as quoted in *Maṭlab al-īqāz*, add a sixth category at the bottom of the list. The categories are: (1) an absolute *mujtahid* (also called independent mufti), like the the four eponymous founders of the four *madhhabs*; (2) restricted *mujtahid* or the dependent muftis, other those who despite being qualified to perform unique legal reasoning chose to follow one *madhhab*; (3) The *mujtahids* of the *madhhab*, or those who are also called the 'possessors of perspectives' (*aṣḥāb al-wujūh*), who relied on statements from the founder as foundations for their juristic inference; (4) The *mujtahids* in fatwa and rule-formulation (*tarjīh*), who perform preponderance from among the valid narrated opinions from the *madhhab*. (5) The transmitters (*nuqalā'*, sing. *nāqil*) of the *madhhab*, or those who transmit the *madhhab*'s legal tradition. (6) the 'carriers of Islamic law' (*ḥamalat al-fiqh*) commentators (*al-muḥashyīn*); 'Abd Allah Balafqīh, *Maṭlab al-īqāz fī al-kalām 'ala ghurar al-alfāz* (Kuwait: Dār al-Ḍiyā', 2017), 85; al-Malybārī, *Dirāsa*, 210-213.

ones and thus, “became constitutive of the next generations’ task”.<sup>46</sup> Below is a table

representing this typology.

	Classification	Description	Examples
1	<b>Absolute <i>mujtahidis</i></b>  (also called independent <i>muftīs</i> )	They acquired knowledge of scriptural rulings via different sources, conditions for solid evidence, mastery of Qur’an, <i>ḥadīth</i> , language, and produced a legal theory on which their legal inferences and substantive rulings are based.	The four eponymous founders of the four Sunni <i>madhhab</i> -law traditions.
2	<b>The restricted <i>mujtahids</i> or the dependent <i>muftīs</i></b>	They follow a <i>madhhab</i> but still through their own unique legal reasoning.	Al-Buwayṭī (d. 232/847), al-Muzanī (d. 264/878), Ibn al-Mundhir (d. 318/930), and Ibn Jarīr al-Ṭabarī (d. 310/923).
3	<b>The <i>mujtahids</i> of the <i>madhhab</i></b> a.k.a ‘possessors of perspectives’ ( <i>aṣḥāb al-wujūh</i> )	They are independent in their establishing ( <i>taqrīr</i> ) of legal foundations and theory through proofs, without contradicting the eponym.	Shaykh Abū Ḥāmid al-Isfārīnī (d. 406/1016), al-Qaffāl (d. 365/976), and al-Mawazī (d. 340/951).
4	<b>The <i>mujtahids</i> in fatwa and rule-formulation</b> ( <i>tarjīḥ</i> )	They mastered the methodology and knowledge of the <i>madhhab</i> .	Al-Nawawī (d. 676/1278) and al-Rāfi‘ī (d. 633/1236).
5	<b>The transmitters (<i>naqalat</i>) of the <i>madhhab</i></b>	They are qualified to transmit the legal tradition, and understand both ambiguous and unambiguous issues	Ibn Ḥajar (d. 974/1567) and al-Ramlī (d. 1004/1596).

Table 1: A hierarchy of the *mujtahids* and *muftīs* of the Shāfi‘ī *madhhab*.

Second, throughout its development, the Shāfi‘ī *madhhab* kept an unbroken chain of narration (*silsila*) that established the connection of its teachings back to the Prophet Muḥammad via the eponymous founder.

<sup>46</sup> Calder, *al-Nawawī*, 162.

Based on the previously mentioned relational elements of a *madhhab*, this thesis suggests that a comprehensive understanding of a juristic tradition should couple an examination of its doctrines with an understanding of the situatedness of the interpretive authorities that produced them. For example, as Chapter Two will show, one of the main achievements of al-Nawawī, for example, in his project to review all the previous legal opinions of his school to arrive at its doctrines. Therefore, al-Nawawī had to reconcile and verify the doctrines of the two interpretive sub-schools of the Shāfi‘ī school that existed up to his time: i.e. Khorasians and Iraqians. These sub schools weighed heavily on the progress of the Shāfi‘ī *madhhab* from the fifth/tenth century forward. Without understanding the relative differences in the hierarchy of authority, doctrines, and juristic approaches of these sub-school vis-a-vis al-Nawawī, one cannot fully grasp the significance and scope of al-Nawawī’s lasting achievement. In contrast, based on the findings from Chapter Three, one of Ibn Ḥajar’s main contributions to post-classical Shāfi‘ism is his defense and consolidation of the juristic authority of the ‘Two Masters’ (*al-shaykhān*), one of whom is al-Nawawī, who came before him in the seventh/tenth century and enjoys a higher rank in the hierarchy of juristic authority.

### The Genres of Digests and Expansums

Didactic legal digests (*mukhtaṣarāt*) represent the most common genre in the Shāfi‘ī library. The most famous example of these digests is the short and widely memorized treatise of Abū Shujā‘

al-Aṣḥānī (d. 593/1197), which is known by two titles, *al-Ghāya wa al-taqrīb* and *al-Ghāya wa al-ikhtisār*. Digests are characterized by their inescapably succinct and pedagogical tone, representing a ‘backward-looking’ summation of the precedent-based system of the *madhhab*. They seek to offer clear-cut, uniform and formulated rules for pedagogical purposes, without a need to engage in debates, justification or citing differences. Historically, the origin and spread of digests was seen as part of the dialectic between progression and regression. For example, the Ḥanafī jurist al-‘Atābī (d. 586/1190), sees the spread of digests, in specific the activity of summarization, as a sign the downfall or “briefness” of the intellectual capabilities of the time (“*wa likhtisār himamihim ikhtārū al-mukhtaṣar fī kull shay*”).<sup>47</sup> In contrast, an example of reading the spread of digests in a different light is offered by Ḥājī Khālifa, a.k.a. Kātip Çelebī, the famous author of the bibliographical encyclopedia *Kashf al-ẓunūn ‘an asāmī al-kutub wa al-funūn*. According to him, digests are, “made as reminders of the headlines of issues (*ru’ūs al-masā’il*). An advanced individual benefits from them by way of recollection. They may benefit some intelligent beginners due to their quick advancement to meanings from precise phrasing.”<sup>48</sup> Also the famous historiographer Ibn Khaldūn describes the activity of writing digests as “the recording of a brief program in every science is presented through a survey of its issues (*masā’iluhu*) and their proofs succinctly, with fewness in letters and while packing them with numerous meanings from the respective of the wider discipline.”<sup>49</sup> In relation to the juristic functions of digests in the realm of Islam law, according to Fadel, the main objective of these

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<sup>47</sup> Quoted in Muṣṭafā Ḥajjī Khalīfa, *Kashf al-ẓunūn ‘an asāmī al-kutub wa al-funūn*, edited by Muḥammad Sharaf al-Dīn Baltaqāya and Rif‘at Balīka al-Kilīsī (Beirut: Mu’assasat al-Tārīkh al-‘Arabī, 2008) 2:936.

<sup>48</sup> Khalīfa, *Kashf*, 1:35.

<sup>49</sup> ‘Abd al-Raḥmān Ibn Khaldūn, *Al-Muqaddimma*, edited by ‘Alī ‘Abd al-Wāḥid Wāfī (Cairo: Dār Nahḍat Miṣr, 2017), 2:142.

digests is to provide uniform rulings which severed a pre-modern form of serving a project of legal codification.<sup>50</sup> Digests are the most valued and refined products of *taqlīd* (conformity to legal precedent), functioning as both textbooks for students and a shorthand for judges for ensuring the uniformity of substantive law.

As for the genre of expansums (*mabsūṭāt* or *muṭawwalāt*, meaning the expansive or lengthy books, respectively), within juristic writing, it mainly consists of commentaries (*shurūḥ*), and glosses/supra-commentaries (*hawāshī*). Some historians argue that this commentarial genre was important to Islamic juristic writing from the works of Arabic grammarians.<sup>51</sup> One can describe these works as a ‘forward-looking’ mode of writing, interested in exploring new horizons of meaning by way of applying a critical, expansive and detailed engagement with the previous discourses and debates. This engagement takes place by a focused linear interaction with one book, from beginning to end. Expansums were used both as references for advanced educational purposes and references to issue fatwas. In addition to amending mistakes and shortcoming in the original text (*matn*), Ḥājjī Khalīfa argues that there are three central reasons for composing commentaries: (1) fulfilling a need for further expanding, so that hidden meanings that are otherwise not easily are grasped by non-experts; (2) providing some needed introductions, analogies, rearrangement, and rationales, and; (3) limiting the unintended hermeneutical possibilities of the text and giving preferences to the meanings that the author of

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<sup>50</sup> Mohammad Fadel, “The Social Logic of Taqlīd and the Rise of the Mukhataṣar”, *Islamic Law and Society* 3, no. 2 (1996), 198.

<sup>51</sup> ‘Abd Allah Muḥammad al-Ḥabashī, *Jāmi‘ al-shurūḥ wa al-hawāshī* (Abu Dhabi: al-Majma‘ al-Thaqāfi, 2004), 1:8.

the original work intended.<sup>52</sup> Calder also provides several functions for expansums: (1) analysis, (2) a means of expressing loyalty to one's school of thoughts and its achievements, (3) 'Truth' formation and, (4) an aristocratic activity for the scholarly elite.<sup>53</sup> Expansums are home to the juristic precedent-based reviews and commentaries of the *madhhab*-system. As al-Azem asserts, "The primary forum in which post-classical Muslim jurists determined precedent was not the courtroom, the academy, or the halls of a government legislative agency, but rather the book, and, most prominently, in the genre of legal commentary."<sup>54</sup>

### The Literary Tradition: A Juristic Story

As part of attempting to provide a survey of the Shāfi'ī literary tradition, I would like to start by expressing a methodological note that pertains to periodization. The periodization of the development of the Shāfi'ī literary tradition that is suggested below will not be based on the classical European conceptualization of pre-modern history. Rather, it is based on critiques of the standard European periodization scheme (i.e. classical, medieval, modern, etc.), which imposes a European historical particularity on other non-European histories. This argument was raised by Chakrabarty's marxist subaltern's historical perspective and Koselleck's theory of historical

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<sup>52</sup> Muṣṭafā Ḥajī Khalīfa Kātip Çelebī, *Kashf al-zunūn 'an asāmī al-kutub wa al-funūn*, edited by Muḥammad Sharaf al-Dīn Baltaqāya and Rif'at Balīka al-Kilīsī (Beirut: Mu'asasat al-Tārīkh al-'Arabī, 2008) 1:36-37.

<sup>53</sup> Calder, "The Law," 986-987.

<sup>54</sup> Al-Azem, *Rule-Formulation*, 1-2.

times.<sup>55</sup> Instead, I will adopt a more temporally and spatially relevant periodization of the Shāfi‘ī textual history. The periodization scheme I follow below is based on an indigenous timeline, one that is marked by the internally recognized salient feature of each period. These features are, first, relevant to Shāfi‘ī legal and literary tradition and, second, recognized by its practitioners and scholars.<sup>56</sup> One important advantage of this periodization system is the ability to read the Shāfi‘ī literary tradition on its own terms, without implicating it with the dialectical arguments of ‘rise’ and ‘decline’. This is especially important since, as we shall see, there was much understudied intellectual, terminological and juristic innovation taking place within the commentarial tradition in the tenth/sixteenth century, a period that was supposedly seen by some commentators as a ‘period of decline and stagnation’, for example.

It can be argued that, throughout its history, the Shāfi‘ī tradition was generally speaking subjected to two types of forces. First, there is what one may call ‘vertical’ forces--like the need for systematization (which the process rule-formulation and review are part of), standardization,

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<sup>55</sup> For an insightful critique of how non-European history is both marginalized and dealt with as secondary to European history, which is central to world history see: Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000). Chakrabarty demonstrates that the history of the other can never fully be incorporated within the European paradigm. In his work, he attempts to “explore the capacities and the limitations of certain European social and political categories in conceptualizing political modernity in the context of non-European life-worlds.” (p. 18). Also for the need to rethink conceptual history and the need for it to be based on a complex theory of periodization, see: Reinhart Koselleck, *The Practice of Conceptual History. Timing History: Spacing Concepts*. (Stanford: Stanford University Press, 2002).

<sup>56</sup> Al-Kāf provides an eight-stage timeline which is based on internal developments of the Shāfi‘ī *madhhab*. It is based on studying and several recent studies on the history of the Shāfi‘ī school by modern scholars and academics. These include: Muḥammad Ibrāhīm Aḥmad ‘Alī, “al-Madhhab ‘inda al-Shāfi‘iyya”, *Majallat Jāmi‘at al-Malik ‘Abd al-‘Azīz*, May 1987, accessed online on 13 April 2019 (<http://www.feqhup.com/uploads/13437371411.pdf>); Aḥmad al-Nahrāwī al-Indunīsī, *al-Imām al-Shāfi‘ī fī madhhabayh al-qaḍīm wa al-jadīd*, a self-published PhD thesis, accessed online in April 2019 ([https://ia802701.us.archive.org/22/items/Shafeay\\_Mazhabih/Shafeay\\_Mazhabih.pdf](https://ia802701.us.archive.org/22/items/Shafeay_Mazhabih/Shafeay_Mazhabih.pdf)); Akram al-Qawāsmī, *al-madhkal ila madhhab al-imām al-Shāfi‘ī* (Amman: Dār al-Nafā‘is, 2004); Ma‘īn al-Dīn Baṣrī, *al-Madhhab al-Shāfi‘ī: khaṣā’ishu, nash’atuhu, aṭwāruhu, mu’allaḥātuhu*, a PhD dissertation submitted to Imam Muḥammad Bin Saud University, (Riadh: 2001); Muḥammad Abū Zahra, *al-Shāfi‘ī: ḥayātuh, ‘aṣruh, ārā’uh, wa fiqhuh* (Beirut: Dār al-Fikr al-‘Arabī, 1987). Al-Kāf asserts that the suggested divisions are not lines in the sand. They do not represent any rupture and he argues that the move from each stage to the next is rather graduated. These stages, which as we will see will give us an important indication of why a certain book or type of book is significant in a certain period, are as follows, and I depict them in a book-focused fashion.



codification, rankings of legal experts and their scope, verification, and authentication. These forces function as an engine for a literary tradition to advance, as a juristic-precedent based legal school. Second, there are ‘horizontal’ forces, like the need to attend to newly emerging legal questions, geographical variations in terms of the practice and preferences among local school bases, and individual differences between author-jurists. The creative tensions between these intersecting forces surely results in crystallization and accumulation of doctrines, legal authorities, and literary responses. As we shall see below, in terms of legal writing, there is a set of processes that were necessitated by emerging scholarly and social needs. These processes include synthesizing legal statements and opinions (*jamʿ*), editing (*ḍabt*), filtering (*taḥrīr*), interpreting (*sharḥ*), transmitting (*naql*), consolidating legal positions (*tanqīḥ*), authenticating (*takhrīj* or *taḥqīq*, especially of ḥadīth evidence), extracting substantive rulings (*tafrīʿ*), among others. The periodization below will give an overview of how each of these processes emerged and how they took place.

This chapter posits that the most influential books in the story of the Shāfiʿī *madhhab* are the ones that textually succeeded in addressing the social and educational needs of their time. Also, although the history of the books will be the main focus of this survey, this story cannot be told by merely narrating the bibliographical history of book titles and author names and biographical information. Rather, it will include the progression of the juristic processes of the Shāfiʿī *madhhab* and the development of its traditional genres of juristic writing, with a special focus on the genres of digests and expansums. Reform through filtering weak opinions and the law-formulation is important to this process. According to contemporary Mālikī jurist-author al-Ḥajawī in his survey of the history of Islamic *fiqh*, “Not exercising the filtering of weak and non-

preponderant opinions (*tanqīḥ*) of books of *fiqh* is one of the necessary causes for its decrepitude.”<sup>57</sup> The continuation Islamic juristic traditions depends on their ability to filter their opinions and to arrive at its doctrines through an always re-energized and continuously developing process of *tarjīḥ*. The above quotation also stresses the link between the work of author-jurists in legal manuals and how their findings should then be transferred and transformed into educational textbooks.

Before starting with the survey of the Shāfi‘ī literary tradition, another terminological point remains. Unlike the Ḥanafī *madhhab*, as discussed in al-Azem’s work, the Shāfi‘ī tradition prefers the term ‘relied upon’ or *mu‘tamad* more over *ṣaḥīḥ* to identify its doctrine; despite the two being virtually synonymous in some instances.<sup>58</sup> The term *mu‘tamad* does not appear in early Shāfi‘ī books, however. The first scholar to use the term with its special terminological objective is Shaykh Zakariyyā al-Anṣārī (d. 926/1520).<sup>59</sup> Even though the term was in use for a while, the first author to define it in full is Ibn Ḥajar in *Tuḥfat al-muḥtāj*, the book which the textual study of Chapter three focuses on. Ibn Ḥajar defines *mu‘tamad* as:

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<sup>57</sup> Al-Hajawī by asserting, “Not exercising the filtering of weak and non-preponderant opinions (*tanqīḥ*) of books of *fiqh* is one of the necessary causes for its decrepitude; especially in the Ḥanafī and Mālikī *madhhabs*. If they [the *madhhabs*] have many *mujtahids* of varying degrees, their legal questions would still be found scattered in the books of *fatāwa*. A *muftī* needs to review numerous tomes and perform profound examinations. He may find his answer in a place different from where he thought they should be. If he does not acquire a substantial ability in memorization, expertise, and reading, and he revises a fatwa, then the outcome is certainly blunder and chaos... reforming *fiqh* certainly needs educational books, as I previously mentioned”; Muḥammad b.al-Ḥasan al-Ḥajawī, *al-Fikr al-Sāmī fī tārikh al-fiqh al-Islāmī* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), 2:405.

<sup>58</sup> ‘Abd al-Baṣīr b.Sulaymān al-Malyabārī, *Dirāsa shahiyya li muṣṭalaḥāt al-madhāhib al-arba‘a al-fiqhiyya* (Kuwait: Dār al-Ḍiyā’, 2018), 81.

<sup>59</sup> Muḥammad b. ‘Umar al-Kāf, *al-Mu‘tamad ‘inda al-Shāfi‘iyya: dirāsa naẓariyya taṭbīqiyya*, an MA thesis, self-published, p. 16, accessed on April 2019: ([https://ia800700.us.archive.org/21/items/gawish2040\\_yahoo\\_201810/%D8%A7%D9%84%D9%85%D8%B9%D8%AA%D9%85%D8%AF%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf](https://ia800700.us.archive.org/21/items/gawish2040_yahoo_201810/%D8%A7%D9%84%D9%85%D8%B9%D8%AA%D9%85%D8%AF%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf))

That which the verifiers from among the late scholars are in consensus on, and that which our shaykhs are still recommending and transmitting from their own shaykhs--and they, in return, [are also in consensus on like] those before them-- is that the *mu'tamad* [positions] are those that the Two Masters (*al-Shaykhān*) [i.e. al-Nawawī and al-Rāfi'ī] are in agreement on. Meaning, unless those who reexamined their positions are in concordance that it a certain opinion of either of them is nothing but an inadvertent absent-mindedness (*sahw*)... otherwise if they are in disagreement then the author's [i.e. al-Nawawī's] position is superior... and if there is a preference for al-Rāfi'ī that this secondary to it, then that's it.<sup>60</sup>

After providing the above introduction on the Shāfi'ī tradition, I will now move to providing an eight-period survey of its literary history, one that shows will also show why and how al-Nawawī's *Minhāj* and Ibn Ḥajar's *Tuhfa* came to enjoy their positions within the Shāfi'ī tradition. Below is a table presenting the main periods, developments, and books in the Shāfi'ī literary tradition, followed by a brief survey.

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<sup>60</sup> 'Abd al-Ḥamīd al-Sharwānī and Aḥmad b. Qāsim al-'Abādī, *Ḥawāshī al-shaykh 'Abd al-Ḥamīd al-Sharwānī wa al-shaykh Aḥmad b. Qāsim al-'Abādī 'ala tuḥfat al-muḥtāj*, (Beirut: Dar al-Fikr, 2014), 1:39.

**The main periods, developments, and books in the Shāfi'ī literary tradition**

<b>Part One: the typology of early Shāfi'ī book prior to al-Nawawī</b>			
<b>1. The founding the <i>madhhab</i> (186-204/802-820)</b>	<b>2. The transmission of the <i>jadīd</i> books of the founder (204-270/820-884)</b>	<b>3, The emergence and spread of the <i>madhhab</i> (270-404/884-1014)</b>	<b>4. Stabilization and emergence of the sub-schools (404-505/1014-1112)</b>
The emergence of the founding rationale and a discursive institution, and a preliminary but common terminological and methodological basis.	The transmission, teaching, and explaining of the opinions and methods; and influencing on the formative history of other Sunni schools	The spreading of a fully realized <i>madhhab</i> ; the emergence of the first work of biographical dictionaries and dissertations ( <i>ta'liqa</i> )	The emergence of the (transmission-focused) Iraqi and (extracting-corollary- rulings-savvy) Khurasnian sub-schools. The introduction of encyclopedias.
Al-Shāfi'ī's (d. 204/820) <i>qadīm</i> books, like <i>al-Hujja</i> , and <i>jadīd</i> ones, like <i>al-Umm</i> .	The <i>mukhtaṣars</i> of al-Muzanī (d. 264/878), al-Buwayṭī (d. 232/847), and Ḥarmala al-Tujībī (d. 243/857).	Ibn Surayj's (d. 306/919) digest and the books of Abū Zur'a (d. 302/915) and al-Qaffāl (d. 365/976).	Al-Māwardī's works (d. 450/1058), al-Shirāzī's (d. 476/1084) <i>al-Muhadhdhab</i> , al-Ghazālī's (d. 505/1111) <i>al-Wasīl</i> , and <i>al-Wajīz</i> .
<b>Part Two: Shāfi'ī books after al-Nawawī</b>			
<b>5. The period of verification (505-676/1112-1278)</b>	<b>6. The period of commentaries (676-926/1278-1520)</b>	<b>7. The period of the glosses (926-1335/1520-1917)</b>	<b>8. The contemporary period (1335-/1917-)</b>
The filtering out of weak opinions and the consolidation of Shāfi'ī doctrines; being those that al-Rāfi'ī (d. 633/1236) and al-Nawawī (d. 676/1278) share.	A critical engagement with al-Rāfi'ī and al-Nawawī's books; the introduction of poetic renditions of legal texts for educational purposes.	The emergence of the circle of commentators ( <i>shurrah</i> ), headed by al-Anṣārī (d. 926/1520) and his students, all of whose views are considered valid.	A decline in teaching and integration of the <i>madhhab</i> in fatwa and courts.
Al-Nawawī's <i>Minhāj al-ṭālibīn</i> , <i>al-Majmū'</i> , and <i>al-Rawḍa</i> ; al-Rāfi'ī's <i>al-Muḥarrar</i> and <i>al-Sharḥ al-kabīr</i> ; and Abū Shujā' al-Iṣfahānī's (d. 593/1197) <i>al-Ghāya wa al-taqrīb</i> .	The commentaries of al-Isnawī (d. 772/1372), al-Adhra'ī (d. 783/1278), al-Bulqīnī (d. 805/1403), al-Aqfāhī (d. 808/1405), Ibn Raslān's (d. 844/1441) <i>al-Zubad</i> and al-'Amrī's (d. 890/1485) <i>Nihāya</i> .	The commentaries of Ibn Ḥajar (d. 974/1567), <i>Tuhfa</i> , and al-Ramlī's (d. 1004/1596), <i>Nihāya</i> , among others, and glosses, like al-Bayjūrī's (d. 1277/1861).	The encyclopedic works of al-Zuhīlī (d. 1436/2015) and Hītū, <i>al-Fiqh al-manhijī</i> of al-Khun and et al, and others.

Table 2: The main periods of the development of the Shāfi'ī literary and juristic tradition, including the main scholarly and juristic developments, and the main books from each period.

## Part One: Early Shāfi'ī textual production prior to al-Nawawī

### First: The Period of the Founding the *Madhhab* by Imam al-Shāfi'ī (186-204/802-820)

The story of books of the Shāfi'ī school starts with the impressive and prolific efforts of the eponymous founder of the *madhhab*, Imam Muḥammad b. Idrīs al-Shāfi'ī (150-204/767-820).<sup>61</sup>

His legal writings during his scholarly career in Egypt (199-204/815-820), which constitutes what is known as the 'new' (*jadīd*) *madhhab*, vis-a-vis his legal contribution during his interspersed time in and out of Iraq (184-199/800-815), which is called 'old' (*qadīm*), is the real seed of the Shāfi'ī bibliographical corpus. This issue of revisiting al-Shāfi'ī's *qadīm* positions continued for centuries after him. Some scholars, including al-Nawawī, believe that unless al-Shāfi'ī states that his *jadīd* opinion abrogates a *qadīm* one, it can still be adopted.<sup>62</sup> While in Egypt, al-Shāfi'ī engaged with a number of students, including students of Imam Mālik (179/795), another eponymous founder of Sunni legal tradition, to whom he dictated his legal

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<sup>61</sup> For a biography of al-Shāfi'ī see: Fakhr al-Dīn Muḥammad al-Rāzī, *Manāqib Al-Imām Al-Shāfi'ī* (Cairo: Maktabat al-Kulliyāt al-Azharīya, 1986); Kecia Ali, *Imam Shafi'i: Scholar and Saint* (Oxford: Oneworld, 2011); Naṣr Ḥamid Abū Zayd, *al-Imām Al-Shāfi'ī wa ta'sīs al-aydulūjiyya al-wasatiyyaa* (Cairo: Saynā lil-Nashr, 1992).

<sup>62</sup> One of the most informative accounts on the *qadīm* and *jadīd* debates and answering the question of why and what happens when a scholar revisits his juristic positions is Ibn al-Qāṣṣ' (d. 335/947) *Nuṣrat al-qawlayn*. The book is not only a defense of resorting to both the *jadīd* and *qadīm* opinions of al-Shāfi'ī in operations of juristic inferences. It provides ten benefits for the existence of *qadīm* and *jadīd* opinions. These ten reasons are: (1) as a measure of differentiation between the invalidity of certain opinion and the validity of another; (2) that some *qadīm* are a mere narration of opinions of jurists that came before al-Shāfi'ī; (3) that al-Shāfi'ī intentionally put forward two different opinions as way of testing students while providing the doctrine in different place in his books; (4) that one of them is a narration of previous opinion while the other is the outcome of allegorical deduction (*qiyās*); (5) as a demonstration certain issues for which both positions are valid; (6) certain issues where the two opinions are consecutive (*'alā al-tartīb*) in relation to a certain juristic scenario; (7) when al-Shāfi'ī intentionally does not publicly state which of the two position is more evidently solid, for fear of social disturbance; (8) when one of the two positions is positively valid while the other is valid for the sake of juristic safety (*'alā al-iḥṭiyāt*); (9) when one of them is a clear way of explaining a matter, while the other is left unexplained or ambiguous, and (10) cases when he explained a position for the sake of making a juristic question easier for students, in order for them not to follow al-Shāfi'ī himself in what he adopts in his personal life, since it is more difficult to implement: Abī al-'Abbās Aḥmad b. Abī Aḥmad Ibn al-Qāṣṣ, *Nuṣrat al-qawlayn lil Imām al-Shāfi'ī*, edited by Māzen Sa'd al-Zabībī (Damascus: Dār al-Bayrūtī, 2009), 107-130.

works. During this period, the story of the books of the *madhhab* revolved around two pivots: performing preponderance between the explicit legal opinions (*aqwāl*, sing. *qawl*) of al-Shāfi‘ī and, second, the operations of editing and narrating his books. Shāfi‘ī jurists engaged for centuries in creating rules for formulating the *qawls* of their Imam, including Imam al-Juwaynī (d. 468), al-Shirāzī (d. 476) in his *al-Tabsira*, al-Ghazālī (d. 505/1111), who wrote a treatise on the subject, titled *al-Qawl fī ḥaqīqat al-qawlayn*, al-Munāwī (d. 803) in *Farā‘id al-fawā‘id*. Arguably the most extensive treatment of the subject is in al-Razī’s (d. 606/1210) *al-Maḥsūl*.<sup>63</sup>

The founding rationale of the Shāfi‘ī school was effective because it successfully addressed and resolved serious interpretive problems. Mainly, it manage to tackle the tension between the different hermeneutic and jurisprudential approaches at the time of al-Shāfi‘ī; especially between the rationalist schools (*aḥl al-ra’y*), who are mainly the Ḥanafīs and the traditionists (*aḥl al-hādīth*), chiefly made up of Mālikīs, among others. One of the main problems at the time of al-Shāfi‘ī is that the rationalists changed their views continuously. The traditionalists, on the other hand, were not able to effectively respond to new issues and also were not able to respond to the arguments of the rationalist, or to articulate an overarching jurisprudential methodology that supports their view.<sup>64</sup> Thanks to his training with both schools, al-Shāfi‘ī was able to find a middle path mainly between these two forces. His perspective stirred away from the Mālikīs’ emphasis on local custom as well as from the rational speculation of the Ḥanafīs. Instead, as El Shamsy observes, “Al-Shāfi‘ī’s radical reconceptualization of revelation

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<sup>63</sup> The upshot here is that generally the new opinion (*qawl jadīd*) abrogates the old one (*qawl qadīm*). There are cases where the Imam states two opinions, but then only one of them is championed by either: (a) explicitly using the terms of *tarjīh*, or (b) an indicating the problem with one of them, or (c) branching out ruling based on one of them. For more on this see: al-Kāf’s thesis, 110-114; al-Munāwī, *Farā‘id al-fawā‘id fī ikhtilāf qawlayn li mujthid wāḥid*, edited by Muḥammad Ismā‘īl (Beirut: Dār al-Kutub al-‘Ilmiyya, 1992).

<sup>64</sup> El Shamsy, *Canonization*, 197-198.

as an act of direct divine communication, grounded in the Arabic language and explicable through the prophetic Sunna, spawned new genres of writing, creating new literatures.”<sup>65</sup> However, as Melchert convincingly demonstrates, the tension existing at the time was not only between these two camps. Rather, it included other forces like the *Zāhirīs*, with their emphasis on consensus or common Muslims.<sup>66</sup>

As for the iconic books from this era, the prolific career of Imām al-Shāfi‘ī is now well established. The list of those books include his pioneering works on jurisprudence or legal methodology (*uṣūl al-fiqh*) in *al-Risāla*. Thanks to recent contributions from Lowry and El Shamsy<sup>67</sup>, a revisionist hypothesis by Calder<sup>68</sup> that argues that *Risāla* does not--at least not fully--belong to al-Shāfi‘ī has been rebutted. The *fiqh* works from the *qadīm* era include *al-Hujja*, which is lost, and a volume of collected legal opinions by al-Karābīsī titled *al-Qadīm*. From the *jadīd* era, *al-Umm* is considered to be the most important work here. It is a collection of opinions written and dictated by al-Buwayṭī and was narrated by al-Murādī, two of al-Shāfi‘ī’s most dedicated students.

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<sup>65</sup> Ibid., 223.

<sup>66</sup> Interestingly, Melchert also demonstrates that, contrary to widespread perceptions, there existed jurisprudential methods within the traditionist camp at the time of al-Shāfi‘ī. This included some Mālikī jurisprudential efforts: Christopher Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law." *Islamic Law and Society* 8, no. 3 (2001): 387, 406.

<sup>67</sup> Academic debate over the authenticity of some of al-Shāfi‘ī’s works in *uṣūl al-fiqh* and whether the ideas in *al-Risāla* are his has seen several notable contributions. Norman Calder offered a revisionist perspective in this regard, arguing that we cannot trust that the work was authored by students of who recorded the legal contribution of their major imams, including al-Shāfi‘ī in the second/eighth century, in *Studies in Early Muslim Jurisprudence* (Oxford: Oxford University Press, 1999). Based on the convincing refutations from Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad b. Idrīs al-Shāfi‘ī*, *Studies in Islamic Law and Society*, vol. 30. (Leiden: Brill, 2007), and Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013), this view is now no longer accepted.

<sup>68</sup> Norman Calder, *Studies in Early Muslim Jurisprudence* (Oxford: Clarendon Press, 1999).

On the emergence, spread and the significance of digests from beginning stages in the Shāfi'ī literary tradition, and how these works effectively substituting al-Shāfi'ī's own expansive work, Ali writes,

Although the *Umm* contains Shafi'i's doctrines and was transmitted, apparently quite accurately, to a number of early Shafi'i scholars it did not long remain a primary legal manual for Shafi'i scholars. Epitomes produced by Muzani and Buwayti quickly supplanted the *Umm* as teaching resources. The 'daunting length' – El Shamsy counts 6500 pages – and scattershot organization of the *Umm* were doubtless key factors. Buwayti abridged it to 200 pages in his *Digest*, which quickly spread both west to Andalusia and east as far as Bukhara. Muzani's *Digest* spawned numerous commentaries, and became a central part of the curriculum of the emerging Shafi'i school; it was ultimately far more influential than the *Umm* itself in the establishment of distinctively Shafi'i doctrines. Authoritative compendia produced in later centuries rendered the *Umm* obsolete. It is only since the publication of the Bulaq edition at the outset of the twentieth century that the *Umm* has reemerged as a vital text, now for historians rather than jurists... Despite its antiquarian rather than doctrinal importance, the *Umm* has become a very important book in early Islamic legal studies.<sup>69</sup>

The previous passage shows that digests have played an important role since the beginning of the Shāfi'ī literary tradition. Their role was to condense, contain, impart and the juristic opinions of the founder of the school. The emergence of the two digests of al-Muzanī and al-Buwayṭī is attributed to the educational and social need for a more manageable length than the founder's own monumental *al-Umm*.

## **Second: The period of transmitting the legal work of the madhhab and narrating the jadīd books of the founder (204-270/820-884)**

The active collection, transmission, and writing down of the legal positions and works of al-Shāfi'ī is the central literary and juristic mission of this period. The two main authors of this

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<sup>69</sup> Ali, *Imam Shafi'i*, 80-81.



period are the al-Muzanī (d. 264/878) and al-Buwayṭī (d. 232/847), with their influential digests of the opinions of al-Shāfi‘ī. It is noteworthy to mention that before meeting with al-Shāfi‘ī al-Muzanī (d. 264/878) and al-Buwayṭī were part of the rationalist and traditionist camps, respectively. It is not a coincidence that, despite their unshakable commitment to al-Shāfi‘ī and his methodology, their approaches to Shāfi‘ī jurisprudence mirror their backgrounds. Later on as we shall see, their respective views were transmitted and resulted in two internal approaches that reiterate the rationalist and traditionist perspectives, still within the folds of an overarching Shāfi‘ī paradigm.

One of the main books of this period is the digest by al-Muzanī, or *Mukhtaṣar* al-Muzanī, as it is widely known. This work is considered to be one of the five most influential works in the early part of Shāfi‘ī legal tradition, according to Ḥajjī Khalīfa’s *Kashf al-Zunūn*. Al-Muzanī was known for his piety and commitment to al-Shāfi‘ī. Before meeting al-Shāfi‘ī, al-Muzanī followed the Ḥanafī *madhhab*. Later Shāfi‘ī scholars, like Ibn al-Ṣalāh, point out that many of his independent views were rejected for their rationalist leanings.<sup>70</sup> Nevertheless, this digest seems to have had an influence on how all later Shāfi‘ī legal manuals were arranged.<sup>71</sup> In its opening statement, al-Muzanī asserts, “I summarized this book from the knowledge of Muḥammad b. Idrīs al-Shāfi‘ī, may Allah have mercy upon him, and also based on the meaning of his [i.e. al-Shāfi‘ī’s] statement: ‘in order to bring it closer to whoever seeks it, while informing them to not

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<sup>70</sup> According to Ibn al-Ṣalāh, al-Shirāzī in his *al-Muhazzab* refutes many of al-Muzanī’s juristic opinions. See: Taqyy al-Dīn ‘Uthmān b. Abd al-Raḥmān al-Shahrazūrī Ibn al-Ṣalāh, *Ṭabaqāt al-fuqahā’ al-shāfi‘īyya*, edited by Muḥyī al-Dīn ‘Alī Najīb (Beirut, Dār al-Bashā’ir al-Islāmiyya, 1992), 202-203.

<sup>71</sup> Çelebī, *Kashf*, 1635-1636.

emulate it (*taqlīduh*) or emulate other works; so that everyone can examine it for the sake of their religion and to caution themselves. And success is only through God’.”<sup>72</sup>

The second notable author-jurist from this period is Abū Ya‘qūb al-Buwayṭī, who took over the teaching responsibility after al-Shāfi‘ī passed away for more than twenty years. Before meeting al-Shāfi‘ī in Cairo, al-Buwayṭī was a follower of Imam Mālik and his traditionist approach. In fact, according to Ibn al-Ṣalāḥ’s *Ṭabaqāt al-shāfi‘iyya*, al-Buwayṭī is the (unnamed) person debating al-Shāfi‘ī in his famous treatise on the difference between Mālik and al-Shāfi‘ī, *Ikhtilāf Malik wa al-Shāfi‘ī*, in which he advocates Malikī traditionist positions.<sup>73</sup>

Another important student of al-Shāfi‘ī is al-Rabī‘ al-Murādī (d. 270/884), who verified and narrated several of his teacher’s works, including *al-Risāla* and *al-Umm*. Other noteworthy compendiums from this period include the works of Ḥarmala al-Tujībī (d. 243/857). Through their contribution to transmitting, explaining and critically expanding on the founder’s ideas and methods, al-Shāfi‘ī’s students are credited with the wide reaching and lasting influence that the *madhhab* achieved at this period. These efforts were so momentous that, as El Shamsy observes, they exercised an important influence on the formative history of other Sunni schools as well.<sup>74</sup>

### **Third: The emergence and spreading of the madhhab (270-404/884-1014)**

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<sup>72</sup> Ismā‘īl al-Muzanī, *Mukhtaṣar al-Muzanī fī furū‘ al-Shāfi‘iyya*, commented on and edited by Muḥammad Abd al-Qādir Shāhīn (Beirut: Dār al-Kutub al-‘Ilmiyya, 1998), 7.

<sup>73</sup> Ibn al-Ṣalāḥ, *Ṭabaqāt al-fuqahā‘ al-shāfi‘iyya*, 683.

<sup>74</sup> Commenting the model that al-Shāfi‘ī students created and their influence on other *madhhabs*, El Shamsy notes, “This model eventually matured into the classical school of law, while the students’ reinterpretations of al-Shāfi‘ī’s thought formed the bridges over which al-Shāfi‘ī’s canonization project spread to other schools and fields of scholarship at a remarkable speed. It is thus not an exaggeration to say that the formative history of the al-Shāfi‘ī school is also the formative history of classical Sunni Islamic law”; El Shamsy, *Canonization*, 6-7.

If the founding and transmission of the teachings of the *madhhab* were the main functions of the first two periods in the history of the Shāfi'ī literary traditions, the popularization of these teachings is the salient mark of the third one. After transmitting the foundational legal books and doctrines of the founder, the school entered a new period that witnessed its spreading and emergence as a fully realized *madhhab*. These efforts came about especially at the hands of dedicated teachers and judges. Chief among them were 'Uthmān al-Anmāṭī (d. 288/901), and his student-cum-judge Abū al-'Abbās Ibn Surayj (d. 306/919), who is credited with spreading the Shāfi'ī *maddhab* in Khurasan and Persia. Ibn Surayj attracted many students and wrote an important commentary on *Mukhtaṣar al-Muzanī*. According to Melchert, Ibn Surayj's influence on the future of Shāfi'ī school was far-reaching. His influences included establishing the *madhhab* as a guild in the third/ninth century, writing his own influential digest, and founding the genre of *ta'liqa*, or a dissertation. It was an assignment by Ibn Surayj to his students consisting of writing a commentary on al-Muzanī's *Mukhtaṣar*. According to Melchert,

It is clear that a continuous school--in the later sense--did not flourish neither in Iraq nor in Egypt during the ninth century. The classical Shāfi'ī guild school dates back, in most of its essentials, not all the way to al-Shāfi'ī but to Abū al-'Abbās Ibn Surayj (d. Baghdad, 306/918). From his time onwards, Shāfi'ī jurists have normally had an identifiable teacher and identifiable students. Before his time, the learning of Shāfi'ī jurisprudence was less like the learning of Ḥanafī jurisprudence, organized as a regular course of study under one teacher, than like the gathering of *ḥadīth* reports from a number of teachers, the more the better. From this time forward, there was a normal course of advanced study leading to production of a *ta'liqa*, virtually a doctoral dissertation, describing the judicial opinions chosen by the Shāfi'ī school. No such literary production regularly characterized the study of law before Ibn Surayj. It was a mark of the classical school of law that had a local chief, and Ibn Surayj seems to be the first jurisprudence described as having the chieftaincy of the Shāfi'īyah. From his time onward,

someone was usually identified as having inherited that title, but no one before is said to have had it.<sup>75</sup>

As the above shows, as a literary form, the *ta'liqas* served two purposes. First, a juristic one, through which Shāfi'ī views on a given issue (*mas'ala*) are deduced. Second, these works were an important element of an educational process early on the Shāfi'ī, marking the mastery of students with Shāfi'ī jurisprudence. However, *ta'liqas* had some unintended and far-reaching consequences. With this, as Halim asserts, Ibn Surayj, “basically provided a cradle of development for the *ṭarīqa*. Hence, through the proliferation of the *ta'liqa*, the *ṭarīqa* also grew. Its climax apparently was reached during the period of the *aṣḥāb al-wujūh*, that is, the period of those jurists who were capable of deriving legal solutions employing the methodology of the eponym of the *madhhab*, as was promoted by Ibn Surayj.”<sup>76</sup>

The spreading of the *madhhab* at this stage was carried out by other scholars as well like Abū Zur'a the Damascan (d. 302/915) and al-Qaffāl (d. 365/976). With regard to diversification of the genres of the Shāfi'ī books, this period also, “Witnessed the emergence of the first work of biographical dictionaries of the Shāfi'īs, *Al-madhhab fī dhikr shuyūkh al-madhhab*, by Abī 'Umar al-Muṭṭawī'ī (d. 440/1049).”<sup>77</sup>

#### **Fourth: The stabilization of the *madhhab* and emergence of the Iraqi and Khurasanian sub-schools (404-505/1014-1112)**

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<sup>75</sup> Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 80.

<sup>76</sup> Halim, *Legal*, 57-58.

<sup>77</sup> Al-Kāf, *al-Mu'tamad*, 47.

The main characteristics of this critical period are three-fold. First, there was a spike in the number of ulema who adhered to the Shāfi‘ī school, contributing to it with diverse works. Second, the Shāfi‘ī *madhhab* was adopted by political power, especially the Seljuk dynasty (428-590/1037-1194) which stretched between Anatolia, south east Asia and Persia, and the Ayyubids (566-658/1171–1260), whose kingdom covered Egypt and the Levant. This adoption influenced courts and schools. Third, two interpretive sub-schools (*tarīqas*) emerged within the *madhhab*; the Iraqians and Khurasanians. Even though the difference between the two sub-schools was a difference in the paths of narrations of legal opinions from the founder and their respective preferences between them, according to al-Nawawī, the Iraqians were more accurate in their transmission while the Khurasanians were better in applying and organizing legal opinions.<sup>78</sup>

An important point here is that, as Halim demonstrates, al-Nawawī verification ultimately favored the Iraqi school, with its distinctive traditionist inclination.<sup>79</sup> Chapter Two will deal with this point.

There are important authors and books from this period. First, there is Abū Ishāq al-Shirāzī (d. 476/1084), who wrote a lasting influential work, *al-Muhadhab*. *Al-Muhadhab* is an abridgment of judge Ṭāhir al-Ṭabarī’s (d. 450/1058) influential work/dissertation *al-Ta‘līq*. Al-Shirāzī also wrote *al-Luma’*, an influential commentary on Ibn al-Ḥājjib’s (d. 646/1249) digest in the discipline of *uṣūl al-fiqh*. Second, there is the eminent Abū Ḥāmid al-Ghazālī (d. 505/1111), who wrote a series of surveys and his own abridgments that the entire corpus of the later

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<sup>78</sup> Al-Nawawī, *al-Majmū’*, edited by Shaykh Najīb al-Muṭī‘ī (Jeddah: Maktabat al-Irshād, n.d.) 1:112.

<sup>79</sup> Halim, *Legal*, 70.

*madhhab* relied upon. This series of books is based on a multi-volume compendium by his teacher and towering scholar al-Juwaynī's (d. 478/1086), *Nihāyat al-maṭlab*. *Nihāyat al-maṭlab* is an expansive commentary on *Mukhtaṣar al-Muzanī*. Al-Ghazālī's series of abridgments are titled *al-Basīṭ*, *al-Wasīṭ*, and *al-Wajīz*, in the order of their length, from the biggest to the smallest. As a sign of the stabilization of the *madhhab*, according to Ḥājjī Khalīfa, four of the five most influential classical books of Shāfi'ism that were produced prior to verification period, which is marked by the achievements of al-Nawawī and al-Rāfi'ī in this regard, came from this period of stabilization.<sup>80</sup> This is a testimony not only to the stabilization of the *madhhab*, but to its maturity and prolific abilities. Other than the aforementioned digest of al-Muzanī that was produced in the third/ninth century, the rest of the five books from this period are al-Ghazālī's *al-Wasīṭ*, and *al-Wajīz*, al-Shirāzī's *al-Muhadhdhab* and *al-Tanbīh*.

Another important development in this period is the introduction of the voluminous genre of juristic encyclopedias (*mawsū'āt fiqhīyya*). The most significant works from this era are Chief Judge al-Māwardī's (d. 450/1058) *al-Ḥāwī al-kabīr* and *Nihāyat al-maṭlab fī dirāyat al-madhhab* by Imam al-Juwaynī (d. 478/1085), both of which are running commentaries on al-Muzanī's *Mukhtaṣar*.

Below is a diagram of the genealogy of the main books in the Shāfi'ī school.

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<sup>80</sup> According to Ḥājjī Khalīfa, "*Mukhtaṣar al-Muzanī fī furū' al-Shāfi'iyya* is one of the five famed five books among the Shāfi'īs that they widely circulated among them. It is widely cited in all regions, as mentioned by al-Nawawī in *al-Tahdhīb*. It is authored by the Shaykh and Imam Ismā'īl b. Yaḥyā al-Muzanī al-Shāfi'ī, who died in 264 [878]. He is the first to author a book in the Shāfi'ī *madhhab*. Ibn Surayj said that the book *Mukhtaṣar al-Muzanī* will leave the world untouched [i.e. by criticism]. Based on its model, they [i.e. the Shāfi'īs] arranged their works. They explained and commented on its discourse. The Shāfi'īs are actively engaging with it, studying it and reading it for a long time. They vary between an expatiating commentator (*shāriḥ muṭawwil*) and an explaining abridger (*mukhtaṣir mu'alil*). The majority among them admit that only a few comprehend its secrets, like Ibn Surayj"; Khalīfa, *Kashf*, 1635-1636.

## Part Two: The typology of Shāfi'ī books from after al-Nawawī

The period of the seventh/thirteenth century is one of unprecedented blooming of the Shāfiʿī tradition. This was partially fueled by the support of the Ayyubids and Seljuks and partially because of scholarly efforts to filter and verify an unmanageably expansive legal corpus of the Shāfiʿī legal school. The juristic books from this period are known to have performed two essential functions: first, isolating weak (*daʿīf*) and non-preponderant (*marjūh*) juristic opinions,

a process which came to be known as verification (*tarjīh* or alternatively *tanqīh*) and; second, the consolidation of opinions that are inline with opinions and foundations of Imām al-Shāfi‘ī by way of attaching to them their respective scriptural evidence (*taḥrīr*).<sup>81</sup> With a massive library that has acquired more than three centuries’ worth of legal works by scores of Shāfi‘ī author-jurists, some of these works by the seventh/thirteenth century have started to contradict the established foundations of the Shāfi‘ī *madhhab*. Also, due to the expansion of the *madhhab* east and west, its books became geographically scattered and unconnected in terms of their shared doctrines and juristic authority figures. Thus, a dual need emerged, first, to limit absolute independent legal reasoning (*ijtihād muṭlaq*) and, second, to verify and regulate the jurisprudential rules of the *madhhab*.

These momentous tasks were achieved by The Two Masters (*al-Shaykhayn*), al-Rāfi‘ī (d. 633/1236) and al-Nawawī (d. 676/1278). Al-Rāfi‘ī mainly worked on al-Ghazālī’s legal works and produced *al-Muḥarrar*. Al-Nawawī, on the other hand, who is more prolific and came to be more preferred right after his death. He authored the decisive book on which all the later referential literature relies, *Minhāj al-ṭālibīn*, which is the subject of Chapter Two. It must be noted here that within the standard Shāfi‘ī curriculum, *Minhāj al-ṭālibīn*, is the most advanced textbook for Shāfi‘ī *fiqh* students and the ultimate reference for *muftīs*.<sup>82</sup>

There are other important bibliographical developments from this period. These include the production of lasting educational digests that are still in use and circulation to this day as standard textbooks. The most iconic one is Abū Shujā‘ al-Iṣfahānī’s (d. 593/1197) *Ghāyat al-*

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<sup>81</sup> See the editor’s preamble to *Nihāyat al-maṭlab*: Al-Juwaynī, *Nihāyat al-maṭlab*, edited by ‘Abd al-‘Azīm al-Dīb (Jeddah: Dār al-Minhāj, 2007) 1:153.

<sup>82</sup> Al-Kurdī, *al-Fawā'id*, 34-36.



*ikhtiṣār* (a.k.a. *al-Ghāya wa al-taqrīb*). Many later commentaries and super-commentaries on this digest, like Ibn al-Qāsim al-Ghazzī (d. 918/1512) commentary and al-Bayjūrī's (d. 1277/1861) *supera-commentary*, became the standard references.

The books of the Two Masters have had a lasting effect on Shāfi'ī scholarship like no other. Even though El-Shamsy sees their work as “part of an encyclopedic drive in the Mamluk era to gather and sift all existing Islamic knowledge; a movement that animated all legal schools and Islamic disciplines,” there are few reasons that can explain this drive.<sup>83</sup> As stated above, one of the main objectives of the literary production of this period was to verify and engage with the expansive juristic corpus that was produced before. This is partly the reason for the encyclopedic orientation in the Mamluk era. This encyclopedic orientation which mainly took place in the genre of commentaries will come to be the main site of juristic *ijtihād*, not digests. But another reason for the need for encyclopedia works is an educational one. These commentaries served as references for advanced Shāfi'ī students in *madrassa* academies, covering past debates, critical engagements with the original works, and serving as reservoirs of legal opinions of past authorities.

The scope of verification of the entire Shāfi'ī juristic corpus and the depth of rule-formulation that Two Masters underwent was so monumental to the extent that later Shāfi'īs deemed going to sources prior to their work as unnecessary. This was carried out especially in al-Rāfi'ī *al-Muḥarrar* and *al-Sharḥ al-kabīr* and al-Nawawī's *Rawḍat al-tālib* and *al-Majmū'*. This new reality of believing there is no need to engage with books that were produced prior to the Two Masters, because of the assumption that the majority of these were not verified, have had

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<sup>83</sup> El Shamsy, Ahmed. 2013. “The *Ḥāshiya* in Islamic Law: A Sketch of the Shāfi'ī Literature.” *Oriens* 41 (3-4): 293.

other outcomes: first, that legal works predating the works of the Two Masters became practically irrelevant. Second, that the funneling of the legal authority within the Shāfi‘ī school through its two most authoritative commentators, al-Rāfi‘ī and al-Nawawī, has “also constrained the future scope of Shāfi‘ī scholarship.”<sup>84</sup>

### **Sixth: The period of the commentaries (676-926/1278-1520)**

The juristic and literary efforts in this period revolved around critically engaging and verifying the doctrines that were deduced by the Two Masters in their books. In the first half of this period, a group of jurist-authors produced important commentaries that critically engaged with al-Rāfi‘ī’s and al-Nawawī’s works. This is because the books of this period “contained the rule-formulations (*tarjīhs*) of their authors from among the opinions of the Two Masters. They became the referential reliance in identifying the doctrines of the *madhhab*.”<sup>85</sup> There was also a parallel track of books branching out from other books, especially the following four: (1) *Rawḍat al-ṭālib*. and *Minhāj al-ṭālib*. of al-Nawawī, and al-Rāfi‘ī’s *al-Sharḥ al-kabīr* and *al-Muḥarrar*. Chief among the scholars who worked on these books are al-Isnawī (d. 772/1372), al-Adhra‘ī (d. 783/1278), al-Bulqīnī (d. 805/1403) and his student Ibn al-‘Imād al-Aqfahsī (d. 808/1405). Al-Isnawī is known to be the most critical of al-Nawawī’s juristic verifications. His views are contained in both his commentary on *Minhāj* and his abridgment of *Rawḍa*. In specific, he criticizes al-Nawawī’s independent juristic preferences (*ikhtiyārat*) through which he inferred his

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<sup>84</sup> Ibid., 293, 295.

<sup>85</sup> Al-Kāf, *al-Mu‘tamad*, 270.

evidence-based preferences that are different from al-Shāfi‘ī.<sup>86</sup> Al-Isnawī’s criticisms were not left unchecked. Rather, they were challenged by the other three previously mentioned, who critically engaged with his criticisms, accepting some and refuting others. Then came al-Zarkashī (d. 772/1273), who compiled an important abridgment that benefited from the different glosses on al-Nawawī’s *Rawda* up to that point, titled *Khādim al-rawḍa*.<sup>87</sup>

Another important development in this history of legal writing is the introduction of poetic educational texts that are memorized and studied as part of the Shāfi‘ī curriculum. Two famous examples here: Aḥmad al-Ramlī Ibn Raslān’s (d. 844/1441) famed 1000-verse poetic rendition *al-Zubad fī mā ‘alihi al-mu‘tamad*, titled *Safwat al-zubad*. Another example is al-‘Amrīṭī’s (d. 890/1485) *Nihāyat al-tadrīb*, which is another exposition of Abu Shujā‘’s *al-Ghaya wa al-taqrīb*. This phenomena of transferring legal and religious writing from prose to poetry for educational purposes continues to be understudied.

### **Seventh: The period of the glosses (926-1335/1520-1917)**

This is a period to which the subject of Chapter Three, Ibn Ḥajar’s commentary, *Tuhfat al-muḥtāj*, on the above mentioned *Minhāj al-ṭālib* of al-Nawawī belong. This post-stabilization period was characterized by producing iconic multi-volume interlinear supra-commentaries or

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<sup>86</sup> After an examination of the difference between *tarjīḥ* and *ikhtiyār* that engaged with many sources, primary and secondary, al-Khaṭīb offers the following definition of a juristic *ikhtiyār*, which is based on a synthesis of many references; an *ikhtiyār* is a case “in which a jurist qualified to perform independent juristic reasoning (*mujtahid*) differs with either the established ruling (*madhhab*) of his followed Imam on some issues or a preponderant (*rājiḥ*) juristic opinion based on evidence.” Al-Khaṭīb, *Ikhtiyārāt*, 93.

<sup>87</sup> In discussing few other important juristic works from that era, al-Saqqaf continues, “... the author of *al-‘Ubāb*, Aḥmad b. Umar al-Muzajjad al-Zabīdī (d. 930/1524) abridged *al-Rawda*. The author of *al-Hāwī al-ṣaghīr* [i.e. ‘Abd al-Ghaffār al-Qazwīnī (d. 665/1267)] abridged the *al-sharḥ al-kabīr* in an unprecedented manner. He collected its objective in one-eighth of its ten volumes... then came the author of *al-Bahja* [i.e. ‘Umar b. al-Wardī (d. 749/1349)] and explained it in poetic form. People rushed to memorize and comment on it, until al-Sharaf Ibn al-Maqrī, author of *al-Rawḍ* came and abridged it in a much more concise form, which he called *al-Irshād*. People readily embraced it, memorizing it and composing commentaries on it”; ‘Alawī b. Aḥmad al-Saqqāf, *Mukhtaṣar al-fawā‘id al-Makkiyya*, edited by Yūsuf ‘Abd al-Raḥmān al-Mar‘ashlī (Beirut: Dār al-Bashā‘ir al-Islāmiyya, 2004), 64-71.

glosses (*ḥawāshī*, sing. *ḥāshiyya*) varying in length on previous authoritative works, alongside some original production. With the establishment of specialized study circles, especially in al-Azhar and the Two Sanctuaries, there was an educational need by Shāfi'ī students, as well as teachers, for such a genre and mode of writing. These glosses served as encyclopedias containing surveys, opinions and debates on every subject they encountered, in addition to a detailed sentence-by-sentence engagement with the author's original work. Based on the outcomes from the period of commentaries, the main books from this period came to revolve around al-Nawawī's corpus.

The juristic and literary objective of this period focused on consolidating and expanding the doctrines of the *madhhab*. This is mainly attributed to the efforts of Shaykh al-Islam Zakariyyā al-Anṣārī (d. 926/1520) and a group of his luminary students who became prominent legal authorities: (1) al-Shihāb al-Ramlī (d. 957/1550), (2) Ibn Ḥajar al-Haytamī (d. 974/1567), (3) al-Khaṭīb al-Shirbīnī (d. 977/1570), al-Shams al-Ramlī (d. 1004/1596), the son of al-Shihāb al-Ramlī. Along with Ibn Ḥajar's *Tuḥfat al-muḥtāj*, al-Shams al-Ramlī's *Nihāyat al-muḥtāj*, both of which are commentaries on *Minhāj*, the pair is considered the most important works from the post-classical, post-stabilization period. These two commentaries became authoritative legal references containing the later doctrines of the *madhhab*. Later Shāfi'īs also are in agreement that no fatwa can contradict the rulings in these two books. The group of authors of glosses all of whose opinions are regarded valid for fatwa purposes are: al-Anṣārī, al-Shirbīnī (d. 977/1570), al-Zayyādī (d. 1024/1615), Ibn al-Qāsim (d. 992/1584), al-Burulusī, a. k. a. 'Umayra (d.

957/1550), al-Shubrāmilsī (d. 1087/1676), al-Ḥalabī (d. 1044/1635), and finally al-‘Inānī--and in this hierarchy of strength.<sup>88</sup>

Additionally, there are others books that represent the most important products from this period: al-Anṣārī’s *Sharḥ al-Manhaj*, which is an commentary on al-Anṣārī’s own abridgment of al-Nawawī’s *Minhāj*, al-Anṣārī’s commentary on his own abridgment of Abī Zur‘a al-‘Irāqī *Tanqīḥ al-lubāb*, another work by Ibn Ḥajar which is a commentary on *al-Muqaddima al-Ḥadramiyya* by Ba-Faḍl, Aḥmad al-Malibārī’s *Fath al-Mu‘īn* which is a commentary on his own *Qurrat al-‘ayn*, and finally al-Khaṭīb al-Shirbīnī’s highly regarded commentary *al-Iqnā‘* on Abū Shujā‘ al-Aṣfahānī’s *al-Ghāya wa al-taqrīb*. These books continue to constitute the standard works used for the Shāfi‘ī educational curriculum. An important and wide referenced gloss is al-Bayjūrī’s (d. 1276/1859) one on Ibn al-Qāsim’s (d. 918/1512) commentary on *al-Ghāya*.

Other than their advanced and sophisticated juristic investigations, these works were characterized by a preoccupation with linguistic and logical examinations. Despite continuing disagreements and contestations, “it is noticeable that the *madhhab* completely stabilizes due to the adoption of relied-upon (*mu‘tamad*) opinions; unlike the previous debates prior to the Two Masters.”<sup>89</sup> Based on the critical engagement of the several scholars, especially the valuable *al-Fawā‘id al-Madaniyya* by al-Kurdī (d. 1194/1780), there is a concordance on a hierarchy of the doctrines of the Shāfi‘ī *madhhab*. It is represented as follows: The highest form of doctrine of the Shāfi‘ī *madhhab* is represented by that which al-Rāfi‘ī and al-Nawawī agree upon. Then, if there is a disagreement between them on any given issues, the *tarjīḥ* of al-Nawawī from between the

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<sup>88</sup> Al-Kurdī, *al-Fawā‘id al-Madaniyya*, 36.

<sup>89</sup> Al-Kāf, 343.

two is given precedence. Then this is followed by that which Shaykh al-Islām al-Anṣārī and his aforementioned students adopted, as long as there is neither different opinions by al-Nawawī nor the existence of an opinion by the two Shaykhs. Ibn Ḥajar’s *Tuḥfa* and al-Ramlī’s *Nihāya* are at the top of this last category.<sup>90</sup>

### **The contemporary period (1335-/1917-)**

This period is said to be characterized by a decline in the teaching of the *madhhab* and its application in fatwa and judiciary. It marks the last but still ongoing chapter of this story of books of the Shāfi‘ī literary tradition. This period is severely understudied, especially since it remains unfolding. Despite a general decline in following in *madhhab* in the contemporary Muslim world, whether in educational or judicial institutions, some of the noticeable efforts taking place in this period include the editing of unpublished manuscripts, producing critical editions, producing new important encyclopedic works, and teaching. The contemporary moment is complex and a thorough analysis of it falls outside the scope of this work.

## **Conclusion**

The Shāfi‘ī school has a complex intellectual and bibliographical history that has not been adequately studied. In order to situate the two most important works in the Shāfi‘ī *madhhab*, *Minhāj al-ṭālib* of al-Nawawī and *Tuḥfat al-muḥtāj* of Ibn Ḥajar, this chapter provided a typology

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<sup>90</sup> Al-Kurdī, *al-Fawā'id*, 36-37.

of the Shāfi‘ī literary tradition. The aim of this typology was to articulate a coherent and interconnected theory of Shāfi‘ī texts, from the founding onward. Rather than following a classic model derived from the standard European periodization, this survey adopted an eight-period scheme shared by Shāfi‘ī historians representing the salient features of each historical period. The first period (186-204/802-820) witnessed the founding of the *madhhab* through al-Shāfi‘ī scripture-based jurisprudential theory and juristic discourse, which was articulated in his prolific juristic career. This career was categorized between ‘new’ and ‘old’ doctrines, before and after he settled in Egypt. In response, the main functions of the second period (204-270/820-884) was the collection and transmission of opinions of the eponymous founder. The main vehicle for these functions was the genre of digests (*mukhataṣarāt*), especially through the works of al-Muzanī (d. 264/878) and al-Buwayṭī (d. 232/847), with their rationalist and traditionist leanings, respectively. The real spread of the *madhhab* took place in the third period (270-404/884-1014), thanks to several efforts, especially al-‘Abbās Ibn Surayj (d. 306/919). This period witnessed the emergence of the genre of *ta’līqa*, which is similar to modern day academic dissertations, a genre that was proven effective in serving the educational and juristic specialization of the time. On the heels of spread came the need for stabilization in the fourth period (404-505/1014-1112). This period witnessed the emergence of two interpretive sub-schools (*tarīqs*), as a result of the widespread of the *madhhab* and the diverse production of its local centers. These *ṭarīqas* were the Iraqi sub-school, with its traditionist emphasis on the accuracy transmission and authentication of juristic opinions, and its Khurasanians counterpart, with its mastery in extraction of substantive opinions. The pivotal writings of this period are those of al-Shirāzī (d. 476/1084) and al-Ghazālī (d. 505/1111).

The spread and diversity of literary and juristic corpus ushered in a need for verification. Verification activity became the hallmark of the fifth period (505-676/1112-1278), thanks to the momentous efforts of the ‘Two Masters’ (*al-shaykhān*) of the *madhhab*, al-Rāfi‘ī (d. 633/1236) and al-Nawawī (d. 676/1278), who undertook the formidable feat of verifying the entire corpus of the school. By this, they consolidated the doctrines of the *madhhab* based on the methodology and opinions of its founder. The crowned digest of the period is al-Nawawī’s *Minhāj*, which came to be regarded as the most authoritative manual in the Shāfi‘ī literary tradition. The period of commentaries (676-926/1278-1520) followed, ushering its prolific and critical engagement with the production of the Two Masters, which resulted in affirming and consolidating their achievements and status, as well as identifying areas that other authors needed to further verification, especially cases of their independent preferences. Even though the following period is called the period of the glosses (926-1335/1520-1917), it saw the authoring the second most authoritative book in Shāfi‘ism, Ibn Ḥajar’s (d. 974/1567) commentary of al-Nawawī’s *Minhāj*, titled *Tuḥfat al-muḥtāj*. As an expansum, *Tuḥfa* represents a culmination of both: post-stabilization juristic verification efforts and of the literary, linguistic, and logical preoccupations that are characteristic of the commentarial genre. As for the eighth and contemporary period (1335/1917-), while editing, publishing and teaching efforts of the Shāfi‘ī literature are noticeable, there is a decline in the juristic production, due to the a drop in integrating the Shāfi‘ī *madhhab* in fatwa and judiciary.

With *Minhāj* and *Tuḥfa* positioned authoritatively at the top of its cannon, the Shāfi‘ī literary tradition can be characterized by a few features. First, that it is the outcome of a series of juristic and literary operations that aligned themselves in an interconnected timeline. This



timeline is the product of a interplay of two sets of social needs: ‘conservative’ needs to uphold doctrinal, methodological, and juristic coherence and authenticity, and ‘progressive’ needs to respond to new questions, scholarly developments and diversity, and social, judicial and educational contexts. Second, as a literary tradition composed of different authorial functions, it enjoys critical and cumulative levels of confirmation and verification. It suffices here to say that, for example, when Ibn Ḥajar wrote his commentary on *Minhāj*, which is considered the most authoritative Shāfi‘ī manual, he had to engage with a two-century worth of layers of critical engagements with it, fierce opposition notwithstanding. Lastly, the site of Shāfi‘ī *ijtihād* has shifted from the genre of digests to that of expansums. This phenomenon has certain literary implications in terms of how it will be expressed in this textual genre, a theme that has not been adequately studied.

## CHAPTER TWO

Enter ‘The Methodology’:

An Examination of the Linguistic and Juristic Elements of Al-

Nawawī’s *Minhāj*

## CHAPTER TWO

### Enter ‘The Methodology’:

#### An Examination of the Linguistic and Juristic Elements of Al-Nawawī’s *Minhāj*

What qualifies a legal manual to become the most authoritative digest in a legal school? What elements does such a manual need to acquire in order to become a vessel containing and passing on the doctrines of its literary tradition? As shown in Chapter One, since its inception, the Shāfi‘ī school has been unique in terms of diversity of its opinion; beginning with its founder, who revisited some of his legal opinions, creating what was known as the ‘old’ (*qadīm*) and ‘new’ (*jadīd*) doctrines; the emergence of different narrators of the founder’s opinions, their own reasoning and opinions, a wide gamut of various genres of legal writing, the emergence of regional schools, as well as two hermeneutical sub-schools varying in their focus on authentication and production of secondary rulings, i.e. the Iraqi and Khurasanian *ṭarīqas*, respectively, and the different attempts to verify and reconcile all of that, side-by-side with consolidating the doctrines of the school. How can a digest encapsulate all of the above? What intellectual, juristic, and linguistic tools does it require to accomplish such a momentous mission?

This chapter will study the *Minhāj* with a focus on examining its status as the most authoritative and referential legal manual in the Shāfi‘ī school of law. It provides an overview of its content, genealogy, and the reasons behind authoring it. By examining the linguistic nature of *Minhāj* and how an original terminological system it adopted became the main tool for serving

its juristic objectives and the Shāfi‘ *madhhab* as whole, this chapter attempts to provide an original contribution in this regard. Thereafter, the chapter moves to examine al-Nawawī’s juristic verification efforts, especially his success in reconciling the differences between Shāfi‘ī sub-schools that existed up to his time, and how they culminated in the *Minhāj* becoming the main vessel for the doctrines of the Shāfi‘ī school. It also includes examples from *Minhāj* that show the scope of the juristic efforts of al-Nawawī, including some in which he adopts a position different from that subscribed to by his school. Finally, the chapter concludes by examining how al-Nawawī influenced Shāfi‘ism in an enduring method up to this day.

### What Sets The *Minhāj* Apart?

*Minhāj al-ṭālib wa ‘umdat al-muftīn* (lit. The methodology of the seekers and reliance of *muftīs*, hereafter “*Minhāj*”) of Muḥyī al-Dīn b. Yaḥyā b. Sharaf al-Nawawī (d. 676/1278), the most prominent scholar of the Shāfi‘ī school and a *ḥadīth* master, is the most authoritative and advanced digest (*mukhtaṣar*) in the Shāfi‘ī school. The volume is said to contain the late doctrines of the Shāfi‘ī school, and has been the main legal reference thereof since it was authored. It represents a critical abridgment of another juristic text, *al-Muḥarrar*, by al-Rāfi‘ī (505–676/1112–1278). Together, al-Nawawī and al-Rāfi‘ī are considered the two most authoritative figures from the post-classical era of this legal school onwards, and came to be known as ‘The Two Masters’ (*al-shaykhān*) of the Shāfi‘ī *madhhab*. A mid-size edition of *al-Minhāj* solely containing the work without any marginalia or annotation is around 340 pages, while the most common editions in circulation, all of which either contain footnotes or selections from running commentaries, are roughly double that in the number of pages. The work is highly

regarded among jurists, judges, and students of Islamic disciplines, including outside Shāfi‘ī circles. It amounts to a standard advanced text in the Shāfi‘ī curriculum to this day everywhere, and is available in complete audio and video courses online.

The text of *al-Minhāj* has been commonly memorized by advanced Shāfi‘ī fiqh students and specialists. Those who memorized the volume gained the designation ‘*al-minhājī*’.<sup>91</sup> The work has attracted dozens of commentaries (84 commentaries, in addition to a dozen glosses on those commentaries), 10 abridgments, several critical editions, and 10 poetic renditions.<sup>92</sup> Many new editions, edited commentaries, and specialized studies of *al-Minhāj* are published annually. There is even a regularly updated website monitoring all new publications, study circles, and student-run study and memorization groups dedicated to this influential book.<sup>93</sup> In an attempt to canonize Islamic law for colonial legal codification by Malaysia, the work was also translated into English from French by L.W.C. Van den Berg (1845–1927), a civil servant and linguist, as

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<sup>91</sup> Al-Sakhāwī, *al-manhal*, 29.

<sup>92</sup> According to the Dār al-Minhāj edition of *Minhāj*, which I will only use outside in this footnote (as otherwise I use the Dār al-Fayḥā’ edition), the above-mentioned number of of commentaries is the highest and most reliable figure I could find on the total number of commentaries on *Minhāj*. This is part of the publisher’s preface to the edition which lists a number of partial and incomplete commentaries of *Minhāj* as well, amounting to 24 in total. There are another 10 commentaries on the opening speech, or Introduction, alone. There are 10 abridgments of *Minhāj*, the most celebrated among them is Shaykh al-Islām Zakariyyā al-Anṣārī’s *Manhaj al-tullāb*, which has attracted eight commentaries on it, including one by the author, al-Anṣārī, himself, and then another 21 glosses on these commentaries by al-Aṣārī: Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-tālib wa ‘umdat al-muftīn*, edited by Muḥammad Muḥammad Āshūr (Jeddah: Dār al-Minhāj, 2020), 22–61.

<sup>93</sup> <https://alminhaji.com/> accessed on November 2019.

part of the Dutch colonization of Malaysia.<sup>94</sup> This translation is testimony to the central judicial function of the work and how essential it was to legal operations in the pre-modern and modern worlds. There is also a French translation from the nineteenth century.<sup>95</sup>

Any attempt to analyze a work that has become a classic or an authority in any field has to be, by definition, complex and multilayered. In order to question the situatedness of any such work is more complex a process than hypothesizing that it happened ‘in the right place at the right time’, to respond to certain intellectual and social needs. A work such as al-Nawawī’s *Minhāj* surely comprises multifaceted and cross-disciplinary influences and focuses. Signally, I will be focusing on law and language in al-Nawawī’s *Minhāj*.

There are two central reasons as to why Imām al-Nawawī’s legal digest (*mukhtaṣar*), *Minhāj*, came to be regarded as the most authoritative interpretive legal work in the Shāfi‘ī legal school. Firstly, there is its monumental juristic contribution to the process of verification (*taḥrīr*) of the doctrines of the *madhhab*, especially by (a) synthesizing the Khurasanian and Iraqian sub-schools, a contribution that is (b) based on two other more expansive works on juristic verification and authentication of legal proofs that were accomplished, especially in two more expansive projects; *al-Majmū‘* and *Rawdat al-ṭālib*. (hereafter “*Rawḍa*”), respectively. Secondly,

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<sup>94</sup> In his preface, the translator iterates the utilitarian purpose behind the translation and notes that his aim is to make al-Nawawī’s work accessible to magistrates and political agents. He also states that the original French translation on which the English rendition is based, is a non-literal one, or rather a paraphrasing, based partly on *al-Muḥarrar*; al-Maḥallī’s commentary of *al-Minhāj*, and “the two principal 16th-century commentaries on *Minhaj et Talibin*--i.e., the *Toḥfat-el-Mohtaj* and the *Nihayat al Mohtaj*. It is hoped, therefore, that the present publication may be of some practical utility in the direction indicated above [i.e., making it more accessible to magistrates and political agents], and at the same time not without interest to the student of comparative jurisprudence.” See: Muḥyyī al-Dīn Abū Zakariyyā Yahyā b. Sharaf al-Nawawī, *Minhaj et Talibin: A Manual of Muhammadan Law according to the School of Shafii*, Translated by E. C. Howard (Lahore: Law Publishing Company, 1977), p.X.

<sup>95</sup> For the French translation, see: *Minhadj At-Talibin: Le Guide Des Zeles Croyants; Manuel de Jurisprudence Musulmane Selon Le Rite de Chaf'i*, translated by L. W. C. Van Den Berg (Batavia: Imprimerie du Gouvernement, 1882).

a salient feature of *al-Minhāj* that lacks due attention is its linguistic nature, which combines (a) unparalleled clarity and precision with (b) the deployment of a comprehensive and effective terminological system that successfully serves all its methodological objectives. Both *al-Minhāj*'s juristic and linguistic achievements have been adopted by successive generations of Shāfi'ī jurists to this day, whereby doctrines of the Shāfi'ī school still center around al-Nawawī's opinions, and the terminologies he developed in *Minhāj* continue to constitute a common practice for Shāfi'ī jurists hitherto. These two juristic and linguistic advantages merited the book with the very practical purpose it constitutes in the eyes of advanced students seeking to master their subjects, and in the eyes of judges seeking a shorthand representing the doctrines of the Shāfi'ī school.

The scope and complexity of the verification process, especially the efforts to reconcile the two Iraqi and Khurasanian sub-schools, has been studied by several scholars, particularly the important contribution of Halim, as well as Calder and El-Shamsy. This thesis has benefited from the work of the former, which focuses on the overall juristic accomplishments of al-Nawawī, and is only limited to *Minhāj*.<sup>96</sup> I will first examine the merits of the terminological system at the center of the verification efforts presented in *Minhāj*. I will try to demonstrate that one of the central factors that qualified this digest to acquire its paramount position is its precise language and the consistent use of its original and customized special system of pre-defined terminologies, the majority of which he first introduced in *Rawḍa*. Second, as I will demonstrate in detail below, I will provide diverse examples in which the outcome of al-Nawawī's juristic

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<sup>96</sup> Arguably, the most extensive treatment of the history of the Iraqi and Khorasanian sub-schools can be found in Halim's work, Chapter Three. Also, even though he acknowledges the importance of the breadth of the Hallaq's and Calder's contribution to exploring al-Nawawī's juristic contribution, he believes their work did not provide enough overview of al-Nawawī's overarching achievement. See: Halim, *Legal*, 7.

verification<sup>97</sup> in *Minhāj*, along with citing the underlying preparatory juristic review from *al-Majmū‘* and *Rawḍa*. Third, I will provide a comparison between al-Nawawī’s methodology of verification and *ḥadīth* studies, which aims to demonstrate that his legal method in uniting the two Shāfi‘ī sub-schools that preceded him, drew heavily on *ḥadīth* studies’ methodology. This special and well-thought-out process, with both its linguistic and juristic elements, allowed this digest to not only become a hallmark in compacting immense and multi-level legal meanings, but also to become an optimal work for the choices of the commentarial tradition, as will be further discussed in Chapter Three.

## The Author

Yaḥyā b. Sharaf al-Nawawī (631–676/1233–1277), one of the foremost deferred Islamic Sunni scholars and one of the supreme authorities, or one of the Two Masters in the Shāfi‘ī school, who also specialized in *ḥadīth*, *ḥadīth* terminology, *ḥadīth* commentary, linguistics, jurists’ biographies, and Sufism, are still among the most circulated books to this day. He was famous for his piety from an early age. Several stories surround al-Nawawī denote saintly miracles, both as a child and later on in life, which Halim studies and examines how they were used in hagiographical writing to elevate al-Nawawī’s status.<sup>98</sup> It can be said that to this day, al-Nawawī is one of the very few scholars respected in all Muslim denominations and *madhhabs* across the board within Sunnism. He was born in the town of Nawa, in modern-day southwestern Syria,

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<sup>97</sup> In sense, the process of verification or *ṭahqīq*, which indicates a process of preponderance between juristic opinions, methods, or narrations, is process of canonization of juristic doctrines; not of standard books. I could have used this term, but I prefer to emphasize the distinction between how books and legal opinions are canonized. For one, there is the fact that legal doctrines change in faster pace throughout history than the book they contain.

<sup>98</sup> Ibid., 14-16.



before settling in Damascus at the age of 18 to pursue his education. He lived to witness the downfall of the Ayyubid dynasty (6th–7th/12th–13th centuries) and the dawn of the Mamluk era (7th–10th/13th–16th centuries), and was appointed as a lecturer in al-Ashrafiyya *madrasa*. He is known for his brave encounter with Mamluk Sultan al-Zāhir Baybars (d. 676/1277), in which he stood up against the Mamluk Sultan's plan to confiscate the lands that were regained from the Crusades in 666/1267.<sup>99</sup>

As for his rank within the hierarchy of *ijtihād* and fatwa within the Shāfi'ī school, which Calder translates as the 'typology of *muftīs*', al-Nawawī is placed without any known contestation in the fourth category. This category is that of the '*mujtahids* in fatwa and rule-formulation (*mujtahidī al-fatwā wa al-tarjīh*)'. Effectively, these are scholars whose qualifications are established as master-jurists, who are well versed in the *madhhab* of their followed eponymous Imams, its proofs, are active in verifying it, and perform preponderance, along with all its legal and intellectual tools.<sup>100</sup>

Despite his death at the young age of forty four years old, which some claim is due to his extremely ascetic lifestyle and impressive authorial productivity, whether by the counts of books

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<sup>99</sup> In this widely cited encounter, Baybars wanted to keep the large swaths of agricultural land that he regained after his victory against the Crusades. Baybars wanted to keep the lands under his possession based on an opinion of some Ḥanafī scholars, which is contrary to the opinion of the majority jurists who deem that the lands have to be transferred back to their original owners. Baybars held a meeting with judges and jurists from across the *madhabs* regarding the issue, citing the Ḥanafī fatwa. The Shāfi'ī judge Shams al-Dīn al-Shahrazūrī (d. 687/1288) and his Ḥanafī counterpart 'Abd Allāh al-Adhra'ī (d. 673/1274) stood firmly and spoke harshly against the Sultan. Baybars clinged to his position. In response, al-Nawawī first sent him a carefully worded letter advising him against the confiscation. Baybars was angered by the letter and ordered the sacking of al-Nawawī, only to know that he is not appointed to a state-sponsored teaching position. Baybars responded to him by writing a letter that showed his lack of knowledge about the legal issues concerning waging a religiously endowed war (*jihād*). Al-Nawawī responded to him with yet another letter which was better received by the Sultan who ended up expressing respect to al-Nawawī and returned the lands to their owners. See: al-Sakhāwī, *al-Manhal*, 48-52; al-'Attār, *Tuḥfat*, 99-102; al-Suyūfī, *al-Minhāj*, 71-74; 'Ukāsha, *al-Fatāwa*, 211-214.

<sup>100</sup> Al-Malybārī, *Dirāsa*, 210-213. For more on this see: Norman Calder, "Al-Nawawī's Typology of Muftīs and its Significance for a General Theory of Islamic Law." *Islamic Law and Society* 3, no. 2 (1996): 137-164.

or the impact of his authored works, al-Nawawī has left us an astounding number of books. Our prolific and influential author also left us with a few unfinished manuscripts, some of which were completed by others.<sup>101</sup> Al-Nawawī's life and trajectory resemble that of the founder of his Shāfi'ī school in some aspects; both lived a relatively short life, but managed to be very prolific. While al-Shāfi'ī lived for fifty four years, al-Nawawī lived for only forty four years. Al-Shāfi'ī's prolific career, especially during his stay in Egypt for the last six years of his life, was “extraordinarily productive,” according to Ali, who quotes al-Marwazī who attributes 113 books of law, exegesis and *belles letters* (*adab*) to al-Shāfi'ī.<sup>102</sup> Al-Nawawī was no less prolific. There are 41 books, several of them multi-volumes, attributed to him. According to the editor of *al-Taḥqīq*, the figure climbs to 65 when we include drafts.<sup>103</sup> A more important resemblance, however, is their shared interests in both the Arabic language and Ḥadīth Studies.

Al-Nawawī's studies started early on in his life. He started his studies after his father moved him to Damascus in 649/1251 at the age of 18 to study full-time. There, he studied at the hands of his first Shaykh Tāj al-Dīn 'Abd al-Raḥmān al-Fazārī al-Farkāḥ (d. 690/1291), who then suggested to him to go study with al-Kamāl Ishāq al-Maghribī (d. 650/1252), who was teaching at al-Rawāḥiyya *madrasa*, located east of the Umayyad Mosque, and was a teaching

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<sup>101</sup> Other than the abundant mentions and entries on al-Nawawī in biographical dictionaries, there are few biographies of al-Nawawī, but arguably the most comprehensive is al-Sakhāwī's. See: Muḥammad Abd al-Raḥmān al-Sakhāwī, *al-Manhal al-'adhb al-rawī fī tarjamat quṭb al-aqtāb al-awliyyā' al-Nawawī*, edited by Aḥmad Farīd al-Mazīdī (Beirut: Dār al-Kutub al-'Ilmiyya, 2005). Another important biography is the one written by al-Nawawī's own student, al-'Attaār (d. 724/1324). See: 'Alā' al-Dīn b. Ibrāhīm al-'Atṭār, *Tuḥfat al-ṭālib fī tarjamat al-imām Muḥyī al-Dīn*, edited by Mashūr b. Ḥasan Āl Salmān, published as a supplement to al-Nawawī, *al-Ijāz fī sharḥ sunnī Abī Dāwūd al-Sājistānī* (Amman: al-Dār al-Athariyya, 2007); Jalāl al-Dīn al-Suyūṭī, *al-Minhāj al-Sawī fī tarjamat al-Imām al-Nawawī* (Beirut: Dār Ibn Ḥazm, 1988). In the English language, arguably the best biography is Halim's. See: Halim, 2015.

<sup>102</sup> Kecia Ali *Imam Shafi'i: Scholar and Saint* (Oxford, England: Oneworld, 2011), 47.

<sup>103</sup> Al-Nurī cites 'Abduh 'Alī Kushshak, an editor of an edition *Rawḍa*, who argues that number of al-Nawawī authored books reaches 65, counting unfinished works and drafts: al-Nawawī, *al-Taḥqīq*, edited by Qāsim Aghā Al-Nurī (Damascus; Beirut: Maktabat Dār al-Fajr, 2016), 13.

assistant to Ibn al-Ṣalāḥ (d. 643/1245), who had an important influence on al-Nawawī's scholarly contribution, as we shall see later on.<sup>104</sup> His studying intensified after his return from pilgrimage to the holy sites in Mecca and Medina with his father. Two years later, he enrolled at al-Ruwāḥiyya. As a sign of the importance of memorization to legal teachings, al-Nawawī memorized al-Shirāzī's *Tanbīh*, and a quarter of the latter's *Muhadhdhab* as well. As a testament to the wide and interdisciplinary scope of his schooling, his studies in al-Ruwāḥiyya are said to have included 12 lessons a day: two lessons studying al-Ghazālī's *al-Wasīf*, one on al-Shirāzī's *al-Muhadhdhab* (on which al-Nawawī would later write a commentary on its abridgment by al-Rāfi'ī), a *ḥadīth* lesson on the two *Ṣaḥīḥ* books, one on *Ṣaḥīḥ Muslim*, another on grammar, studying Ibn Jannī's *al-Luma'*, Arabic lexicography and grammar based on Ibn al-Sikkīt's *Iṣlāḥ al-mantiq*, another in Legal theory, which included *al-Luma'* of al-Shirāzī and al-Rāzī's *al-Muntakhab*, theology, and genealogy.<sup>105</sup> As al-Sakhāwī mentions, his teachers of both *ḥadīth* and *fiqh* are students or affiliates of Ibn al-Ṣalāḥ. The three other teachers with whom he studied are Muḥammad b. Nūḥ b. Mūsā al-Maqdīsī (d. 650/1252), the Muftī of Ḥalab, 'Umar b. As'ad b. Abī Ghālib al-Rab'ī al-Arbalī (date of death unknown), and Sallār b. al-Ḥasan al-Arbalī (d. 670/1272).<sup>106</sup> They too were affiliated with Ibn al-Ṣalāḥ, whose influence on al-Nawawī we will come back to later in this chapter.

In another resemblance with al-Shāfi'ī, when it comes to linguistics, a subject which is related to the linguistic elements of *Minhāj*; in the same way that al-Shāfi'ī was considered an

<sup>104</sup> Al-Sakhāwī, *al-Manhal*, 15.

<sup>105</sup> Muḥammad Abd al-Raḥmān al-Sakhāwī, *al-Manhal al-'adhb al-rawī fī tarjamat quṭb al-awliyyā al-Nawawī* (Beirut: Dār al-Kutub al-'Ilmiyya, 2005), 13–14; 'Abd al-Ghanī Al-Duqr, *al-Imām al-Nawawī Shaykh al-Islām wa 'umdat al-fuqahā' wa al-muḥaddithīn* (Damascus: Dār al-Qalam, 1994), 35.

<sup>106</sup> Al-Sakhāwī, *al-Manhal*, 15-16.

authority in the Arabic language, so was al-Nawawī. Al-Nawawī authored two important works on Arabic, *Taḥrīr al-tanbīh* and *Tahdhīb al-asmā' wa al-lughāt*. It is no exaggeration that a grammarian and historian of Arabic linguists, Ibn Abī Shuhba, asserts that al-Nawawī was “a master (*imām*) in language and grammar. He studied these subjects with Shaykh Jamāl al-Dīn b. Mālik, and narrated from him in his own writing. He authored *Tahdhīb al-asmā' wa al-lughāt*, leaving it in draft form. This work is testament to his erudition in the science of language. The same applies to his book *al-Taḥrīr 'ala kitāb al-tanbīh*.”<sup>107</sup> There is no doubt that al-Nawawī’s mastery in Arabic has empowered his legal focus, especially in producing a precise legal language that combines clarity and precision. In addition, his ability to create codification and terminological systems is at the heart of his linguistic labor in *al-Minhāj*. In specific, both jurists, al-Shāfi‘ī and al-Nawawī, were concerned with *ḥadīth* as textual evidence for legal inference. The above legal, *ḥadīth* and linguistic training provided the interests, influences, and qualifications which empowered al-Nawawī to produce the *Minhāj*.

### What is the *Minhāj*?

*Al-Minhāj* is the most popular legal digest containing the doctrines of the Shāfi‘ī school. As discussed in Chapter One, digests comprise an essential part of the Shāfi‘ī literary tradition. They were viewed from different perspectives. On the one hand, historically, some see digests as a product of ‘periods of decline’ (according al-‘Atābī). On the other hand, others view digests as products of the ‘golden period’. Therefore, digests were seen as either a product of mere summarizing or an erudite and precise collection of foundations and “unique, precious elements”

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<sup>107</sup> This quote is from Ibn Abī Shuhba’s biographical dictionary of grammarians and linguists, *Ṭabaqāt al-nuḥāt wa al-lughawiyyīn*, unpublished manuscript that is cited in: Al-Duqr, *al-Imām*, 67.

alone, according to the famous historian and Mālikī jurist Ibn ‘Abd al-Barr (d. 463/1071).<sup>108</sup> It suffices here to mention that even though the expansum of the eponymous founder of the school, *al-Umm*, which is believed to contain the culmination of his legal opinions, became virtually obsolete.<sup>109</sup> In comparison, the two digests summarizing those opinions by his students, al-Buwayṭī and al-Muzanī, unseated the founder’s work and became the central works upon which all the later works of the school rely.

In terms of structure, as a legal digest, *Minhāj* consists of 70 chapters that revolve around the four standard departments of Islamic *fiqh* manuals: (1) worship (‘*ibādāt*), (2) interpersonal transactions (*mu‘āmalāt*), (3), family issues (*usra*), and (4) fixed penalties, inheritance calculations, judiciary, and testimonies (*ḥudūd wa ḥisābāt wa qaḍā’ wa shihādāt*). Although these headings are not written, this is generally the standard order and scope of legal digests. The book starts with Ritual Purity (*ṭahāra*) and ends with (the rights of) The Mothers of Children (*ummahāt al-awlād*). These chapters vary in length, and many have several subsections within them. In terms of its main contribution, as discussed in detail below, it is the painstaking accuracy, precision, and consistency in formulating the doctrines of the *madhhab*. *Minhāj* is said to cover 70,000 juristic issues.<sup>110</sup> In terms of literary genre and genealogy, although it is a digest, *Minhāj* is itself an abridgment of yet another abridgment, it is half the size of *al-Muḥarrar* of the eminent, contemporaneous other ‘Master’ of the *madhhab*, Abī al-Qāsim ‘Abd al-Karīm al-Qazwīnī al-Rāfi‘ī (505-676/1112-1278). *Al-Muḥarrar* is also itself an abridgment of al-Ghazālī’s

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<sup>108</sup> Jamāl al-Dīn ‘Umar Ibn ‘Abd al-Barr, *al-Durr fī ikhtisār al-maghāzī wa al-siyar*, edited by Shawqī Ḍayf (Cairo: Dār al-Ma‘ārif, 1983), 12.

<sup>109</sup> Alī, *al-Imām*, 82.

<sup>110</sup> Sālim b. Ahmad b. Abī Bakr Al-Khaṭīb, *Ikhtiyārat al-Imām al-Nawawī allatī tafarad bihā min al-madhhab al-Shāfi‘ī: dirāsa muqārana* (Amman: Dār al-Nūr al-Mubīn lil-Nashr wa al-Tawzī‘, 2016), 32.

*al-Wajīz*, which is in turn an abridgment of another work by the latter titled *Wasīṭ*, based upon an abridgment of an even bigger work of al-Ghazālī's, *al-Basīṭ*. This last book is also an abridgment of another book, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, by al-Ghazālī's teacher and towering figure, the Imām of the Two Sanctuaries 'Abd al-Malik al-Juwaynī (d. 478/1058). This last work is said to be a summary of the legal opinions in al-Shāfi'ī's *al-Umm*, *al-Imlā'*, and *Musnad*, and al-Muzanī's *Mukhtaṣar*.<sup>111</sup> It must be noted that al-Nawawī is not the sole abridger of *Muḥarrar*.<sup>112</sup> While *al-Minhāj* is an abridgment of *Muḥarrar*, the latter is itself also a semi-independent abridgment based on another larger work, al-Ghazālī's *Wajīz*.<sup>113</sup> On this note, in *Tuhfa*, Ibn Ḥajar writes about *al-Muḥarrar* that, "Its designation as a digest is due to the fewness of its words, not because it being an abridgment of a certain book."<sup>114</sup>

There are myriad testimonies highlighting the importance of *Minhāj*. Although there are many statements praising the *Minhāj*, it suffices here to mention two. In his commentary on the *Minhāj*, which is considered one of the two most authoritative commentaries, alongside Ibn Ḥajar's, al-Shams al-Ramlī (d. 1004/1596) describes it as, "It is a book that intellects could not match, nor did aspirations aim high to weave a work similar to it... it outdoes expansums,

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<sup>111</sup> Ibn al-Najjār, *Tārīkh Baghdād*, 16:44, cited by al-Ahdal; *Sullam*, 633.

<sup>112</sup> According to al-Ahdal, there are others including Tāj Maḥmūd al-Iṣfahīdī al-Karmānī (d. 807/1404) under the title *al-Ījāz*, and 'Alā' al-Dīn al-Bājī (d. 714/1314). Others also have commented on it, including judge Shihāb Aḥmad b. Yūsuf al-Sindī (d. 895/1490), in *Kashf al-durrar fī sharḥ al-muḥarrar*, in which he focused on mentioning prepondering disagreements between al-Rafi'ī and al-Nawawī. Another Commentary is by Sharf al-Dīn al-Shirāzī; Aḥmad al-Baqarī Shamīla al-Ahdal, *Sullam al-Muta'alim al-Muḥtāj ilā ma'rifat rumūz al-minhāj*, published as an appendix to Nawawī's *Minhāj* (Riyadh: Dār al-Minhāj, 2012), 630.

<sup>113</sup> *Wajīz* was abridged by several authors, including its author, al-Ghazālī himself, who abridged into *al-Khulāsa*. Others who abridged it include Tāj al-Dīn 'Abd al-Raḥmān al-Mawṣilī (d. 671/1272); al-Rāfi'ī into commentaries, one remains untitled, and the bigger ten-volume commentary is titled *Fath al-'Azīz ilā sharḥ al-wajīz*. This commentary, known in short as *al-'Azīz*, was abridged by al-Nawawī in his *Rawḍa*; Ibid., 631-630.

<sup>114</sup> Ibn Ḥajar al-Haytamī, *Tuhfat al-muḥtāj*, with the two supra-commentaries of Shaykh 'Abd al-Ḥamīd al-Sharwānī and Aḥmad b. Qāsim al-'Abādī (Damascus: Dār al-Fikr, 2014), 1:38.

despite its smallness, and outshines digests, with the abundance of its information.”<sup>115</sup> It must be noted that *Minhāj* is not a standalone work, but it is rather a culmination and the outcome of a complex verification process, which I will analyze below. This process took place in two other important juristic projects by al-Nawawī: filtering and assessing the corpus of scriptural proofs of the doctrines of al-Shāfi‘ī, especially *ḥadīth* proofs, and, second, reconciling the two interpretive approaches of the Iraqi and Khurasanian sub-school. These two formidable undertakings were carried out independently in two other works, *al-Majmū‘* and *Rawḍa*, respectively. However, even though *Minhāj* is essentially a site of interplay of juristic and hermeneutic processes, there are two other incomplete works by al-Nawawī which are regarded as being even more authoritative and reliable than *Minhāj*. First, there is *al-Taḥqīq*, an incomplete digest, in which al-Nawawī only reached to the chapter on *Ṣalāt al-musāfir* (the Prayer of the Traveler). The majority of later Shāfi‘īs, including al-Dimyāṭī<sup>116</sup> and Ibn Hajar,<sup>117</sup> agree on the superiority of *Taḥqīq* to *Majmū‘* in terms of it authoritatively hosting the doctrines of the *madhhab*; even though both are incomplete and belong to a later period of Nawawī’s life that came after composing *al-Minhāj*.

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<sup>115</sup> Shams al-Dīn Muḥammad al-Ramlī, *Nihāyat al-muḥtāj ilā sharḥ al-Minhāj* (Beirut: Dār al-Fikr, 1984), 1:10.

<sup>116</sup> For example, al-Dimyāṭī, in his celebrated *I‘ānat al-ṭālibīn*, states, “Know that that if the books of al-Nawawī exhibit a discrepancy in the opinions they contain, a proficient expert then does not need to be restricted by any of them, whether to depend on them or others. He may adopt the later works by him [i.e., al-Nawawī] in which he follows the opinions of the *aṣḥāb* more than others, like *al-Majmū‘*, followed by *al-Taḥqīq*, then *Rawḍa*, then *al-Minhāj*. That which the majority of scholars have agreed on from among his books is given precedence over the one agreed on by a lesser number. Also, what is stated in the pertaining chapter, is generally given precedence over elsewhere. This was stated by Ibn Hajar and confirmed by Ibn Lillān and others”; ‘Uthmān b. Shata al-Bakrī al-Dimyāṭī, *I‘ānat al-ṭālib al-āḥ al-fādh fath al-mu‘īn li al-‘allāma al-Malibārī* (Cairo: Dar Iḥyā’ al-Kutub al-‘Arabiyya, n.d.), 234.

<sup>117</sup> The hierarchy of authoritativeness of al-Nawawī’s legal works, which include complete and incomplete titles, is as follows according al-Haytamī, “*al-Taḥqīq*, then *al-Majmū‘*, then *al-Tanqīh*, then his abridgment works like *Rawḍa*, then *al-Minhāj*, and then moving towards his *Fatāwa*, then his *Sharḥ Muslim*, then *Taṣḥīḥ al-Tanbīh*. Otherwise, what is in reality incumbent when there is a contradiction among these books is to follow the opinions of the established (*mu‘tamad*) legal scholars, and that which they gave preponderance to”; al-Haytamī, *Tuḥfa*, 1:39.

It must be noted, however, that al-Nawawī's verification and reconciliation project, which he carried in *Rawḍa*, and his scriptural proofs for all the doctrines of the *madhhab*, which was done in *al-Majmū'*, both favored the Iraqi *ṭarīqa*; with its traditionist trajectory and attention to authenticating the chains of transmission of the juristic opinions of the al-Shāfi'ī and his *mujtahid* companions. This tendency of course culminated in his juristic work in *Minhāj*. Nevertheless, al-Nawawī is never explicit about this leaning. Commenting on this leaning towards the interpretive approach of the Iraqians, Halim writes,

In his *Majmū'*, for instance, which is essentially a collection of the doctrines of the community of the Iraqi jurists, he proceeds as he did in his *Rawḍa* to record the doctrines of the Iraqians and follow up on their legal interpretations and inferences. Whenever he discovers that the Iraqi elaboration of a particular case contradicts the doctrine and reasoning of al-Shāfi'ī, he interposes his own reasoning, with reference to his mastery of al-Shāfi'ī's teaching and the literature of other jurists in the *madhhab*.<sup>118</sup>

Turning to our author's own intention from authoring this digest, al-Nawawī writes the following in the introduction to *al-Minhāj* regarding the reasons behind writing it, his interest in *al-Muḥṣarar* and its significance, scope, and the task of making it shorter for the purpose of memorization, which is an integral part of juristic education, or a reference:

Our [Shāfi'ī] colleagues (*aṣḥābunā*), may Allah grant them mercy, have abundantly authored expansums (*mabsūṭāt*) and digests (*mukhtaṣarāt*). The most masterly expansum is *al-Muḥṣarar* of Imām Abī al-Qāsim al-Rāfi'ī, may Allah grant him mercy, the ones known for its [reliable] verifications. It has numerous benefits, and in authenticating the [established positions of the] *madhhab*, a reliance of *mufīṣ*s and others, who possess a relevant desire. Its author, may Allah grant him mercy, was committed to referencing that which the majority of [al-Shāfi'ī's] companions (*aṣḥāb*), and he indeed fulfilled his commitment, which was the most critical of missions. Nevertheless, its size is voluminous in a way that hinders most of its contemporaries

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<sup>118</sup> Halim, *Legal*, 70.



from memorizing it, except those of special providence. Thus, I decided to summarize it in half of its size, in order to ease its memorization, in addition to new precious additions, God-willing.<sup>119</sup> Regarding the practical use of *Minhāj*, the best proof of its immense practicality, whether for pedagogical or judicial purposes, is to examine how widely it was memorized. Memorizing *Minhāj* was not only part of the requirements in many traditional Islamic seminaries, it was also a source of pride, so much so that many students and scholars (both men and women) who managed to memorize it added the designation *al-Minhājī* to their last name.<sup>120</sup> Not only that, al-Ahdal, an author of an important treatise on the terminological system of the *Minhāj*, titled *Sullam al-Muta‘alim al-Muḥtāj ilā ma‘rifat rumūz al-minhāj*, is said to have made a daily practice (*wird*) to read a quarter of *Minhāj*.<sup>121</sup> On this practical function of the *Minhāj*, Halim notes that,

One of the most authoritative repositions of the school’s doctrines, whose practical purpose was to aid the jurist-*muqallid* or judge in a court to issue a legal opinion or judgment accurately representing the *madhhab*’s position, *Minhāj* also attracted more commentary than any other of al-Nawawī’s primary legal works. Moreover, *Minhāj* also became a standard curricular textbook and subject for memorization in colleges of law, and formed part of the qualifications required to obtain a license to transmit the Shāfi‘ite school’s doctrine.<sup>122</sup>

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<sup>119</sup> Muḥyy al-Dīn b. Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-ṭālibīn*, edited by ‘Abd al-Razāq Shaḥūd al-Najm (Damascus: Dār al-Fayḥā’, 2019). 26.

<sup>120</sup> Aḥmad al-Baqarī Shamila al-Ahdal, *Sullam al-Muta‘alim al-Muḥtāj ilā ma‘rifat rumūz al-minhāj*, published as an appendix to Nawawī’s *Minhāj* (Riyadh: Dār al-Minhāj, 2012), 624.

<sup>121</sup> Ibid.

<sup>122</sup> Halim, *Legal*, 40–41.

After providing an overview of the contents of the *Minhāj*, its genealogy, importance, practical purpose, and the objectives behind writing it, I will now move to explore the two main reasons that I argue endowed the work with its eminent status among Shāfiʿī legal manuals.

## A Linguistic and Legal Exploration of the ‘Methodology’

### First: The Language

The most immediate element that one encounters when attempting to discover what sets *Minhāj* apart is its linguistic character and nuances. To fully understand the significance of *Minhāj* and the objective its language needed to deliver, we must first understand the juristic and intellectual aim behind composing the volume. As Calder asserts, al-Nawawī “Analyzed and summarized *all* that came before him, and his work was the starting point for all that came after him.”<sup>123</sup>

Accomplishing such a monumental mission of analyzing and summarizing a huge reservoir of legal opinions necessitates a suitable and precise linguistic vehicle. In order to demonstrate the breadth of al-Nawawī’s legal review, he said that he consulted a hundred books that contained all the different legal opinions of the Shāfiʿī school before him.

The first and most striking linguistic feature of *Minhāj* is its clarity and unmistakable accessibility. The mission of explaining religious doctrine to people in order to carry it out correctly, as expressed by al-Nawawī in the previous quote, aligns perfectly with such accessibility. The second linguistic feature of the work is its craftily designed terminological

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<sup>123</sup> Calder, Norman Calder and Colin Imber. *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 74. Emphasis is mine.

system, which is used consistently throughout the work. In order to unpack these linguistic features of the *Minhāj*, we have to examine the precise scope of the terminological conventions which Nawawī has set. In his introduction, al-Nawawī details his methodology in the following passage and hints at the task that *al-Minhāj* is to accomplish. Here he elaborates on the unique aspects and terminological system of this work:

Our [Shāfi‘ī] colleagues (*aṣḥābuna*), may Allah grant them mercy, have abundantly authored expansums (*mabsūṭāt*) and digests (*mukhtaṣarāt*). The most masterly expansum is *al-Muḥarrar* of Imām Abī al-Qāsim al-Rāfi‘ī, may Allah grant him mercy, the one known for its [reliable] verification. It has numerous benefits, and it is the most reliable work in authenticating the [doctrines of the] *madhhab*, a reliance of *mufīīs* and others who possess a relevant desire. Its author, may Allah grant him mercy, was committed to reference that which the majority of our [Shāfi‘ī] companions (*aṣḥāb*) have determined as doctrines. He indeed has fulfilled his commitment, which is the most critical of missions. Nevertheless, its voluminous size hinders most of its contemporaries from memorizing it, except those of special providence. Thus, I decided to summarize it in half of its size, in order to facilitate its memorization, in addition to new precious additions, God-willing, including: (1) Cautioning regarding some restrictions in some issues, which are omitted from the original text. (2) Rare occasions that he [al-Rāfi‘ī] mentioned in *al-Muḥarrar* that are contrary to the chosen positions (*mukhtār*) in the *madhhab*, which, as you shall see, God-willing, are clear-cut. (3) Substituting what is uncommon or insinuating that which is not correct from its wording with that which is clear, more precise, and unambiguous phrasing.<sup>124</sup>

The above passage demonstrates several important linguistic and terminological elements of the *Minhāj* that I will attempt to unpack below.

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<sup>124</sup> Muḥyy al-Dīn b. Yahyā b. Sharaf al-Nawawī, *Minhāj al-ṭālibīn*, edited by ‘Abd al-Razāq Shaḥūd al-Najm (Damascus: Dār al-Fayḥā’, 2019), 26.

Firstly, since the author has stated his interest in producing a ‘thinner’ work that can easily be memorized, this highlights both the centrality of memorization to the educational process, and the importance of utilizing succinct language, albeit without undermining clarity. Despite the legalistic complexity of the content, the language is strikingly accessible and lucid, so much so that, according to al-Khaṭīb, “it is so clear to the extent that a student of sacred knowledge can read and understand it without any need for explanation.”<sup>125</sup> This emphasizes the idea that the main reason for the numerous commentaries written on *Minhāj* is not explain its technical language, but to unpack its subtleties and juristic achievements (Chapter One provided a brief overview of the objectives of writing legal commentaries). Second, as illustrated above, clarity and precision of language is a central juristic objective of *Minhāj*, including, as al-Nawawī emphasizes, “Substituting what is uncommon or insinuating that which is not correct from its wording with that which is clear, more precise, and unambiguous phrasing.”<sup>126</sup>

### The Methodology’s Terminological System

Even though some experts have noted that al-Nawawī used systematically in it, there are 17 main terms that are at the core of *Minhāj*’s terminological system. Al-Nawawī details these terms—that are central to his juristic trajectory—in the following passage from his Introduction, which I translate here in full, to highlight its importance:

Explaining the ‘two opinions’ [of al-Shāfi‘ī] (sing. *qawl*), those of his companions (sing. *wajh*), paths [of narrating the established position of the *madhhab*, mainly between Iraqians and Khurasanians] (sing. *ṭarīq*), and the levels of difference (*marātib al-ikhtilāf*)

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<sup>125</sup> Al-Khaṭīb, *Ikhtiyārāt*, 32.

<sup>126</sup> Al-Nawawī, *Minhāj*, 26.

of all of them. Thus, when I say the ‘among most apparent’ (*fī al-aẓhar*) or well-known (*mashhūr*) from among one or more *qawls*. If the disagreement is significant, I would use the terms ‘the most apparent’ (*al-aẓhar*), otherwise, I would use ‘most well-known’.

Whenever I say, what’s ‘more valid’ (*aṣaḥḥ*) or ‘valid’ (*ṣaḥīḥ*), this means it is related to the two or more positions of companions [of al-Shāfi‘ī]. If there is a stronger disagreement, I would use ‘the more valid’ or ‘valid’ position is so and so. Whenever I say the established position (*madhhab*), then this means it is chosen from two or more of the paths of transmission (*tarīqas*). When I say the text (*al-naṣṣ*), then it is that of al-Shāfi‘ī, may Allah grant him mercy, and then there is a weak opinion by his companions (*wajh*) or an authenticated *qawl*. Whenever I say the New (*jadīd*) [position], then the ‘old’ (*qadīm*) one is different from it, or the *qadīm*, or according to an ‘old’ opinion (*fī qawl qadīm*), then the ‘new’ one differs from it. Whenever I say ‘it is said that’, then this is an indication that this is a weak *wajh*, and that the valid (*al-ṣaḥīḥ*) and the most valid (*al-aṣaḥḥ*) are different from it. Whenever I say, ‘and according to a certain *qawl*’, then the preponderant opinion is different from it.

- Precious issues that I add to it, that they should not be voided. At the beginning of which I state, ‘I say’ (*qult*), and at the end I say, ‘And Allah knows best’ (*wa Allāhu a‘lam*). Whatever additional wording I find, and the likes of that, I find as more than what is in *Muḥarrar*; I adopt if there it must be. The same applies to whatever supplicatory prayers (*adhkār*) I find that are different from what is in *Muḥarrar* and other books of, I affirm it. It is because I have verified those from the reliable books of *ḥadīth*. It also may be the case that I bring ahead some issues from the chapter at hand for a reason or for the sake of summarizing. I may bring forward an entire chapter due to its suitability. I hope that if such an abridgment is made that it would be considered a commentary on the *al-Muḥarrar*. This is because I do not omit any of its rulings, to begin with, even from among what I differ with, even if it is very weak and among the precious points I have previously mentioned.

The passage above is key to understanding al-Nawawī’s terms, which have become a standard in the Shāfi‘ī literary tradition, ever since he authored *al-Minhāj*.

Based on the source-subject of legal opinion that was reviewed, and indicating their level of strength in relation to a relevant legal disagreement within the school, the above terms can be classified into three categories. The first category of these referential terms are those that indicate that a said juristic opinion belongs to the eponymous founder. These terms are: (1) the most apparent (*al-aẓhar*), which occupies the highest status in terms of authoritativeness; (2) the most well-known (*al-mashhūr*), which indicates an opinion that was more popular than its counterparts and occupies a firm standing; (3) ‘old’ (*qadīm*) (i.e., expressed by al-Shāfi‘ī in Iraq before coming to Egypt, where he revisited some of his positions); (4) ‘new’ (*jadīd*) (meaning was issued in Egypt), (5) in one opinion (*fī qawl*), meaning an uncategorized opinion belonging to al-Shāfi‘ī; (6) in an ‘old’ opinion (*fī qawl qadīm*), such-and-such was said (*qīl kadha*); (7) in a certain opinion (*fī qwl kadhā*); (8) the two opinions (*al-qawlān*), and; (9) the opinion (*al-qwāl*). In the second category, we find the terms indicating that the opinions discussed belong to al-Shāfi‘ī’s immediate companions and students (*aṣḥāb*). Those include: (10) al-Shāfi‘ī’s companions (*al-aṣḥāb*); (11) the valid opinion (*al-ṣaḥīḥ*); (12) it is said (*qīl*); (13) according to one perspective (*fī wajh*); (14) according to two perspectives (*al-wajhān*), and; (15) the perspectives (*al-awjuh*). Finally, there is a category that includes terms indicating that a certain ruling combines the opinions of both al-Shāfi‘ī and his companions: (16) the text (*al-naṣṣ*), and; (17) the doctrine (*al-madhhab*).

An important starting point in attempting to unlock the intricacies of this technical system of the *Minhāj* is al-Nawawī’s own two short treatises on the subtle points (*nukat*) and terms of the *Minhāj*. The production of these supplementary works by al-Nawawī himself is a sign of his own regard to the *Minhāj* and that it is not accidental, in addition to the educational need to

unpack it, of course. In *Daqā'iq al-Minhāj* (lit. the subtitles in the *Minhāj*), al-Nawawī states from the beginning that his work's intention is to explain, “the difference between its terms [the *Minhāj*'s] and those of *al-Muḥarrar*.”<sup>127</sup> This proves that not of al-Nawawī's terms were completely original. Rather, some of them were adopted from al-Rāfi'ī. Those were appropriated and further developed and used systematically by al-Nawawī.

There are several other works that focus on the terminology in *Minhāj*. These works belong to the genre of juristic terminologies (*al-muṣṭalaḥāt al-fiqhiyya*), a genre to which I would like to turn. In the Arabic language, the root for *muṣṭalaḥ* comes from Ṣ-L-Ḥ, which signifies making peace, reconciliation and reform. Interestingly, this resonates with one of the meanings of ‘term’ in English, like agreement and concordance, or “provisions that determine the nature and scope of an agreement,” according to Merriam Webster.<sup>128</sup> According to *al-Waṣīt* Arabic dictionary, it is “the agreement among a certain group [i.e., specialists] on a specific matter.”<sup>129</sup> Thus, based on these basic etymological parameters, the success of a term coined by a specialist is measured by its ability to become a shared vehicle for a meaning anew, and in ways that dispose of previous disagreement, and express clearly the reality of that which it includes. Normally, even though a term should differ from the linguistic understanding of its wording, Muslim scholars made conditional that there should be some resemblance between the two: the linguistic and the technical meanings.

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<sup>127</sup> Sharaf al-Dīn Yahyā al-Nawawī, *Daqā'iq al-Minhāj*, edited by Iyād Aḥmad al-Ghowj (Beirut: Dār Ibn Ḥazm, 1996), 25.

<sup>128</sup> Merriam Webster Dictionary, entry on “term”, accessed online on 13 March 2019: <https://www.merriam-webster.com/dictionary/term>

<sup>129</sup> Ibrāhīm Anīs, ‘Abd al-Ḥalīm Muntaṣir, ‘Attiyya al-Ṣuwālihī, Muḥammad Khalaf-Allāh Aḥmad, *al-Mu‘jam al-Waṣīt* (Cairo: Majma‘ al-Lughā al-‘Arabiyya and Dār al-Shuruq, 2004), 520. Also see al-Saqqāf, *al-Fawā'id al-Makkiyya*, 41.

Al-Nawawī's terminological contribution is innovative. According to al-Khaṭīb al-Shirbīnī (d. 977/1569), himself a commentator on *al-Minhāj* and an author of a work that focuses on its terms, with regard to this terminological system, he comments on the beginning of the previously mentioned from *Minhāj*'s Introduction, "Explaining the 'two opinions' (*qawlayn*), those of his companions (*wajhayn*), 'two paths' [i.e., of the Iraqis and the Khurasanians] (sing. *tarīq*), and the levels of difference," by saying, "No one has beaten the author [i.e., al-Nawawī] to such terminology. It is a fair terminological convention, unlike that in *al-Muḥarar*."<sup>130</sup> Al-Shirbīnī moves on to mention that al-Rāfi'ī used some of these terms but in an inconsistent manner, while, except for some cases, al-Nawawī is generally consistent. He also cites al-Isnawī, who is generally speaking critical of al-Nawawī, arguing that al-Nawawī's claim to complete consistency is "rejected."<sup>131</sup> That is to say, internal critics within the Shāfi'ī school anchored the authority of the *Minhāj* in al-Nawawī's unparalleled contribution to language and terminology.

Although there are several works that study the juristic terms of *Minhāj*, I will be focusing on three. The first is the terminological study of *Minhāj* as a recently published treatise, *Risālat al-tanbīh*, by Shaykh Mahrān Kuttī b. Abd al-Raḥmān Kuttī (d. 1408/1988). The editor of the work, who himself published other books on the terminology of the Shāfi'ī school, asserts that it is "the best authored book on explaining the terms of Shāfi'ī *fiqh*, and the best work to resolve the terminological issues in *Minhāj* and its commentaries, especially the commentary of the verifier Imam Jalāl al-Dīn al-Maḥallī, *Kanz al-Rāghibīn*, may Allah grant him

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<sup>130</sup> Muḥammad b. al-Khaṭīb al-Shirbīnī, *Mughnī al-muḥtāj ilā ma'ifāt al-fāz al-Minhāj*, edited by Muḥammad Khalīl 'Aytānī (Beirut: Dār al-Ma'rifa, 1997), 1:35.

<sup>131</sup> Ibid.



mercy.”<sup>132</sup> *Risālat al-tanbīh* provides an extensive discussion of all the terms of al-Nawawī, including a running commentary of the above mentioned translated passage.

The second is al-‘Alawī’s *al-Ibtihāj fī bayān iṣṭilāḥ al-minhāj*, a short treatise that is also virtually a running commentary on the above section of *Minhāj*’s Introduction, which lays out its terminological conventions.<sup>133</sup>

The third work is al-Ahdal’s *Sullam al-Muta‘allim al-Muḥtāj ilā ma‘rifat rumūz al-minhāj*, which surveys *Minhāj* providing a focused study of its juristic terms, along with the terms used in three of its commentaries, including the *Tuḥfa*, the second book that this thesis will focus on, and comes up with important statistical findings. These findings demonstrate the significance of the influence of this terminological system to Nawawī’s grand project of verification. First, the term ‘most apparent’ (*al-aẓhar*), a central term for the process of verification, which indicates the result of the process of preponderance and that the non-preponderant opinion, is still a solid opinion on its own, that occurs 395 times in *Minhāj*. The term ‘well-known’ (*mashūr*), which indicates both the un-commonality of the said opinion of Imām al-Shāfi‘ī and its weakness (occurring 23 times). As for the term ‘most valid’ (*al-aṣaḥḥ*), it occurs 1,038 times: it is a term that is only associated with the opinions of the companions of al-Shafi‘ī, who derive their opinions from the al-Shafi‘ī’s maxims, texts, and apply their own personal reasoning (*ijtihād*) to them, except when their views are demonstrably different, like al-Muzanī and Abū Thawr. As for the valid (*al-ṣaḥīḥ*), there are such 176 occurrences, indicating

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<sup>132</sup> Mahrān Kuttī b. Abd al-Raḥmān Kuttī, *Risālat al-tanbīh*, edited by ‘Abd al-Naṣīr Aḥmad al-Shāfi‘ī al-Malyabārī (Kuwait: Dār al-Ḍiyā’, 2014), 9. Interestingly, the part of the editor’s introduction and study of the life of the author mentions that it took the author eight years to study al-Maḥallī’s commentary on *al-Minhāj*, a long and immersive study, that the editor believes is credited with the quality of the work.

<sup>133</sup> Aḥmad b. Abī Bakr bin Sumayṭ al-‘Alawī al-Ḥaḍramī al-Shāfi‘ī, *al-Ibtihāj fī bayān iṣṭilāḥ al-minhāj*, published as an appendix to al-Nawawī, *Minhāj al-ṭālib*. (Riadh: Dār al-Minhāj, 2012), 665–687.

that the difference in strength/validity between the two sides of its relevant juristic preponderance is minimal. Al-Ahdal cites an important opinion by the eminent Shāfi'ī Muftī of Mecca, Muḥammad Sa'īd Hilāl Sunbul (d. 1175/1761), that adjudges that it is permissible to follow the non-preponderant opinions which are distinguished from *aẓhar* and *aṣaḥḥ*, as opposed to the non-preponderant ones that distinguished from *mashhūr* and *ṣaḥīḥ*. In addition, as for al-Shāfi'ī's own preponderant 'new,' or *jadīd* legal opinions that were issued in Egypt, *Minhāj* contains 75 such occurrences, while the preponderant 'old,' or *qadīm* opinions constitute 28 cases.<sup>134</sup> As for the term '*al-madhhab* is so and so', meaning the doctrine, there are 187 cases of such rulings. The other statistical findings include: the Shāfi'ī's-companions-related *qīla*, occurring 499 times; *fi qawl*, 202 times.<sup>135</sup>

The above analysis of the linguistic nature of al-Nawawī's *Minhāj* shows the importance of its linguistic character and the centrality of its terminological innovations. In his recent study of al-Nawawī's terms in *Minhāj*, Ayman al-Badārīn asserts that al-Nawawī is the first to come up

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<sup>134</sup> It must be noted here that later scholars disagreed with Nawawī and deemed 18 *qadīm* positions as doctrines, as opposed to *jadīd*. Of interest here is the issue of scripturalizing legal opinions, as the later Shāfi'īs did with the founder in their school. However, such scripturalized opinions are not incontestable. For example, according to al-Ahdal, "Since the likeliness of follower (*maqlid*) to a scholar qualified him to perform independent reasoning (*mujtahid*), is like a *mujtahid* is to the Prophet, Allah's blessings and peace be upon him, in the same way there is consensus (*ijām*) that a newer evidence from sharia abrogates, in a way that makes it incumbent upon a *mujtahid* to adopt it. The same applies to a *muqallid* in his relation with a *mujtahid*. As for the issues that were enumerated and adopted the *qadīm*, the reason for this is that a groups of *mujtahids* within the *madhhab* thought that in some issues, the *qadīm* is evidentially more apparently (*aẓhar*) [preponderant]. Thus they adopted it in fatwa, but without attributing it to al-Shāfi'ī. Whosoever reaches their rank of [being qualified to perform] preponderance, should adopt it in fatwa. Otherwise, there is no point to both his knowledge or fatwa. However, all such issues, which were counted, for the majority of them there is a related *jadīd* opinion. Thus, fatwas should adopt it. These amount to 18 issues." Al-Ahdal then goes on to detail those 18 issues; al-Ahdal, *Sullam*, 633–639.

<sup>135</sup> It must be noted that later scholars have affirmed al-Nawawī's position in designating these 499 cases of *qīla* as weak, except for the 15 cases (12 referred to as *qīla* and three as *fi qawl*) that later jurists, contrary to al-Nawawī's formulation, deemed preponderant. Al-Ahdal, *Sullam*, 641.

with them,<sup>136</sup> a finding that cannot be read alone without the previously mentioned statement by al-Nawawī himself acknowledging that he appropriated some al-Rāfi‘ī’s terms. These terms are keys to understanding Shāfi‘ī legal opinions and doctrines, as they indicate the level of disagreement over them, their author, and their ranking in terms of their authoritativeness. It may be the case that al-Nawawī was not perfectly consistent in his use of these terms, as some of his commentators attest. However, he surely succeeded in the most effective terminological tools needed to verify the entire body of legal opinions that came before so effectively, that all Shāfi‘ī jurists and scholars use his original glossary in their writing. As an understudied essential part of al-Nawawī’s lasting influence on and contribution to the Shāfi‘ī school, this terminological system that he adopted and used systematically, has been a standard practice for al-Shāfi‘ī scholars that came after him.

## Second: The Law

The second of the two central reasons behind the authoritative status of *Minhāj* is the legal efforts of its author in verifying and formulating the doctrines of the *madhhab*. This monumental task involved verifying the entire legal corpus that preceded al-Nawawī, especially reconciling the two hermeneutical sub-schools of Shāfi‘īsm, i.e., the Iraqi and Khurasanian *ṭarīqas*. The process of verification (*tahqīq*), essentially the consolidation of opinions that are inline with those of al-Shāfi‘ī’s hermeneutic foundations, is typically accompanied by the juristic practice of

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<sup>136</sup> Ayman al-Badārīn, “Iṣṭilāḥ al-Shāfi‘īyya min khilāl iṣṭilāḥ al-Nawawī fī Minhāj al-Ṭālibīn”, *Majallat Jami‘at al-Khalīl lil-Buḥūth*, issue 4/3: 2009, p. 297, accessed online on 24 March 2020: <https://k-tb.com/book/Figh03507-%D8%A7%D8%B5%D8%B7%D9%84%D8%A7%D8%AD-%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A%D8%A9-%D9%85%D9%86-%D8%AE%D9%84%D8%A7%D9%84-%D8%A7%D8%B5%D8%B7%D9%84%D8%A7%D8%AD-%D8%A7%D9%84%D9%86%D9%88%D9%88%D9%8A-%D9%81%D9%8A-%D9%85%D9%86%D9%87%D8%A7%D8%AC-%D8%A7%D9%84%D8%B7%D8%A7%D9%84%D8%A8%D9%8A%D9%86>

rule-formulation (*tarjīh*) and authentication (*tahqīq*) of scriptural proofs. At the heart of the following analysis of al-Nawawī's execution of this process are two factors. First, there is a special interest in verifying scriptural proofs of Shāfi'ī doctrines, especially *ḥadīth* and narration studies, an approach that al-Nawawī inherited from Ibn al-Ṣalāḥ, via the former's direct teachers with al-Nawawī studied. Additionally, according to al-Qalyūbī, there is a chain of three scholars between al-Nawawī, all of whom worked on reconciling the views of the two sub-schools: the previously mentioned Sallār, Muḥammad al-Qazwīnī (d. c. 700/1301), and 'Abd al-Ghaffār al-Qazwīnī (d. 665/1267).<sup>137</sup> Also all of al-Nawawī's teachers were students of Ibn al-Ṣalāḥ. Al-Nawawī expanded on this narrational investigation in *al-Majmū'*. Second, there is al-Nawawī's profound interest in verifying and reconciling what was by his time unmanageably expansive opinions of the *madhhab*, especially those produced by the affiliates of the two Khurasanian and Iraqi sub-schools. This was, of course, a concern added to the objective of authenticating the narrations of the legal opinions of the founder of the school, i.e., Imam al-Shāfi'ī. He accomplished this task in *Rawḍa*. It is important to see the juristic accomplishment of *Minhāj* as the outcome and accumulation of these two works. It is believed that he composed them simultaneously. Commenting on the logical progression from these two works that came to fruition in the *Minhāj*, in his chapter on al-Nawawī's juristic contributions in four works, *Majmū'*, *Rawḍa*, *Minhāj*, and commentary on *Ṣaḥīḥ Muslim*, Calder notes that,

The *Minhāj al-ṭālib* is Nawawī's *mukhtaṣar*; it represents the end of a logical progression from the *Majmū'*, which focused equally on revelation, dispute and the *madhhab* (together with a considerable if unsystematic concern for language), through the *Rawḍa*,

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<sup>137</sup> Shihāb al-Dīn Aḥmad al-Qalyūbī, *Hashiyya 'ala sharḥ al-Maḥallī 'alā al-Minhāj*, (Beirut: Dār al-Fikr, 1988) 1:11.

which eliminated revelation while retaining a complete account of dispute and of the *madhhab*, to this work which eliminates both revelation and (on the surface) dispute, offering only a statement of the *madhhab*. It is logically the last of his works, since its conclusions follow from the studies and the surveys of the preceding two. In practice, as we have seen, it is not necessary to think that he wrote and completed any one of these works prior to starting the next. Rather, he worked on them in parallel. Their relationship is essentially logical. Nonetheless, such evidence as can be thought relevant suggests that he did in fact complete this work after he had completed the bulk of the other two.<sup>138</sup>

In *al-Majmūʿ*, arguably the most impressive and expansive multi-volume legal encyclopedia in Islamic law, which was composed as a commentary on al-Shirāzī's *al-Muhadhdhab* (itself part of al-Nawawī's own formative educational curriculum), al-Nawawī conducts a deep study of scriptural proofs, as he indicates in detail in the introduction, complete with starting by furnishing an ontological function on Islamic law.<sup>139</sup> Explaining his methodological focus on scriptural evidence in *al-Majmūʿ*, and especially the scope of examining textual *ḥadīth* proofs, he notes, "I shall mention in it scores of its [i.e., *al-Muhadhdhab*'s] blooming insights, and explain some of its various arts. Among them, the Qur'anic exegesis (*tafsīr*) of its noble verses, prophetic traditions, elevated reports, definite fatwas, referenced poems, doctrinal and substantive rulings,

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<sup>138</sup> Calder, Norman Calder and Colin Imber, *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 99.

<sup>139</sup> He starts by explaining that humans have essentially been created for worship, and then he moves from that to assert, "The first subject—that the realized ones busied themselves with, the illustrious ones exerted all that they could afford for its sake, the awakened ones left behind everything for it, and the gnostics spent abundant time in acquiring—after knowing Allah and performing what is obligatory, is to roll up one's sleeves to explain that which makes matters of worship accurate... since they have to be according to the maximums of Sharī'a." *Al-Nawawī, al-Majmūʿ*, edited by Shaykh Najīb al-Muṭīʿī (Jeddah: Maktabat al-Irshād, n.d.), 1:15.

names and dialects, and restrictions and cautions, as well as other sciences.”<sup>140</sup> In this multi-volume tome, al-Nawawī managed to authenticate all evidentiary prophetic traditions that constitute textual proofs supporting the doctrines of the Shāfi‘ī school. Other than being one of the ‘Two Masters’ of the *madhhab*, his authentication efforts of all such *ḥadīth* proofs earned him the title of the ‘authenticator’ (*muḥaqqiq*) of the Shāfi‘ī *madhhab*. This expanded process of verification of the scriptural proofs of the doctrines of the school in *Majmū‘* constituted the foundation on which the formulation of final doctrines in *Minhāj*. Below is a diagram of the geneology of al-Nawawī’s books.

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<sup>140</sup> Al-Nawawī then goes on to further detail the comprehensive of *ḥadīth* authentication that he will perform, adding, “I shall also indicate which from among the prophetic traditions is authentic (*ṣaḥīḥ*), fair (*ḥasan*), raised (*marfū‘*), halted (*mawqūf*), uninterrupted (*muttaṣil*), expedient (*mursal*), interrupted (*munqati‘*), problematic (*mu‘ḍil*), forged (*mawḍū‘*), well-known (*mashhūr*), rare (*gharīb*), anomalous (*shādh*), disclaimed (*munkar*), mixed up (*maqlūb*), defective (*ma‘lūl*), interloped (*mudraj*), among others classifications which you shall in their due places... and if a tradition is narrated in of the two *Ṣaḥīḥs* of Bukhārī and Muslim, may Allah be well pleased with them, or in either of them, I restrict myself to referencing it to them, and I never reference it to other collections, except rarely, and for a reason in some occasions. This is because what they deem so does not need to be strengthened [i.e., in terms of the level of their authentication] by referencing them in other collections. As for the one [i.e., tradition] that is not in one of them, I then cite it to whichever work of *Sunan* collections or other they are in. If it is in *Sunan Abī Dāwūd*, *al-Tirmidhī*, or *al-Nasā‘ī*, which are the compilations of the five foundational works of *ḥadīth*, on in some of them, I also here cite it from them. Whatever else that falls outside those I cite to whichever work it is easy to cite from, God-willing, Most Sublime, explaining its level of authenticity or weakness. Whenever a tradition is weak, I shall demonstrate its weakness and notify as to the reason of its weakness, if such a description does not require a lengthy discourse.”; *Al-Majmū‘*, edited by Shaykh Najīb al-Muṭī‘ī (Jeddah: Maktabat al-Irshād, n.d.), 16.

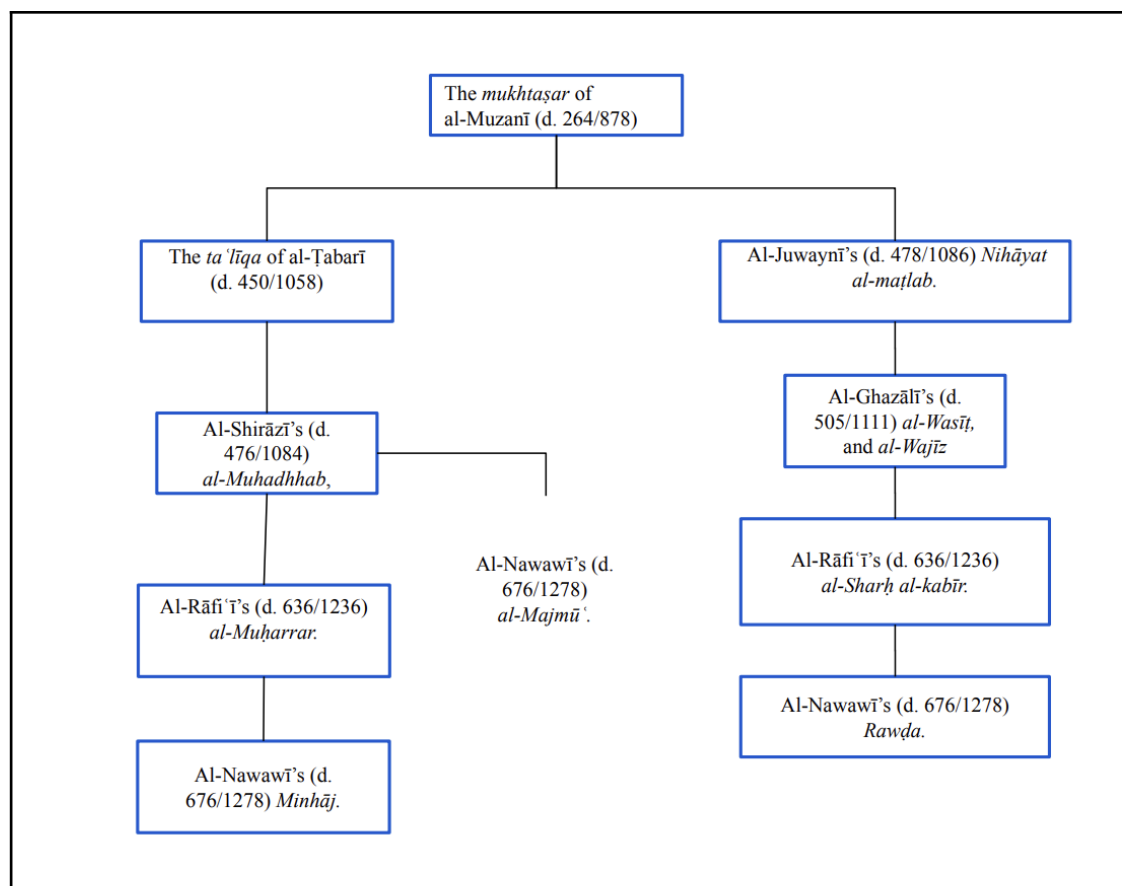


Figure 2: A Geneology of the books of Imam al-Nawawī.

As for the *Rawḍa*, which is an abridgment of another work by al-Rāfi'ī, his commentary on al-Ghazālī's *al-Wajīz*, it is the main site for al-Nawawī's efforts to review, synthesize, and reconcile the entire corpus of his legal school, especially the Khurasanian and Iraqi sub-schools. In its introduction, he clearly expresses the reasons behind composing al-*Minhāj*, including the out-of-control state of opinions of the *madhhab*, due to its expansive legal literature, and the fact that it

is extremely difficult to arrive at the doctrines of Shāfi‘ism under such circumstances.<sup>141</sup> It is in *Rawḍa*, not *al-Majmū‘*, that al-Nawawī uses terms similar to, but less than, the one he uses in *Minhāj*, which were discussed above. The ones he uses there are: (1) *jadīd*, (2) *qadīm*, (3) ‘*ala qawl*, (4) ‘*ala al-ṣaḥīḥ*, (5) *al-aṣaḥḥ*, (6) *al-aẓhar*, (7) *al-mashhūr*, (8) *al-qawlayn*, (9) *al-madhhab*, and (10) *ṭarīq*. The previously mentioned *Risālat al-tanbīh* cites al-Shirbīnī from his commentary on *al-Bahja* asserting that al-Nawawī’s terminological system in *al-Minhāj* and *Rawḍa* “are close.”<sup>142</sup> This proves that, not only is *Minhāj* the fruit of the juristic and scriptural investigation in *al-Majmū‘* and *Rawḍa*, but also that *Minhāj*’s unique and original terminological system was first developed and applied in *Rawḍa*.

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<sup>141</sup> In his introduction to *Rawḍa*, al-Nawawī details the reasons behind his work, including reconciling the scattered differences in legal opinions in the school, which leaves the doctrines of the school very difficult to reach. He states, “The most important type of knowledge in this time is that secondary legal rules (*al-furū‘ al-fiqhiyyāt*), because all people are in need of them in all circumstances, even though they are mere instructions, and therefore they are among the most important matters. The scholars from among our fellow Shāfi‘ī and others have produced numerous books, both expansums and digests, incorporating in them rulings, maxims, proofs, and other mighty and precious matters, which are known for the ones gifted with providence. The works of our fellows [Shāfi‘īs], may Allah grant them mercy, are extremely numerous and widespread, with all the disagreements they contain in their [juristic] choices. Therefore, only a few individuals were able to validate the doctrines of the school. Those are the ones who were given success, the deep divers, the knowledgeable, and the ones with high aspirations. Then, Allah, Most Sublime and High, and praise be to Him, has bestowed success from among our later fellows to the one who reconciled those *ṭarīqas*, who refined the *madhhab* in the best of ways, gathering its scattered elements in succinct phrases, and comprehended all that he could find from among the celebrated books—this is the eminent, prominent, erudite, and the one who has correctly taught the *madhhab* Abū al-Qāsim al-Rāfi‘ī, the one of the sound [legal] verifications. He achieved in his book *Sharḥ al-Wajīz* what no one can outperform; in his comprehension that is coupled with briefness, perfectionism, and clarity. May Allah reward him for his efforts and multiply his reward, and join us, as well as other loved ones, in the world of rewarding His honored ones, those who occupy the high ranks. People of our time have greatly benefited from his book, for all the traits it acquired, but it is huge in size, to the extent that the majority of people generally cannot study it.”: Yaḥyā al-Nawawī, *Rawḍat al-ṭālibīn*, edited by Zuhayr al-Shāwīsh (Beirut: al-Maktab al-Islāmī, 1993), 1:4.

<sup>142</sup> Kuttī, *Risālat*, 109; Muḥammad al-Khaṭīb al-Shirbīnī, *Hāshiyya ‘alā al-ghurar al-bahiyya*, which is a commentary on the text by Zakariyyā al-Anṣārī, edited by Muḥammad Abd al-Qādir ‘Aṭṭa (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 1:74.



## Al-Nawawī's Methodology of Verification

In order to contextualize al-Nawawī's juristic contribution through the process of verification of the legal corpus of his school, which culminates in his comprehensive legal digest *Minhāj*, we have to unpack the methodology he utilized to verify and assess the entire legal Shāfi'ī corpus that preceded him. Due to the nature of the digest, he does not specify the methodology he follows in *Minhāj*, nor does he detail his juristic and intellectual objective in its entirety. Rather, he details it in another work, *Majmū'*, which may be considered one of the most important legal expositions in Islamic law (Al-Nawawī did not complete *Majmū'* during his lifetime, a task that was taken up by another towering Shāfi'ī jurist and Shāfi'ī *mujtahid*, Taqī al-Subkī. However, the latter was also unable to complete the work by covering all the conventional legal sections. This task was completed in modern times by another scholar, Muḥammad Bakhīt al-Muṭī'ī (d. 1354/1935). Certainly, this continuum warrants an independent study to examine this work and the layers of contribution). *Al-Majmū'* is a commentary on Abū Ishāq al-Shirāzī's *Muhadḥḥab*, one of two books that, along with al-Ghazālī's *al-Wasīṭ*, al-Nawawī describes in his introduction "in these two book are lessons for teachers, the [culmination] of the research of realized achievers, and the preservation by attentive students, in past and in current times, in all quarter."<sup>143</sup> In the Introduction, al-Nawawī specifies that rule-formulation (*tarjīḥ*) is the objective of the book, and that he will go to great lengths to explain the rule-formulation process in the clearest phrasing. Al-Nawawī also identifies the main problem his work tackles and the momentous task confronting him,

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<sup>143</sup> *Al-Majmū'*, edited by Shaykh Najīb al-Muṭī'ī (Jaddah: Maktabat al-Irshād, n.d.), 16.

Know that the books on the *madhhab* has severe difference among the direct followers (*aṣḥāb*) [i.e. of al-Shāfi‘ī], so much so that it is unattainable for a reader to ascertain the authenticity of whether an opinion of any of them is the established rule (*madhhab*), unless he is able to preview the majority of the famed books of the madhhab. This is why I do not leave a *qawl*, *wajh*, or *naql*, even if they are weak or faint in my view, without mentioning it, if God Most-Sublime wills. I do this while explaining the preponderant and non-preponderant, establishing the weakness of the weak [rule], and falsehood of that which is fabricated, while expanding in emphasizing the severity of what its author has said, even if he is one of the most established ones.<sup>144</sup>

The following is a summary of al-Nawawī’s methodology, based primarily on his own account in *al-Majmū‘*, as well as a few secondary sources. Firstly, his main point of departure is to distinguish between whether an opinion of al-Shāfi‘ī is ‘old’ (*qadīm*), ‘new’ (*jadīd*), or corroborated with uncontested evidence as a doctrine of al-Shāfi‘ī. Secondly, al-Nawawī pays attention to the particular *qadīm* and *jadīd* opinions. Thus, unless clearly stated, a new opinion of al-Shāfi‘ī on certain legal issues is affirmed if he states it in contradistinction to the old one. Hence, if there is no contradiction between them, or if he did not mention anything new about the issue at hand, the *qadīm* is the doctrine that should be used for issuing fatwas. Thirdly, if two opinions of al-Shāfi‘ī are in the same chronological category (i.e., both are either *qadīm* or *jadīd*) and are equal in their strength of evidence, the latter one is to be adopted; otherwise, the one among them that is preponderant by al-Shāfi‘ī himself. Fourthly, if there are two opinions by the founder and it is not known when they were issued in respect to one another, and whether he deemed one of them preponderant, a juristic evaluation must be applied by scholars who are

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<sup>144</sup> Nawawī, *Majmū‘*, 18.

qualified in both rule-formulation (*tarjīh*) and authentication (*takhrīj*).<sup>145</sup> Fifthly, however, if there is a difference in opinion between the *aṣḥāb* regarding which of the two opinions is the preponderant one, the following three criteria must followed: (a) to follow the law-determination (*taṣḥīh*) based on the position of the majority, and then the more knowledgeable, and then the first precedence that was issued. The opinion of the most knowledgeable if given precedence should there be further difference; (b) to take into consideration the capacity and stature of those who narrate two opinions on the same matter, whether they be from al-Shāfi‘ī (*aqwāl*, sing. *qawl*) or those of his companions (*wujūh*, sing. *wajh*), or: (c) to take what is concurrent with other *madhhab*.<sup>146</sup>

It is noteworthy that al-Nawawī’s approach to narration and authentication of the opinions, as cited previously in the fifth element of his methodology (points a, b, and c), is highly influenced by Ibn al-Ṣalāḥ (d. 643/1245). Several teachers of Shāfi‘ī *fiqh* with whom al-Nawawī studied in Damascus were all students of the towering student of the *ḥadīth* master Ibn al-Ṣalāḥ. These include the aforementioned Abū Ibrāhīm Ishāq b. Aḥmad b. ‘Uthmān al-Maghribī (d. 650/1252), Tāj al-Dīn ‘Abd al-Raḥmān b. Ibrāhīm b. Ḍiyā’ al-Fazārī (d. 690/1291), Abu- Muḥammad Abd al-Raḥmān b. Nūḥ al-Maqdisī (d. 654/1256), and Abū al-Faḍā’il Sallār b. al-Ḥasan al-Irbalī (d. 670/1271). This is perhaps relevant to explaining to his deep interest in combining traditionist and legal studies. Even though al-Nawawī never met Ibn al-Ṣalāḥ, some

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<sup>145</sup> Al-Nawawī, *Majmū’*, 108–09; Muḥammad b. Sulaymān Al-Kurdī. *Al-Fawā’id al-Madaniyya fīman yuḥīḍ biqawlihi min al-Shāfi‘iyya* (Cairo: Dār al-Fārūq, 2015). I also benefited from the insightful chapter on the overall intellectual history of the Shāfi‘ī school by ‘Alī: Muḥammad Ibrāhīm Muḥammad Alī, *al-Madhhab ‘inda al-Ḥanaḥiyya, al-Mālikiyya, al-Shāfi‘iyya, al-Ḥanābila*, edited by Turkī Muḥammad Ḥamīd al-Naṣr (Kuwait: al-Wa‘ay al-Islāmī, 2012), 271–311.

<sup>146</sup> Al-Nawawī also mentions that there are some jurists who adopt the opposing view, mainly stating that if an opinion of al-Shāfi‘ī differs with other *madhhabs*, it should be adopted since it he only did saw based on his familiarity with the textual evidence. Among those is Abū Ḥāmid al-Isfārīnī. See: al-Nawawī, *Majmū’*, 109-110.

biographies wrongly insert his name among al-Nawawī's teachers. This was not only important to enhancing al-Nawawī's authority in *ḥadīth* the eyes of later generations of Shāfi'ī scholars. More importantly, it is historical, since, as Faschrizal asserts, "through him [i.e., Ibn al-Ṣalāḥ], he aimed to trace back the authority of his learning transmission to Abu al-ʿAbbās Aḥmad b. ʿUmar b. Surayj (d. 306/918). Ibn Surayj, as has been pointed out by Wael Hallaq, was considered the most important figure in the Shāfi'ī school after al-Shāfi'ī, for his role in the establishment of regular transmission of doctrine and the spread of the *madhhab*."<sup>147</sup>

This historical significance of Ibn Ṣalāḥ lies in him being one of the few scholars who attempted to reconcile the two schools of legal hermeneutical approaches (*tarīqas*) that emerged after Ibn Surayj, and via both: the Iraqis, who are known for their narrational rigor, and the Khurasanians, known for juristic innovation. This is significant as one of most important legal credentials of al-Nawawī was his ability to combine the two approaches of the two sub-schools, as Ibn al-Ṣalāḥ's *isnād* was the most authoritative in representing the Shāfi'ī *madhhab*.<sup>148</sup>

### Examples of al-Nawawī's Verification

To exemplify al-Nawawī's contribution in *Minhāj*, as well as how the tome is built on al-Nawawī's efforts from other books, I will engage with three different examples that demonstrate different outcomes from his verification (*tarjīḥ*). In the first case, al-Nawawī sides with and defends the doctrine of al-Shāfi'ī. In the second, he uses his independent reasoning (*ijtihād*) to

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<sup>147</sup> Halim, *Legal*, 18.

<sup>148</sup> Ibid.

arrive at a different position from that of his school. In the third, he takes an educated and evidenced position to select from different opinions.

### Defending the Doctrine

The first is the case of wiping the head during ritual ablution (*wuḍūʾ*), in which al-Nawawī champions and affirms the doctrine of al-Shāfiʿī, a ruling that is unique to his Shāfiʿī *madhhab* and is not shared by either of the other three Sunni schools, based on an opinion that goes back to the founder. In *Minhāj*, al-Nawawī states in the section on the supererogatory acts of ritual washing (*ṣunan al-wuḍūʾ*),

Among its supererogatory acts is to use a natural toothbrush (*siwāk*) sideways, not one's finger, according to the most valid (*fī al-aṣaḥḥ*) position. It is supererogatory [to perform it] in cases of prayer, bad breath, and it is not disliked when fasting, except after midday; to invoke *tasmiyya* [i.e., the formula '*bism Allāh al-raḥmān al-raḥīm*'], and if someone leaves it, they should invoke it [the intention] during the act; to wash the hands, but if one was not certain whether they are clean, it is disliked to wash them inside a container before washing them; to wash the mouth and to cleanse the nostrils, and the most apparent (*al-aẓhar*) position is that it is better to separate between them, and it is the most valid opinion to wash the mouth by scooping water into one's palm trice, and then using the other hand to cleanse the nostrils trice. One should perform both with intensity, except when fasting. I [al-Nawawī] say it is more apparent to prefer combing both with three scoops, washing the mouth and then cleansing nostrils from each scoop. And Allah knows best, and to perform both washing and wiping trice.<sup>149</sup>

Other than noting the occurrence of the special terms of verifying juristic positions, this last sentence is key. While the other three Sunni *madhhabs* hold the juristic position that wiping the head needs to be done only once during ablution, according to the Shāfiʿī school, it is preferred

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<sup>149</sup> Al-Nawawī, *Minhāj*, 42–44.

to be done three times. In his juristic argument *al-Majmūʿ*, al-Nawawī cites that al-Shāfiʿī and his companions use prophetic traditions and analogical reasoning (*qiyās*) in defense of their position. In so doing, he presents that a rigorously authenticated tradition that is narrated by Imam Muslim which states that, “The Prophet, Allah’s peace and blessings be upon him, performed *wudūʿ* doing everything thrice, thrice” (*tawaḍḍaʿ thalathan thalathan*). He starts by arguing that this means that the Prophet performed all aspects of ablution three times, including the wiping of the head, as “The point of indication (*dalāla*) from which comes his wording *tawaḍḍaʿ* (lit. performed ritual ablution) includes both wiping and washing.”<sup>150</sup> Typically ‘washing’ (*ghasl*) is understood to cover all parts of ablution, except the head, which is wiped. It is established among all Sunni *madhhabs* that washing the prescribed parts should be done three times. However, here al-Nawawī starts his argument by noting that the above-mentioned instruction to do things three times extends to wiping the head. He then proceeds to cite scriptural proofs of two fairly authentic (*ḥasan*) traditions, and discusses their validity, stating that the Prophet wiped his head three times while performing *wudūʿ*, one narrated by Abū Dawūd and the second by al-Bayhaqī.

Al-Nawawī then enumerates a few cases of analogical reasoning, arguing that, first, there is no textual reasoning to exclude the head from remaining body parts that should be washed three times. Second, while cautioning against extending this analogy to the ritual purification performed during cases of lack of water, using sand (*tayammum*), he cites other analogies on how a ruling that concerns a principal part (*aṣl*), applies to all others. He then engages with all the Shāfiʿī opinions on the matter, and concludes, “As for their saying that al-Shāfiʿī, may Allah be pleased with him, has violated the consensus (*ijmāʿ*), this is not true. Anas Ibn Malik, ‘Aṭā,

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<sup>150</sup> Al-Nawawī, *al-Majmūʿ*, 1:463.

and others subscribe to this position, as we have previously demonstrated, according to the narrations of Ibn al-Mundhir.”<sup>151</sup>

Regarding the same issue of wiping the head three times, in *Rawḍa*, al-Nawawī asserts that it is recommended to perform, “Repetition thrice with parts that should either be washed or wiped, whether obligatory or supererogatory.” Still, he adds that in addition to the previous assertion, “I hold a rare (*shādhah*) opinion that one should not repeat it.”<sup>152</sup> This last part differs from his argument in the *al-Majmū‘*, where he asserts that it should be done only once. It is not uncommon for jurists, including al-Nawawī, to occasionally adopt different positions in different books. However, in *al-Minhāj*, he succinctly covers the matter when covering the supererogatory of elements *wuḍū‘*, stating: “And performing it three times for both washing and wiping.”<sup>153</sup>

### Differing with the School Through Rule-Formulation

The second example of al-Nawawī’s verification is his judgment regarding the trading of a debt for another debt. Al-Nawawī asserts in *al-Minhāj* that, “Selling a debt to someone else other than the one to whom it is owed is invalid (*bāṭil*) according to the ‘most apparent’ (*fī al-aẓhar*) [position].”<sup>154</sup> Al-Shāfi‘ī and the majority of commentators, including al-Haytamī<sup>155</sup>, disagree, deeming it valid. *Fī al-aẓhar*, literally ‘the most apparently’, is a term which he uses to indicate a preponderance between two strong opinions both of which belong to al-Shāfi‘ī himself. To

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<sup>151</sup> Ibid., 465.

<sup>152</sup> Al-Nawawī, *Rawḍa*, 1:59.

<sup>153</sup> Al-Nawawī, *Minhāj*, 44.

<sup>154</sup> Ibid., 300.

<sup>155</sup> Ibn Ḥajar al-Haytamī, *Tuḥfat al-muḥtāj*, with the two supra-commentaries of Shaykh ‘Abd al-Ḥamīd al-Shirwānī and Aḥmad b. Qāsim al-‘Abādī (Damascus: Dār al-Fikr, 2014), 4:452.

understand how such a judgment is arrived at through evidentiary verification in *Minhāj*, we first turn to *al-Majmūʿ*.<sup>156</sup> Therein, al-Nawawī starts his investigation into the matter by providing a scenario in order to visualize the situation. He then cites al-Shāfiʿī's prohibitive opinion and another one by Imam Malik which deems it permissible to trade a debt if it is due. He then cites the consensus within the Shāfiʿī *madhhab* on the matter, after which he proceeds to mention that Imam Aḥmad Ibn Ḥanbal cites the existence of consensus on this later position, citing a *ḥadīth* that confirms the prohibition. After examining the textual validity of the aforementioned weakly authenticated (*ḍaʿīf*) tradition, al-Nawawī concludes, "If the chain of narration is not verified, the consensus cannot be upheld, since there is a disagreement about this particular form [of the debt]. Otherwise, it should be metaphorically understood to explain a debt that is unanimously prohibited, which is the case here."<sup>156</sup>

In *Rawḍa*, al-Nawawī conducts a detailed examination of the types of debts and their monetary and non-monetary forms. Detailing the opinions on the validity of changing the form of a non-monetary debt or selling it, he rules out the validity of transferring debt, after engaging with an opinion that allows it, but only conditional to it being used at a fixed price. He cites this opinion from al-Ghazālī's *al-Wasīṭ*. As for substituting monetary debts for non-monetary compensation, he agrees with a 'new' (*jadīd*) opinion by al-Shāfiʿī, al-Ghazālī, and Ibn al-Qaṭṭān (d. 359/970). He follows this assertion with a branching out of the different cases and a special engagement with some Khurasanian jurists, like al-Ghazālī and al-Baghawī (d. 516/1122), agreeing with the latter that the exchange should not take place in the same setting. Monetary debts, which are likely to be the form he meant in *al-Minhāj*, are prohibited. As for the debts of a

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<sup>156</sup> Al-Nawawī, *al-Majmūʿ*, 10:106.



loan or compensation for damage, they can be converted, except if the debtor, al-Nawawī asserts, owns money that is held by a guarantor.<sup>157</sup>

In his examination of the issues in which the author *Minhāj* adopted an opinion contrary to the Shāfi‘ī doctrine, Ibn Sumayṭ comments that the agreed upon position among Shāfi‘ī scholars is that the rule-formulations (*tarjīḥāt*) of al-Nawawī in *al-Majmū‘* are superior to those in *Rawḍa*. He argues that at the crux of this difference between al-Nawawī and his commentators, is that when they performed rectification (*taṣḥīḥ*) by way of evidence-determination, based this on the assumption that—unlike al-Nawawī—the debtor is unable to pay.<sup>158</sup>

### **Independent ‘Juristic Preferences’**

There is a subtle difference between two forms of verification (*taḥqīq*) that many jurists conflate, there is rule-formulation (*tarjīḥ*), which means exercising preponderance among reliable positions of the *imām* of the *madhhab*, while ‘juristic choice’ or *ikhtiyār*, means choosing another opinion from outside those by appealing to an evidence. In his monograph, *Ikhtiyārāt al-imām al-Nawawī allatī tafarrad bihā min al-madhhab al-Shāfi‘ī*, which is focused on the juristic choices of al-Nawawī, al-Khaṭīb defines it as the case “in which a jurist qualified to perform independent juristic reasoning (*muṣṭahid*) differs with either the doctrine of his followed Imam or some of the formulated rules of the *madhhab* based on evidence.”<sup>159</sup> In the section on paying a

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<sup>157</sup> Al-Nawawī, *Rawḍa*, 3:32–33.

<sup>158</sup> Muṣṭafā b. Ḥāmid b. Ḥasan Bin Sumayṭ, *Al-Masā’il al-ghayr mu’tamada fi al-Minhāj* (Tarīm: Dār al-‘Ilm wa al-Da‘wa, 2005), 84–85.

<sup>159</sup> Ibid., 89.

compensation (*fiḍya*) for not performing obligatory fasting in *Minhāj*, al-Nawawī states, “If one dies after being able to fast [and not making up the fasting], his or her custodian (*walī*) does not need to fast on his [the deceased’s behalf] behalf. Rather, he should take from the inheritance everyday a little over half a kilo (*mud*) of food. The same applies to cases of [fulfilling] a vow (*nadhṛ*) or an atonement (*kaffāra*). I say [i.e., al-Nawawī]: the ‘old’ position is more apparent. A *walī* is any relative based on my juristic choice (‘*alā al-mukhtār*).”<sup>160</sup>

### Shāfi‘ism After al-Nawawī

The Shāfi‘ī *madhhab* is not the same before and after al-Nawawī. With regard to this process of verification (*taḥqīq*) of the legal corpus of the Shāfi‘ī school that preceded al-Nawawī and how he was able to formulate the doctrines of Shāfi‘ism, it is important to note that although al-Nawawī is the uncontested virtuoso of this process, he is definitely not the first to engage with it. Verification of the huge—to the point of being unmanageable and divisive—legal corpus of the Shāfi‘ī school was the main drive for literary production within the Shāfi‘ī *madhhab* in the seventh/thirteenth century. One of the reasons for such diversity is also the existence of two sub-schools, the Khurasanians, who specialized in systematic inference, and the Iraqīs, who focused on the mastery of authenticating the narration of the views they adopted. The two main champions of the process who managed stabilize the school by way of verifying and the entire corpus that preceded them and to reconcile the aforementioned sub-schools, were al-Rāfi‘ī and al-Nawawī, the authors of *al-Muḥarrar* and its abridgment, *Minhāj*, respectively, who then came to be known as the ‘Two Masters’ (*al-Shaykhān*). However, it must be noted that there are other

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<sup>160</sup> Al-Nawawī, *Minhāj*, 238.

figures who worked within the frameworks of the two sub-schools, in an attempt to reconcile them.

Within the Shāfi‘ī *madhhab*, *Minhāj* is considered the crown jewel of the verification period, during the sixth and seventh/twelfth and thirteenth centuries, and the hallmark of stabilization of the Shāfi‘ī literary tradition. As seen above, *al-Minhāj* embodies the culmination of two preparatory efforts in *Majmū‘*, whose main focus is scriptural evidence, and second, *Rawḍa*. *Rawḍa*, in particular, is of major importance to establishing the doctrines of Shāfi‘ism as expressed in *Minhāj*. It focuses on an expansive application of verification of the doctrines of the Shāfi‘ī school, from the founder onwards. This process includes the filtering out of weak (*ḍa‘īf*) and non-preponderant (*marjūh*) legal opinions and, second, the consolidation of opinions that are inline with opinions and foundations of Imām al-Shāfi‘ī. The *Minhāj*’s claim to its authoritative standing stems from it being a culmination of all previous efforts to reconcile the two approaches (*tarīqas*) of Iraqis and the Khurasanians, which were developed and crystallized in the fifth and sixth/eleventh and twelfth centuries. Although al-Nawawī studied these two juristic approaches thoroughly and reconciled them in *Rawḍa*, *Minhāj* is the summation of the outcome of the chosen doctrines of that process, using the above-cited original and effective terminological system.

One of the primary aspects of the legal differences between the two sub-schools that reflects the science of *ḥadīth* is that essentially the difference between the two sub-schools centers around the paths of transmission of legal opinions. To provide al-Nawawī’s primary position on the two sub-schools, he points, “Know that narrations of the texts of al-Shāfi‘ī, the rules of his *madhhab*, and the opinions (*wujūh*) of our early fellow followers by our companions,

the Iraqis, are more exact and authenticated than the narrations of the Khurasanians. The Khurasanians are mostly better in processing the [the narrations], in research, in derivation, and in classification.”<sup>161</sup> Although al-Nawawī’s legal project of reconciling the two sub-schools is seen by many as being balanced, one can see some favoring of the Iraqi school in his work, especially in terms of their superiority in narration, which echoes *ḥadīth* methodology.

Expanding on this preference for the Iraqis, Halim notes,

Except in the *Minhāj*, which is devoid of any detailed, epistemological elaboration of the *ṭarīqa*’s doctrines, the same models of reconciliation based on al-Shāfi‘ī methodology may be found in all of al-Nawawī’s legal writings. In His *Majmū‘*, for instance, which is essentially a collection of doctrines of the community of the Iraqi jurists, he proceeds as he did in his *Rawḍa* to record the doctrines of the Iraqis and follow up on their legal interpretations and inferences. Whenever he discovers that the Iraqi elaboration of the particular case contradicts the doctrine and reasoning of al-Shāfi‘ī, he interposes his own reasoning, with reference to his mastery of al-Shāfi‘ī’s teachings and the literature of the other jurists in the *Madhhab*. Despite the fact that al-Nawawī is not always explicit about the principle he refers to in elaborating such cases, he was widely trusted as an interpreter of al-Shāfi‘ī’s hermeneutic principles, and it was this that allowed him to narrow the differences between the major *ṭarīqas* among the Shāfi‘ī jurists. Following this model of reconciliation, al-Nawawī traced all the doctrines of the *ṭarīqas* as transmitted by al-Shirāzī and al-Ghazālī (through) al-Rāfi‘ī, and brought any doctrine he thought of as deviating from the *madhhab* back into line with al-Shāfi‘ī’s juristic paradigm.<sup>162</sup>

After al-Nawawī, whatever he and al-Rāfi‘ī agree upon has been unanimously adopted as representing the doctrine of the school. In case they differed, al-Nawawī’s positions are believed to take precedence. In his important work on the hierarchy of positions for fatwa, al-Kurḍī

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<sup>161</sup> Nawawī, *al-Majmū‘*, 1:709.

<sup>162</sup> Halim, *Legal*, 70.

asserts the superiority of the position of the Two Masters and that there is no reason to refer to works that preceded them, arguing, “for they are more knowledgeable of the texts, and the opinions of those who oppose them. They cannot be opposed except based on a compelling affirmation, regardless of whosoever knows it or is ignorant about it... the utmost degree of *ijtihād*, coupled with good intention and sincerity in filtering (*taḥrīr*) the legal opinions of the *madhhab*, which compels us to believe that they never contradicted an opinion except for a compelling reason, like it being weak or based on weak reasoning.”<sup>163</sup> This has been the position of the *madhhab* which has been affirmed by all the later scholars, including all the later commentators. The books of the Two Masters have had a lasting effect on Shāfi‘ī scholarship. Commenting on this lasting effect, El-Shamsy writes, “The synthesizing function of these two scholars explains why their works, and particularly al-Nawawī’s, became the authoritative lens through which later Shāfi‘īs perceived the doctrinal history of their school.”<sup>164</sup>

This adoption of the positions of the Two Masters has also led to two other outcomes: first, that legal works predating the works of the Two Masters became practically irrelevant. Second, that the funneling of the legal authority within the Shāfi‘ī school through the two most

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<sup>163</sup> Muḥammad b. Sulaymān Al-Kurdī, *Al-Fawā'id al-Madaniyya fiman yufta biqawlihi mina al-Shāfi'īyya* (Cairo: Dār al-Fārāuq, 2015), 37–39.

<sup>164</sup> Al-Shamsy gives the following context, “Al-Rāfi‘ī and al-Nawawī were part of an encyclopedic drive in the Mamluk era to gather and sift all existing Islamic knowledge; a movement that animated all legal schools and Islamic disciplines. This was particularly important for the Shāfi‘īs in the thirteenth century because of the economic, and then military, destruction of their eastern centers of learning in Transoxania, Khorasan, and Iraq, and the accompanying influx of scholars and literature into the Mamluk realm. Al-Rāfi‘ī’s and al-Nawawī’s achievement was to bring together and fuse into a unitary doctrine the entire known intellectual legacy of the Shāfi‘ī school and to publicize and circulate it in works ranging from compact compendia (*mukhtasarāt*) to huge commentaries (al-Rāfi‘ī’s *Muḥarrar*, ‘*Aziz*’, and *Sharḥ kabīr*, and al-Nawawī’s *Minḥāj al-tālibīn*, *Rawdat al-tālibīn*, and *Majmū’*)”; Ahmed El-Shamsy, “The *Hāshiya* in Islamic Law: A Sketch of the Shāfi‘ī Literature.” *Oriens* 41 (2013: 3–4): 293.

authoritative commentators on al-Rāfi‘ī and al-Nawawī, i.e. Ibn Ḥajar and al-Ramlī, “also constrained the future scope of Shāfi‘ī scholarship.”<sup>165</sup>

## Conclusion

As part of his study of the influence of al-Nawawī’s terminologies on the later Shāfi‘īs, a contemporary Palestinian academic described this influence as “the bottleneck of an hourglass, as it collected the extract of the books of early generations (*mutaqaddimūn*), passing through it to the later ones (*muta’akhhirūn*). As such, it represents the apex of a pyramid for the early generations and their opinions, the summation of which was contained therein. It is the base of an inverted pyramid for the books of the later generations, as they all detail what’s in it.”<sup>166</sup> This may sound like a hyperbole. But it is not. First, whatever he and al-Rāfi‘ī agreed upon became the uncontested doctrine of the school and in cases where they differed, precedence is given to al-Nawawī’s position. Second, it is not an exaggeration to say that all subsequent Shāfi‘ī juristic production, either directly or indirectly, revolves around al-Nawawī’s works and views—far more than al-Rāfi‘ī—especially in *Minhāj*. *Minhāj* became the most authoritative, uncontested digest within the Shāfi‘ī world, save for another incomplete digest by al-Nawawī as well, *al-Taḥqīq*.

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<sup>165</sup> Ibid., 293, 295.

<sup>166</sup> Atman al-Badārīn, “Iṣṭilāḥ al-Shāfi‘iyya min khilāl iṣṭilāḥ al-Nawawī fī Minhāj al-ṭālibīn”, *Majalat Jami‘at al-Khalīl lil-Buḥūth*, vol. 4, issue 2, p. 284.

There are two main reasons for this status. First, the linguistic nature of *Minhāj*. This includes its clarity, precision, and the adoption of an original and effective terminological glossary that has become standard in all Shāfi'ī works since the authoring of *Minhāj*. As my findings demonstrate, some of these terms were first used by al-Rāfi'ī, albeit inconsistently, then developed in another work by al-Nawawī, i.e., *Rawḍa*, and then used effectively in *Minhāj* (as well as in *al-Taḥqīq*, the last of al-Nawawī's work, although incomplete, as my personal reading shows). This examination of the role terminological system of al-Nawawī has been ignored in academic research. The second reason for the status of *Minhāj* is that it is the fruit of al-Nawawī's effort in reconciling the two Shāfi'ī sub-schools, in a way that favors the Iraqi *ṭarīqa* and is inspired by his interest in *ḥadīth* studies and due to Ibn Ṣalāḥ's influence.

## CHAPTER THREE

The Methodology's Masterpiece:

Ibn Hajar's Exceptional Legal Commentary



## CHAPTER THREE

### *The Masterpiece:*

#### Ibn Ḥajar's Exceptional Legal Commentary

This chapter will focus on Ibn Ḥajar's commentary on al-Nawawī's *Minhāj* and the reasons behind its eminent status in the Shāfi'ī literary tradition. It includes an overview of its content, genealogy, and the reasons behind composing it. In addition, building on findings from Chapter Two, it will have two central focuses. First, it will examine the linguistic and terminological content of the *Tuhfa*, positing that this neglected dimension is central to studying legal commentaries. This examination will include an investigation of the functions of the new terms that Ibn Ḥajar coined and a comparison between his terms and those of al-Nawawī. This is especially important for two reasons. On the one hand, this will demonstrate the philological preoccupation of the commentarial genre, especially since *Tuhfa* is a salient example of this genre and the commentarial tradition. On the other hand, there are a few treatises that examine its terminological conceptions of *Tuhfa*. Studying those works directly pertains to the objectives of this chapter. Second, this chapter will explore the reasons that empowered *Tuhfa*'s juristic contribution to be so revered by Shāfi'ī students, teachers, *mufīīs*, and judges. Therefore, I will attempt to answer the question of what kind of juristic investigations occupied authors of commentaries. This way, we can have a window into the mind of juristic commentators, the debates and operations they are interested in, how they engaged with their interlocutors, and, ultimately, an overview of the nature of their *ijtihād* operations.

## What makes *Tuhfa* a masterpiece?

Interrogating a commentary for the sake of understanding the reasons that lead to its authoritative status has to examine the commentary in itself, its relation to the original text (*matn*), and analyzing its commentarial approach and elements. In this regard, what warrants a legal commentary a higher status over others? What intellectual tools and crafts go into the making of a legal commentary? As shown in Chapter One, the two earliest texts that proved influential in containing the doctrines and foundations of the Shāfi'ī *madhhab* were the two digests of al-Muzanī (d. 263/877) and al-Buwayṭī (d. 232/847). However, due to mounting social and educational needs to better understand juristic rulings and their applications, the period of spreading the Shāfi'ī school in the late third-early fifth/late ninth-early eleventh centuries, witnessed the emergence of one the first and most influential early expansums, a commentary; that is the commentary of judge Abū al-ʿAbbās Ibn Surayj (d. 306/919). According to Calder, Ibn Surayj is arguably the most important force in spreading the Shāfi'ī *madhhab* in Khorasan and Persia.<sup>167</sup> Ibn Surayj was not only an influential and popular teacher. He was also an important author-jurist who wrote a celebrated commentary on the aforementioned important digest of al-Muzanī. The significance of the emergence of the genre of commentaries is linked to two needs. First, the emerging social and educational need to master a text with an identifiable teacher and, second, the pedagogical need to produce a *ta'liqa*, virtually a dissertation, by advanced students to fulfill their educational requirements.

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<sup>167</sup> Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 80.

*Tuhfat al-muhtāj bi-sharḥ al-Minhāj*, (lit. the masterpiece for the one in need in commenting on [al-Nawawī's] the Methodology, thereafter "*Tuhfa*") of Shihāb al-Dīn Abū al-‘Abbās Aḥmad b. Muḥammad b. ‘Alī Ibn Ḥajar al-Haytamī (909/1504–974/1567), is the most authoritative legal expansum in the Shāfi‘ī legal tradition. Late Shāfi‘ī scholars believe that no fatwa can contradict that which is agreed on by Ibn Ḥajar in his *Tuhfa* and Shihāb al-Dīn Aḥmad al-Ramlī (d. 957/1550) in *Nihāyat al-muhtāji*; also a commentary on al-Nawawī's *Minhāj*. The majority of the post-classical Shāfi‘ī verification labor mainly revolves around al-Nawawī's works; second to none other than al-Rāfi‘ī. While the agreements of al-Nawawī and Rāfi‘ī - Two Masters (*al-shaykhān*) - came to constitute the doctrines of the Shāfi‘ī school from the seventh/thirteenth onward, Ibn Ḥajar comes into the picture as a leading figure of a circle of commentators on al-Nawawī's *Minhāj*.<sup>168</sup> This circle consists of Shaykh al-Islam Zakariyyā al-Anṣārī (d. 931/1525) and his students, chief among of them is Ibn Ḥajar. The juristic positions of all them are seen as valid enough to base fatwas on in the later school; as long as they don't contradict the Two Masters, or the foundations of the Shāfi‘ī *madhhab*.<sup>169</sup>

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<sup>168</sup> For an extensive and detailed hierarchy of how to conduct fatwa and the doctrines of the Shāfi‘ī school see al-Kurdī's *al-Fawā'id al-Madaniyya*, in which he asserts that there are two types of authoritative *mufṭīs*: (1) those who are qualified to perform rule-formulation (*tarjīḥ*), then they can only issue fatwas based on the outcomes of them performing rule-formulation but from among the opinions that the 'Two Shaykhs' are in agreement on, and (2) those who are not. For those who are not qualified, they have to follow that which Ibn Ḥajar and al-Ramlī are in agreement on. Otherwise, they should perform rule-formulation based on the positions of either of them, depending on their geographical affiliation [i.e. in relation to where the texts of Ibn Ḥajar and al-Ramlī are adopted]. But when all three—Shaykh al-Islam Zakariyyā al-Anṣārī, Ibn Ḥajar, and al-Ramlī—are in agreement, their views can be differentiated according to their respective rank: as the first was most familiar with transmitted texts, the second is the most knowledgeable of legal intent [of any given text], and the latter is most thorough in his transmissions of juristic opinions: Muḥammad b. Sulaymān Al-Kurdī. *Al-Fawā'id al-Madaniyya fiman yufta bi qawlihi min al-Shāfi'iyya* (Cairo: Dār al-Fārāuq, 2015), 34-37.

<sup>169</sup> Al-Kurdī, *al-Fawā'id*, 62-65. Al-Dimyāṭī affirms that, "*Ifṭā'* should only be based on what the Two Masters have adopted. If not, then al-Ramlī and Ibn Ḥajar in the lands where they are respectively followed. This is followed by the opinions of "Shaykh al-Islam, then al-Khaṭīb, then al-Zayyādī, then Ibn 'Umayyir, then al-Shubramilsī, then Ḥalabī, then Shubrī, then all 'Anānī, provided that they do not contradict a foundation of the *maddhab*," 'Uthmān b. Shata al-Bakrī al-Dumyāṭī, *I'ānat al-ṭālib alā ḥal al-fādh fath al-mu'in li al-'Allāma al-Malibārī* (Cairo: Dar Ihya al-Kutub al-'Arabiya, n.d.).

## The Author

Shihāb al-Dīn Abū al-‘Abbās Aḥmad b. Muḥammad b. ‘Alī b. Ḥajar al-Haythamī

(909-974/1504-1567) was an eminent Egyptian scholar who moved to Mecca from Cairo, where he taught and wrote until the end of his life.<sup>170</sup> Some accounts deem spelling his last name as al-Haythamī as more accurate.<sup>171</sup> He was born in a village of Salamant, in the Egyptian Delta. Like al-Shāfi‘ī and al-Nawawī, Ibn Ḥajar was no less of a prolific and polymath author. He produced around 148 books, the majority of which, 78, are in Shāfi‘ī *fiqh*, 16 in *ḥadīth*, 1 in Islamic legal theory (*uṣūl al-fiqh*), 13 in theology (*kalām*), 18 in Sufism, 2 grammar, and 1 astronomy, among other subjects.<sup>172</sup> There are several later biographical sources that give a comprehensive overview of his life. Arguably, the most comprehensive among them is the one penned by Ibn

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<sup>170</sup> After investigating the differences in the year of the birth of Ibn Ḥajar’s, Rashīd concludes that, based on Ba‘amr, al-Ghazzī, among other resources, that 909/1504 is the correct year.

<sup>171</sup> Although it is not common, al-‘Awnī argues that it is more accurate to call him al-Haythāmī, since it is related to the more accurate way to pronounce the name of his hometown region of Maḥlat Abī Haytham. Al-Sharīf Hātim b. Arīf al-‘Awnī, *Rīy al-bāḥith al-ḥamī bi-tarjīḥ al-thā’ fī nisbat Ibn Ḥajar al-Haythamī*, a short paper, p. 5, retrieved online on 5 April 2020: <http://dr-alawni.com/files/books/pdf/1586773429.pdf>

<sup>172</sup> Amjad Rashīd, *Al-Imam Ibn Ḥajar Ibn Ḥajar wa atharuh fī al-fiqh al-shāfi‘ī*, an MA submitted to the University of Jordan, 2000, p. 48, retrieved online in 20 March 2020: (<http://mylibrary.medi.u.edu.my:8181/xmlui/bitstream/handle/123456789/99577/%D8%A7%D9%84%D8%A5%D9%85%D8%A7%D9%85%20%D8%A7%D8%A8%D9%86%20%D8%AD%D8%AC%D8%B1%20%D8%A7%D9%84%D9%87%D9%8A%D8%AA%D9%85%D9%8A%20%D9%88%D8%A3%D8%AB%D8%B1%D9%87%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf?sequence=1&isAllowed=y>)

Ḥajar's student, al-Ṣayfī, titled *Nafā'is al-Durar fī tarjamat Shaykh al-Islām Ibn Ḥajar*.<sup>173</sup> Our Ibn Ḥajar should not be confused with another similarly named scholar, Ibn Ḥajar al-ʿAsqalānī (d. 852/1449), the eminent *ḥadīth* master.

Ibn Ḥajar's father died when he was young. When the blows of instability struck Egypt during the late era of the Mamluks, which witnessed lots of infighting between the ruling class and economic instability, his grandfather, himself a shaykh and a Sufī master, moved and took him along to the village of Maḥalt Abī Haytam. It is for this reason that he acquired the designation of Haytamī.<sup>174</sup> The two pious shaykhs also taught his father, al-Shams Ibn al-Ḥamā'il and the latter's student al-Shams al-Shināwī, took Ibn Ḥajar under their wings and mentored his religious education. Afterwards he moved to Cairo to start his religious education in al-Azhar mosque in 924/1518. According to a biography written by one of his own students, Ibn Ḥajar managed to memorize the Qur'an at a young age and later memorized al-Nawawī's *al-Minhāj*, the very digest he later commented on in the *Tuḥfa*. This highlights the importance of early education on later academic achievement; in the same way al-Nawawī studied al-Ghazālī's *al-Wasīt*, the book on which his seminal *Minhāj* was founded.

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<sup>173</sup> These sources include one by his student Abī Bakr Baʿamr al-Ṣayfī, *Nafā'is al-Durar fī tarjamat Shaykh al-Islām Ibn Ḥajar* (Amman: Dār al-Fath, 2016); al-Shaʿrānī, *al-Nūr al-Sāfir ʿan akhbār al-qarn al-ʿāshir*, edited by Aḥmad Ḥālū, Maḥmūd al-ʿAranʿūt, and Akram al-Būshī (Beirut: Dār Ṣādir, 2001); ʿAbd al-Ḥayy b. Aḥmad Ibn al-ʿImād, *Shadharāt al-dhahab fī akhbār man dhahab*, 10 vols., edited by ʿAbd al-Qādir al-ʿArnaʿūt and Maḥmūd al-ʿArnaʿūt (Damascus: Dār Ibn Kathīr, 1406/1986), 8:370-372; ʿAbd al-Ḥayy al-Kitānī, *Fahras al-fahāris wa al-athbāt*, edited by Iḥsān ʿAbbās (Beirut: Dār al-Gharb al-Islāmī, 1982) 1:337-340; Najm al-Dīn Muḥammad b. Muḥammad Ibn al-Ghazzī, *al-Kawākib al-sāʾirah bi-ʾayn al-miʾah al-ʿāshirah*, edited by Khalīl Maṣṣūr (Beirut: Dar al-Kutub al-ʿIlmiyyah, 1997) 2:200-202.

<sup>174</sup> Ibn al-Ghazzī, *al-Kawākib*, 3:113.

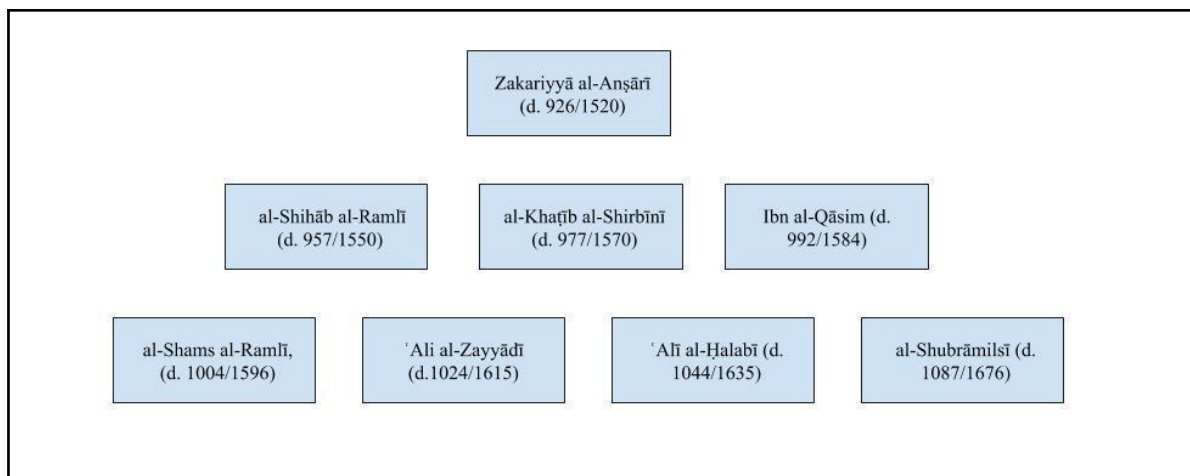


Figure 3: ‘The commentarial circle’, consisting of Shaykh al-Islam Zakariyyā al-Anṣārī and some of his students and students of his students. The opinions of all these scholars, which are contained in their authored expansums, are considered valid for fatwa in the late Shāfi‘ī school, according to al-Kurdī and others.

Ibn Ḥajar was a student of the highest authority in Shāfi‘ī *fiqh* of his time, Shaykh al-Islam Zakariyyā al-Anṣārī (d. 931/1525). Al-Anṣārī is of special importance to this chapter, as he is the main teacher of the ‘commentarial circle’, all of whose works are considered valid--under some conditions--fatwa purposes. According to al-Kurdī,

No fatwa can contradict these two [i.e. Ibn Ḥajar and al-Shams al-Ramlī], rather whatever contradicts *al-Tuhfa* and *al-Nihāya*, except if these two did not tackle it. Otherwise, the next in rank to be sourced for fatwa is Shaykh al-Islām Zakariyyā al-Anṣārī, then al-Khaṭīb al-Shirbīnī (d. 977/1570), then the super commentary of ‘Alī b. Yaḥyā al-Zayyādī (d. 1024/1615), then the super-commentary of Ibn al-Qāsim (d. 992/1584), then the options of Shihāb al-Dīn Aḥmad al-Burulusī, a. k. a. ‘Umayra (d. 957/1550), then the options of the super-commentary of ‘Alī al-Shubrāmilsī (d. 1087/1676), then the super-commentary of ‘Alī al-Ḥalabī (d. 1044/1635), then the super-commentary of al-Shubrī, then the super-commentary of al-‘Inānī.<sup>175</sup>

Ibn Ḥajar is the leading figure of this elite circle of commentators. Among his *fiqh* teachers are Zayn al-Dīn al-Sunbātī (d. 931/1525), and Shihāb al-Dīn al-Ramlī (d. 957/1550). He is said to have met with a number of the most iconic scholars of his time, including *fiqh* experts like Nāṣir al-Dīn al-Ṭablāwī (d. 966/1559), and *fiqh* and *uṣūl* expert al-Laqqānī (d. 958/1551). He was

<sup>175</sup> Al-Kurdī, *al-Fawā'id*, 36.

inspired to start writing based on a dream that he saw during his first pilgrimage to Mecca. He then started writing a commentary on *al-Rawḍ*, a *fiqh* treatise, the original of which was stolen and destroyed. Ibn Ḥajar later moved to Mecca, allegedly due to the harassment and jealousy he faced in Cairo by his fellow shaykhs. He settled in Mecca and acquired a wide influence in teaching and an opportunity to author authoritative works in the late Shāfiʿī school and the title of the Muftī of the land of Hijaz.

Ibn Ḥajar lived through the closing of the era of the Mamluk dynasty (648-923/1250-1517), towards the end of the Circassian period (792-923/1382-1517), a period marked by deep instability, tumultuousness and constant change of political leadership. He also witnessed the beginning of the Ottoman rule, as the Ottomans moved to take over Egypt and then transferred its political and some of the scholarly importance to the new capital of the Islamic Caliphate in Istanbul. He lived most of his life under the Ottomans. Rashid, a Shāfiʿī *fiqh* specialist, concludes that there is no known publicly expressed political opinion by Ibn Ḥajar during his lifetime, except a praise of Sultan Süleyman the Magnificent (900-974/1494-1566) in one of his books, *Al-Manāhil al-ʿaẓba fī mā wa hiya min al-Kaʿba*, because of the latter's efforts to stabilize the society, especially in Mecca where Ibn Ḥajar resided.<sup>176</sup> He lived during the life of a number of eminent scholars, such as the polymath and erudite al-Suyūṭī (849-911/1445-1506), the eminent *ḥadīth* scholar Shams al-Dīn al-Sakhāwī (831-902/1428-1497), among others, in addition to his Aḥmad al-Ramlī (919-1004/1513-1596),

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<sup>176</sup> Amjad Rashīd, *Al-Imam Ibn Ḥajar Ibn Ḥajar wa atharuh fī al-fiqh al-shāfiʿī*, an MA submitted to the Jordanian University, 2000, retrieved online in April 2019: (<http://mylibrary.medi.u.edu.my:8181/xmlui/bitstream/handle/123456789/99577/%D8%A7%D9%84%D8%A5%D9%85%D8%A7%D9%85%20%D8%A7%D8%A8%D9%86%20%D8%AD%D8%AC%D8%B1%20%D8%A7%D9%84%D9%87%D9%8A%D8%AA%D9%85%D9%8A%20%D9%88%D8%A3%D8%AB%D8%B1%D9%87%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf?sequence=1&isAllowed=y>)

who was called the “young Shāfi‘ī,” in praise of his erudition. Al-Ramlī is the second of the two most authoritative figures in the late Shāfi‘ī *madhhab*, alongside Ibn Ḥajar, who are thought of the highest authorities in the *madhhab*.

As for his scholarly status, Ibn Ḥajar is considered as one of the transmitters of the *madhhab*. The transmitters (*nuqalā’*, sing. *nāqil*) of the *madhhab* is the fifth category in the hierarchy of the Muftīs of the *madhhab*, a topic that Calder dedicated an important study to.<sup>177</sup> The condition of occupying this category is to memorize the positions of the *madhhab*, to transmit its legal tradition, and to understand both its ambitious and unambiguous legal issues. Ibn Ḥajar was known for his expansive scope of the knowledge of the Shāfi‘ī literary tradition, covering the earliest works in Shāfi‘ī *fiqh* from the writings of the eponymous founder of the *madhhab* onward, and in different genres as well, like digests, fatwas, expansums, *ḥadīth*

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<sup>177</sup> With regard to the hierarchy of *mujtahids* and muftis within the *madhhabs* and Ibn Ḥajar’s rank in it, there are five ranks for jurists in relation to their *ijtihād*: (1) an absolute *mujtahid* (also called independent mufti): a category includes the four eponymous founders of the four Sunni legal schools; (2) restricted *mujtahid* or the dependent mufti: such individuals chose to follow the *madhhab* but still through their own unique legal reasoning. The scholars of this category include the following followers of the Shāfi‘ī school, like al-Buwayṭī, al-Muzanī, Ibn al-Mundhir, and Ibn Jarīr al-Ṭabarī. Despite having their own method and proofs, the main difference between category (1) and (2) is that scholars in (2) did not have legal theory and *ḥadīth* maxims on which legal inferences and substantive rulings are based; (3) The *mujtahids* of the *madhhab* who are also called the ‘possessors of perspectives’ (*aṣḥāb al-wujūh*). The scope of *ijtihād* of the scholars in this category is that despite they followed the maxims and the legal theory of the Imam of the *madhhab*, they remained independent in their establishing (*taqrīr*) of the legal foundations and theory through proofs. They used the statements of the founder as foundations for inference; the likes of Shaykh Abū Ḥamid al-Isfārīnī (d. 406/1016), al-Qaffāl (d. 365/976), and al-Mawazī (d. 340/951); (4) The *mujtahids* in fatwa and rule-formulation (*tarjīh*). Scholars in this category established master-jurists who are well versed in the *madhhab* of their followed Imam, its proofs, are active in verifying it, and perform preponderance, along with all its legal and intellectual tools. This category is of special importance to this study because of the centrality of *tarjīh* to its scope, and because of the debate that relates to whether Ibn Ḥajar belongs to it, and; (5) The transmitters (*nuqala*, sing. *nāqil*) of the *madhhab*: The condition of occupying this category is to memorize the positions of the *madhhab*, transmitting its legal tradition, and understanding it in both ambitious and unambiguous issues. See: al-Malybārī, *Dirāsa*, 210-213. For more on this see: Norman Calder, “Al-Nawawī’s Typology of Muftīs and its Significance for a General Theory of Islamic Law.” *Islamic Law and Society* 3, no. 2 (1996): 137-164. These previous categories are important, if only for the sake of understanding the different layers of legal reasoning and the cumulative nature of the *madhhab* progress. As even confirmed by Ibn Ḥajar himself, due to the continuous critical and gradual work done by jurists, each of these categories phase out. For example, he states that the *mujtahids* in fatwa and in *tarjīh*, do not exist after the fifth/eleventh century. See: Ibn Ḥajar al-Haytamī, *al-Fatāwa al-fiqhiyya al-kubrā* (Beirut: Dār Ṣādir, n.a.), 4:303. Based on critical and balanced examination of whether Ibn Ḥajar belong to the fourth or fifth category, Rashīd convincingly asserts that he belongs to the fifth category. See: Rashīd, *Ibn Ḥajar*, 98-105.



proofs, and others. He rose to his esteemed scholarly rank and became the uncontested Shāfiʿī Mufti of Ḥijāz, and was sought for all kinds of fatwas, especially for complex and difficult questions. Rashīd describes status of the fatwas of Ibn Ḥajar and the attention that scholars have given them as follows, “the reader will find in his fatwas or authored works tremendous knowledge, delicate understanding, extensive verification, and impressive critique, that is seldom encountered in many books.”<sup>178</sup>

In one of the rare example of treating Ibn Ḥajar’s legal works in western academia, a chapter by Jackson that examines a fatwa by Ibn Ḥajar that is in form of an independent treatise, due to the comprehensive treatment it gives to questions of elementary education, *Taqrīr al-maqāl fī ādāb wa-aḥkām wa-fawāʾid yahtāju ilayhā muʾadibbū al-atfāl* (The Decisive Word on Etiquette, Rules, and Pointers Needed by Children’s Educators). Acknowledging the juristic and social insights that went to fabric of the work, Jackson asserts, “In ways more than one, *Taqrīr al-maqāl* reveals the extent to which medieval jurists, in their capacity as the custodians of the religious law and hence interpreters of the *waqf*-endowment deeds, school administrative policy. Indeed, Ibn Ḥajar’s work might defensibly be read as the published policies of a local school board.”<sup>179</sup> Also in his dissertation on Ibrāhīm al-Kurānī and the intellectual life in Ḥijāz in the eleventh/seventeenth century, Dumairieh mentions Ibn Ḥajar as one of the most important contributors to the works focused on transmission (*isnād*). He also identifies him as one of the few scholars who was able to attract foreign student to move and study in Ḥijāz, transforming it

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<sup>178</sup> Rashīd, *Ibn Ḥajar*, 91.

<sup>179</sup> Sherman Jackson, “Discipline and Duty in a Medieval Muslim Elementary School: Ibn Hajar al-Haytamī’s *Taqrīr al-maqāl*” a chapter in *Law and Education in Medieval Islam: Studies in Memory of Professor George Makdisi*, edited by Joseph E. Lowry, Devin J. Stewart, and Shawkat M. Toorawa (Cambridge: E.J.W. Gibb Memorial Trust, 2002), 19.

into a educational center from the tenth/sixteenth century onward.<sup>180</sup> There is also another chapter by El-Rouayheb that studies his theological views against the the Ḥanbalī Damascan jurist Ibn Taymiyya.<sup>181</sup>

One of the manifestations of the attention that Ibn Ḥajar's contemporaries gave to his writing is that the Yemeni scholar Imām 'Abd Allāh b. 'Umar Ba-Makhrama (d. 972/1565) authored a two-volume work mentioning the subtle points (*nukat*) in the *Tuhfa*.<sup>182</sup> He also wrote the following about Ibn Ḥajar's scholarly accomplishments.

... Ibn Ḥajar is considered the seal of the *muḥaqqiqīn* (verifiers, sing. *muḥaqqiq*), from whom [learning] the *madhhab* is sought, and when a disagreement is occurs, his opinion is given precedence, and no one else equals him in this except his contemporaneous Imam Shams al-Dīn Muḥammad al-Ramlī; as in their verification and consolidation of the *madhhab*, they both reached a lofty status that gave them precedence among the late Imams, even from their own *shaykhs*. Among those is the Shaykh of Islam Zakariyyā al-Anṣārī, al-Shihāb al-Ramlī, Imām Abū al-Ḥasan al-Bakrī, Zayn al-Dīn 'Abd al-Ḥaqq al-Sunbātī, and others who carried the banner of the *madhhab* in the tenth [/seventeenth] century, even though each of them weighs an entire nation in his own knowledge and verification.<sup>183</sup>

As for the rank of Ibn Ḥajar among in Shāfi'ī *muftīs*, although he enjoys an equal standing with other later scholars, he is considered to be one of the two most superior authorities in the late Shāfi'ī school. In the same way the doctrines of Shāfi'ism cannot contradict that which al-Nawawī and al-Rāfi'ī agreed on, according to the consensus of later scholars, fatwas are cannot

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<sup>180</sup> Naser Dumairieh, *Intellectual Life in the Hijāz in the 17th Century The Works and Thought of Ibrāhīm al-Kūrānī (1025-1101/1616-1690)*, p. 118-122, a PhD dissertation submitted to Institute of Islamic Studies McGill University, Montreal, October 2018.

<sup>181</sup> Khaled El-Rouayheb, "From Ibn Hajar al-Haytamī (d.1566) to Khayr al-Dīn al-Alūsī . (d.1899): Changing Views of Ibn Taymiyya amongst Sunni Islamic Scholars", in *Ibn Taymiyya and His Times*, edited by Shehab Ahmed and Yossef Rapoport (Karachi: Oxford University Press, 2010) 269– 318.

<sup>182</sup> Al-'Aydārūs, *al-Nūr*, 279.

<sup>183</sup> Rashīd, *Ibn Ḥajar*, 91.

contradict what in Ibn Ḥajar's *Tuḥfa* or al-Ramlī's *Nihāyat al-muḥtāj*. However, whenever there is a disagreement between the two, Ibn Ḥajar's position overrides, even if slightly.

Ibn Ḥajar and al-Ramlī have followings and influence in different geographies. Scholars of Ḥaḍramout, the Levant, Kurdish scholars, scholars from Dagestan, and the Hijāz give preference to Ibn Ḥajar. The Egyptians have historically adopted what al-Ramlī has written, especially in *Nihāya*, since it was audited to its author in the presence of four hundred scholars who critiqued, one opinion claims. The author of *Maṭlab al-iqāz*, however, narrates that even though it is established that Ibn Ḥajar is superior to al-Shams al-Ramlī, late Egyptian Shāfi'īs give presence to the latter because of, "The lofty status of his father, al-Shihāb al-Ramlī and rank as an Imam. His fame sprang from him to his son. Fame has an influence."<sup>184</sup> In the Hijāz al-Ramlī acquired more influence, with the arrival of many Egyptian scholars there. As for the ranking of Ibn Ḥajar's own books for fatwa purposes, *al-Tuḥfa* tops the list, followed by *Fath al-Jawād*, then *al-Imdād* (which was abridged by the previous work), then *al-Manhaj al-qawīm*, then his fatwa collection, titled *al-Fatāwa al-fiqiyya al-kubrā*, and then legal work *al-Ī'āb shraḥ al-'Abāb*.

According to El-Shamsy, *madhhab*-doctrine restrictions, like making the main doctrines of the *madhhab* limited to the agreements of al-Nawawī and al-Rāfi'ī, and later doctrines based on the agreements of Ibn Ḥajar and al-Jamāl al-Ramlī, have led to two outcomes. First, that the past works that predate these two scholars became practically irrelevant. Second, that the funneling of the legal authority within the Shāfi'ī school through the two most authoritative commentators on al-Rāfi'ī and al-Nawawī, i.e. Ibn Ḥajar and al-Ramlī, "also constrained the

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<sup>184</sup> 'Abd Allah Balafqih, *Maṭlab al-Īqāz fī al-kalām 'ala ghurar al-alfāz* (Kuwait: Dār al-Ḍiyā', 2017), 83.

future scope of Shāfi'ī scholarship.”<sup>185</sup> Below, however, I will provide some example of Ibn Ḥajar's juristic innovations exemplifying that despite these restrictions, there was still room for innovative juristic operations and contributions. These types of compartmentalized *ijtihād* (*ijtihād juz'ī*) that does not overhaul the Shāfi'ī legal methodology or rulings.

### What is the Masterpiece?

*Tuḥfat al-muḥtāj* is Ibn Ḥajar's is one of the most celebrated commentarial expansums. The book studies, explains, critiques, and comments on al-Nawawī's referential digest of *Minhāj al-ṭālibīn*. Each of the two texts represents the highest most authoritative legal text in their respective genres. Both the *Tuḥfa* and al-Ramlī's *Nihāyat al-muḥtāj*, also a commentary on *Minhāj*, are considered the two most authoritative late commentaries in the Shāfi'ī school, to the extent that, as mentioned previously, Shāfi'īs agree that no fatwa can contradict whatever these two commentaries agree on. Although the genre of expansums and the writing of commentaries was discussed in Chapter One, the following note is relevant. In theory, authors compose their works based on the belief that they can be understood on their own, without needing an explanation or commentary.<sup>186</sup> Explaining his reasons behind writing the *Tuḥfa*, in its opening, Ibn Ḥajar asserts in his Introduction,

For a long time I have been thinking about gracing myself (*atabarrak*) by serving a book of *fiqh* by the godly spiritual pole, the godly scholar, and the uncontested Friend of Allah, the indisputable verifier (*muḥarir*) of the *madhhab* Abī Zakariyyā Yaḥyā al-Nawawī, may Allah sanctify his soul and illuminate his grave. It is now, the twelfth of [the month of] Muḥarram, [of the year] nine hundred and fifty-eight [1551] to serve his methodology, which is explicitly clear

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<sup>185</sup> Ibid., 293, 295.

<sup>186</sup> 301.

and implicitly full of treasures and resources, by way of summarizing and approving its recycled commentaries, and answering to its expansive examinations, restricting lengthy discourse to evidence and relevant disagreement and justification, and to citing opinions and examinations to their authors. This is because high aspirations have been suspended from performing verification, let alone when they are lengthy. I shall resort to the opposite of that [i.e. succinct discourse], by way of rebutting its analogy or underlying cause (*'illah*), or what is detective about the original text in its briefness.<sup>187</sup>

Short as it is, unpacking this previous passage is key to grasping and identifying the conceptual operations that take place in a commentator's mind. As Ibn Ḥajar posits, summarizing, reviewing and approving the findings of other commentaries, evaluating the original texts examinations and conclusions, proving and verifying its conclusions and verifications, demonstrating the values and subtle points of *Minhāj*, and supplementing its formulated rules with scriptural evidence--are all part of objectives of a juristic commentary. This chapter will include below some examples of these functions. Also, while providing supportive juristic evidences to al-Nawawī's arguments, it must be noted Ibn Ḥajar does not hold back from differing with al-Nawawī when the latter's independent legal preferences differ with Shāfi'ī doctrines. All the above are among the many reasons why scores of later Shāfi'ī experts revere the *Tuhfa*.

With regard to the genealogy of *Tuhfa* and the influences that went into it, it must be noted that between the time of al-Nawawī and Ibn Ḥajar, there were a little above sixty other commentaries written on *Minhāj*; in addition to few dozen other related works, between glosses,

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<sup>187</sup> Ibn Ḥajar Ibn Ḥajar, *Tuhfat al-muhtāj*, with the two supra-commentaries of Shaykh 'Abd al-Ḥamīd al-Sharwānī and Aḥmad b. Qāsim al-'Abādī (Damascus: Dār al-Fikr, 2014), 1:5-6.

abridgments and poetic renditions.<sup>188</sup> Ibn Ḥajar was clearly familiar of some of these works, especially since several of them were by his own teachers. Chief among them is the abridgment by Shaykh al-Islam Zakariyyā al-Aṣārī, *Manhaj al-ṭulāb*, and four different commentaries by Ibn Ḥajar's own teacher, Muḥammad al-Bakrī al-Ṣidīqī (d. 952/1545). With regard to tracing main influences on Ibn Ḥajar in his *Tuhfa*, al-Saqqāf argues in *al-Fawā'id al-Makkiyya*, Ibn Ḥajar particularly benefited from al-Jalāl al-Maḥallī's (846/1459) commentary on *Minhāj*.<sup>189</sup>

In terms of structure, *Tuhfa* follows that of *Minhāj*, with its seven main chapters, which vary in length. It is a little more than double the *Minhāj*'s size. *Tuhfa* is a running commentary that includes meticulous juristic, linguistic, theological, and jurisprudential investigations. The most commonly circulated edition of the commentary of *Tuhfa* is printed alongside two glosses and consists of ten volumes. In specific, it is arguably the most referenced late work, and its centrality for fatwa cannot be understated. The book continues to attract study groups and has been published in several editions.<sup>190</sup>

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<sup>188</sup> The Dār al-Minhāj edition of al-Nawawī's *Minhāj*, the secondary edition I use in this research, provides a detailed list of all the works that are related to *Minhāj* and some information on their authors, including their date of death. Between al-Nawawī's date of death (d. 676/1277) and that of al-Haythamī (d. 974/1567), the list give 63 commentaries on *Minhāj*: Yahyā b. Sharaf al-Nawawī, *Minhāj al-ṭālib wa 'umdat al-muftīn*, edited by Muḥammad Muḥammad Āshūr (Jeddah: Dār al-Minhāj, 2020), 24-61.

<sup>189</sup> Al-Saqqāf, *al-Fawā'id*, 37.

<sup>190</sup> For example, here is a link from the Facebook page of an Egyptian distributor, accessed on March 2020: [https://www.facebook.com/search/top/?q=%22%D8%AA%D8%AD%D9%81%D8%A9%20%D8%A7%D9%84%D9%85%D8%AD%D8%AA%D8%A7%D8%AC%22&epa=SEARCH\\_BOX](https://www.facebook.com/search/top/?q=%22%D8%AA%D8%AD%D9%81%D8%A9%20%D8%A7%D9%84%D9%85%D8%AD%D8%AA%D8%A7%D8%AC%22&epa=SEARCH_BOX) Also, a recent ten volume critical edition of Dār al-Ḍiyā', Kuwait, edited by a Dagestanian scholar, Anwar b. Abī Bakr al-Shaykh al-Dāghistānī, has attracted lots of attention, especially on social media, with lots students of Shāfi'ī fiqh and buyer putting their pictures carrying the box it comes in online. Also, in another example of the continuous interest of the work, A preface to a recent abridgment of *Tuhfa* written by Aḥmad al-Ḥaddād, the current Mufti of Dubai, calls Ibn Ḥajar the "seal of authors... and the reliance of the late jurists and ḥadīth specialists, because of its [i.e. *Tuhfa*] comprehension of the texts of Imam al-Shāfi'ī, the master of the *madhhab*, with additional tracing of the opinions of imams of the *madhhab*, with his verifications, rule-reformulations, and authentication": Muṣṭafa b. Ḥāmid b. Sumayṭ, *Mukhtaṣar al-masā'il al-fiqhiyya li tuḥfat al-muḥtāj bi sharḥ al-Minhāj* (Tarim: Maktabat Tarīm al-Ḥadītha, 2013), 4.

As for the reception and status of *Tuhfa*, there are several indications of its rank in the Shāfi'ī literary tradition. In demonstrating its high status the author of *Maṭlab al-Īqāz*, 'Abd Allāh Balafqīh asserts,

Know that the explanatory commentary (*sharḥ*) of *al-Minhāj* titled *tuhfat al-muhtāj*, since it was the last of the authored works by Shaykh Ibn Ḥajar, may Allah most High grant him mercy, in substantive aspects of law (*furū' fiqhyya*), and since it was audited to him numerous times, it was edited and refined, so much so that it became the most known among his works in its refinement and the most obvious in its verification and preponderance. Thus, when it reached such a rank, the Muslim community received it approvingly by the Imams of Islam (*talaqathu bil-qabūl a'immat al-Islām*), and it became a reliable work for laymen and specialists alike, and a referential work for judges and rulers.<sup>191</sup>

Seeing juristic erudition of the commentarial engagement of *Tuhfa*, many scholars and jurists were inspired to write glosses that comment on it. They are twenty-two in total. Interestingly, one of them is Ibn Ḥajar's own, titled *Turfat al-faqīr bi-Tuhfat al-Qadīr*. However, it is incomplete.<sup>192</sup> After introducing the text, its author, its influence, genealogy and rank, This chapter will turn now to studying the linguistic and the juristic aspects of the text.

## Language and the Masterpiece

What kind of language serves as a vehicle suitable for achieving the purposes of an advanced legal commentary? What are the main juristic operations it needs to perform? Based on the conclusion of Chapter Two, one of the most lasting and significant influences of al-Nawawī on later Shāfi'ī literary tradition is the unanimous adoption of his juristic terminological conventions by later scholars. In al-Nawawī's case, he needed to invent terms that identify the

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<sup>191</sup> Balafqīh, *Maṭlab*, 96.

<sup>192</sup> Rashīd, *Ibn Ḥajjīr*, 54.

authors of legal opinions under consideration, the level of strength of these opinions, and the strength of the relevant disagreement surrounding them. These various opinions existed in the Shāfi'ī *madhhab* before al-Nawawī; whether by al-Shāfi'ī, 'old' and 'new' opinions, his Companions, the early *mujtahids*, known as *aṣḥāb al-wujūh*, who died before the beginning of the fourth/tenth century, or later scholars. Having adopted the consensus of Shāfi'ī scholars that the agreements of al-Nawawī and al-Rāfi'ī constitute the doctrines of the school, Ibn Ḥajar's scope of juristic evaluation, and by extension his terminological language, is different from that of al-Nawawī. Some scholars who came after al-Nawawī explained and refined his glossary. Ibn Ḥajar is no exception. In addition to adopting and building on al-Nawawī's terms, he added to them new ones that serve his new and unique juristic purposes, which are different from al-Nawawī's. Other Shāfi'ī author-jurists saw his terminological contributions as worthy of dedicating books to studying them.

### Terminological Innovations

I will turn here to examining Ibn Ḥajar's new terms in his *Tuhfa*. Terminological innovations constitute a significant element of the late-classical commentaries (*ʿaṣr al-ḥawāshī*) which, to my knowledge, has not been studied. A cursory look at the *Tuhfa* reveals the presence of terminological innovation that serves the commentarial purposes of the work. It is important to keep in mind that the most central purpose and focus of the deep reading performed in commentaries is to arrive at, authenticate, and prove the doctrines of their respective legal school. It is through this lens that we can understand the scope and purpose terminological contribution of a commentator like Ibn Ḥajar. The terms Ibn Ḥajar uses in his debates and



engagements with his main interlocutors, other commentators on *Minhāj*. Engagement with other commentators for the sake of formulating the doctrines of the *madhhab* is the central mission of the juristic commentarial tradition. Below I will engage with two examples of Ibn Ḥajar's main terms, one relating to juristic authorities and the other to doctrinal issues. This will be followed by an examination of independent works that focused on studying the special terms of Ibn Ḥajar in the *Tuhfa*.

The first example I want to engage with is the term 'commentator' (*shāriḥ*) that Ibn Ḥajar uses wildly. Sometimes Ibn Ḥajar plainly mentions the name of his interlocutor, at others the identity of the commentator is kept anonymous. We see in the following examples a succinct and precise representative of such an engagement. For example, in the section on "Facing the Ka'ba, What Constitutes a Substitute for it, and the Subsequents of that", Ibn Ḥajar affirms the obligation to direct one's prayer to the very physical structure of the Ka'ba. These measures include taking all needed steps to achieve this goal, as much as one possibly can. He starts by disagreeing with the opinion of Ibn Surayj that his opinion to face Mecca suffices is wrong, along with discrediting an inauthentic *ḥadīth* that the latter bases his opinion on. He states that the opinion of another scholar who remains unnamed but still referred to as 'the commentator' regarding not accepting intense fear as an excuse for praying without facing the Ka'ba is "problematic."<sup>193</sup> He then moves to discussing and disproving Judge 'Alī al-Qunawī (d. 729/1329), arguing that if someone is in front of the Ka'ba, parts of their body, for instance their arm, should face the Ka'ba. He then moves on to the following encounter with a commentator (the original text from al-Nawawī's *Minhāj* is in bold).

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<sup>193</sup> Ibn Ḥajar, *Tuhfa*, 1:515-516.

The obligation to face the direction of the Ka'ba (*qibla*) (**specifically relates**) to cases when it is easy, [during] (**the entering into the prayer by invoking 'Allahu akbar' (*taḥarrum*)**). Yes, the relied-upon doctrine (*mu'tamad*) with regard to [being on a mount or vehicle used for traveling] is that it has to be stationed for long. This is inline with the expression of a commentator. Based on that, it appears that the intention is that, that which customarily breaks the continuation of traveling. So, as long as it is stationed, s/he [i.e. the traveller] cannot only pray on it except if facing the direction of the *qibla*.<sup>194</sup>

As we can see, at every turn, Ibn Ḥajar is engaging with different opinions and authors, relentlessly verifying and formulating the doctrines of the *madhhab*. In the previous example, he agreed with the unnamed commentator. A quantitative search of the occurrences of the word *shāriḥ*, i.e., commentator, in the text of *Tuḥfa*, shows that it occurs 380 times.<sup>195</sup> This shows the extent of the engagement that is part of the commentarial function.

In another example, in the section on the expiation (*kaffāra*) for engaging in intercourse during the fasting time in the month of Ramaḍān, we find the following engagement with another commentator. In this section, al-Nawawī asserts that an expiation must be made whether the partner is a spouse or otherwise, but not if the sexual encounter happens while fasting outside Ramaḍān, during the dispensation from fasting while traveling, or for whoever thinks that the time for fasting has not began. Ibn Ḥajar qualifies this position here by arguing that in this example,

... there is no expiation needed, even if one considered sinful, if one believed that sunset has entered without a proof or while doubting, or discovered after intercourse that it is daytime. The individual here did not intend to violate. Paying expiation can be averted by mere doubt, in the same way a corporal punishment (*ḥadd*) is. Therefore, sinfulness may be disregarded, based on what preceded; that breaking one's fast by the end of the day can only happen if based on *ijtihād* [i.e. that the time for fasting has ended with sunset entering]. Similarly, there is no expiation here,

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<sup>194</sup> Ibid., 1:521.

<sup>195</sup> For this statistical investigation, I used an electronic search engine. See "al-Maktaba al-Islamiyya", website of the Islamweb.net, accessed on 18 April 2020: [https://islamweb.net/ar/library/index.php?page=websearch&bk\\_no=20](https://islamweb.net/ar/library/index.php?page=websearch&bk_no=20)

based on what a commentator has mentioned. Others have looked into the matter and made a distinction whether one is doubting if they have intended to fast [i.e. outside Ramaḍān] or otherwise.<sup>196</sup>

Here, as we can see, is an attempt to cite and agree with other opinions of other commentators on a secondary probable case, in order to provide a comprehensive treatment on the topic of expiation for breaking one's fast due to a sexual encounter.

The second term I want to engage with, one that relates to *Tuhfa*'s doctrinal investigations, is the unique term '*alā al-mu'tamad*, or literally 'based on the adopted [doctrine]'. The term indicates the outcome of verifying two opinions by al-Shāfi'ī. The term *mu'tamad* was first coined and used in a technical fashion by Ibn Ḥajar's teacher, Shaykh al-Islam Zakariyyā al-Anṣārī.<sup>197</sup> An electronic numeration of the number of times the term appears in *Tuhfa* shows that it occurs 420 times.<sup>198</sup> Here is an example of its use:

... A written contract (does not dissolve), even if flawed (because of insanity), or the fainting (of the slave who has a contract to be freed after paying for his freedom in installments (*mukātab*)) or imposing interdiction upon him due to lunacy, in case such a measure is needed from one of the two parties as in the case of pawn. If he [the slave] is proven to own no money, the master can dissolve the contract, thus returning to his possession. In this case, the master has to sustain him, if it appears that the slave does not own any money that covers the amount needed to dissolve the contract and set him free. The Imam said that we prefer it to be in the hands of the master, otherwise that dissolving the contract is imposed as in the case of lack of money, and then afterwards it appears. If the slave possesses money he may go to the ruler and affirm the written contract and that the time of payment is due, demanding the term of the contract, admitting the oath of disclosure (*yamīn al-istizhār*) that him due remains unfulfilled. (And) at this time, (the

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<sup>196</sup> Ibid., 3:494.

<sup>197</sup> Muḥammad b. 'Umar al-Kāf, *al-Mu'tamad 'inda al-Shāfi'iyya: dirāsa naẓariyya taṭbīqiyya*, an MA thesis, self-published, p. 16, accessed on 2 April 2020: ([https://ia800700.us.archive.org/21/items/gawish2040\\_yahoo\\_201810/%D8%A7%D9%84%D9%85%D8%B9%D8%AA%D9%85%D8%AF%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf](https://ia800700.us.archive.org/21/items/gawish2040_yahoo_201810/%D8%A7%D9%84%D9%85%D8%B9%D8%AA%D9%85%D8%AF%20%D9%81%D9%8A%20%D8%A7%D9%84%D9%81%D9%82%D9%87%20%D8%A7%D9%84%D8%B4%D8%A7%D9%81%D8%B9%D9%8A.pdf))

<sup>198</sup> See "al-Maktaba al-Islamiyya", website of the Islamweb.net, accessed on 2 April 2020: [https://islamweb.net/ar/library/index.php?page=websearch&bk\\_no=20](https://islamweb.net/ar/library/index.php?page=websearch&bk_no=20)

judge) must (deliver) to him out of his money (if there is money that belongs to him) which the master has not taken away, even in the case of a slave who interdicted, if there is an interest for the master to set the slave free based on the relied upon doctrine (‘*ala al-mu‘tamad*), since he acts on his [the slave’s behalf] due to his lack legal capacity; unlike in the case of an absent slave whose money is present.<sup>199</sup>

This term, as shown in the above example, shows that the scope of Ibn Ḥajar’s juristic rule-formulation goes as far back as to evaluate the opinions (*aqwāl*) of the eponymous founder.

## Terminological Studies of the *Tuḥfa*

There are two main books that examine the terminological innovation and contribution of *Tuḥfa* to the commentarial tradition. The first is by the eminent eighteenth-century scholar Muḥammad b. Sulaymān al-Kurdī (d. 1194/1780), author of the influential book on methodology of *iftā’* for the late Shāfi‘īs, *al-Fawā'id al-Madaniyya fī man yuftā bi-qawlihi min al-Shāfi'īyya*, titled ‘*Uqūd al-durrar fī bayān muṣṭalaḥāt Tuḥfat Ibn Ḥajar*.<sup>200</sup> The second book is *Tadhkirat al-Ikhwān fī bayān muṣṭalaḥāt Tuḥfat al-muḥtāj li-Ibn Ḥajar* by al-Kurdī’s student, Muḥammad b. Ibrāhīm al-‘Alījī al-Qulhānī (date of death unknown).<sup>201</sup> This interest of both al-Kurdī and his student in the terms of *Tuḥfa* is a testimony to the importance of these terms to later juristic investigations, especially those focusing on commentaries. Al-Kurdī’s work, in essence, is an extensive and careful study that focuses on three central terms that Ibn Ḥajar mentions throughout the *Tuḥfa* in numerous juristic discussions. The first term is the previously discussed “a commentator” (*shāriḥ*), which we encountered previously. Ibn Ḥajar uses it widely. There is

<sup>199</sup> Ibn Ḥajar, *Tuḥfa*, 10:411.

<sup>200</sup> Muḥammad b. Sulaymān al-Kurdī, *‘Uqūd al-durrar fī bayān muṣṭalaḥāt tuḥfat Ibn Ḥajar* (Amman: Dār Arwiqa lil-Dirāsāt wa al-Nashr, 2015).

<sup>201</sup> Muḥammad b. Ibrāhīm al-‘Alījī al-Qulhānī, *Tadhkirat al-Ikhwān fī bayān muṣṭalaḥāt Tuḥfat al-muḥtāj li-Ibn Ḥajar* (Cairo: Dār al-Iḥsān, 2018).

a common misunderstanding that the identity of the “commentator” is mainly Ibn Shuhba (d. 851/1448), as being one of the main interlocutors of Ibn Ḥajar throughout his *Tuhfa*.<sup>202</sup> Through numerous examples, and tracing the references and the resemblance of the juristic position of several commentators, al-Kurdī convincingly concludes that the identity of the unnamed commentator cannot be restricted to Ibn Shuhba.<sup>203</sup> The second term that al-Kurdī engages with in detail is the common phrase “some of them have said” (*qāla ba ‘duhum*). Again, through examining many examples where the term is used and cross-referencing, al-Kurdī concludes that the common conception that the person meant here is al-Jalāl al-Ramlī, Ibn Ḥajar’s main rival, is wrong. Rather, he concludes that it can mean others as well; mainly Ibn Ḥajar’s contemporaneous commentators on *Minhāj*, especially the Yemeni scholar Abū al-‘Abbā al-Ṭanbalāwī and some of his colleagues.<sup>204</sup> The third term is “as in” (*kamā*), which he concludes is a code indicating that whatever comes after it is the adopted doctrine.<sup>205</sup>

The second, more exhaustive work that focuses on Ibn Ḥajar’s terms is al-Quhlānī’s *Tadhkirat al-ikhwān*. The book studies the meaning and uses of thirteen terms unique to the *Tuhfa*, in addition to few other relevant investigations; like an explanation of the books that represent the doctrines of the school for *iftā*’ purposes, on following a *madhhab*, on the conditions of what nullifies a ruling of a judge, and few biographies of important Shāfi‘ī jurists. The thirteen terms are: (1) ‘our master’ (*shaykhunā*), meaning Shaykh al-Islam Zakariyyā al-

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<sup>202</sup> Muḥammad Ibn Qāḍī Shuhba abū al-Faḍl, *Bidāyat al-muḥtāj fī sharḥ al-minhāj*, edited by Anwar b. Abī Bakr al-Shaykhī al-Dāghistānī (Jeddah: Dār al-Minhāj, 2011).

<sup>203</sup> Ibn Qāḍī Shuhba abū al-Faḍl, *Bidāyat*, 46.

<sup>204</sup> Ibid., 60.

<sup>205</sup> Ibid., 63.

Anṣārī, the teacher of Ibn Ḥajar and the ‘founder’ of the aforementioned commentarial circle; (2) ‘the commentator’ (*al-shāriḥ*) or ‘the verifying commentator’ (*al-shāriḥ al-muḥaqqiq*), indicating al-Jalāl al-Maḥllī; (3) ‘the Imam’ (*al-imām*), the title of The Imam of the Two Sanctuaries al-Juwaynī (d. 478/1085); (4) ‘the Judge’ (*al-qāḍī*), meaning Judge Hussayn b. Muḥammad (d. 462/1070), of Khorasan; (5) ‘a commentator’ (*shāriḥ*), with an indefinite article, which can mean any of the commentators of the *Minhāj* or other works; (6) ‘according to what some have said’ (*kamā qālahu ba‘ḍuhum*) or ‘according to what is implied by their talk’ (*kama iqtadā kalāmuhum*), if used conditional to the being combined with *kamā*, sometimes signifies the doctrine while at other times it may not; (7) ‘based on what their talk implies’ (‘*alā ma iqtadā kalāmuhum*) or ‘based on what so-and-so have said’ (‘*alā mā qālahuh fulān*), a formula indicating repudiation; (8) ‘based on the relied upon position’ (‘*alā al-mu‘tamad*), constituting the ‘more apparent’ (*al-aẓhar*) between two opinions of al-Shāfi‘ī; (9) ‘based on the more valid perspectives’ (‘*alā al-awjah*), i.e. of al-Shāfi‘ī’s companions, indicating the preponderant judgment between two of their positions; (10) ‘that which is apparent’ (*alladhī yaẓhar*), signifying that the opinion under investigation is based on the research finding of al-Shāfi‘ī’s companions; (11) ‘the [upshot of] research’ (*al-baḥth*), meaning that which is clearly understood from the general discourse of the companions of al-Shāfi‘ī that they transmit from the founder through general means of transmission; (12) if using diacritical, the term ‘possible’ (*muḥtamal* مُحْتَمَل) is used, then indicating preponderance, while ‘probable’ (*muḥtamil* مُحْتَمِل) means there is no preponderance (and if there is no diacritical differentiation, then the position must be checked in the books of later scholars), and, lastly; (13) ‘the choice’ (*al-ikhtiyār*), indicating the

juristic inference of a scholar based on his jurisprudential evidence by way of independent reasoning (*ijtihād*), which is different from the approved opinions within the *madhhab*.<sup>206</sup>

The above shows that, first, Ibn Ḥajar adopted al-Nawawī's original terminological conventions, which the former used in his extensive rule-formulation of the entire legal corpus that preceded him. An example here is *'alā al-awjah*, which is built on al-Nawawī's own *al-awjah*, lit. 'more valid' perspective, indicating a preponderant opinion belonging to al-Shāfi'ī. Second, similar to al-Nawawī, Ibn Ḥajar invented some terminological conventions that serves the unique needs of his juristic orientations. These include *shāriḥ* and *qāla ba'ḍuhum*, both of which pertain to discussions and rule-formulations based on the opinions of jurists and commentators that came after al-Nawawī. Also the original terms like *al-baḥṭh* and *al-ikhtiyār*. This last one is especially important as it became the standard text to deal with such verifications of opinions that are evidence based but are from outside the known opinions of al-Shāfi'ī, especially, as shown in Chapter Two, in relation to al-Nawawī.

Lastly, before moving to examining the juristic operations of *Tuhfa*, a brief engagement with Ibn Ḥajar's language in terms of its tone and level of its difficulty is needed. While al-Nawawī is known for his lucid, precise, and accessible language and prose, to the extent that even for his advanced legal manual *Minhāj*, "a student of sacred knowledge can read and understand it without any need for explanation," the same cannot be said of Ibn Ḥajar.<sup>207</sup> Ibn Ḥajar's language is verbose and can at times be complex and hard to follow. Despite his commentary on *Minhāj* being hailed as the most authoritative and erudite, it is also widely seen

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<sup>206</sup> Ibid., 57-61.

<sup>207</sup> Sālim b. Aḥmad b. Abī Bakr al-Khaṭīb, *Ikhtiyārat al-Imām al-Nawawī allatī tafarad bihā min al-madhhab al-Shāfi'ī: dirāsa muqārana* (Amman: Dār al-Nūr al-Mubīn lil-Nashr wa al-Tawzī', 2016), 32.

as “the most difficult commentary, with a difficult phrasing.”<sup>208</sup> Along with acknowledging Ibn Ḥajar’s juristic mastery, a cursory reading of *Tuhfa* also demonstrates that his language is verbose and at times obscurely academic and wordy; especially when compared to that of al-Nawawī’s, as well as that of his rival jurist, al-Jalāl al-Ramlī.

## The Masterpiece and the Law

After al-Nawawī and al-Rāfi‘ī, later Shāfi‘ī scholars worked mainly based on the foundation that these Two Masters developed, explaining, defending and expanding on the doctrines that they two of them arrived at. As shown in Chapter One, the commentarial efforts of later scholars ultimately focused more on al-Nawawī’s works. One important observation here is that there was a shift in the genre containing the Shāfi‘ī doctrines from digests, which mainly contained the doctrines cultivated by al-Nawawī and al-Rāfi‘ī, to expansums. The expansums that housed Shāfi‘ī *ijtihād* and doctrines, as we shall see below, were authored by a circle of scholars consisting of Shaykh al-Islam Zakariyyā al-Anṣārī (d. 926/1520) and his erudite students. This circle includes: al-Shihāb al-Ramlī (d. 957/1550), and his son al-Shams al-Ramlī, (d. 1004/1596), al-Khaṭīb al-Shirbīnī (d. 977/1570), Ibn Ḥajar Ibn Ḥajar, and others.

Ibn Ḥajar’s juristic operations within the framework of the Shāfi‘ī school can be characterized by his uncompromising attitude towards compliance to Shāfi‘ī orthodoxy and defense of the Shāfi‘ī school, its founder, and its doctrine. Unlike al-Nawawī, who performed

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<sup>208</sup> “Sharḥ fath al-qarīb al-mujīb: muqaddimat al-fiqh, al-dars al-thānī,” Youtube video, 1:32:52, “Dr. Labīb Najīb ‘Abd Allāh,” 6 October 2018: [https://www.youtube.com/watch?v=7MAUF\\_KHTnA&ab\\_channel=%D8%AF%D9%84%D8%A8%D9%8A%D8%A8%D9%86%D8%AC%D9%8A%D8%A8%D8%B9%D8%A8%D8%AF%D8%A7%D9%84%D9%84%D9%87](https://www.youtube.com/watch?v=7MAUF_KHTnA&ab_channel=%D8%AF%D9%84%D8%A8%D9%8A%D8%A8%D9%86%D8%AC%D9%8A%D8%A8%D8%B9%D8%A8%D8%AF%D8%A7%D9%84%D9%84%D9%87)



independent evidence-based inference through which he arrived at numerous unique juristic preferences (*ikhtiyārāt*), Ibn Ḥajar, despite his outstanding juristic credentials, was a different jurist. He was highly committed to the principles and doctrines of the Shāfiʿī school in a way that eclipsed any personal interest in pursuing any unique or independent positions. Ibn Ḥajar could have surely performed juristic review between established and existing legal opinions, in addition to defending Shāfiʿī doctrines. However, one can characterize the majority of his legal work as a defense of the opinions of the Two Masters or one of them, especially in the face of later scholars who disagreed with the al-Nawawī, especially al-Bulqīnī, al-Isnawī, and al-Adhruʿī.<sup>209</sup> Ibn Ḥajar never chose opinions that differ the school's doctrines. Even though he passionately defends the doctrines that al-Nawawī and al-Rāfiʿī agree on, he never agreed with al-Nawawī on any of the latter's independent juristic preferences, or *ikhtiyārāt*. "Shāfiʿī doctrines are not established by the *ikhtiyārāt* of al-Nawawī, may Allah be well pleased with him, as he uses this phrasing to indicate that which is preponderant for him, not because it is the doctrine. We are Shāfiʿīs, not Nawawīs," Ibn Ḥajar asserted in one of his fatwas by way narrating this previous statement of Walī al-Dīn al-ʿIrāqī (826/1422).<sup>210</sup>

Ibn Ḥajar is a faithful defender of the Two Master's jurisprudence, without a known exception. According to Rashīd, the types of legal contributions of Ibn Ḥajar performs in *Tuhfa*, can be classified into the following categories: (1) providing evidence of the established rulings of the *madhhab*; (2) exercising rule formulation or preponderance (*tarjīḥ*) between the rulings accepted within the *madhhab*; (3) unifying what is seemingly contradictory from among the

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<sup>209</sup> Rashīd, *Ibn Ḥajar*, 105.

<sup>210</sup> Aḥmad b. Ibn Ḥajar al-Haytamī, *al-Fatāwa al-fiqhiyya al-kubrā*, edited by ʿAbd al-Latīf ʿAbd al-Raḥmān (Beirut: Dār al-Kutub al-ʿIlmiyya, 2018), 4:12.

legal texts of the *madhhab*; (4) restricting what is seemingly unrestricted within the rulings of the *madhhab*; (5) identifying legal distinctions among the positions of the *madhhab*; (6) reexamining and tracing the debates and opinions of the jurists of the *madhhab*, and; (7) issuing fatwas based on extracting corollary rulings (*tafrī'*).<sup>211</sup> I will attempt below to provide a few examples and brief analysis of some of some of the aforementioned juristic operations, in an attempt to demonstrate the types of *ijtihād* and legal thought of Ibn Ḥajar. By this I hope to show that Ibn Ḥajar's *ijtihād*, limited in scope as it may, is a testimony that independent and innovative juristic efforts were still performed in the tenth/sixteenth century by the jurists like Ibn Ḥajar; even if within areas and scope different from what preceded him, based on the new needs of the ever-evolving precedent-based legal tradition of the Shāfi'ī *madhhab*.

## Examples of the Juristic Contributions of the *Tuhfa*

### Rule-Formulation from among Accepted Opinions

In this first example, Ibn Ḥajar exercises rule-formulation (*tarjīh*) between different opinions that fall within the established views of the *madhhab*. The issue is whether combining a worldly intention with a religious one in the same action is valid. This example is especially important since it relates to one of the most salient issues in Islamic law, i.e. intention (*niyya*). As we can see here, as part of his *ijtihād* on the topic, Ibn Ḥajar engages with this topic by rejecting, critiquing or building on some of the biggest authorities of the Shāfi'ī school. He definitively chooses an innovative opinion, rejecting the known opinion of the 'Sultan of the 'ulamā' al-'Izz b. 'Abd al-Salām (d. 660/1262), who states that combining worldly and other-worldly intentions

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<sup>211</sup> Rashīd, *Ibn Ḥajar*, 109-203.

leaves no reward whatsoever for any given action. Instead, he builds on al-Ghazālī, who claims that if the motive of the hereafter is predominant, outweighing that of the here-now, then the action will be rewarded. Ibn Ḥajar performs preponderance between these opinions arguing that, unless the worldly motive involved is prohibited, like showing off, one will be reward in a way commensurate with the religious intention alone. Thus, he comments on al-Nawawī's text in *Minhāj* (which appears throughout all the following examples in bold), as follows,

**(Whosoever intended cooling off)** or cleaning up [by washing up], **(combined with a recognized intention)**, as previously mentioned, **(then this action is valid)**; i.e. this does not ruin one's recognized intention, **(as per the valid (*ṣaḥīḥ*) opinions)**. If one did not have a special intention, then there is no invalid sharing of intentions. Things are treated differently though with regard to religious reward (*thawāb*). There is a disagreement whether a *thawāb* is altogether granted in this case. The stronger opinions (*awjah*), based on my explanation, along with its evidences in the supra-commentary of *al-Īdāh* and other works, is that one is rewarded for the intention of worship in a way commensurate with its scale.<sup>212</sup>

This position is different from Ibn 'Abd al-Salām, who denies that there is a reward altogether.

It is also different from al-Ghazālī, who argues that if an act of worship is mixed with a prohibited matter like showing off, there shall be no reward. This is markedly different from the *ijtihād* of the former, who believes that the judgment depends on which of the two motives outweighs the other. There will also be reward for the otherworldly motive according to Ibn Ḥajar, even if it is little; unlike al-Ghazālī who believes that this will only happen if the otherworldly motive exceeds the worldly one.<sup>213</sup>

Another instance of performing *tarjīḥ* is on the question of whether it is allowed for men to wear more than one silver ring. Unlike al-Ramlī and al-Khaṭīb al-Shirbīnī, Ibn Ḥajar

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<sup>212</sup> Ibn Ḥajar, *Tuhfa*, 1:196.

<sup>213</sup> Rashīd, *Ibn Ḥajar*, 134.

absolutely prohibits wearing more than one, whether on one hand or two, arguing, “What is ought to be a relied-upon position (*alladhī yattajih i ‘timāduh*) is the opinion in [al-Nawawī’s] *Rawḍa* which is clear in absolutely prohibiting [wearing] multiple rings.”<sup>214</sup> Unlike in instances where al-Nawawī chooses an opinion independent from both the founder and established opinions within the school, Ibn Hajar’s *ijtihād* leads him to adopt this position of only allowing a single ring, contrary to other late-classical authorities in the *maddhab*.

### Restricting the Unrestricted

As an example of an *ijtihād* in restricting a seemingly general, unrestricted rule, based on the doctrines of the *madhhab*, there is the issue of whether a copy of the Qur’an that was desecrated with a ritually filthy matter should be washed, even if this results in destroying the physical copy. After citing the predominant opinion that deems the washing obligatory, regardless of the consequences, Ibn Hajar restricts his innovative position to cases in which filth touches the actual text of the Qur’an, not the cover or the margins. As part of the investigation on filth and how it should be removed, Ibn Hajar asserts,

**(The more apparent opinion (*aẓhar*) is that the water used in the process of purification (*ghusāla*) is ritually clean (*ṭāhir*)),** whether for a matter that is ritually deemed impure (*najāsa*) that pardoned or otherwise. Distinguishing between the two is not valid, because the place subject for performing this distinction is the locale before cleansing was performed. This is supported by what was previously examined, that the pardoned impurities used water (*musta‘mal*) **(if it separates)** from the place it contaminated, while it is little **(without changing)**, in weight, keeping in mind that the water a dress absorbs and gives off in clear dirt. Uncertainty in both cases is valid; **(and if the place is cleaned)** by there not being a taste, color, or smell [of filth] that can be easily removed... Someone issued a fatwa regarding a book of Qur’ān (*muṣḥaf*) that

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<sup>214</sup> Ibid., 3:276.

was desecrated with a ritual impurity that cannot be pardoned, adjuring that it has to be washed, even if this leads to damaging it, even if it belongs to an [minor] orphan. This should only be made obligatory on the content if the filth touched the [text of] Qur'ān; unlike if it is on the leather cover or the margins.<sup>215</sup>

As we can see, Ibn Ḥajar's *ijtihād*ic synthesis here results in the possibility of preserving a desecrated physical copy of a Qur'ān, which was much more expensive before mass printing. This was achieved by restricting the rule that was previously unrestricted, making it obligatory to wash impurities off. Previous judicial reviews of the matter concluded that if a copy of a Qur'an is dirtied, it must be washed completely; even if this results in damaging it. Not only did Ibn Ḥajar restrict this ruling on the obligation to remove impurity, but he did so in relation to Islamic scripture, a revered object, and thus preserving the copy, unless the filth touches the actual scripted text.

### **Distinguishing Between Juristic Positions**

As for identifying distinctions among the legal positions within the *madhhab*, the following example which deals with distinguishing the rulings on abortions and coitus interruptus (*'azl*), gives a good idea of Ibn Ḥajar's juristic precision in creating subtle and necessary juristic distinctions. While some scholars, like Ibn 'Imād al-Aqafahsī (d. 808/1405), argue that it is prohibited (*ḥarām*) to cause the abortion before the hundred and twenty day scriptural limit, by which the soul is 'blown into the fetus', which is said to be hundred twenty days from conception. Ibn Ḥajar draws the line between two abortion and coitus interruptus. In *Minhāj*, in the section 'The Term of Waiting that Ends With Delivering,' al-Nawawī asserts, "the waiting period (*'idda*) of a pregnant woman ends with delivery, conditional to the child's being

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<sup>215</sup> Ibid., 1:340-343.

attributed to the father is subject of the waiting period, even if based on a probability... it ends with a dead child, not a clot (‘*alaqa*), or tissues (*mudgha*) that have an undeveloped human form, as told by expert midwives. If it does not have a form, and they said ‘it is the origin of the human form’, it [i.e. the waiting period] is terminated according to the doctrine.”<sup>216</sup>

Commenting on the previous passage, Ibn Ḥajar moves on to argue,

They [the jurists] differed on intentional abortion when the period has not reached the established limit to blow the spirit, which is hundred and twenty days. What is seen as valid for Ibn al-‘Imād and others who agree with him is that it is prohibited. This should not be confused with the permissibility of performing coitus interruptus (‘*azl*), because of the clarity of the difference between them, as when it is ejaculated, the sperm is a mere inanimate object, that is not yet ready for life in any way. <sup>217</sup>

### Rewriting a Baseless Cause for a Rule

Ibn Ḥajar’s juristic operations are more diverse than the previous examples show or this space allows. Other than performing rule-formulation from among available juristic positions accepted by the *madhhab*, restricting ruling that were left without limitations, identifying the different applicabilities of juristic ruling on different cases, I want to briefly present two more examples of these diverse operations. This example will be from the sections on interpersonal transactions (*mu‘āmalāt*). First, on re-examining and tracing the previous debates and positions of the scholars of the *madhhab*, here is an example related to favoring one of the children in a will. In *Tuhfa*, Ibn Ḥajar contradicts the position of other scholars, including al-Rāfi‘ī, who deem it preferable for parents to not favor some of their children over others, especially boys; especially in relation girls’ inheritance or share from an endowment. He argues,

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<sup>216</sup> Al-Nawawī, *Minhāj*, 502.

<sup>217</sup> Ibid., 8:278.

It occurs to many to endow their money, while still fit, to males from among their children, with the intention of depriving the females. It has occurred several times that more than one individual has issued a fatwa declaring the endowment (*waqf*) in this case annulled. This must be reconsidered (*fiḥī nazar*). Rather, the valid perspective is that this is correct. Firstly, we do not submit to the assumption that the objective of deprivation [of the females] is sinful, since our imams [i.e. the Shāfi'īs], just like the majority of ulema, agree that giving money, be all or some, as a gift, endowment, or other, to a particular child/children does not enter into prohibition. This is even the case if there is no known excuse. This makes it clear that the intention of deprivation is not prohibited, since it is necessary to particularize [the bigger share] without a known excuse. They [the jurists] have allowed it, as you know. Secondly, submitting to the position of prohibiting this act is based on the belief in the existence of a sin that falls outside the actual endowment, like in the case of buying grapes for the sake of making wine out of it. How can this make it necessarily unlawful?

Ibn Ḥajar deems this act of favoring a certain child with a bigger share valid, arguing that, first, this is based on an unestablished assumption of the existence of a sinful intention to deprive a certain child from inheritance. Second, if this assumption cannot be established, there is another assumption that the endowment is thus annulled. Ibn Ḥajar also digs deeper and asserts that the actual intention to give a particular share of an inheritance or an endowment to a particular child is not sinful, in the first place. Therefore, the juristic rules based on this unestablished assumption are baseless and invalid.<sup>218</sup>

### **Extraction of Corollary Rulings**

As an example of issuing fatwas based on original extraction of corollary rulings (*tafrī'*), this ability to extract new rulings is a salient feature of Ibn Ḥajar's legal thought. Interestingly, with regard to whether it is better for someone who prays the dawn prayer in Mecca to perform or to circumambulate the Ka'ba or to stay until one prays the sunrise prayer. First, Ibn Ḥajar contradicts both his own teacher, Shaykh Zakariyyā al-Anṣārī, and his contemporaneous Shāfi'ī

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<sup>218</sup> Ibid., 6:247; Rashīd, *Ibn Ḥajar*, 190.

jurist, al-Ramlī, both of whom give preference to circumambulation. After presenting three evidences for the difference in virtue of acts of worship, the superiority of staying in worship until sunrise, and some scholars' disliking of circumambulating the Ka'ba right after sunrise, and rebutting the evidences of the opposing views, he established the superiority of staying in worship until sunrise.<sup>219</sup>

## Conclusion

In *Islamic Intellectual History in the Seventeenth Century*, which examines the understudied intellectual history under the Ottomans and in Maghreb, Khaled El-Rouayheb, asserts that, contrary to widespread perceptions of stagnation and spread of fanaticism, Islamic (rational) sciences were cultivated vigorously in this period of Islamic intellectual history.<sup>220</sup> He also argues there existed an “impersonal and textual model of the transmission of knowledge,” which is based on ‘deep reading’, that he attributes to educational reforms and increased interest in rational sciences in the tenth/sixteenth century.<sup>221</sup> This conclusion is relevant to this research project. Ibn Ḥajar al-Haytamī is the leading representative the tenth/sixteenth century's commentarial tradition, whose deep reading, research and textual activities, have surely contributed to the process El-Rouayheb describes. Ibn Ḥajar is the most important prominent representative of the commentarial tradition within the the Shāfi'ī school.

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<sup>219</sup> Ibn Ḥajar, *Tuhfa*, 4:94.

<sup>220</sup> Khaled El-Rouayheb, *Islamic Intellectual History in the Seventeenth Century: Scholarly Currents in the Ottoman Empire and the Maghreb* (New York: Cambridge University Press, 2015), 13-15.

<sup>221</sup> *Ibid.*, 97-100.



Ibn Ḥajar's commentary, *Tuhfat al-muhtāj*, on al-Nawawī's classic, *Minhāj al-ṭālibīn*, stands tall in the post-classical era. It consists of linguistic, juristic, jurisprudential and theological elements that make it deserving of its status, with no close rivals other than *Nihāyat al-muhtāj* of al-Shams al-Ramlī. There are similarities between al-Nawawī and Ibn Ḥajar in their projects. First, when it comes to language, Ibn Ḥajar, like all other late Shāfi'ī scholars, followed and developed the innovative terminological conventions that al-Nawawī invented and used in his works. Ibn Ḥajar, in return, developed a (smaller) number of innovative terms that pertain to his discussions, investigations and juristic reviews from the time after al-Nawawī. In specific, these terms alluded to either his contemporary authoritative interlocutors or doctrinal investigations. However, his language was much less accessible, much more technical than al-Nawawī; as well as his main rival, al-Jalāl al-Ramlī. Second, with regard to juristic investigations, he is considered a first-tier defender of Shāfi'ī doctrines, which consist of the agreements of al-Nawawī and al-Rāfi'ī. The above shows the breadth and depth of the legal efforts of Ibn Ḥajar and his independent reasoning, culminating in his work crowning within the Shāfi'ī school.

Even if limited to a certain scope due to the trickling down and accumulation of methodological conventions, Ibn Ḥajar's *ijtihād* within the commentarial genre is still momentous and lasting in its effect. His *ijtihād* in *Tuhfa* may not have been absolute, wide-ranging, or have overhauled the established methodological traditions of Shāfi'ism. Still, his contributions advanced the *madhhab* in many ways. This includes exercising rule-formulation or preponderance (*tarjīh*) between the previous binding rulings, restricting unrestricted within the rulings of the *madhhab*, identifying legal distinctions among the different legal positions,

reassessing the outcomes the previous debates and opinions of the jurists of the *madhhab*, and issuing fatwas based on extending corollary rulings. Whether by supporting the established Shāfi‘ī doctrines as concurred by the ‘Two Masters’, performing exercising rule-formulation or extracting corollary rulings, unifying, restricting, distinguishing different legal rulings and doctrines—all of these operations are among the many valuable contributions of Ibn Ḥajar to Shāfi‘ism.

However, Ibn Ḥajar was a different scholar and man from al-Nawawī. Al-Nawawī consolidated the foundations of Shāfi‘ī doctrines, reviewing the previously unmanageable diverse Shāfi‘ī legal corpus, by way of arriving at the doctrines of the school and authenticating its scriptural proofs and narrations from the two hermeneutical sub-schools of the Khurasanians and the Iraqians. At the same time, he also is known for his numerous evidence-based juristic preferences (*ikhtiyārāt*) that differ with al-Shāfi‘ī’s opinions. The same, however, cannot be said of Ibn Ḥajar. Despite his juristic qualifications and mastery in rule-formulation, he kept the scope of his juristic operations faithfully within the conformist boundaries of Shāfi‘ī doctrines. Even though he tirelessly defended al-Nawawī and al-Rāfi‘ī in their efforts to establish the doctrines of the school, he provided many contributions in defense of the *madhhab*, including against the evidence-based innovative opinions of al-Nawawī that fall outside the established opinions of the school’s doctrines, which al-Nawawī himself helped consolidate.<sup>222</sup> “We are Shāfi‘īs, not Nawawīs,” is a succinct characterization of Ibn Ḥajar’s affinities in this regard.

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<sup>222</sup> Sumayṭ surveys and examines forty six rulings in the *Minhāj* that are not in accordance with the doctrines of Shāfi‘ism, while al-Kaḥṭīb counts a total of fifty six issues in which al-Nawawī chose opinions that are not from among the accepted ones within the *madhhab*: Muṣṭafā b.Ḥāmid b.Ḥasan b.Sumayṭ, *Al-Masā’il al-ghayr mu’tamada fī al-Minhāj* (Tarīm: Dār al-‘Im wa al-Da‘wa, 2005); al-Kaḥṭīb, *Ikhtiyārat*, 602-606.

## Conclusion

A literary tradition like the Shāfi'ī *madhhab* is a complex and multilayered structure, filled with paradigms, undercurrents, and a massive library. In an attempt to analyze the development of the Shāfi'ī literary tradition and its two most authoritative texts, this thesis presented a typology of the Shāfi'ī textual production in order to form a theory of texts. This theory of texts suggests that the development of the Shāfi'ī library was the outcome of a critical interplay of two main forces; a continuous tension between internal hermeneutical currents and diverging social needs. Despite different historical circumstances and developments, this critical and accumulative process of juristic textual production has ultimately favored a traditionist-leaning hermeneutical approach. This effort was championed by the verification and authentication projects of al-Nawawī (d. 676/1278), who came to be considered as an axial authority in the school, along with his peer and second in influence, al-Rāfi'ī (d. 633/1236). The pair came to be known as the 'Two Masters' (*al-shaykhān*). Despite layers of critical and diverse juristic engagements, the Shāfi'ī school continues to build mainly on al-Nawawī's lasting juristic legacy, through scores of diverse commentaries, super-commentaries, abridgments and contemporary adaptations of classical texts.

The above-mentioned typology, which adopted a periodization scheme based on the indigenous developments of Shāfi'ī history, rather than the standard European historical periods, resulted in further findings. First, that the foundational rationale of the *madhhab* and the interpretive tensions that accompanied its beginning continued to influence the Shāfi'ī school;

especially until its stabilization and, to a lesser degree, beyond. The foundational methodological and interpretive solution that Imam al-Shāfiʿī put in place when he established the *madhhab*, in order to treat the interpretive tensions that burdened the Muslim populace and scholarly communities during his lifetime, persisted after him. These tensions were mainly between the traditionalism of the Mālikis and the rationalism of the Ḥanafīs. They lingered and were reinvented as two interpretive sub-schools (*ṭarīqas*) that competed within the accepted frameworks of Shāfiʿī jurisprudence. This tension between traditionist and rationalist approaches to Shāfiʿism can be traced throughout its epochs: from the inclinations of al-Shāfiʿī's two most important students and the main transmitters of his juristic teachings, al-Buwayṭī (d. 232/847) and al-Muzanī (d. 264/878); to the proliferation of these approaches through the spread of the *taʿlīqas*, or dissertations produced by advanced Shāfiʿī students that were introduced by Ibn Surayj (d. 306/919); to the solidification of the Iraqi and Khurasanian sub-schools, and, finally, to the decisive reconciliation of the two subschools by al-Nawawī and al-Rāfiʿī in the seventh/thirteenth century.

The theory of texts also highlighted the existence of an interconnected series of juristic operations that channel through Shāfiʿī legal and textual history. These operations started with legal deductions, theory and rulings of the eponym; both in his 'old' (*qadīm*) *madhhab*, which was almost entirely abrogated by the 'new' *madhhab* he constructed after settling in Cairo. Even though his juristic corpus was contained in a massive compendium, two digests by al-Buwayṭī and al-Muzanī were more effective than his own work in preserving and propagating his legacy, due to their suitability for educational purposes. Although the following operations have been applied throughout the ages, the juristic operations that characterize the first three centuries of

the Shāfi'ī school, from the third/ninth to the sixth/twelfth century, are the following: transmission (*naql*) (accompanied by synthesizing the opinions (*jam'*) of the founders and the major early *mujtahids*), editing (*dabt*) of texts, filtering of weak opinions (*tahrīr*), and of course commenting and interpreting (*sharḥ*). This shows clearly in the literary production from those centuries, especially in the most iconic and influential works from that era; the digests of *al-Muzanī*, *al-Muhadḥhab* of al-Shirāzī's (d. 476/1084), and al-Ghazālī's (d. 505/1111) *al-Wasīṭ*, and *al-Wajīz*.

The major educational, social, and judicial needs that influenced Shāfi'ī literary production between the third/ninth and the sixth/twelfth centuries included the need to explain the juristic doctrines, the introduction of *madrasas* later on, and the need to provide shorthand juristic references for the judges. The major writing genres at the time were digests, along with the newly introduced genres of *ta'līqas*, biographical dictionaries of jurists, and massive encyclopedias. Also, in the same way that support from the Seljuk and Ayyubid rulers boosted the presence and influence of the *madhḥab* in social, educational and judicial settings, its exclusion from heading the fatwa institutions under the Mamluks and the Ottomans, even in places where it was prominent, has had a weakening effect; especially on the development of the *fiqh* of interpersonal exchange (*mu'āmalāt*).

The following three centuries were characterized by a surge in the spread of the *madhḥab* and, consequently, the gradual moving away from the founder's doctrines and methodology. The most pervasive consolidation of legal positions (*tanqīḥ*) and rule-formulation (*tarjīḥ*) came in the seventh/thirteenth century in the works of al-Nawawī and al-Rāfi'ī and stabilized the *madhḥab*. This process was akin to a canonization of juristic doctrines. Their

contributions established the doctrines of the school and decisively reconciled and abrogated its sub-schools. As the Shāfi‘ī corpus amplified, and its doctrinal and authorial references diversified, new needs emerged. Thus, the mounting necessity for the process of authenticating (*takhrīj* or *taḥqīq*), especially of scriptural evidence, became apparent. Also, in the face of growing new juristic questions from society, deriving corollary rulings (*tafrī‘*) became inevitable. The emergence of these two processes signified the need for the doctrinal coherence of the entire school. The accomplishment of al-Nawawī and al-Rāfi‘ī did not fall short of that. Al-Nawawī’s efforts in particular led to two significant outcomes. First, the synthesizing of the Iraqi and Khurasanian sub-schools that existed up to his own time, with disagreements between representatives of the two sub-schools cited in educational circles around him.<sup>223</sup> Second, the diverse and unregulated juristic works that preceded the Two Masters became virtually obsolete. Some scholars, like El Shamsy, believe that later agreement among scholars that the doctrines of the *madhhab* are those which the Two Masters agreed on have stifled later juristic innovation. However, al-Nawawī’s critical and independent juristic erudition led to not only the consolidation of the *madhhab* from his time onward; they also brought about numerous independent *ḥadīth* evidence-based legal preferences (*ikhtiyārāt*) that differ from those of the founder of the school.<sup>224</sup>

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<sup>223</sup> Muḥammad Tāriq Maghribiyya, *al-Madhhab, al-Shāfi‘ī: dirāsa ‘an ahm muṣṭalahātih wa ashhar muṣanaḥātih wa marātib al-tarjīh fih* (Damascus: al-Fāruq, 2011) 163.

<sup>224</sup> Despite al-Nawawī’s views, including in the *Minhāj*, for example, al-Khaṭīb specifies fifty six of those *ikhtiyārāt* or juristic views that are different from the doctrines of the school in al-Nawawī’s books. See: Sālim b. Ahmad b. Abī Bakr Al-Khaṭīb, *Ikhtiyārat al-Imām al-Nawawī allatī tafarad bihā min al-madhhab al-Shāfi‘ī: dirāsa muqārana*. (Amman: Dār al-Nūr al-Mubīn lil-Nashr wa al-Tawzī‘, 2016), 602-606. Also with *Minhāj* itself, Bin Sumayṭ identifies forty six juristic issues (*masā’il*) in which al-Nawawī adopts views others than the doctrine of the *madhhab*. See: Muṣṭafā b. Ḥāmid b. Ḥasan b. Sumayṭ, *Al-Masā’il al-ghayr mu’tamada fī al-Minhāj* (Tarīm: Dār al-‘Ilm wa al-Ḍa‘wa, 2005).

The books of al-Nawawī, especially *Minhāj al-ṭālibīn*, were eventually proven central--if not centering--to the entire later *madhhab*. *Minhāj* is a culmination of other intentional efforts by al-Nawawī that are in line with his traditionist orientation and those of his source of inspiration: jurist and *ḥadīth* master Ibn al-Ṣalāḥ (d. 643/1245). Although the two never met, Ibn al-Ṣalāḥ was the teacher of al-Nawawī's main teachers. Al-Nawawī used his chain of transmission for narrating the books of the *madhhab*. He also completed and commented on some of his works. More importantly, al-Nawawī completed Ibn al-Ṣalāḥ's project to reconcile the Iraqi and Khorsanian sub-schools, mainly favoring the Iraqi traditionist approach; an inclination that is clear in al-Nawawī's *tarjīḥs* in *Rawḍa* and *al-Muajmūʿ*.<sup>225</sup>

It is not a coincidence that the most authoritative commentary in the Shāfiʿī school, *Tuḥfat al-muḥtāj* of Ibn Hajar (d. 974/1567), is a commentary on its most authoritative digest by al-Nawawī, i.e. *Minhāj*. There are three centuries worth of critical engagements with al-Nawawī's legacy, especially in *Minhāj*, including harsh critics like al-Isnawī (d. 722/1372), which established its unshakable authoritative standing. The literary acumen of *Tuḥfa* essentially consists in the quality and scope of of Ibn Ḥajar's engagement with all the other commentaries on al-Nawawī's work. He also performed some innovative verifications. His trajectory was rather different from that of al-Nawawī, however. While al-Nawawī performed numerous *ijtihāds* in the form of *ikhtiyārāt*, or evidence-based juristic formulations that are different from the opinions of his *madhhab*, Ibn Ḥajar was a different kind of jurist. Ibn Ḥajar's main juristic operations included defending the doctrines of the *madhhab*, including those that al-Nawawī and al-Rāfiʿī arrived at and agreed on, revisiting some old verification and

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<sup>225</sup> Halim, *Legal*, 70.

examining new issues. However, whenever al-Nawawī differed with the established opinions of the school, Ibn Ḥajar rebutted his arguments for the sake of defending the doctrines. Ibn Ḥajar's other operations included innovative *tarjīḥ* between the previous rulings, restricting the scope of previous rulings and distinguishing between similar rulings, among others.

Both al-Nawawī in the seventh/thirteenth century and, to a lesser scope, Ibn Ḥajar in the tenth/sixteenth century, exercised partial and narrational *ijtihāds* (*ijtihād juz'ī* and *ijtihād bi-riwāya*); deducing juristic rulings in some legal topics or categories (not universally), and arriving at independent rulings regarding the authenticity of the narration of legal opinions from the *mujtahids* of the *madhhab*, respectively. This still means, based on their qualifications and gradual critical solidification of the school's doctrines, that they performed important types of *ijtihād* that fit the stage of development of their precedence-based legal tradition. One of the main points this research project highlights is the need to study the implications of the departure of juristic *ijtihād* from the genres of digest to the genre of expansums post-stabilization, during the 'commentarial period', known as '*aṣr al-ḥawāshī*'. That is not to say that this advancement was uniform in all departments. As Chapter Three showed, innovations in the field of interpersonal exchange (*mu'āmalāt*) were weakened by the removal of Shāfi'ism from being the main *madhhab* for issuing fatwas in the official fatwa institutions under the Ottomans. As our study of *Tuhfa* demonstrated, there is much more legal thought and innovation in the commentarial sources than we know about, because of the current dismissal of the intellectual production from this era. Such a realization will take more than a decolonial commitment to go beyond orientalist perceptions of this period as a 'dark age' of decline, full of either intellectual gymnastics or stale reproductions. It requires a familiarity with their terminology, discursivity,



purpose, approach to textual analysis, appreciation for linguistic and logical investigations, and engagement with the other commentators from their tradition.

Finally, the textual analysis of *Minhāj* and *Tuhfa* has clearly demonstrated the importance of studying the field of juristic terminologies (*muṣṭalaḥāt fiqhiyya*) in unveiling the breadth of the juristic operations in legal texts. The terminological system that al-Nawawī innovated to signify the source, strength, and degree of disagreement with each juristic opinion that he verified was essential to his mission. The same was proven for Ibn Ḥajar. In his case, his glossary was mainly related to his interlocutors from the commentarial tradition. Despite it being a key to unlock the depth of juristic operations, to the best of my knowledge, this topic has not yet been studied adequately.

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