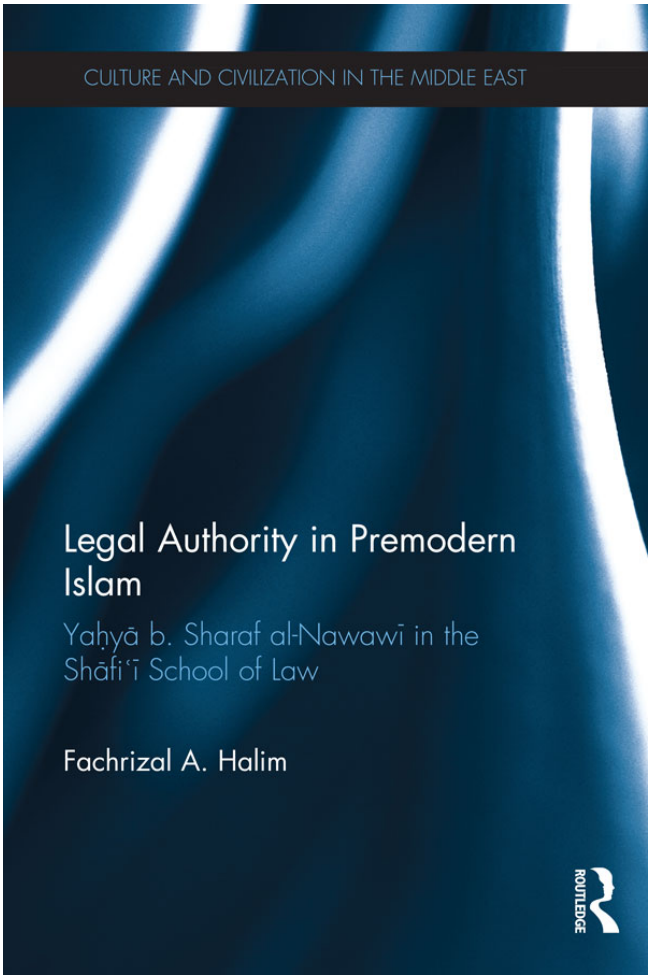
CULTURE AND CIVILIZATION IN THE MIDDLE EAST

Legal Authority in Premodern Islam

Yaḥyā b. Sharaf al-Nawawī in the Shāfiʿī School of Law

Fachrizal A. Halim

ROUTLEDGE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Offering a detailed analysis of the structure of authority in Islamic law, this book focuses on the figure of Yaḥyā b. Sharaf al-Nawawī, who is regarded as the chief contributor to the legal tradition known as the Shāfiʿī *madhhab* in traditional Muslim sources, named after Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), the supposed founder of the school of law.

Al-Nawawī's legal authority is situated in a context where Muslims demanded the stabilization of legal disposition that was consistent with the authority of the *madhhab,* since in premodern Islamic society, the ruling powers did not produce or promulgate law, as was the case in other, monarchic civilizations. Al-Nawawī's place in the long-term formation of the *madhhab* is significant for many reasons but for one in particular: his efforts in reconciling the two major interpretive communities among the Shāfiʿites, that is, the *ṭarīqa*s of the Iraqians and Khurasanians. This book revisits the history of the Shāfiʿī school in the pre-Nawawic era and explores its later development in the post-Nawawic period.

Presenting a comprehensive picture of the structure of authority in Islamic law, specifically within the Shāfiʿite legal tradition, this book is an essential resource for students and scholars of Islamic Studies, History and Law.

Fachrizal A. Halim teaches at the Department of Religion and Culture, University of Saskatchewan, Canada. He received his PhD in Islamic Studies from McGill University. Prior to joining the University of Saskatchewan, he taught

at Université de Montrél and Collège Marie-Victorin in Montreal.

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To the memory of Rachel Rahima Halim (d. 1434/2013)

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Preface

The present book examines the legacy and contribution of Yaḥyā b. Sharaf Muḥyī al-Dīn al-Nawawī (d. 631–76/1233–77), who attained a reputation in Muslim jurisprudence as the mainstay of the doctrines of the Shāfiʿī school of law. This status was constructed during a time in which the Muslim community needed to anchor legal authority in an eponymous figure given that the ruling powers did not produce or promulgate law. Eschewing intellectual idealism, pragmatic considerations demanded certain measures that were in keeping with day-to-day legal reality, that is, structured authority and a sense of determinacy in law. Al-Nawawī's juristic legacy suited these requirements and in fact served well those Muslims who had chosen to settle ultimate legal authority on al-Shāfiʿī, the supposed founder of the school of law named after him.

As demonstrated in his major, substantive legal works, al-Nawawī effectively reduced the inherent plurality of method of interpretation (*ṭarīqa*) among members of the community of the Iraqian and Khurasanian jurists, a situation that had often prevented jurists from discovering the authoritative solution to a given case. Al-Nawawī's achievement was to investigate the existing doctrine of the school and extract from them a set of canonical doctrines as followed by the Shāfiʿī school of law. This selection of canonical doctrine in turn became the primary set of rules by which jurists were enabled to discover authoritative legal solutions to cases, and at the same time provided a road map for further development of legal doctrine under the skillful guidance of later jurists. Furthermore, in addition to providing later jurists with a greater sense of

certainty, al-Nawawī's juristic project also sought to vindicate the Shāfiʿī schools of law as the most faithful to the legal tradition of the Prophet. By virtue of these practical innovations, al-Nawawī became an extended axis of authority, who managed to reconnect later Shāfiʿite jurists with the authority of al-Shāfiʿī and to promote a shared loyalty to the school of law.

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My first and deepest expression of gratitude must go to my parents, who have given unwavering moral support from the first days of my studies. After them I must acknowledge my teacher and former advisor, Wael B. Hallaq, for his constant moral and intellectual support and for the training he gave me in Islamic legal history. The present book originated in a dissertation that I wrote under his guidance at the Institute of Islamic Studies, McGill University. His supervision proved not only inspirational, but also a model of efficiency of learning and commitment to achieving the highest intellectual standards. Nevertheless, any shortcomings found herein are entirely mine.

I also wish to express my gratitude to Robert Wisnovsky, Rula J. Abisaab, Ahmed Fekry Ibrahim, and Katherine Lemons, who were kind enough to read the earlier draft of the manuscript and offer generous and valuable comments. R. Kevin Jaques of Indiana University in Bloomington also read the same draft and encouraged me to sharpen my assessment of al-Nawawī's posthumous legacy and his "canonical" selection of the school's doctrines. Uner Turgay, Laila Parsons, and Malek Abisaab have also been of great help during the preparation of this manuscript.

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Conventions

Diacritics have been retained in Arabic names and other non-English terms, as well as in titles of scholarly works. The transliteration system follows that of the *International Journal of Middle East Studies* (IJMES) as specified in the journal. Notes and list of references follow the sixteenth edition of *The Chicago Manual of Style*. Qurʾānic translations are based on ʿAbdullah Yūsuf ʿAlīʾs *The Meaning of the Holy Qurʾān* (Beltsville, MD: Amana Publications, 1999).

Introduction

General statement of the problem

The present book focuses on the figure of Yaḥyā b. Sharaf al-Nawawī (d. 676/1277), who in traditional Muslim sources is regarded as an influential Shāfiʿite scholar and author of numerous and lengthy works ranging in topic from *ḥadīth*, to theology, biography, and jurisprudence. His literary achievement in the latter discipline was particularly significant, and led to his being recognized as the chief contributor to the later development of the Shāfiʿī school's doctrines. For example, in al-Dhahabī's *Tadhkirat al-Ḥuffāẓ*, al-Nawawī was considered as having been conferred the leadership of the *madhhab*.[1] In other biographical dictionaries, he was also regarded as the one who had completely refined, regulated and organized the doctrines of the *madhhab*.[2] Furthermore, among later Shāfiʿite jurists who lived during and after the medieval period, al-Nawawī was considered as the common reference, as the one who had, as it were, the final say on which legal doctrine was authoritative in the *madhhab*. Given the juristic authority of al-Nawawī, the community of later Shāfiʿite jurists felt as though they were no longer required to scrutinize the earlier literature of the school, since the authoritative doctrine of al-Nawawī was considered sufficient to their needs. Hence, for them, al-Nawawī's works represented the canonical doctrines of the Shāfiʿī school of law.

The degree of later Shāfiʿite jurists's reliance on al-Nawawī's juristic authority is best characterized in Zayn al-Dīn al-Malībārī's popular didactic work, *Fatḥ al-Muʿīn bi-*

Sharḥ Qurrat al-ʿAyn, in which al-Nawawī's legal authority was described as representing the voice of the *madhhab*. "The established opinion in the Shāfiʿī *madhhab* for adjudication and *fatwā*," according to al-Malībārī, "is whatever is agreed upon by the two teachers [i.e. al-Nawawī and al-Rāfiʿī], then priority is given to al-Nawawī's opinion."[3] Here al-Nawawī's works were assumed to have been considered the choice of the community of Shāfiʿite jurists for day-to-day legal practice and that judges and *muftī*s, especially those whose legal knowledge is limited to weighing opinions in the school's *corpus juris*, should not fail to consult al-Nawawī's works. In this case, al-Nawawī's authority was also understood to have effectively functioned as the measure of certainty amid numerous legal opinions, often contradictory, in the entire school's tradition. His writings in jurisprudence were synthetic in nature. He reviewed the school's earlier literature and refined and reconciled any opinions that he considered to have departed from the *madhhab*. He then progressively formulated the school's canonical doctrine and finally vindicated and defended the school's hermeneutic principles. Hence, unless a jurist or *muftī* is capable of deriving law independently from the scriptures, or being a *mujtahid* himself, he was advised to follow legal opinions that are deemed preponderant by al-Nawawī.

This book shall decipher how al-Nawawī came to acquire such an important status in the history of the Shāfiʿī school of law. It also aims to understand why or upon what justification later Shāfiʿite jurists obeyed al-Nawawī's legal authority. The answer to these questions leads us beyond an analysis of al-Nawawī's juristic career and his status in the history of the *madhhab*. It would demand revisiting the history of the Shāfiʿī school in the pre-Nawawic era and analyzing the development of the *madhhab* in the entire post-Nawawic period. One would have to treat themes

familiar to specialists in the field such as the formation and evolution of the Islamic schools of law, the rationalization of authority construction, and the perennial debate over the issue of *ijtihād* and *taqlīd*. Hence, even though this book appears to focus on intellectual history of al-Nawawī, it must inevitably account for Islamic legal history from the early formative period up to al-Nawawī's era. Al-Nawawī's place in the long-term formation of the *madhhab* is significant for many reasons but for one in particular: his effort in reconciling the two major interpretive communities among the Shāfiʿites, that is, the *ṭarīqa*s of the Iraqians and Khurasanians.

Besides examining al-Nawawī's place in the wider history of the Shāfiʿī school, a great deal of this book shall concentrate on al-Nawawī's own intellectual formation, from his early career as a scholar and author-jurist to the period of the reception of his works and the routinization or stabilization of his legacy. This procedure reflects what Biblical scholar James Sanders has characterized as the "period of intense canonical process" in his study of authoritative texts in the believing communities.[4] During the course of this period of reception, al-Nawawī's image as an ordinary jurist and *ḥadīth* scholar evolved into that of an authority representing nothing less than the doctrine of the Shāfiʿī *madhhab*. He did not enjoy this reputation during his lifetime, but his writings did earn him a certain early measure of respect within the school. This, as I will show, was essential to the growth of his image and legacy. His intellectual capacity as a jurist and *ḥadīth* scholar, with which he scrupulously evaluated and rearranged the school's doctrine in his own works, later made him popular among Shāfiʿite jurists. In other words, al-Nawawī became subject to a project of authority construction in the later development of the Shāfiʿī school of law. The reason behind this construction was practical, that is, structuring legal

disposition, since Muslims continued to rely on the authority of the *madhhab*. The significant of al-Nawawī in this case is that he was the one who effectively connected later jurists to the authority of the eponym of the school and formulated the doctrinal legacy of *madhhab* to be more applicable to the changing condition of Muslim community.

Situating al-Nawawī in the chronology of the Shāfiʿī school of law

Understanding the phenomenon of the *madhhab* in the Islamic legal tradition requires a clear assessment of the chronology of events in its evolution—a pattern that is consistent for each of the *madhhab*s.[5] Just as a thing considered as law is not fixed from God, but one that must be discovered and elaborated from the Qurʾān and the *ḥadīth* of the Prophet, the *madhhab* which literally means a "way" to reach that supposed law of God, is also not something ready-made. The *madhhab* is the product of the arduous efforts of the generations of jurists who have navigated Muslim society to be as close as possible to God's ordinance. This juristic endeavor was elusive and has been developed through a long process extending for a period of no less than four centuries. Due to the intricate nature of the aspects of the *madhhab*, exerting the chronology of its development is essential to the understanding of the operation of *madhhab* in the Islamic legal tradition.

Most scholars agree that the conflict between the traditionalists and the rationalists has had a profound impact on the development of Islamic legal theory, a synthesis of which eventually led to the establishment of the four schools of law in Sunni Islam. However, scholars differ as to the basic chronology and the details of the conceptual categories in explaining the reality of *madhhab*. In this case, Joseph Schacht's basic chronology—according

to which local variations of a common ancient doctrine evolved, first into distinctive regional schools and then into eponymous *madhhab* which bore the names of prominent scholars in particular regional centers—has become paradigmatic in examining the subject. We find, for example, George Makdisi in his *Rise of Colleges* affirming the Schachtian chronology of *madhhab* formation from regional to personal schools of law.[6] However, Makdisi's concern was on the proliferation of traditionalism in Islamic institutions of learning and did not examine the process of the personalization of regional legal schools.

Later, Christopher Melchert reaffirmed Schacht's chronology and elaborated on the shift by focusing on the "literary activity" of prominent individual Muslims who resided in such places as Kufa, Basra, or the Hijaz.[7] From this activity, the commentary of prominent individuals whose names became associated with their legal doctrine began to emerge at the hands of persons such as Ibn Surayj of the Shāfiʿites, al-Karkhī of the Ḥanafites, and Abū Bakr al-Khallāl of the Ḥanbalites.[8] It was these scholars who elevated the founding fathers and used their names as eponyms for specific schools of law. Melchert also noted that the personalization occurred in response to the challenge of traditionalism which was marked by al-Shāfiʿī's preference for the Prophetic *ḥadīth* rather than the reports of the Companions. The name of the eponym meant a guarantee of orthodoxy and authority.[9]

Other scholars, however, did not subscribe to the famous shift "from regional to personal schools of law." Nurit Tsafrir who focused on the biographical materials of the Ḥanafites discovered that the reality of *madhhab* was more complex than the issue of geographical personalization. She confirmed the transmission of legal material on the authority of prominent individuals such as Abū Yūsuf, Muḥammad al-Shaybānī, and Zufar. However, this regional

transmission was not the exclusive domain of those who were later identified as Ḥanafites. The semi-Ḥanafites, that is those who were known in the sources as traditionalists, also contributed to the personalization of the authority of legal schools.[10] In a more skeptical tone, Nimrod Hurvitz proposed that the shift from regional to personal schools may not have happened because "there is little that substantiates the existence of regional *madhāhib* in the first place."[11] For Hurvitz, the so-called regional schools did not have the unifying factors that could identify them as *madhhab*. The major factor in the establishment of *madhhab* as personal school, on the contrary, was the circle of master and his disciples from which the intellectual activity of Muslims to elaborate juristic concepts and authority took place.[12]

Wael Hallaq, who studied the same issue, goes even further in his denial of the existence of regional and personal schools. For him, the notion of personal school did not exist because the leading jurist did not always command total loyalty from his followers.[13] If one insists on using the term, it should be meant only as the middle stage between the formation of the scholarly circle and the final emergence of a doctrinal school. He also added that the notion of a doctrinal school is more convincing than a personal school because *madhhab* after all is about collective doctrines, not just an opinion of a single jurist. Therefore, if one is to speak about loyalty, such is given to juristic traditions that encapsulated a doctrinal school, rather than to personal figures.[14]

In his recent publication *The Canonization of Islamic Law* (2013), Ahmed El Shamsy suggested that the Shāfiʿī school of law was established much earlier in the third/ninth century and that it had both personal and doctrinal characteristics as suggested by Schacht and Hallaq respectively. Following this thesis, al-Shāfiʿī's paradigm

subsequently generated a distinctive framework for further legal elaboration; being the first by his immediate students such as al-Buwayṭī (d. 231/846) and al-Muzanī (d. 264/877–78), and then, by their successors who all shared loyalty to al-Shāfiʿī's hermeneutic model.[15]

Besides chronology, scholars also disagreed on the material of the institutionalization of *madhhab*. Makdisi, for example, looking at the Ḥanbalī school, insisted that legal knowledge was not the issue in the formation of *madhhab*. Rather, the traditionalist theological stance taken by Aḥmad b. Ḥanbal against the Muʿtazilite rationalism was main issue.[16] This theory was slightly revised by Nimrod Hurvitz who proposed that Ḥanbalism grew not as the result of the *Miḥna*, but as the result of certain moral standards that were upheld by Ibn Ḥanbal.[17]

In the previous pages, we noted that Christopher Melchert underlined the "literary activity" of Muslims who focused on the transmission of the teaching of prominent jurists which eventually elevated them as the founding fathers of legal schools. Quite similar to Melchert, Daphna Ephrat found that the main factor that influenced the infrastructure of *madhhab* was traditional legal learning which focused on the renowned *mudarris*. Madrasa as a formally organized institution did not influence the *madhhab*, but only nourished and reasserted the relationship between teacher and student in an institutionalized manner.[18]

Wael Hallaq, however, played down the idea that the transmission of legal knowledge influenced the infrastructure of *madhhab*. For him, the main point was the building of doctrine and the construction of authority, which included the act of attribution and the disassociation of certain figures from their predecessors so as to make them the "founder" of schools. Hence, according to this thesis, Abū Ḥanīfa, Mālik, al-Shāfiʿī, and Aḥmad b. Ḥanbal

were recognized in traditional Muslim sources as founders of the Ḥanaī, Mālikī, Shāfiʿī, and Ḥanbalī schools not only because they were jurists of outstanding calibre, but also because they were constructed by their followers to be so.[19] This attribution had a practical function in that it accommodated the need of the growing Muslim community to anchor law in certain authority, since in Islamic society, the ruling powers did not produce or promulgate law, as was the case in other, monarchic civilizations.[20] Legal authority, therefore, had to be placed in individuals, such as those eponyms of the schools of law.

In this book, I aim to show that the same authority 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. The active link between al-Nawawī's authority and that of the eponym of the school depended on the instrumental nature of the former in perpetuating the juristic influence of the latter. Applying Bernard Weiss's categorizations of "absolute authority" and "relative authority," we may classify al-Nawawī's authority as relative and mediated through the declaration of the absolute *mujtahid*—that is, the eponym of the school. Absolute authority—or what the *mujtahid* is subject to—according to Weiss, resides in the scriptural texts. Relative authority, on the contrary, relies on the *mujtahid*'s interpretation of the texts, and hence, is decentered, multiple, and inconstant.[21] Regardless of the difference, however, making explicit the doctrines of both types of authority was essential to providing stable and predictable rules for the *madhhab*. Therefore, it is neither the intrinsic teachings of remarkable individuals such as al-Nawawī, nor the intellectual achievements or moral standards of eponymous figures such as al-Shāfiʿī that constitute the primary concern here, but rather the

pragmatic considerations of later Shāfiʿite jurists in establishing a sense of determinacy in law. Al-Nawawī's juristic legacy, his understanding of the school's principles and his solutions to problems facing the nascent Muslim community suited the requirements of those faced with the task of structuring such legal dispositions.

Existing studies on al-Nawawī

In popular narratives of Muslim traditions and biographical dictionaries written by later Shāfiʿite jurists, few are assigned such high esteem as al-Nawawī. Despite this common admiration, both Muslim and Western scholars have not fully explored al-Nawawī's achievement as an author-jurist.[22] Aḥmad ʿAbd al-ʿAzīz al-Ḥaddād, who wrote a thesis on al-Nawawī for Umm al-Qurā University in Mecca, discusses al-Nawawī's intellectual achievement at length. His focus, however, is limited to al-Nawawī's influence in the field of *ḥadīth*.[23] Affaf Khogali-Wahbi and Abdullah al-Zouebi, two others who dedicated their doctoral dissertations to the study of al-Nawawī, likewise limit their work, respectively, to research on his contribution as a *ḥadīth* scholar and his terminology in his commentary on al-Shīrāzī's *al-Tanbīh*.[24] W. Heffening, in his entry on al-Nawawī in the *Encyclopaedia of Islam*, only refers to his importance as a jurist in one paragraph.[25] Ignaz Goldziher makes clear the importance of al-Nawawī's works in his study of the Ẓāhirī school of law. However, as the title of his book indicates, his purpose was to study the Ẓāhirīs' doctrine and history, not those of al-Nawawī and the Shāfiʿī school of law.[26]

Some recognition did come in the early twentieth century, when al-Nawawī became the subject of an extensive debate between two prominent Dutch Orientalists, C. Snouck Hurgronje and L. W. C. van den Berg. The latter had translated Nawawī's *Minhāj al-Ṭālibīn*

into French and wished to see it used as a manual for the courts in the Netherlands Indies.[27] However, neither the translation nor the debate that followed have added much to our understanding of al-Nawawī's role in the long-term development of the *madhhab*. The focus of the debate was simply to measure to what extent al-Nawawī's work could be used as a code of law by the colonial administration.

Sami Zubaida mentions al-Nawawī and his work *Minhāj al-Ṭālibīn* in his *Law and Power in the Islamic World* (2003). However, apart from his broad description of the legal work, his account of the subject does little more than provide an example of a juristic text from the past.[28] Similarly, R. Kevin Jaques, in his recent study of the *Ṭabaqāt al-Shāfiʿiyya* of Ibn Qāḍī Shuhba, refers to al-Nawawī and his legal works. He describes al-Nawawī as one of the most authoritative jurists in the transmission of legal diversity among the Shāfiʿites, whose internal critique of the legal tradition was instrumental in understanding the crisis of authority and the perceived decline of Islamic jurisprudence during the Circasian Mamluk Period (1382–1517).[29] Looking at his impact in a different field, Frederick M. Denny excerpts al-Nawawī's *Tibyān fī ādāb hamalat al-Qurʾān* (Exposition of the Code of Behaviour for Those Who Bear the Qurʾān) in attempting to show the significance of his work on etiquette for believers.[30] Despite addressing al-Nawawī as an influential author, however, none of these authors pay specific attention to the reception of al-Nawawī's work or his juristic legacy in the Muslim community.

More substantial work on al-Nawawī's juristic achievements has been offered by Norman Calder and Wael Hallaq. Calder has explicated one section of al-Nawawī's *Majmūʿ* dealing with the issue of *iftāʾ*, which is a significant contribution in that not only does it reassert the complexity of the debate pertaining to the issue of *ijtihād* and *taqlīd*,

but it also reveals one essential characteristic of juristic activities during this period, which was loyalty to the *madhhab*. This loyalty was reflected in al-Nawawī's hermeneutical venture to explain, evaluate, harmonize, and adapt the doctrines in the light of changes in time and society.[31]

Likewise, Wael Hallaq, in his *Authority, Continuity, and Change in Islamic Law*, frequently points to al-Nawawī's juristic creativity in his larger project to unravel the structure of authority in Islamic law.[32] His most important finding lies in explaining al-Nawawī's elaboration of the activity of jurists in defending the *madhhab*, one that was overlooked by Calder. On the surface, as Hallaq has pointed out, one may assume that the defense of the *madhhab* consisted of merely reproducing and rationalizing the authoritative doctrines, which does imply loyalty. However, on a substantive level, the main goal in upholding the *madhhab* was the defense of methodology and hermeneutics, which in turn accommodated the possibility of holding different legal opinions and justified the need for legal change.[33]

As much as Calder's and Hallaq's works are important in explaining al-Nawawī's contribution to the *madhhab*, neither author had the space to give much attention to his overall juristic achievements, allowing contemporary readers to locate al-Nawawī in the wider history of the Shāfiʿī school of law. A full-scale study of al-Nawawī's juristic career in terms of the school itself is still necessary in order to add to our understanding of the development of the Shāfiʿī *madhhab*.

Method of approach and plan of this study

This study will reveal novel aspects of al-Nawawī's career, whose juristic contribution was highly regarded in the long-term development of the Shāfiʿī school of law. Al-Nawawī,

to be sure, was neither the only person who strove for scholarly consistency nor the most authoritative jurist in the later period of the Shāfiʿite legal tradition. However, my reading of biographical dictionaries and legal literature produced from the eighth/fourteenth century onwards led me to acknowledge al-Nawawī's distinct approach when compared to other jurists in light of his efforts at organizing and canonizing the doctrine of the *madhhab*. The *madhhab* I conceptualize here is not only a mere institution vaguely resembling a guild of jurists, but also a form of cumulative doctrine, centered around the figure of Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), who is traditionally regarded as the genuine founder of the Shāfiʿī school, having a specific mode of permutation, neither a stagnant one, nor was it fully established during the "formative period" as early scholarship had assumed.

The primary sources of this dissertation project are of two types. The first is the vast world of biographical dictionaries, including al-Nawawī's own work, *Tahdhīb al-Asmā' Wa-l-Lughāt*,[34] which falls into this category. Information I gained from this type of source is significant to understanding two phases in the perception of the history of the Shāfiʿī school of law: the Shāfiʿite legal tradition prior to al-Nawawī and as seen through his eyes, and the period after him, in which we see how later Shāfiʿite jurists viewed al-Nawawī and his juristic accomplishments. Problems of idealization of the past and personal glorification for whatever moral purposes or pedagogy are inevitable, as both phases were recorded *post eventum*. However, for the time being there is no other source that can match the richness of the biographical dictionaries for anyone dealing with this subject.

The second category of sources includes legal literature of both *uṣūl* and *furūʿ* works. *Uṣūl* works offer rules on how to derive law from the scriptures and on how to deal with

conflicting legal evidence, whereas *furūʿ* works contain substantive opinions that are considered God's law. The importance of these sources for the study of the *madhhab* is that they reflect the operation of Islamic law, its theoretical elaboration, and its projection of authority.

I shall limit the discussion here to al-Nawawī's *al-Majmūʿ Sharḥ al-Muhadhdhab,*[35] *Rawḍat al-Ṭālibīn*,[36] and *Minhāj al-Ṭālibīn*[37] and use additional texts from other Shāfiʿite jurists only in order to understand the former. Although I do not take what these two types of sources have to say for granted, I do want that the materials to speak for themselves; I do not intend to allow my view of the past to validate or invalidate what these authors had to transmit, much less to predetermine the results of this project.[38] Hence, based on the sources I selected and what I present here as the author, I am aware that the analysis in this dissertation has its own limits.

As for the plan of this study, I shall begin with the presentation of al-Nawawī's *curriculum vitae* in Chapter 1. This discussion includes an account of his early background, his teachers, his career and his relevant works, including his theological inclination in the perennial debate between rationalism and traditionalism. Material on al-Nawawī's life and works is derived from biographical dictionaries that are available in print. The image of al-Nawawī as presented in these biographical records, however, has undergone some filtering, being apparently structured to highlight al-Nawawī's virtues, intellectual powers, and juristic reputation. Information that is irrelevant to those values, consequently, was keep to a minimum. In line with biographers' purpose to mark al-Nawawī's achievements, his theological inclination was also structured to transmit the biographers' message about the dominant orthodoxy at the time, that is, Ashʿarism. Hence, the legal school that is transmitted in al-Nawawī's

writings is thought to reflect legal tradition of the Sunnite orthodoxy.

Chapter 2 will examine the reception and legacy of al-Nawawī among later Shāfiʿite jurists. My chief concern here will be to show that al-Nawawī's scholarly and juristic excellence was not immediately developed for some time after his death. In a hierarchy of juristic authority developed by later generations of jurists after al-Nawawī, he was only placed at the bottom of the hierarchy, meaning that al-Nawawī was by no means considered a leading authority among Shāfiʿite jurists. However, following the spread of his legal works, al-Nawawī's posthumous image began to rise significantly as the one whose juristic works symbolized the authority of the *madhhab*. The significance of al-Nawawī for later generations of Shāfiʿite jurists is that through his juristic works, he connected them to the entire doctrines of the school. However, never once did al-Nawawī intend his works to represent the final reference in the *madhhab*. Jurists who lived after al-Nawawī were perfectly aware of the limits on his ability to solve the virtually unlimited legal cases that could possibly arise in the future. In other words, the *madhhab* has continued to evolve, and al-Nawawī remains documented as one who contributed to this long-term evolution of the legal tradition known as the Shāfiʿī school of law.

Chapter 3 will examine al-Nawawī's contribution in reconciling the two interpretive communities, that is, the *ṭarīqa*s of Iraqian and Khurasanian jurists. These two *ṭarīqa*s emerged alongside the long-term process of synthesis between traditionalism and rationalism in Islamic law. The instrument that precipitated their creation was the writing of *taʿlīqa*s that proliferated after the fourth century of the hijra. Despite the fact that information on the existence of the *ṭarīqa*s is scanty, biographical records and al-Nawawī's substantive works provide ample evidence enabling us to identify systematically the generations of

jurists representing each *ṭarīqa*. That being said, information gathered from the available sources limits the findings in this chapter only to jurists who maintained genealogies of learning to Ibn Surayj (d. 306/918) and Abū Isḥāq al-Marwazī (d. 340/951). In the final two sections of this chapter, I shall detail the differences between the two *ṭarīqa*s and al-Nawawī's efforts at reconciling them with the doctrine and principles of the *madhhab*. His contributions in the latter constitute one of the reasons why he was recognized as an influential jurist in the later Shāfiʿī school of law.

In Chapter 4, I shall discuss al-Nawawī's contribution to the creation of the set of canonical doctrines of the Shāfiʿī school, which is part of what led to his rise to authority for later generations of Shāfiʿite jurists. His selection of doctrines functioned as a legal reference for Shāfiʿite jurists who were unable to attain sufficient skills to derive law directly from the textual sources. However, what al-Nawawī deemed as a canonical selection of the school's doctrines was never meant to serve as a code of law. His purpose in extracting this selection of authoritative doctrines was designed above all to aid jurists in dealing with issues of indeterminacy. Here I will explore his hermeneutic method in weighing different and conflicting legal opinions, achieved especially through the techniques of *tarjīḥ* and *taṣḥīḥ*. The scope and the nature of this activity has become an important subject of discussion in *uṣūl* works. Among Shāfiʿite jurists, no less than al-Shīrāzī and al-Ghazālī have extensively drawn up rules as to how, on what matter, and by whom, *tarjīḥ* or *taṣḥīḥ* can be performed. Al-Nawawī, for his part, realized that *tarjīḥ* has been somewhat idealized as part of the *ijtihād*ic activities. With all the established rules of legal theory, he also understood that not everyone could perform *tarjīḥ* or *taṣḥīḥ*. However, he was capable of meeting the requirement in legal theories and the need to minimize the

plurality of opinion by elaborating discourse on juristic typology. His elaboration of the latter justified his need to engage in *tarjīḥ* and *taṣḥīḥ* activities, which led to his creating the selection of authoritative doctrines that once became the mainstay of the later Shāfiʿte jurists.

Al-Nawawī's attempt at canonizing the school's doctrine did not stop at verifying and classifying the preponderant opinions. As I will show in Chapter 5, al-Nawawī also attempted to vindicate the *madhhab* and its hermeneutic principle in order to emphasize the Shāfiʿī school's superiority over other schools of law. In doing so, he reconstructed scholarly virtues of jurists belonging to the *madhhab* and bound them under the authority of al-Shāfiʿī, the one who was thought to have maintained the legal tradition ofthe Prophet. The clear manifestation of this activity of vindication can be seen in his elaboration of certain legal cases, which differed from that of other schools of law, giving a distinctive character to Shāfiʿite doctrine.

Notes

1 Shams al-Dīn Muḥammad b. Aḥmad al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4 vols. (Hyderabad: Osmania Oriental Publications Bureau, 1958), 4:1472.

2 ʿAbd Allāh b. Asʿad al-Yāfiʿī, *Mirʾāt al-Jinān Wa-ʿIbrat al-Yaqẓān*, 4 vols. (Beirut: Muʿassasat al-Aʿlamī li-l-Maṭbūʿāt, 1970), 4:182; Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya Wa-l-Nihāya*, (eds) Aḥmad Abū Mulḥim and Abū Hājar Muḥammad al-Saʿīd b. Basyūnī Zaghlūl, 14 in 7 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985), 13:294.

3 Zayn al-Dīn b. ʿAbd al-ʿAzīz al-Malībārī, *Fatḥ al-Muʿīn bi-Sharḥ Qurrat al-ʿAyn* (Singapore; Jeddah: al-Ḥaramayn, 1980), 140.

4 James A. Sanders, *Canon and Community* (Philadelphia: Fortress Press, 1984), 30–33.

5 There are other determining factors beyond legal matters such various political exigencies, socio-economic as well as the moral aspects of society in a given period that could also elucidate the phenomenon of the *madhhab,* none of which will be accommodated in here. On these various factors, see for example Nimrod Hurvitz, "Schools of Law and Historical Context: Re-Examining the Formation of the Ḥanbalī *Madhhab*," *Islamic Law and Society* 7:1 (2000): 37–64; Peri Bearman, Rudolph Peters, and Frank E. Vogel (eds), *The School of Law: Evolution, Devolution, and*

Progress (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2005).

6 George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 2.

7 Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden; New York: Brill, 1997), 33–47.

8 Ibid., 43, 87, 125.

9 Ibid., 37–38.

10 Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Hanafism* (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2004), 1–16.

11 Hurvitz, "Schools of Law and Historical Context," 45.

12 Ibid., 46.

13 Wael B. Hallaq, "From Regional to Personal School of Law? A Reevaluation," *Islamic Law and Society* 8:1 (2001): 19–20.

14 Ibid., 21–22.

15 Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013), 167–82.

16 Makdisi, *The Rise of Colleges*, 7.

17 Hurvitz, "Schools of Law and Historical Context," 55–63.

18 Daphna Ephrat, *A Learned Society in a Period of Transition: The Sunni "Ulama" of Eleventh-Century Baghdad* (Albany, NY: State University of New York Press, 2000), 85–93.

19 Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 25–43.

20 Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge; New York: Cambridge University Press, 2009), 70–71.

21 Bernard G. Weiss, "The Madhhab in Islamic Legal Theory," in *The Islamic School of Law: Evolution, Devolution, and Progress*, (eds) Peri Bearman, Rudolph Peters, and Frank E. Vogel (Cambridge, MA: Islamic Legal Studies Program, Harvard Law School, 2005), 4–5.

22 This is in contrast to al-Nawawī's achievements in the field of *ḥadīth*, which attract wide attention among modern scholars.

23 See the published version of his thesis in Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, *al-Imām al-Nawawī Wa-Ātharuhu fi-l-Ḥadīth Wa-ʿUlūmih* (Beirut: Dār al-Baṣāʾir al-Islāmiyya, 1992).

24 See Affaf Khogali-Wahbi, "Hadith and Sufism in Damascus, 627/1230–1728/1328: Ibn ʿArabi (d. 638/1240), al-Nawawi (d. 676/1277) and Ibn Taymiyya (d. 728/1328)" (PhD diss., King's College, London, 1994); Abdullah al-Zouebi, "al-Taḥrīr fī Sharḥ Alfāẓ al-Tanbīh" (PhD diss., University of Glasgow, 1999).

25 W. Heffening, "al-Nawawī," in *The Encyclopaedia of Islam: New Edition*, (eds) C. E. Bosworth, *et al.* (Leiden; New York: E. J. Brill, 1993), 7:1041.

26 Ignaz Goldziher, *The Ẓāhirīs: Their Doctrine and Their History*, trans. Wolfgang Behn (Leiden: E. J. Brill, 1971).

27 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-Ṭālibīn: Le Guide Des Zélés Croyants: Manuel De Jurisprudence Musulmane Selon Le Rite De*

Chāfiʿī, trans. L. W. C. van den Berg, 3 vols. (Batavia: Imprimerie du Gouvernement, 1882). For further information on the debate, see Karel A. Steenbrink, "Kata Pengantar," in *Hadramaut Dan Koloni Arab Di Nusantara*, (ed.) L. W. C. van den Berg (Jakarta: Indonesian Netherland Cooperation in Islamic Studies [INIS], 1989), xiii; Christiaan Snouck Hurgronje, *Verspreide Geschriften* [Kumpulan Karangan C. Snouck Hurgronje], trans. Soedarso Soekarno, 14 vols. (Jakarta: Indonesian–Netherlands Cooperation in Islamic Studies [INIS], 1993), 7:93.

28 Sami Zubaida, *Law and Power in the Islamic World* (London; New York: I.B. Tauris, 2003), 32–35.

29 R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden; Boston, MA: Brill, 2006), 9–10, 22, 176.

30 Frederick M. Denny, "Nawawi: Etiquette in Recitation," in *Windows on the House of Islam: Muslim Sources on Spirituality and Religious Life*, (ed.) John Renard (Berkeley; Los Angeles, CA; London: University of California Press, 1998), 55–57.

31 Norman Calder, "Al-Nawawī's Typology of Muftīs and Its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3:2 (1996).

32 Hallaq, *Authority, Continuity, and Change in Islamic Law*, 99–103, 05–08.

33 Ibid., xi.

34 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007).

35 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925).

36 al-Nawawī, *Rawḍat al-Ṭālibīn*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ, 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000).

37 al-Nawawī, *Minhāj al-Ṭālibīn*, (ed.) Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, 3 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2005).

38 For the idea of self-image of the past to which I refer here, see Gustave E. von Grunebaum, "Self-Image and Approach to History," in *Historians of the Midlle East*, (eds) Bernard Lewis and P. M. Holt (London: Oxford University Press, 1962), 458.

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1 The man and his biography

Early life

Abū Zakariyā Muḥyī al-Dīn Yaḥyā b. Sharaf b. Murī b. Ḥasan b. Ḥusayn b. Muḥammad b. Jumʿah b. Ḥizām al-Nawawī al-Dimashqī was born in Nawā, a Syrian town located about 83 km to the south of Damascus.[1] The name "al-Nawāwī" can be spelled with an *alif* after the first *waw* or without it following al-Nawawī's own preference.[2] The *nisba* of the city of Damascus was also attached to him because he lived there for 28 years. As the Arabic maxim says: "whoever resided in a place for the duration of four years, he is entitled to bear the *nisba* of the place" (*man aqāma bi-baladin arbaʿa sinīna nusiba ilayhā*).[3] The nickname "Muḥyī al-Dīn" was one name he never truly accepted due to its association with one of God's names (*al-Muyhī* or the Giver of life). He is quoted as once having said in anger: "I will not forgive who ever called me that name."[4]

The precise date of al-Nawawī's birth has been a subject of controversy among biographers. Al-Isnawī (d. 771/1370) suggests that he was born sometime during the first ten days of Muḥarram 631 (October 1233),[5] whereas al-Suyūṭī (d. 911/1505) and al-Sakhāwī (d. 902/1497) claim that the more reliable date lay sometime during the middle third of the month of Muḥarram in the same year.[6] His forefather Ḥizām was said to have been a Qurayshite descendent of a Companion of the Prophet, Ḥakīm b. Ḥizām (d. 54/674), and was also said to have moved the family to Damascus.[7] Al-Nawawī, however, denied that his grandfather Ḥizām

was of Qurayshite lineage, insisting that he was ordinary person from the Golan who moved to Nawā later in his life and remained there as his descendants multiplied.[8] Apart from the sketchy information about al-Nawawī's genealogy back to Ḥizām, much of the details of his early life remain unknown. Apparently, al-Nawawī himself never attempted to explain his own background to others. This may be why Ibn al-ʿAṭṭār (d. 724/1324),[9] al-Nawawī's student and companion who later collected and gathered al-Nawawī's writings, did not have much to say regarding his teacher's family background and early childhood.[10]

Instead, Ibn al-ʿAṭṭār and other biographers of al-Nawawī had to be content with a series of moral tales from his youth. One of the stories recorded by biographers to single out al-Nawawī's rare quality in his childhood was his experience of the event of the Night of Decree (*Laylat al-Qadr*) during the month of Ramaḍān. Al-Suyūṭī and al-Sakhāwī record the report of Ibn al-ʿAṭṭār, on the authority of al-Nawawī's father, that when al-Nawawī was seven years old, he saw the light that his father interpreted as the sign of the *Laylat al-Qadr*.[11] The *Laylat al-Qadr* is highly regarded in Muslim tradition as it was during this night that the first five verses of the Qurʾān were revealed to Muḥammad. One tradition states that every act of worship during this night brings so much blessing that it could never be equalled by ordinary persons even if they were to worship for their entire life.[12] Al-Nawawī never confirmed this personal experience. However, in his legal work *Rawḍat al-Ṭālibīn*, he does explain the virtue of the *Laylat al-Qadr* and describes the night as "neither hot nor cold and the bright sun rises in the following morning."[13] Likewise, in his *Riyād al-Ṣāliḥīn*, a repository of moral guidance about how righteous Muslims should behave, al-Nawawī marshalled several Prophetic *ḥadīth*s to establish

in detail the value of the *Laylat al-Qadr* and advice Muslim to seek out the night.[14]

Ibn al-ʿAṭṭār also recalled another event reported by a certain Yāsīn b. Yūsuf al-Marākushī that referred to another of al-Nawawī's childhood experience. When al-Nawawī was ten years old, he did not enjoy any of the sort of games familiar to children of his age. Many of his friends were even hesitant to play with him. As he could not endure being rejected, he cried and ran away from them and finally occupied himself with reciting the Qurʾān.[15]

How do we make sense of the inclusion of these tales into al-Nawawī's biography? One possible way to understand what biographers seek to convey is to analyze the connection between this literature about al-Nawawī and ideal behavior in his society. As Albert Hourani has suggested, based on how early biographers addressed their subject and given what they included and what they omitted in their writings, they often projected a certain human image that was "an ideal type of what the concerned, literate, law respecting Muslim should be."[16] This might be the case with of Ibn al-ʿAṭṭār, who became the most important source for al-Nawawī's biography. As a student of al-Nawawī, he certainly had respect for and showed obedience to his teacher, not to mention his personal piety, as he himself was a scholar of a certain caliber. With all these components of respect, obedience, and piety, Ibn al-ʿAṭṭār recorded the early life of al-Nawawī in certain ways in order to deliver a "moral message" whose main purpose was to project the *curriculum vitae* of al-Nawawī as a prominent scholar.[17]

The narrative of the *Laylat al-Qadr* was therefore inserted to bolster the image of al-Nawawī as a scholar blessed since his early childhood.[18] The motive is clear: not all people would have the same fortune to experience the *Laylat al-Qadr* as al-Nawawī did as a boy. However, Ibn al-

ʿAṭṭār and other biographers did not attempt to transform al-Nawawī into a mythical or a less historical figure. Nor did they invent the story out of context. By inserting the story of *Laylat al-Qadr*, the main goal was simply to emphasize a personal quality of al-Nawawī, whose erudition in religious science were already known. Similarly, the anecdote of al-Nawawī engrossing himself with reciting the Qurʾān when the children of his age rebuffed him was also inserted with the same moral sensibility to highlight that the Qurʾān was the central to al-Nawawī's life since his early childhood.

His teachers and chains of transmission

In contrast to the scanty information about al-Nawawī's early life, there is no lack of contemporary accounts with respect to his learning, virtues, intellectual genealogy, and juristic career and reputation. These records begin with al-Nawawī's juristic training, which commenced after he moved to Damascus. During the Mamluk period, Damascus enjoyed a reputation as one of the major cultural and religious centers in the Islamic Empire and one of the best places to pursue higher levels of education. As such, when al-Nawawī reached seventeen years of age, his father sent him to the city in order to study with the established scholars of his era.[19]

The exact number of al-Nawawī's teachers in Damascus is a subject of disagreement among his biographers.[20] They do, however, agree on al-Nawawī's most important teacher, who happened to be Abū Ibrāhīm Isḥāq b. Aḥmad b. ʿUthmān al-Maghribī (d. 650/1252),[21] a student and later the colleague of the celebrated scholar of the time ʿUthmān b. ʿAbd al-Raḥmān al-Shahrazūrī (also known as Ibn al-Ṣalāḥ, d. 643/1245). Abū Isḥāq al-Maghribī was al-Nawawī's first and most important teacher in jurisprudence. Al-Suyūṭī reports that while learning under

Abū Isḥāq's tutelage, al-Nawawī served as a teaching assistant (*muʿīd*) in his instructor's large study circle.[22]

Before al-Nawawī studied with Abū Isḥāq al-Maghribī, he was introduced to Ibn ʿAbd al-Mālik b. ʿAbd al-Kāfī al-Rabʿī, the *imām* and *khaṭīb* of the Umayyad Mosque. From the latter, al-Nawawī was brought to Tāj al-Dīn ʿAbd al-Raḥman b. Ibrāhīm b. Ḍiyāʾ al-Fazārī, also known as Ibn al-Firkāḥ (d. 690/1290), who was also known to have studied with Ibn al-Ṣalāḥ.[23] As Ibn al-Firkāḥ could not offer any accommodation, al-Nawawī was then introduced to Abū Isḥāq al-Maghribī, who found shelter and stipend for him at the Rawāḥiyya *madrasa*, a Shāfiʿite college built under the patronage of Hibat Allāh b. Muḥammad al-Anṣārī (d. 620/1223).[24]

Having settled in the Rawāḥiyya, al-Nawawī expanded his juristic training with Abū Muḥammad ʿAbd al-Raḥman b. Nūḥ al-Maqdisī (d. 654/1256), who was also reported to have studied under Ibn al-Ṣalāḥ.[25] A little later during the same period, al-Nawawī also sought instruction from Abū al-Faḍāʾil Sallār b. al-Ḥasan al-Irbalī (d. 670/1271), who was another former pupil of Ibn al-Ṣalāḥ.[26] Two other former students of Ibn al-Ṣalāḥ with whom al-Nawawī studied jurisprudence were Abū Ḥafṣ ʿUmar al-Arbalī (d. 675/1277)[27] and al-Qāḍī al-Tiflīsī (d. 672/1273).[28] Ibn al-ʿAṭṭār reported that al-Nawawī learned the "doctrine" of Jahm b. Ṣafwān (d. 128/745–46) from al-Arbalī, whereas with al-Qāḍī al-Tiflīsī, al-Nawawī read the *Muntakhab* of al-Rāzī and a substantial part of the *Mustaṣfā* of al-Ghazālī.[29]

Studying jurisprudence, however, was only one part of al-Nawawī's daily activities in the Rawāḥiyya. Another activity was to study *ḥadīth* with Damascene scholars distinguished in the field. Among these scholars was Abū Isḥāq Ibrāhīm b. ʿAlī al-Wāsiṭī, through whom he established a chain of transmission (*isnād*) back to Abū al-Ḥusayn Muslim b. al-Hajjāj al-Qushayrī (d. 261/875), the author of *Ṣaḥīḥ*

Muslim.[30] In addition to al-Wāsiṭī, al-Nawawī also studied with another *ḥadīth* scholar Abū Isḥāq Ibrāhīm b. ʿĪsā al-Murādī (d. 667/1268),[31] from whom he learned the *Ṣaḥīḥ* of al-Bukhārī and the *al-Jamʿ Bayna al-Ṣaḥīḥayn* of al-Ḥumaydī.[32] Al-Nawawī also studied with ʿAbd al-Azīz b. Muḥammad b. ʿAbd al-Ḥasan al-Anṣārī (d. 662/1264) and Abū al-Faḍāʾil ʿAbd al-Karīm b. ʿAbd al-Ṣamad al-Ḥarastānī (d. 662/1264), who was yet another friend of Ibn al-Ṣalāḥ.[33] Some other important works that al-Nawawī read with these *ḥadīth* scholars were: Mālik's *Muwaṭṭaʾ*; the *Musnad* of al-Shāfiʿī; the *Musnad* of Aḥmad b. Ḥanbal, the *Musnad*s of al-Dārimī and of Abū Yaʿlā; the *Ṣaḥīḥ* of Abū ʿAwānah; the *Sunan*s of al-Dāraquṭnī and al-Bayhaqī; the *Sharḥ al-Sunnah* of al-Baghawī; the *Jāmiʿ li-Ādāb al-Rāwī Wa-l-Sāmiʿ* of al-Khaṭīb al-Baghdādī; and the *Ansāb* of Zubayr b. Bakār.[34]

In addition to jurisprudence and *ḥadīth*, al-Nawawī also took considerable pains to study linguistics. In this field, he was reported to have read the *Iṣlāḥ al-Manṭiq* of Ibn al-Sikkīt (d. 242/857–58)[35] with a certain Abū al-ʿAbbās Aḥmad b. Sālim al-Miṣrī. Scholars of linguistics considered the *Iṣlāḥ al-Manṭiq* one of the most important philological manuals, although others questioned its right to be considered as a serious linguistics treatise.[36] Al-Nawawī also read the *Kamāl fī Maʿrifat Asmāʾ al-Rijāl* of Ḥāfiẓ ʿAbd al-Ghanī[37] with Abū al-Baqāʾ Khālid b. Yūsuf al-Nabulusī (d. 663/1265). Another important book that al-Nawawī studied was the *Lumaʿ* of ʿUthmān b. Jinnī al-Mūṣilī (d. 392/1002).[38] He read it with a certain Fakhr al-Dīn al-Mālikī, who was known as one of the foremost grammarians of his time.

In the above account, the name of Ibn al-Ṣalāḥ occurs so frequently that it is almost as though al-Nawawī actually studied with him. However, al-Nawawī never personally studied with this scholar. He arrived in Damascus in the year 649/1251, six years after Ibn al-Ṣalāḥ had passed

away (643/1245). Why do the biographers then mention Ibn al-Ṣalāh at every turn? One answer seems to be that the biographers wanted to show al-Nawawī was indirectly influenced by Ibn al-Ṣalāḥ through his students and his works. Ibn al-Ṣalāḥ was a renowned jurist and scholar of *ḥadīth* in his lifetime. Some of al-Nawawī's writings, such as his commentary on *Ṣahīḥ Muslim* and his *Mukhtaṣar Ṭabaqāt al-fuqahā',* were reported to have been based on Ibn al-Ṣalāḥ's own works.[39] In his introduction of the *Majmūʿ*, al-Nawawī states that Ibn al-Ṣalāḥ was one of his authoritative sources for his discussion of "the art of *fatwā*, *muftī* and *mustaftī*" (*ādāb al-fatwā wa-l-muftī wa-l-mustaftī*).[40] Inserting the name of Ibn al-Ṣalāḥ among al-Nawawī's teachers therefore was instrumentally important to enhancing al-Nawawī's authority in the generations of Shāfiʿite scholars and in the study of *ḥadīth*.

Be that as it may, the primary reason for linking al-Nawawī with Ibn al-Ṣalāḥ might go beyond projecting the accomplishments of the former on the latter. In his *Tahdhīb al-Asmā' Wa-l-Lughāt*, al-Nawawī states that at least three of his teachers mentioned in a particular passage—Abū Ibrāhīm Isḥāq al-Maghribī, Abū Muḥammad ʿAbd al-Raḥman b. Nūḥ al-Maqdisī, and Abū Ḥafṣ ʿUmar b. Asʿad al-Arbalī—had indeed all been students of Ibn al-Ṣalāḥ.[41] In doing so, al-Nawawī explicitly acknowledged the influence of Ibn al-Ṣalāḥ on his learning experience, albeit indirectly. However, Ibn al-Ṣalāḥ's intellectual magnanimity was not al-Nawawī's first and last concern. Al-Nawawī's main purpose in mentioning Ibn al-Ṣalāḥ was historical: through him, he aimed to trace back the authority of his learning transmission to Abū 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 Shāfiʿī school after al-Shāfiʿī for his role in the

establishment of regular transmission of doctrine and the spread of the *madhhab*.[42]

Al-Nawawī suggests that after the period of Ibn Surayj and his student, Abū Isḥāq Ibrāhīm b. Aḥmad al-Marwazī (d. 340/951), Shāfiʿite doctrines split into two major communities of interpretation: the Iraqian's method (*ṭarīqat al-ʿIrāqiyyīn*) and the Khurasanian's method (*ṭarīqat al-Khurāsāniyyīn*).[43] The significance of Ibn al-Ṣalāḥ for the overall line of transmission was that he was among those Shāfiʿites who reconciled the doctrines of the two *ṭarīqa*s. Thus with the establishment of a chain of transmission going back to Ibn Surayj via the two *ṭarīqa*s, Ibn al-Ṣalāḥ's *isnād* was the most authoritative in representing the Shāfiʿī *madhhab*.

Al-Nawawī lists Ibn al-Ṣalāḥ's teachers in the Iraqian line of jurists as follows: Ibn al-Ṣalāḥ on the authority of his father, from Abū Saʿīd ʿAbd Allāh b. ʿAlī al-Mūṣilī (d. 585/1189), from al-Qāḍī Abū ʿAlī al-Fāruqī (d. 528/1133), from Abū Isḥāq al-Shīrāzī (d. 476/1083), from al-Qāḍī Abū al-Ṭayb Ṭāhir al-Ṭabarī (d. 450/1058), from Abū al-Ḥasan Muḥammad b. Muṣliḥ al-Māsarjisī (d. 384/994), from Abū Isḥāq al-Marwazī, from Ibn Surayj. Ibn Surayj for his part had studied under Abū al-Qāsim ʿUthmān al-Anmāṭī (d. 288/901), who derived his authority from Abū Ibrāhīm Ismāʿīl al-Muzanī (d. 264/877–78). The latter had been a pupil of al-Shāfiʿī. Al-Shāfiʿī established his own *isnād* back to the Prophet Muḥammad through his teachers, who in turn included, among others, Mālik b. Anas, who learned from the authority of Rabīʿa, Anas b. Mālik and Nāfiʿ, and from Ibn ʿUmar, who reported directly from the Prophet.[44]

As for the Khurasanian line, the list goes as follows: Ibn al-Ṣalāḥ on the authority of his father, from Abū al-Qāsim b. al-Bazarī al-Jazirī (d. 560/1165), from Abū al-Ḥasan ʿAlī b. Muḥammad b. ʿAlī Ilkiyā al-Harāsī (d. 504/1110), from Abū al-Muʿālī ʿAbd al-Mālik b. ʿAbd Allāh b. Yūsuf Imām al-

Ḥaramayn al-Juwaynī (d. 478/1085), from his father Abū Muḥammad, from Abū Bakr al-Qaffāl al-Marwazī al-Ṣaghīr (d. 417/1026), known as the *imām* of the *Ṭarīqat al-Khurāsāniyyīn*, from Abū Zayd Muḥammad b. Aḥmad al-Marwazī (d. 371/982), from Abū Isḥāq al-Marwazī, from Ibn Surayj, and then back along the same line of transmission to al-Shāfiʿī and the Prophet Muḥammad.[45]

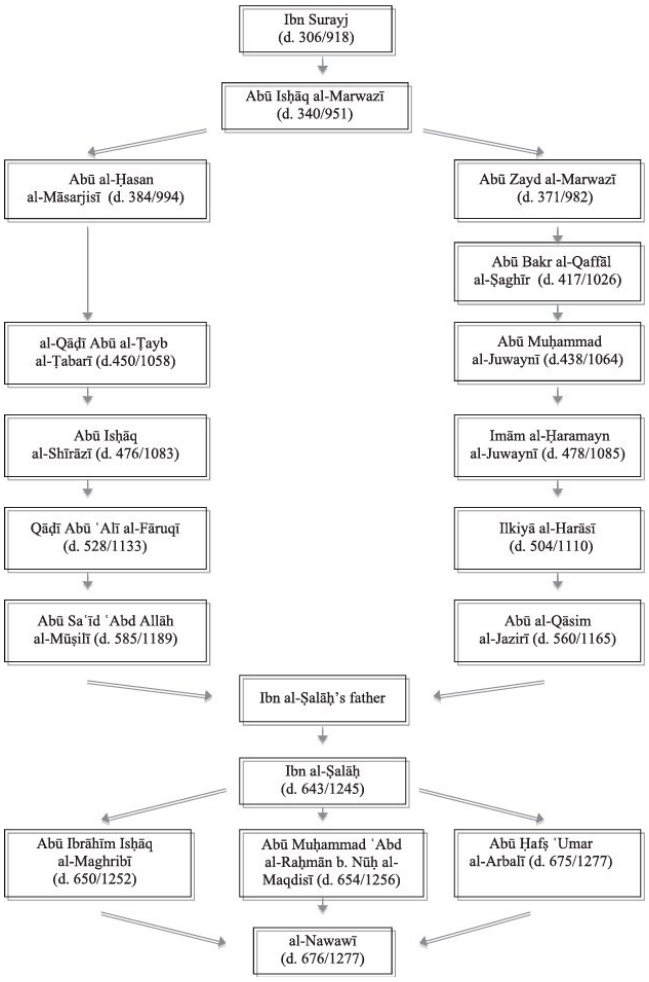

Figure 1.1 al-Nawawī's teachers and lines of transmission through the two *ṭarīqa*s to Ibn Surayj

Another teacher of al-Nawawī, Abū al-Faḍā'il Sallār b. al-Ḥasan al-Irbalī, was also reported to have had a link with the Khurasanian jurists. In addition to having studied with Ibn al-Ṣalāḥ, al-Irbalī had also been a pupil of a certain Abū

Bakr al-Mahānī, a contemporary of Ibn al-Ṣalāḥ's father and a student of Abū al-Qāsim b. al-Bazarī al-Jazarī.[46] As the above list indicates, this Abū al-Qāsim al-Jazarī was also the teacher of Ibn al-Ṣalāḥ's father.

For the early biographers of al-Nawawī, these two intellectual genealogies and the intermediacy of Ibn al-Ṣalāḥ between the two links were significant for what they said about al-Nawawī as an authority. Through Ibn al-Ṣalāḥ, al-Nawawī assumed a strong position, establishing his authority to the fullest extent by sharing in the reconciliation of two Shāfiʿite communities of learning and stretching the line back to Ibn Surayj and ultimately to the Prophet himself.

His ascetic life

"Frugal" is the word W. Heffening uses to describe al-Nawawī's lifestyle in his entry on the latter in the *Encyclopaedia of Islam*.[47] His description is justified on the grounds of what biographers wrote about al-Nawawī's habits and personal outlook, which they considered unusual for a scholar in thirteenth-century Damascus. For example, he was reported to have regularly fasted all his life (*ṣawm al-dahr*), that is, that is he voluntarily abstained from eating during the daytime for the whole course of his adult life. He broke his fast with only one meal after the night prayer (*al-ʿishā'*) and drank only a cup of water before the dawn.[48] Scholars voice many different opinions concerning this type of fasting. Abū Ḥāmid al-Ghazālī (d. 505/1111), for example, viewed it with disfavor because it meant fasting on days on which the Prophet himself never fasted, that is, during the two days of feast (*al-ʿĪdayn*) and the days of orientation (*ayyām al-tashrīq*). Al-Ghazālī also discouraged long-term fasting because it can bring hardship to a person.[49] The biographers of al-Nawawī, however, considered this life-long fasting out of piety as a

fundamental aspect of his lifestyle. In fact, al-Sakhāwī reproduces al-Nawawī's legal opinion about fasting, the purpose of which was none other than to justify this ritual.[50]

Besides fasting, al-Nawawī was also said to have been extra vigilant in his dietary regime. During his tenure at the Rawāḥiyya, he ate no food except dry bread and figs regularly sent to him by his family in Nawā.[51] All other fruit and types of food were deemed unnecessary. When someone offered him a peeled cucumber, he refused to eat it due to its satisfying nature and its potential to induce sleep.[52] He even avoided all fruits grown in Damascus because he assumed that the fruits were cultivated on lands that were designated as religious endowments (*waqf*).[53] Furthermore, these same fruits were grown on the basis of the sharecropping system (*musāqāt*), on which jurists had different opinions regarding its legality. Hesitating, he said: "How can I be satiated by eating that [suspicious] fruit?"[54]

Al-Sakhāwī provides another anecdote to portray al-Nawawī's strict dietary practice. On one of the days of *Eid*, the chief judge Jamāl Sulaymān al-Zarʿī visited al-Nawawī at home and found him eating a type of soup with tiny bits of meat in it. Al-Nawawī offered him the soup, but he did not find it satisfying. Al-Nawawī's brother, who was also there, decided to buy some grilled meat and sweets for the company. When al-Nawawī's brother offered everyone a share, al-Nawawī refused. When the former asked: "Oh my brother, are these foods forbidden?" al-Nawawī replied: "No, but these are the foods of the Herculian" (*ṭaʿām al-jabābira*).[55]

Al-Nawawī's status would have allowed him to act as though he were of the *noblesse de robe* of Damascus. At the time, it was not uncommon to see scholars who had achieved a certain status to adopt a style of dress similar to

that of the rulers and the über-established elites in the society. This might have been due to the complex mutual relations between rulers and scholars, which inspired some of the latter to wear distinctive dress associated with power. Turban, sleeves, the *ṭaylasān* and the *ṭarḥa* were some of the apparel that gradually became the sign of prestigious scholarly status.[56] By contrast, however, al-Nawawī maintained his simplicity. His clothes were little different from what the commoners wore.[57]

Al-Sakhāwī goes on to report that in his early period of study at the Rawāḥiyya, al-Nawawī participated in no less than twelve different "classes" (*ḥalqa*s) every day. These included, but were certainly not limited to: two lessons from *al-Wasīṭ*; three lessons from *al-Muhadhdhab*; one lesson on *al-Lumaʿ* of Abū Isḥāq al-Shīrāzī; one lesson on *al-Muntakhab* of Fakhr al-Rāzī; one lesson on *Asmāʾ al-Rijāl*; and one lesson on *uṣūl al-dīn*.[58] He also managed to memorize *al-Tanbīh* of al-Shīrāzī, a manuscript consisting of 266 folios, in just four and a half months. In the same year, he memorized a quarter of *al-Muhadhdhab,* particularly the sections on ritual, consisting of another 257 folios.[59] Along with that, the writing of commentary (*sharḥ*) and rectification (*taṣḥīḥ*) also became part of his daily routine. As Ibn al-ʿAṭṭār said: "He never wasted his time, day and night, but keep on studying. Even while he was traveling, he kept reading and writing, and this kind of activity lasted for six years."[60] This craving for study meant that al-Nawawī could not devote the same time to sleep that others did. The chief judge Badr al-Dīn b. Jamāʿah once confronted al-Nawawī and asked how he was able to sleep if he studied all the time. "When sleep overtook me," al-Nawawī replied, "I used to lean on my books for a while, so I could remain alert."[61]

The biographers also note that al-Nawawī never married.[62] Al-Nawawī explained in his own writings that his

decision to opt for celibacy was due to his devotion to learning. Referring to the *Jāmiʿ li-Ādāb al-Rāwī Wa-l-Sāmiʿ* of al-Khaṭīb al-Baghdādī, al-Nawawī assumed that taking care of a spouse and supporting a household would hinder him from mastering his subjects and collecting traditions. He quoted several narratives in support of this: "The best among you on the Day of Judgment is the one who has the lightest liability, that is, he who has no family or child;" "Whoever is accustomed to women's legs will not succeed;" "If a jurist marries, he is like one traveling by sea, for if he has children, he would be dashed on the rocks;" "God will guard the one who keeps himself away from women, and he will not be tamed by their [women] legs."[63] He finally quoted the *ḥadīth* of the Prophet: "This world is sweet and God has appointed us to manage it, but be accountable for your actions, and beware of this world and of women; the first *fitna* among the Israelites was over women."[64]

Nevertheless, one must be cautious about seeing al-Nawawī's lifestyle as entirely frugal. In a society that was largely characterized by struggles and competition among its elites,[65] al-Nawawī's abhorrence of worldly matters was viewed as ideal conduct. Therefore, biographers wanting to deliver a moral message to generations to come would have accentuated al-Nawawī's abstemious lifestyle, diet, and careless habits in order to portray his virtue, and at the same time provide an example of how a learner and believer should act.

Career and written works

It is rather difficult to determine when al-Nawawī began his intellectual career, since modern concept of "career" does not fit the experience of al-Nawawī or his contemporaries. Contemporary scholars who work on medieval Islamic learning commonly assume that one's career as a jurist or professor began after the person received a license from

one's direct teacher. George Makdisi, for example, shows clearly that a student who met the required competences in law and legal methodology usually received a license to teach and to issue *fatwā*s from his own teacher (*ijāza li-l-tadrīs wa-l-iftā'*), regardless of whether he had studied in a formal *madrasa* or not.[66] Likewise, Jonathan Berkey states that the *ijāza* became "the standard means" by which knowledge was transmitted, and in turn, gave the recipient the authority to continue the transfer of knowledge.[67]

However, apart from reporting that al-Nawawī was appointed as the *muʿīd* (teaching assistant) to Abū Isḥāq al-Maghribī during his study at the Rawāḥiyya, his biographers do not furnish any evidence as to when al-Nawawī formally received his license to teach or to issue legal decisions. In fact, the biographers provide no information as to whether or not Abū Isḥāq al-Maghribī ever formally gave him a full license to teach. Perhaps, in al-Nawawī's case, we need to set aside the formal concept of career, particularly since his learning and professional experience far outstripped those of others.

The biographers of al-Nawawī instead apply their own standard in highlighting al-Nawawī's intellectual career. For them, the most important period in his lifetime, which we can interpret as the beginning of his career, was the period when he engaged in writing. This is exactly what Ibn al-ʿAṭṭār has explicitly recorded regarding his teacher. Right after stating that al-Nawawī spent all his time only in studying, and that this lasted for a duration of six years, Ibn al-ʿAṭṭār goes on to report that al-Nawawī began to work on his writing (*thumma ishtaghala bi-l-taṣnīf*).[68] If we are to trust this report and assuming that al-Nawawī began his initial studies in Damascus at the age of nineteen, he seems to have needed only a few years in which to establish himself as an author-jurist (*muṣannif*). However, to assume that al-Nawawī waited until the last phase of his studies

before he began writing would be erroneous. Ibn al-ʿAṭṭār in fact states that al-Nawawī made refining and writing commentary a habit from his early days as a pupil.[69] This is in keeping with Makdisi's observation on the practice of writing of the *taʿlīqa* (pl. *taʿālīq*/*taʿlīqāt*), a supplemental note penned by both student and teacher on a certain subject that often came to be used as the basis of a larger and more definite work.[70] It is not surprising, therefore, that in a relatively short period, al-Nawawī produced a large number of written materials, as I will show a little later in this section.

Be that as it may, writing was certainly not al-Nawawī's only occupation. While he valued solitude as an author-jurist, he also held a quite prestigious position as the head of the Ashrafiyya College of Tradition (*Dār al-Ḥadīth al-Ashrafiyya*), a post that he took up following the death of Shihāb al-Dīn Ibn Abī Shāma in the year of 665, which he held until his own death.[71] This professorship at the Ashrafiyya naturally added to al-Nawawī's credentials as an author-jurist. Moreover, his engagement with students and the religious sciences led him to become more aware of the most relevant and urgent topics. In fact, most of al-Nawawī's major legal works were written during his tenure at the Ashrafiyya, including his unfinished works. Having said this, it must be remembered that the task of professor and author-jurist were two distinct occupations, even though they could be held by the same person.[72] His work as a professor did not necessarily require him to produce works of legal scholarship.[73] Thus, while important enough at the time, and perhaps of a higher significance in terms of direct influence in the *madhhab*, al-Nawawī's biographers from later generations emphasized his importance as an author-jurist, rather than as a professor. Therefore, regardless of how important his position was at the Ashrafiyya, the biographers concurred that al-Nawawī's

primary occupation was that of an author-jurist. This would later have a symbolic significance for al-Nawawī's credentials as the one who refined and reorganized the Shāfiʿī school's doctrine, I shall cover in Chapter 4.

As an author-jurist, al-Nawawī was prolific. In a relatively short period, before dying at the age of forty-five, he produced immense written works on topics ranging from jurisprudence, *ḥadīth*, and theology, to biography and language. The exact number of his works, however, remains unknown. Ibn al-ʿAṭṭār reports that al-Nawawī once asked him to wash out thousands of manuscript pages he had written and then to sell them to the papermaker. Ibn al-ʿAṭṭār had no choice but to obey al-Nawawī's instruction. Later, he deeply regretted his teacher's decision to dispose of manuscripts that might possibly have been beneficial for generations to come.[74] It is therefore perfectly possible to argue that the number of al-Nawawī's extant works represents only what Ibn al-ʿAṭṭār was able to collect and keep with the permission of his teacher.

Al-Nawawī's surviving written works in jurisprudence include: *Rawḍat al-Ṭālibīn*, which is an abridgment of al-Rāfiʿī's *Fatḥ al-ʿAzīz*, also called *Sharḥ al-Kabīr*; *Minhāj al-Ṭālibīn*, an abridgment of *al-Muḥarrar* written by the same al-Rāfiʿī; *Taṣḥīḥ al-Tanbīh*, a work which serves as a commentary on the *Tanbīh* of al-Shīrāzī; *Daqāʾiq al-Minhāj*, which is also called *Kitāb al-Daqāʾiq*; *al-Tarkhīṣ fī-l-Ikrām Wa-l-Qiyām*; *Ruʾūs al-Masāʾil*; *al-Fatāwā*; *al-Īḍāḥ fī-l-Manāsik*; *al-Ījāz fī-l-Manāsik*; *al-Uṣūl Wa-l-ḍawābiṭ*; *Qismat al-Ghanāʾim*; and *Mukhtaṣar Taʾlīf al-Dārimī fī-l-Mutaḥayyira*.[75]

The books in jurisprudence that al-Nawawī was unable to finish include: *al-Majmūʿ Sharḥ al-Muhadhdhab*, which he completed up to the book on usury (*al-ribā*); *al-Taḥqīq*, in which he reached only the section on the prayers of the traveler (*ṣalāt al-musāfir*); *Sharḥ al-Wasīṭ*, which he named

al-Tanqīḥ but which contained only the chapter on prayer*; Nukat ʿalā al-Wasīṭ*; *Daqāʾiq al-Rawḍa*; an abridgment of the *al-Tadhnīb* of al-Rāfiʿī, which he called *al-Muntakhab*; *Mukhtaṣar al-Tanbīh*; *Taḥrīr al-Tanbīh*; *Tuḥfat Ṭullāb; ʿUmda fī Taṣḥīh al-Tanbīh*; *Nukat al-Tanbīh*; *Muhimmāt al-Aḥkām*; and *Nukat al-Muhadhdhab*.[76]

In the field of *ḥadīth*, an important one for his juristic activity, al-Nawawī wrote: *Riyād al-Ṣāliḥīn; Sharḥ Ṣaḥīḥ Muslim*; *al-Adhkār*; *al-Arbaʿīn al-Nawawiyya*; *al-Irshād fī ʿUlūm al-Ḥadīth*; *al-Taqrīb Wa-l-Taysīr fi Maʿrifat Sunan al-Bashīr al-Nadhīr*; and *Minhāj Sharḥ Muslim*. Some of the works in this field that he never finished are: a commentary on al-Bukhārī, which al-Nawawī called *al-Talkhīs*; *al-Ījāz*, a commentary on Abū Dāwūd which he completed up to the chapter on ablution (*al-wuḍūʾ*), *al-Imlāʾ*, which is a commentary on the *ḥadīth "innamā al-aʿmāl bi-l-niyāt"*; *Khulāṣat al-Aḥkām fī al-Ḥadīth*; and *Risālat al-Maqāṣid*.[77]

Related to the subject of *ḥadīth* and jurisprudence are his works in the fields of biography and *rijāl* (narrative virtues of famous men). In this field, al-Nawawī wrote: *Tahdhīb al-Asmāʾ Wa-l-Lughāt*; *Ṭabaqāt al-Fuqahāʾ*; *al-Mubhamāt*, which is a summary of the *Tārīkh Baghdād* of Khatīb al-Baghdādī; and *Manāqib al-Shāfiʿī*. Other works, falling under the category of morals and etiquette, include: *al-Tibyān fī Ādāb Hamalat al-Qurʾān* and its abridgement; *Mukhtaṣar Ādāb al-Istisqāʾ*; *Bustān al-ʿĀrifīn*; *Mukhtaṣar al-Basmalah* of Abū Shāma; and a chapter on the prayer for rain (*al-istisqāʾ*).[78]

There are also some written works that are reported as having been composed by al-Nawawī such as *al-Nihāya fī Iikhtiṣār al-Ghāya* and *Aghālīṭ al-Wasīṭ*, which Ibn al-ʿAṭṭār never included among his teacher's works.[79] Brockelmann adds several manuscripts that neither al-Suyūṭī nor Ibn Qāḍī Shuhba mention: *Ḥizb al-Mubham ʿalā Ḥurūf al-Muʿjam*; *al-Abkār*, *ʿAmal al-Yaum Wa-l-Layla*; *Risala fī*

Aḥādīth al-Ḥayā’, and *Risala fī Maʿāni al-Asmā’ al-Ḥusnā*.[80] Likewise, Heffening also lists two manuscripts that seem to have been portions of al-Nawawī’s larger works: *Mukhtaṣar Asad al-Ghāba* and *Ādāb al-Muftī Wa-l-Mustaftī*.[81]

Theology

In contrast to the abundant information about al-Nawawī’s contributions in the field of jurisprudence and related disciplines, the biographers provided limited information on his theological views. This might be due to his major preoccupation as a jurist and *ḥadīth* scholar, rather than a theologian. However, determining al-Nawawī’s general theological stance is important in order to assess its implication for his legal thinking.

Traditional Western scholarship has long regarded the perennial binary opposition between traditionalism and rationalism as indispensable to the study of Muslim intellectual history. These two analytic distinctions provide the framework not only for the examination of personal belief, that is, how Muslims perceive God and His attributes, but also in the analysis of the broader aspect of Muslim theology in society, that is, how Muslims derive God’s law and promote His justice in society. The rationalist camp in this scholarship is represented by the Muʿtazilites, who glorified the use of reason over revelation in their theory. The traditionalists, on the contrary, favored reliance on textual sources over reason. At one time, the Muʿtazilites were supported by the secular power that be under Caliph al-Maʾmūn (d. 218/833) in their challenge to the traditionalists, who enjoyed strong support among the masses. This event came to be known as the *miḥna*.[82] However, the *miḥna* was not the only event where politics affected the contest between traditionalism and rationalism. Two centuries later, it was the traditionalists who worked hand in hand with the ruler, especially during

the reign of Caliph al-Qādir (d. 422/1031), to establish an edict known as “the Qadiri Creed” (*al-Iʿtiqād al-Qādirī*). This creed became the standard traditionalist view in opposition to the Muʿtazilites.[83] At about the same time, theological stances that sought a compromise between rationalism and traditionalism began to be developed, with Ashʿarism, named after Abū al-Ḥasan ʿAlī b. Ismāʿīl al-Ashʿarī (d. 324/936), receiving most interest among the Shāfiʿites. Al-Ashʿarī is known to have held the opinion that reason and revelation are bound together. His understanding of the relationship between reason and revelation is intermediate between the extreme traditionalists on the one hand and the Muʿtazilites on the other.[84] In a larger context, this was also the period in Islamic legal history when *ḥadīth*s came to be regarded as insufficient without the instrument of reason. In its own complex process, Ashʿarism became the predominant school of theology and even held up the banner of Sunnite Orthodoxy.[85]

With Ashʿarism gaining favor as orthodoxy, it was inconceivable for the biographers to place al-Nawawī anywhere other than under this banner. Thus, al-Sakhāwī, on the authority of al-Yāfiʿī and Tāj al-Dīn al-Subkī, established al-Nawawī as an Ashʿarite.[86] The same Tāj al-Dīn al-Subkī even said that Ashʿarism, from its inception, had been inseparable from Shāfiʿism.[87] Many questions can be raised regarding al-Nawawī’s leaning toward Ashʿarism. One relevant question for further discussion in this section is: What did the biographers have in mind when they established al-Nawawī as an Ashʿarite? Al-Dhahabī reports that al-Nawawī was compliant with Ashʿarism because he did not use interpretation (*taʾwīl*) in reading the Quranic verses pertaining to God’s attributes and thus let the scripture speak for itself. Al-Dhahabī also claims that al-Nawawī barely used *taʾwīl* in his *ḥadīth* work, *Sharḥ Ṣaḥīḥ*

Muslim.[88] For the most part, al-Dhahabī's account coincides with al-Nawawī's own statement:

> Muslims differed in understanding the Quranic verses pertaining to God's attributes, whether they use *taʾwīl* or not? Some said that *taʾwīl* will suit them better and this is known as the position of the *mutakallimūn*. Others, however, will avoid the use *taʾwīl*, and instead lean the meaning of the verses to God and hold firm to it. … For example, we believe that God sits on His throne, but we do not know the meaning of it and we do not seek to find further meaning, although we believe that nothing is similar to God … This is the way of Ancestor (*salaf*) or the majority of them. This way is *safer*[89] (the emphasis is mine).

Nevertheless, al-Dhahabī's declaration that al-Nawawī did not exercise the use of *taʾwīl* must be treated carefully. Al-Nawawī, in fact, never forbade any competent individual from engaging in speculative theology (*kalām*) and therefore acknowledged the use of *taʾwīl*. He was also aware that al-Shāfiʿī abhorred *kalām.* However, he made it clear that, whenever someone is unsure of his faith and nothing can overcome this doubt except learning the proofs of the *mutakallimūn*, then it is compulsory for him to pursue *kalām* in order to answer the doubt (*wajaba taʿlimu dhālika li-izālati al-shakk*).[90] However, unlike other Shāfiʿite jurists who are known to have engaged extensively in speculative theology, al-Nawawī does not provide us with a theoretical framework for how jurists ought to reconcile rationalism and traditionalism. Compared to al-Ghazālī, for example, who proposed a naturalisation of reason and revelation through the "rule of interpretation" (*qānūn al-taʿwīl*),[91] al-Nawawī is not specific as to how his acceptance of *taʾwīl* was put into practice. Nevertheless, insofar as his *Majmūʿ* and *Rawḍa* are concerned, al-Nawawī's link to

Ashʿarism can be seen in his greater propensity for deriving religious law based on scripture and an increased reliance on the *isnād* in evaluating prophetic Tradition. Thus, while the role of reason is recognized, its use is limited. The combination between the use of textual evidence and reason in juristic elaboration was to become the trademark of all the surviving schools of law, including the Ḥanafī, the Mālikī, the Shāfiʿī and even the Ḥanbalī. The difference between them lies in, among other factors, the competing authority given to the different instance of textual evidence and the extension of the use of reason in cases that do not directly correspond to textual evidence. The details of how this was elaborated in legal cases will be discussed in the Chapter 5.

Final days

Not much can be gathered about al-Nawawī's final days, which came at the end of his twenty-eight years of learning and juristic career in Damascus. Perhaps, due to his untiring work habit both as a professor and an author-jurist, not to mention his abstemious and self-denying lifestyle, al-Nawawī began to realize that his health was deteriorating. We know that he decided to take leave from his position and return to his family in Nawā. While staying there, he was motivated to join the pilgrimage to Jerusalem and to the shrine of al-Khalīl (Abraham) in Hebron. Due to failing health, however, al-Nawawī never made it back to Damascus. He died in Nawā on the night of 24 Rajab 676/1277, having lived no more than forty-five and a half years.[92]

Notes

1 Muḥammad b. ʿAbd al-Raḥmān al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, (ed.) Muṣṭafā Dīb al-Bughā (Damascus: Dār al-ʿUlūm al-Insāniyya, 1997), 3. Not much can be reported of Nawā, except that it is known as the village of

Ayyūb and is famous as the location of the tomb of Sam, the son of Nūḥ. See Guy Le Strange, *Palestine under the Moslems: A Description of Syria and the Holy Land from A.D. 650 to 1500* (Beirut: Khayats, 1965), 515–16.

2 Jamāl al-Dīn ʿAbd al-Raḥīm b. al-Ḥasan al-Isnawī, *Ṭabaqāt al-Shāfiʿiyya*, (ed.) ʿAbd Allāh al-Jubūrī, 2 vols. (Baghdad: Maṭbaʿat al-Irshād, 1970), 2:477, n. 2.

3 See al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 3.

4 Cited in Rafik Berjak, *al-Nawawī: The Jurist of Islam* (Victoria, BC: Trafford Publishing, 2007), 109.

5 al-Isnawī, *Ṭabaqāt al-Shāfiʿiyya*, 2:477. See also, ʿUmar Riḍā Kaḥḥāla, *Muʿjam al-Muʾallifīn: Tarājim Muṣannifī al-Kutub al-ʿArabiyya*, 15 in 8 vols. (Damascus: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1980), 13:202.

6 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 3; Abū al-Faḍl Abd al-Raḥmān b. Muḥammad Jalāl al-Dīn al-Suyūṭī, "al-Minhāj al-Sawī fī Tarjamat al-Imām al-Nawawī," in *Rawḍat al-Ṭālibīn*, Vol. 1, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 54.

7 Muḥammad Ibn Shākir al-Kutubī, *Fawāt al-Wafayāt Wa-l-Dhayl ʿalayhā*, (ed.) Iḥsān ʿAbbās, 5 vols. (Beirut: Dār Ṣādir, 1973), 4:265. For biographical information on Ḥakīm b. Ḥizām, see Shams al-Dīn Muḥammad b. Aḥmad al-Dhahabī, *Siyar Aʿlām al-Nubalāʾ*, (ed.) Shuʿayb Arnāʾūṭ, 23 vols. (Beirut: Muʾassasat al-Risālah, 1986), 3:44–51.

8 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 3.

9 He was ʿAlī b. Ibrāhīm b. Daūd b. Salmān b. Sulaymān ʿAlāʾ al-Dīn Abū al-Ḥasan b. al-ʿAṭṭār. For his biographical information, see Abū Bakr b. Aḥmad Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, (ed.) Ḥāfiẓ ʿAbd al-ʿAlīm Khān, 4 in 2 vols. (Beirut: ʿĀlam al-Kutub, 1987), 2:270–71.

10 Ibn al-ʿAṭṭār only mentions that al-Nawawī's father was a small business owner in Nawā. This rather minimal information, as Gibb points out, became the common characteristic of a biographical dictionary, besides other major structures such as "who, when, where, intellectual powers, reputation." See, Sir Hamilton Gibb, "Islamic Biographical Literature," in *Historians of the Middle East*, (eds) Bernard Lewis and P. M. Holt (London: Oxford University Press, 1962), 56–57.

11 al-Suyūṭī, "al-Minhāj al-Sawī," 54; al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 4.

12 See Muḥammad b. Naṣr al-Marwazī, *Kitāb Qiyām Ramaḍān*, (eds) Muḥammad Aḥmad ʿĀthūr and Jamāl Abd al-Munʿim al-Kaumī (Cairo: al-Dār al-Dhahbiyah, 1994), 116. The Qurʾān said: "The Night of Power is better than a thousand months; therein come down the angels and the spirit by Allah's permission, on every errand; peace this until the rise of morn" Q.97:3–5. The Quranic quotations are after the translation of ʿAbdullah Yūsuf ʿAlī. See ʿAbdullah Yūsuf ʿAlī, *The Meaning of the Holy Qurʾān* (Beltsville, MD: Amana Publications, 1999), 1676. Other traditions also refer to the divine meaning of the night during which "the satans and genies are put in chains, and the doors of the sky open, and all repentance is accepted" (*tuṣaffadu maradatu al-Shayāṭīn, wa-tughallu ʿafāriyatu al-*

Jinn, wa-tuftaḥu fī-hā abwābu al-samā', wa-yaqbalu Allāh fī-hā al-tawbah). See al-Marwazī, *Kitāb Qiyām Ramaḍān*, 120.

13 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Rawḍat al-Ṭālibīn*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ, 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 2:256.

14 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Riyāḍ al-Ṣāliḥīn: Arabic–English*, trans. S. M. Madni Abbasi, 2 in 1 vols. (New Delhi, India: Kitab Bhavan, 1989), 2:581–83.

15 al-Suyūṭī, "al-Minhāj al-Sawī," 54; al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 4.

16 See Albert Hourani, "Islamic History, Middle Eastern History, Modern History," in *Islamic Studies: A Tradition and Its Problem*, (ed.) Malcolm H. Kerr (Malibu, CA: Undena Publications, 1980), 15.

17 On the concept of "moral message," see Nimrod Hurvitz, "Biographies and Mild Asceticism: A Study of Islamic Moral Imagination," *Studia Islamica* 85 (1997): 45–50.

18 A similar historical pattern is found in the biography of the Prophet Muḥammad. Ibn Hishām reported many events in which the Prophet was known to have received the divine blessing since his early childhood. See for example, ʿAbd al-Mālik Ibn Hishām, *al-Sīrah al-Nabawīyah*, (eds) Muṣṭafā al-Saqqā, Ibrāhīm al-Ibyārī and ʿAbd al-Ḥāfiẓ Shalabī, 2 vols. (Cairo: Maktabat wa-Maṭbaʿat al-Bābī al-Ḥalabī, 1955), 1:166.

19 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:153.

20 See Shams al-Dīn Muḥammad b. Aḥmad al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4 vols. (Hyderabad: Osmania Oriental Publications Bureau, 1958), 4:1471; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:154–56; al-Suyūṭī, "al-Minhāj al-Sawī," 56–57; al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 9–14.

21 For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:102–3.

22 al-Suyūṭī, "al-Minhāj al-Sawī," 54. For further information on the *muʿīd* or repetitor in the study circle, see George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 103, 27. Cf. Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190–1350.* (Cambridge: Cambridge University Press, 1994), 80.

23 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:173–76.

24 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 5, 9–10. Makdisi suggested that as the institution of *madrasa* was growing, finding residence in *madrasa* was subject to a competition. See Makdisi, *The Rise of Colleges*, 186–87.

25 For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:108–9.

26 Ibid., 2:132–33.

27 He was Abū Ḥafṣ ʿUmar b. Asʿad b. Abī Ghālib al-Rabaʿī al-Arbalī. See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:142–43.

28 His complete name was Abū al-Fatḥ ʿUmar b. Banḍār al-Tiflīsī. For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:143–44.

29 See al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 9, 13.

30 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, (ed.) Khalīl Mays, 18 in 9 vols. (Beirut: Dār al-Qalam, 1987), 1:109.
31 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 13. For information about Abū Isḥāq al-Murādī, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:128–29.
32 He was Muḥammad b. Fattūḥ al-Ḥumaydī (d. 488/1095). For information on his work, see Muḥammad b. Fattūh al-Ḥumaydī, *al-Jamʿ Bayna al-Ṣaḥīḥayn: al-Bukharī Wa-Muslim*, (ed.) ʿAlī Husayn Bawwāb (Beirut: Dār Ibn Hazm, 1998).
33 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 14.
34 Ibid., 14–15.
35 His name was Abū Yūsuf b. Isḥāq b. al-Sikkīt, a renowned grammarian whose veneration of the ʿAlids led to his being executed at the hands of the caliph al-Mutawakkil (d. 861/247). Ibn al-Sikkīt was reported to have praised Ḥasan and Ḥusayn and dared to say to the caliph: "Kanbar, Ali's slave was better than you and your sons." See Shams al-Dīn Abū Al-ʿAbbās Aḥmad Ibn Khallikān, *Wafayāt al-Aʿyān* [Ibn Khallikān's biographical dictionary], trans. Bn. Mac Guckin de Slane, 4 vols. (Paris: Edouard Blot, printed for the Oriental Translation Fund of Great Britain and Ireland, 1842), 4:293–94, 4:99.
36 Ibid., 4:298.
37 He was ʿAbd al-Ghanī b. ʿAbd al-Wāhid al-Jammāʿīlī (d. 1203). His work *Kamāl fī Maʿrifat Asmāʾ al-Rijāl* triggered a generation of *ḥadīth* scholars to write commentaries on and abridged versions of the text. See for example, Yūsuf b. al-Zakī ʿAbd al-Raḥmān al-Mizzī, *Tahdhīb al-Kamāl fī Asmāʾ al-Rijāl*, (ed.) Bashshār ʿAwwād Maʿrūf, 35 vols. (Beirut: Muʾassasat al-Risālah, 1980).
38 As a book on the grammatical science, *al-Lumaʿ* should not to be confused with the *al-Lumaʿ fī Uṣūl al-Fiqh* of Abū Isḥāq Ibrāhīm al-Shīrāzī al-Fayrūzābādī (d. 476/1083), a work that al-Nawawī studied with a different teacher.
39 Berjak, *al-Nawawī*, 37–38.
40 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925), 1:40. *Muftī* is a juristconsult or person who issues a legal opinion. *Mustaftī* is an individual questioner or one who requests a legal opinion, bet it in connection with litigation or not. For further information, see Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, "Muftis, Fatwas, and Islamic Legal Interpretation," in *Islamic Legal Interpretation: Muftis and Their Fatwas*, (eds) Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (Cambridge, MA; London: Harvard University Press, 1996), 3–8.
41 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 1:25.
42 See, Wael B. Hallaq, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25 (1993): 595–96. In his *Tahdhīb*, al-Nawawī notes that there was actually another Shāfiʿite scholar who was of the same intellectual caliber as Ibn Surayj,

whose name was Abū Saʿīd al-Iṣtakhrī (d. 328/940). Al-Nawawī also writes that Abū al-Qāsim al-Dārakī (d. 375/986) once said that when his teacher Abū Isḥāq Ibrāhīm al-Marwazī (d. 340/951) first came to Baghdad, he (al-Marwazī) found no one worthy of teaching law except Ibn Surayj and al-Iṣtakhrī. However, unlike Ibn Surayj, al-Iṣtakhrī did not enjoy the same popularity as the former, probably because he did not have students who would later record his juristic achievements posthumously. See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:109.

43 Further discussion regarding what was the nature of these *ṭuruq* (pl. of *ṭarīqa*) and how Shāfiʿite doctrine developed into these two entities will be discussed in Chapter 3.

44 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:25–26.

45 Ibid., 1:26.

46 Ibid.

47 Heffening's original words were: "[H]e lived very frugally and even declined a salary." See W. Heffening, "Al-Nawawī," in *The Encyclopaedia of Islam: New Edition*, (eds) C. E. Bosworth, *et al.* (Leiden; New York: E. J. Brill, 1993), 7:1041.

48 ʿAbd Allāh b. Asʿad al-Yāfiʿī, *Mirʾāt al-Jinān Wa-ʿIbrat al-Yaqẓān*, 4 vols. (Beirut: Muʿassasat al-Aʿlamī li-l-Maṭbūʿāt, 1970), 4:183; Ismāʿīl b. ʿUmar Ibn Kathīr, *al-Bidāya Wa-l-Nihāya*, (eds) Aḥmad Abū Mulḥim and Abū Hājar Muḥammad al-Saʿīd b. Basyūnī Zaghlūl, 14 in 7 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985), 7:294.

49 However, al-Ghazālī admits that, if it poses no danger to the individual, it is permissible since many pious persons in the previous generation had performed the same ritual. See Abū Ḥāmid Muḥammad al-Ghazālī, *Asrār al-Ṣawm* (Cairo: Maṭbaʿat al-Azhar, 1969), 28–29.

50 Al-Sakhāwī lists al-Nawawī's twelve opinions regarding this life-long tradition of fasting: For those who neither committed to perform fasting nor found it harmful, there were four opinions; the choice (*ikhtiyār*) of most Shāfiʿte jurists was that it was recommended (*istiḥbāb*), al-Baghawī considered it disfavored (*karāha*), while al-Shāfiʿī considered it optional (*ibāḥa*), and some of the ancestors, forbade it (*taḥrīm*). For those who committed to perform life-long fasting and did not feel it a burden, there were five opinions: the choice of most Shāfiʿite jurists was that it was obligatory (*wujūb*), whereas other opinions are as we mentioned above. For those who found it harmful (*yataḍarrar*), there were three opinions: forbidden, disfavored, and permitted. See al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 49–50.

51 Ibid., 53.

52 al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4:1472.

53 Ibid.

54 For *Fa-kayfa taṭību nafsī bi-akli dhālika,* see al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4:1472.

55 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 55.

56 Chamberlain, *Knowledge and Social Practice*, 102–3.

57 al-Sakhāwī, *Ḥayāt al-Imām Al-Nawawī*, 53.

58 Ibid., 7. Compare this with the topics listed by al-Dhahabī and Ibn Qāḍī Shuhba; see, al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4:1470; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:154.

59 See the note by the editor to the introductory part of al-Nawawī's *Minhāj*: Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-Ṭālibīn*, (ed.) Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, 3 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2005), 1:9.

60 *Lā yuḍyiʿu lahu waqtan fī laylin wa-lā nahārin illā fī waẓīfah min al-ishtighāl bi-l-ʿilm ḥattā fī dhahābihi fī-l-ṭarīq yukarriru wa-yuṭāliʿu wa-annahu baqiya ʿalā hādhā sitta sinīn*. See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:155.

61 *Idhā ghalabanī al-nawmu istanadtu ilā al-kutubi laḥẓatan wa-antabihu*. See al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 50.

62 See among others, Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:156.

63 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:35.

64 Ibid.

65 For general references about Damascus and Mamluk society, see among others, Donald P. Little, *History and Historiography of the Mamlūks* (London: Variorum 1986); J. van Steenbergen, *Order Out of Chaos: Patronage, Conflict and Mamluk Socio-Political Culture, 1341–1382* (Leiden; Boston, MA: Brill, 2006); Robert Irwin, *The Middle East in the Middle Ages: The Early Mamluk Sultanate, 1250–1382* (London: Croom Helm, 1986); P. M. Holt, Ann K. S. Lambton, and Bernard Lewis (eds), *The Cambridge History of Islam: Central Islamic Lands from Pre-Islamic Times to the First World War,* Vol. 1a, (Cambridge; New York: Cambridge University Press, 1970); Chamberlain, *Knowledge and Social Practice*.

66 Makdisi, *The Rise of Colleges*, 270–72. Makdisi also said: "When he [teacher/master-juristconsult] granted the license to the candidate he did so in his own name, acting as an individual, not as part of a group … for there was no faculty." Cf. Chamberlain, *Knowledge and Social Practice*, 88. In this case, Chamberlain describes Makdisi as not demonstrating whether or not the granting of an *ijāza* had anything to do with the madrasa.

67 Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo* (Princeton, NJ: Princeton University Press, 1992), 31.

68 See note 50.

69 al-Suyūṭī, "al-Minhāj al-Sawī," 54–55.

70 Makdisi, *The Rise of Colleges*, 126–27.

71 al-Isnawī, *Ṭabaqāt al-Shāfiʿiyya*, 2:477; ʿAbd al-Ḥayy b. Aḥmad Ibn al-ʿImād, *Shadharāt al-Dhahab fī Akhbār Man Dhahab*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 6:9. For further information on Abū Shama, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:169–71. Al-Sakhāwī reports that, while heading the Ashrafīyya, al-Nawawī did not take any salary or stipend (*jāmikīya*), although he was entitled to receive one. He generously donated his salary to purchasing books for the benefit of students in the *madrasa*. Furthermore, he assumed that this salary was the least of reward, due to the Prophetic *ḥadīth* that warned learned men against receiving any worldly benefit from their patron. According to the *ḥadīth*, a certain Ubayy b. Kaʿab taught a man the

Qurʾān. When Ubayy visited Yemen, the man gave him a bow as a gift. Ubayy told this to the Prophet, and he reminded him; "if you accept it, you would receive the same bow from Hellfire" (*in akhadhtahā fa-khudh bi-hā qawsan min al-nār*). See al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 52.

72 See Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 167–68. Cf. Makdisi, *The Rise of Colleges*, 208.

73 Hallaq, *Authority, Continuity, and Change in Islamic Law*, 168.

74 al-Suyūṭī, "al-Minhāj al-Sawī," 69.

75 See ibid., 62–69; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:156–57. Cf. Carl Brockelmann, *Geschichte Der Arabischen Litteratur. Supplementband*, 3 vols. (Leiden: E. J. Brill, 1937), 1:680–86; W. Heffening, "Zum Leben Und Zu Den Schriften an-Nawawi's," *Der Islam* 22:3 (1935): 171–87.

76 al-Suyūṭī, "al-Minhāj al-Sawī," 62–69; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:156–57; Heffening, "Zum Leben Und Zu Den Schriften an-Nawawi's," 171–87.

77 al-Suyūṭī, "al-Minhāj al-Sawī," 62–69; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:156–57. Cf. Brockelmann, *Geschichte Der Arabischen Litteratur. Supplementband*, 1:680–86; Heffening, "Zum Leben Und Zu Den Schriften an-Nawawi's," 171–87.

78 al-Suyūṭī, "al-Minhāj al-Sawī," 62–69. Heffening also listed all books in this paragraph except the last title on the prayer for rain (*al-istisqāʾ*).

79 Ibid., 69; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:157.

80 Brockelmann, *Geschichte Der Arabischen Litteratur. Supplementband*, 1:685–86.

81 Heffening, "Zum Leben Und Zu Den Schriften an-Nawawi's," 186–87.

82 Scholarship on the *miḥna* is quite contentious, as many scholars adopt conflicting positions. For a recent study, see John A. Nawas, "The *Miḥna* of 218 A.H./833 A.D. Revisited: An Empirical Study," *Journal of the American Oriental Society* 116:4 (1996). Nawas maps how different scholars have conceptualized the issue of the *miḥna*. His position in this article is to reaffirm the argument of previous studies which views the *miḥna* as al-Maʾmūn's attempt to assert his theological and legal authority over the juristic culture, especially among the deviant traditionists and traditionalists. Cf. Scott Lucas, who sees an entirely different motive behind the traditionalists' project than that of challenging the caliph. See Scott C. Lucas, *Constructive Critics, Ḥadīth Literature, and the Articulation of Sunnī Islam: The Legacy of the Generation of Ibn Saʿd, Ibn Maʿīn, and Ibn Ḥanbal* (Leiden; Boston, MA: Brill, 2004), 192–202.

83 George Makdisi, *Ibn ʿAqil: Religion and Culture in Classical Islam* (Edinburgh: Edinburgh University Press, 1997), 8–11.

84 On al-Ashʿarī's understanding of the relationship between rationalism and traditionalism, see Richard M. Frank, "Al-Ashʿarī's Conception of the Nature and Role of Speculative Reasoning in Theology," in *Early Islamic Theology: The Muʿtazilites and al-Ashʿarī*, (ed.) Dimitri Gutas (Aldershot: Ashgate Publishing Limited, 2007), 147.

85 By a complex process, Ashʿarism has undergone a long and intricate process of gaining legitimacy as orthodoxy. For detail discussion, see George Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History I," *Studia Islamica* 17 (1962).
86 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 51.
87 Makdisi, "Ashʿarī and the Ashʿarites in Islamic Religious History I," 68–69.
88 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 51.
89 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:25.
90 Ibid. The question whether al-Nawawī's treatment of *kalām* was pragmatic and instrumental or synthetic requires a separate study.
91 On al-Ghazālī's "rule of interpretation," see Frank Griffel, *Al-Ghazali's Philosophical Theology* (Oxford; New York: Oxford University Press, 2009), 112–23.
92 al-Sakhāwī, *Ḥayāt al-Imām al-Nawawī*, 99–100.

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2 The reception and routinization of his legacy

“He made us believe that Ibn al-Ṣalāḥ had come back to life, and that al-Shāfiʿī had never passed away.” Such was the elegy expressed by a certain Rashīd al-Dīn al-Fāruqī to emphasize al-Nawawī’s symbolic significance as an author-jurist.[1] Indeed, anyone who reads Shāfiʿite biographical dictionaries written from the eighth/fourteenth century onwards will easily find similar presentation of al-Nawawī as one of the few jurists who contributed to the crystallization of the school’s doctrine through his works in jurisprudence. Likewise, any person who reads *furūʿ* works from the same period will find the same image of al-Nawawī, whose legal opinions are cited as though they represent the authoritative opinion of the school. Al-Nawawī, in other words, attained an unequivocal reputation and legacy as transmitter of the totality of legal doctrine that centered around the figure of al-Shāfiʿī, the supposed founder of the *madhhab*. However, a careful reading of the biographical works suggests that al-Nawawī did not gain this fame and reputation during his lifetime, nor did he attain it immediately after his death. Instead, as I shall show in this chapter, al-Nawawī underwent a process of growing veneration evolving from the status of pious jurist in the Ashrafiyya to becoming an authority with the final say on *madhhab* doctrine—a status that eventually distinguished him from other great jurists in school. Within this process of growing veneration, his juristic knowledge was gradually recognized and routinized in substantive

works and narratives of history written by later Shāfiʿite jurists as representing the authority of the *madhhab*.

Following the spread of the school's doctrine and as a consequence of the continuous need of Muslims to stabilize law and legal authority in the institution of the *madhhab,* al-Nawawī became a central figure among later Shāfiʿite jurists in the long-term process of construction and perpetuation of the juristic authority of al-Shāfiʿī, the school's eponym. However, this is as clear an indication as any that reliance on a personal authority did not end with the doctrine of that person. Hence, for legal cases not covered by al-Nawawī, subsequent Shāfiʿite jurists derived their own solution without necessarily abandoning the legacy of al-Nawawī, because the basis of their legal elaboration relied on the hermeneutic principles of the eponym as represented by al-Nawawī in his influential juristic works.

The reception and veneration of al-Nawawī

As discussed earlier, Muslim biographers considered al-Nawawī to be one of the most celebrated author-jurists among the later generation of Shāfiʿites. He had produced numerous and lengthy works ranging from *ḥadīth* to biography and jurisprudence in a relatively short period before his premature death at the age of forty-five. His works in jurisprudence are considered to have made such a significant contribution to the field that he came to be recognized as the one who rearticulated (*muḥarrir*) the school's doctrines. However, al-Nawawī's image as a prominent jurist was not developed during his lifetime. Some biographers, in fact compared al-Nawawī's juristic achievements unfavorably with that of other jurists who lived around a generation after him.

Tāj al-Dīn al-Subkī, for example, is known to have claimed that his father, Taqī al-Dīn al-Subkī,[2] was actually more

knowledgeable than al-Nawawī. “[My father] became the head of the Ashrafiyya College of Tradition after the late al-Mizzī,[3] and we find that no one in that position was more knowledgeable (*aʿlam*) than him, no one more accomplished in memorization (*aḥfaẓ*) than al-Mizzī, and no one more pious (*awraʾ*) than al-Nawawī and Ibn al-Ṣalāḥ.”[4] Abū al-Ḥasan al-Samhūdī (d. 911/1505), in his book *al-Farīd fī Aḥkām al-Taqlīd* (The Uniqueness in the Rules of *Taqlīd*), reported a narrative from Abū Zurʿah al-ʿIrāqī (d. 826/1423), according to which the latter once asked his teacher, Sirāj al-Dīn al-Bulqīnī (d. 805/1403),[5] about Taqī al-Dīn al-Subkī’s status as an absolute *mujtahid* and his ability to perform *ijtihād*. Al-Bulqīnī said: “He [Taqī al-Dīn al-Subkī] has fulfilled the requirements of *ijtihād* in himself.” When Abū Zurʿa asked whether or not Taqi al-Dīn al-Subkī would ever perform *taqlīd*, al-Bulqīnī was silent. He then concluded that there was nothing to prevent al-Subkī senior from performing *ijtihād* except for a requirement to follow what has been established by the four founders of the *madhhab*s. Elaborating the law independently from these eponyms was considered a blamed innovation (*bidʿa*).[6]

In another report, Taqī al-Dīn al-Subkī acknowledged that his teacher Ibn Rifʿah (d. 710/1310),[7] was superior to him in terms of legal knowledge—the implication being that Ibn Rifʿah’s moral standing at the time was paramount in the school.[8] Regardless of the message behind and even the validity of this account, the report suggests that at least a half-century after his death, al-Nawawī was still not considered the outstanding figure among the late thirteenth- and early fourteenth-century jurists of the Shāfiʿite school.

Al-Sakhāwī also played down al-Nawawī’s influence in comparison to his contemporaries. In one report, he claimed that throughout the history of the Ashrafiyya

College of Tradition, al-Nawawī, who once headed the college, was not the only one who had left behind a respected legacy at the institution. Like Tāj al-Dīn al-Subkī, al-Sakhāwī said that Taqī al-Dīn al-Subkī was known to be the most knowledgeable among scholars to have taught in the college, whereas al-Nawawī and Ibn al-Ṣalāḥ were known among the most pious.[9] Here, it is certainly not a coincidence to find Taqī al-Dīn al-Subkī again reported to be the most knowledgeable and al-Nawawī and Ibn al-Ṣalāḥ the most pious scholars in the Ashrafiyya. One might argue that this status was attributed to al-Nawawī due to perceptions of scholarship in the Damascene milieu: al-Nawawī was probably better known as the author of *ḥadīth* works, which contributed to his prominence as a *ḥadīth* scholar and professor, rather than as a practicing jurist. Compared to the achievements of his contemporaries, such as that of Taqī al-Dīn al-Subkī, al-Nawawī's opinions might not yet have been recognized or routinized in teaching circles outside of the Ashrafiyya. Hence it was natural that at the time of al-Sakhāwī, al-Nawawī's legal thought should have been superseded by that of other jurists who lived around the same era. Judging by the tendency in Islamic legal theory to prefer the doctrine of the knowledgeable jurist over the pious one,[10] al-Nawawī's reputation was by no means a recommendation to those seeking a reliable authority. Nor did he emerge as the most authoritative Shāfiʿite jurist until after at least a half-century following his death.

This inferior image is made even more obvious in the hierarchies of the authority of Shāfiʿite jurists elaborated by later generations of scholars.[11] For example, in such hierarchy, al-Nawawī lies at the bottom, that is, the lowest level of the echelon. According to this order, the first level (after the founder of the school) is reserved for those who transmited the opinions of al-Shāfiʿī and those who

qualified to perform *ijtihād* within the *madhhab* by using the hermeneutic principles established by al-Shāfiʿī. Al-Shāfiʿī's companions (*aṣḥāb*) such as Abū Thawr al-Kalbī, al-Muzanī, or al-Buwayṭī, fall within this category. The second level is comprised of those jurists who fell short of the former category, but who are also qualified to perform *ijtihād* on particular legal queries that were not discussed by the founder of the school. This category includes jurists such as al-Ghazālī and his peers. The third level consists of jurists capable of engaging in *takhrīj*[12] and who, because of their lesser mastery of the school's literature, were limited to interpreting the opinions of their *imām* or selecting the established *wajh*-opinions. Jurists in this category include, among others, Imām al-Ḥaramayn al-Juwaynī. The bottom level was reserved for jurists capable of weighing various legal opinions in terms of the reliability of the transmitters or in terms of understanding the particular legal questions. With this capacity, they could decide that one opinion was preponderant over another. Jurists falling into this category include al-Nawawī and al-Rāfiʿī.[13]

The above hierarchy shows that within the overall structure of authority of Shāfiʿite jurists, al-Nawawī's juristic capacity was seen as limited to weighing already established legal opinions. Compared with the juristic achievements of previous scholars, such as al-Ghazālī, al-Nawawī's personal qualities never replaced those of his predecessors. Even al-Rāfiʿī's legal opinions were often thought to be more authoritative than al-Nawawī's.[14] Hence, if we go by the above hierarchy, the legal opinions of al-Nawawī were taken into consideration only after prioritizing al-Ghazālī's and al-Rāfiʿī's, respectively. It is then obvious that al-Nawawī was little more than a *primus inter pares* in his lifetime and for at least a half-century after his death.

As his legal works became more widely known, al-Nawawī's posthumous image began to appear more exalted than before. For example, his achievement in authenticating *ḥadīth* reports in legal works was celebrated as laying the groundwork for the study of the *madhhab* for later Shāfiʿite jurists. Even Ibn Rifʿah is known to have remarked: "al-Nawawī had a greater in-depth knowledge of *ḥadīth* than al-Rāfiʿī. For the major part of his legal works, he relied favorably on the authority of jurists as in the question of who narrated a *ḥadīth*, and whether it is a sound, good, or weak *ḥadīth*. Later jurists followed his lead, and his achievement is original."[15] Echoing Ibn Rifʿah, Zayn al-ʿIrāqī (d. 806/1404)[16] said that al-Nawawī was the first to begin weighing the quality of the *ḥadīth* as sound or weak in his works on jurisprudence. He said:

> It is the habit of the ancient jurists (*al-mutaqaddimūn*) to remain silent regarding the *ḥadīth* they quoted in their works, without indicating from whom the *ḥadīth* is narrated, and without specifying whether the *ḥadīth* they used was sound or weak, except for a few, despite the fact that they were known as *ḥadīth* scholars, because it was sufficient for them to refer to the books that they knew (i.e. the book of *fiqh* or *ḥadīth* collections), to the point where people no longer paid attention to what is in the book. Even al-Rāfiʿī followed in their steps, although he had a good knowledge of *ḥadīth*. This practice continued until al-Nawawī started to narrate the theory of *ḥadīth* criticism in his works on jurisprudence. His initiative was important and valuable.[17]

As a backward projection, this statement of course cannot be taken for granted. The ancient jurists, that is, those who were commonly believed to have lived around and before the period of the ninth century, cannot be branded as

having been unaware of *ḥadīth* criticism. When these jurists wrote their legal treatises, they had already made attempts to scrutinize which *ḥadīth* was strong and which one was weak. For example, Aḥmad b. Ḥanbal in his *masā'il* collections does not shy away from pronouncing on the quality of the *ḥadīth* he quotes whenever there is disagreement over a legal position.[18] Hence, al-Nawawī cannot be said to have been the first to narrate *ḥadīth* theory in a legal work. Zayn al-ʿIrāqī too must have been aware of the case of Aḥmad b. Ḥanbal and other jurists like him. However, he deliberately rendered them insignificant in order to highlight al-Nawawī's important contribution in applying *ḥadīth* criticism to jurisprudence. Here al-Nawawī's legacy is also thought to have surpassed that of al-Rāfiʿī, because the latter did not explicitly elaborate on this theory in his juristic works.

Yet, despite this apparent bias, the statement testifies to al-Nawawī's growing recognition as a jurist who knew a great deal of the science of the *ḥadīth*. As the biographical literature relates, al-Nawawī composed specific books on *ḥadīth* criticism titled *al-Irshād fī ʿUlūm al-Ḥadīth* and its abridgment *al-Taqrīb wa-l-Taysīr li-Maʿrifat Sunan al-Bashīr al-Nadhīr fī Uṣūl al-Ḥadīth*.[19] The later work generated a commentary by one leading Shāfiʿite jurist in the fifteenth century, al-Suyūṭī, who hailed the work as one of the greatest importance and highly valuable.[20]

But Zayn al-ʿIrāqī's projection of al-Nawawī as the one who first applied *ḥadīth* criticism in his work on jurisprudence may have been aimed at a point beyond acknowledging al-Nawawī's growing reputation as a *ḥadīth* scholar or as the author of *al-Irshād* and *al-Taqrīb*. Because even if *al-Irshād* and *al-Taqrīb* were excellent books in the field, they were nonetheless fairly well known to have relied substantively on Ibn al-Ṣalāḥ's *Kitāb ʿUlūm al-Ḥadīth*.[21] Hence, it could certainly not have been al-ʿIrāqī's

objective to merely state what was obvious, that is, al-Nawawī's reliance on Ibn al-Ṣalāḥ's work. Instead, what Zayn al-ʿIrāqī aimed to achieve here was apparently to elevate al-Nawawī's prestige as a jurist of the highest calibre in the history of the Shāfiʿites. In contrast to al-Nawawī's position in the above hierarchy of Shāfiʿite jurists that placed him at the bottom of the echelon, Zayn al-ʿIrāqī idealized al-Nawawī as a jurist of the highest standing who did not need to rely on the canonical collections of the *ḥadīth* of the Prophet, such as those of al-Bukhārī and Muslim, in his work on jurisprudence. Simply put, unlike non-specialists or jurists of lower calibre who would be forced to rely on those canonical books, al-Nawawī was capable of evaluating *ḥadīth* on his own.[22]

As commentary on his legal works increased, al-Nawawī's writings began to enjoy prestige and popularity among Shāfiʿite jurists. Although there is no need to explain in great depth the extent to which al-Nawawī's works were received by later Shāfiʿite jurists, it is important for the purpose of this discussion to mention a few of them. Taking the *Rawḍa* as an example, al-Suyūṭī notes that this book became the mainstay of Shāfiʿite jurists (*ʿumdat al-madhhab*) for its detailed elaboration of legal doctrines and points of difference with other schools of law.[23] Similarly, the *Majmūʿ* was also admired by later Shāfiʿite jurists as it represented al-Nawawī's most solid legal scholarship, despite the fact that he was unable to complete the book. Taqī al-Dīn al-Subkī (the father of Tāj al-Dīn al-Subkī), who took on the burden of continuing the writing of the *Majmūʿ* after al-Nawawī died, admitted the difficulty of achieving the same level of literary quality and perfection that al-Nawawī had set for himself. "There are three requirements," al-Subkī states, "that one needs to have in order to meet al-Nawawī's level of legal scholarship in the *Majmūʿ*. The first is that one must devote all his time to

writing and have nothing to worry about, not even family. The second is the availability of literature and the mastery of legal knowledge that would assist him in writing. The last is sincere intention and commitment to piety and ascetic life." These three requirements, according to al-Subkī, are hard to meet.[24] In the end, even al-Subkī never had the chance to complete the book.[25]

Al-Nawawī's other book, the *Minhāj*, is also known as a reliable reference for the Shāfiʿite school's doctrines. This concise work, as al-Suyūṭī notes, gained fame among students of jurisprudence, teachers, and *muftī*s for its comprehensive content and the literary style of its language.[26] It is considered one of the most authoritative repositories 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. It has also attracted more commentary than any other of al-Nawawī's primary legal works. Extant commentaries of the *Minhāj* include: the *ʿUmdat al-Muḥtāj* of Sirāj al-Dīn ʿUmar b. ʿAlī Ibn al-Mulaqqin (d. 804/1402); the *Kanz al-Rāghibīn* of Jalāl al-Dīn al-Maḥallī (d. 864/1460); the *Tuḥfat al-Muḥtāj* of Ibn Ḥajar al-Haythamī (d. 974/1566); the *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī alfāẓ Sharḥ Minhāj* of Shams al-Dīn Muḥammad b. Aḥmad al-Khaṭīb al-Sharbīnī (d. 977/1569); and the *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj* of Shams al-Dīn Muḥammad b. Aḥmad b. Ḥamza al-Ramlī (d. 1004/1596). In addition, the *Minhāj* also became a standard curricular textbook and subject for memorization in colleges of law. It formed part of the qualifications needed to obtain a license to transmit the Shāfiʿite school's doctrine.[27]

Be that as it may, al-Nawawī was never immune from the criticism of jurists who lived after him. Zayn al-Dīn al-Kitnānī (d. 738/1338)[28] was known as one Shāfiʿite jurist

who wrote a refutation of al-Nawawī's *Rawḍa*, although the work did not enjoy popularity after Taqī al-Dīn al-Subkī exposed its shortcomings in a single work entitled *Radd ʿalā al-Shaykh Zayn al-Dīn Ibn al-Kitnānī fī Iʿtirāḍātihi ʿalā al-Rawḍah*.[29] Another Shāfiʿite jurist, al-Isnawī, is also known to have argued against al-Nawawī. In the chapter related to the bath purification (*bāb al-ghusl*) of his *Majmūʿ*, al-Nawawī forbade the removal of pebbles (*ḥaṣā*) from the mosque. This statement, according to al-Isnawī, went too far as it implied that al-Nawawī restricted people from performing dry ablution (*tayammum*) using sand (*turāb*) from around the mosque.[30] However, Badr al-Dīn b. ʿAbd Allāh al-Zarkashī (d. 794/1392),[31] who was himself a former student of al-Isnawī, came to al-Nawawī's defence and disproved his teacher's legal inferences. For al-Zarkashī, al-Nawawī's statement implied that he would only prohibit people from performing dry ablution using materials (pebbles, rocks, soil, etc.) that had already became part of the mosque, but would not prohibit them from using materials (such as dust) that came into the mosque by the wind blowing or spraying onto it.[32] In arguing this position, al-Zarkashī made a conscious attempt to promote al-Nawawī's legal stand vis-à-vis those who were thought to have misrepresented him.

The same veneration continued with the next generation of jurists. Ibn Ḥajar al-Haythamī, for instance, reports how al-Isnawī issued a *fatwā* based on al-Nawawī's opinion in the *Rawḍa*. As discussed earlier, we know that al-Isnawī was very critical to al-Nawawī's legal position, including what al-Nawawī elaborated in the *Rawḍa.* Thinking that people would not pay attention to a *fatwā* based on his own reasoning, al-Isnawī relied on al-Nawawī's *Rawḍa* instead of his own writing. "The reason," Ibn Ḥajar explains, "is that in his own writing al-Isnawī formulated the preponderant opinion based on his own authority, whereas

the preponderant opinion that he cited from al-Nawawī was formulated on the authority of the *madhhab*."[33] It was to anticipate the same drawback in formulating a legal opinion that Abū Bakr al-Qaffāl, when requested to issue a *fatwā*, usually asked the petitioner whether the latter wished to hear the *madhhab* (i.e. personal opinion) of al-Qaffāl, or the *madhhab* (in this case, doctrinal opinion) of al-Shāfiʿī.[34] Here, Ibn Ḥajar al-Haythamī made a conscious attempt—as did al-Zarkashī—to venerate the image of al-Nawawī as one whose juristic authority represented the ruling of the *madhhab*. Hence, by the time of Ibn Ḥajar al-Haythamī, al-Nawawī's image, which had previously been no greater than any other jurist's or even inferior to his contemporaries, had evolved into an authority that represents the doctrine of the Shāfiʿī school of law.

From these records, we can see that al-Nawawī's reputation as a prominent jurist did not emerge during his own lifetime. And while he may have written a corpus of legal works that were significant for the development of the Shāfiʿte legal traditions, even these needed time to gain a wide readership and enjoy popular and authoritative status. In other words, al-Nawawī had to undergo aprocess through which his status as an ordinary jurist was increasingly venerated to the point where his juristic authority became almost undisputable. Al-Nawawī's image as a high calibre jurist furthermore saw competition from others who may have possessed the same level of juristic knowledge, but had not gone through the same process as al-Nawawī had. In other words, there was a deliberate attempt to vindicate al-Nawawī's status and to single out his accomplishment as one who contributed to the development of the school's doctrine.

Why al-Nawawī became the subject of this veneration is not difficult to explain. One has to see this augmentation process as a natural requirement for a functioning society

in a way that is very similar to the modern distribution of power. In this case, we may recall Marshall Hodgson's division of Muslim society into the so-called clerical and political classes. The former is the one representing religious institutions whose duty, among others, was to formulate or establish legal judgment from its divine sources. The political class, that is, the caliph and the apparatus surrounding him (the judges, the police, tax collectors, or market inspectors), had a rather limited function when it came to preserving order in the community.[35] It was in this context that prominent Muslim figures such as Abū Ḥanīfa, Mālik, al-Shāfiʿī, and Aḥmad b. Ḥanbal, emerged in traditional Muslim sources as the "founders" of their respective schools of law. As Wael Hallaq has shown, they became the supposed founders of the Ḥanafite, Mālikite, Shāfiʿite, and Ḥanbalite schools respectively, not only because they were jurists of a certain calibre, but also because they were "constructed" by their followers to become so.[36] Hence, rather than viewing them as mere "great figures" in history, we must see the attribution given to them as the necessary steps to accommodate the need of Muslims to anchor law in certain authority, since in Islamic society the ruling power did not produce or promulgate law. Legal authority, therefore, had to lodge in individuals, such as the eponyms of the schools of law.

However, as the *madhhab* evolved from a personal to a doctrinal school of law,[37] authority construction was extended to later jurists who lived during the post-formative period for exactly the same reason, that is, to continue the exaltation of the authority of the eponym, since legal authority in Muslim society remained invested with Muslim jurists and not with the ruling power of the day. If al-Shāfiʿī was considered the axis of authority in the institutional operation of the *madhhab*, the importance of

al-Nawawī lay in the fact that he was the one who connected later jurists to al-Shāfiʿī, both in terms of his personal authority and his doctrinal legacy as developed by his followers. For later jurists, al-Nawawī's juristic figure was all they needed to continue the institutionalization of the *madhhab* and achieve effective source of legal authority.

But al-Nawawī was by no means the only Shāfiʿite jurist who became the subject of this extended authority construction. Over the course of time, there were others in the *madhhab* who were the object of veneration almost similar to that of al-Nawawī. For example, Abū Ḥāmid al-Isfarāʾīnī (d. 406/1016), the leader the *ṭarīqa* of the Iraqian jurists, was venerated by biographers as the "Second al-Shāfiʿī" for his knowledge of the *madhhab*.[38] Al-Shīrāzī reports in fact that there were people who claimed that Abū Ḥāmid al-Isfarāʾīnī was even more knowledgeable than al-Shāfiʿī himself.[39] He also notes that many of the great Shāfiʿite jurists who lived during the early fifth century were the students of Abū Ḥāmid, such as al-Qāḍī Abū al-Ṭayyib al-Ṭabarī (d. d. 450/1058),[40] Abū al-Qāsim al-Karkhī (d. 447/1055),[41] and Abū al-Ḥasan ʿAlī al-Māwardī (d. 450/1058).[42] Similarly, we also saw in Chapter 1 that Ibn Surayj was granted honourable status for his role in the spread of the *madhhab*, a status that not even al-Shāfiʿī's direct students such as al-Muzanī would ever receive.[43] One comes across many others who were venerated as leaders of the Shāfiʿī *madhhab* in major cities, as was the case of Abū Bakr al-Ṭūsī al-Nawqānī (d. 420/1029) who was said to have been the leader of the Shāfiʿites of Nishapur (*kāna imām aṣḥāb al-Shāfiʿī bi-Nīsābūr*),[44] or of Abū Saʿd Ismāʿīl al-Jurjānī (d. 396/1005) who was praised as the *shaykh* of the Shāfiʿī school Gorgan.[45]

However, none of these jurists enjoyed the same legacy among later jurists as al-Nawawī. That is to say, the

veneration and authority construction accorded to al-Nawawī was no mere fabrication. Al-Nawawī's intellectual and juristic qualities were such that they readily distinguished him from other high-profile Shāfiʿite jurists, for reasons that will be discussed in Chapters 3, 4, and 5.

Al-Nawawī's authority to later Shāfiʿite jurists

Having established that al-Nawawī was the focus of extended authority construction, it is now necessary to analyze what this meant for later Shāfiʿite jurists. When al-Nawawī was praised for making it seen as though al-Shāfiʿī had never passed away, this was not simply in recognition of his legal works or the collection of doctrines he transmitted from previous jurists. Likewise, when he was held up as the one on whom leadership in the knowledge of the *madhhab* had been conferred (*ʿalayhi raʾsan fī maʿrifati al-madhhab*),[46] or as the one who was responsible for synthesizing legal knowledge (*mushārik fī baʿḍi al-ʿulūm*),[47] —as al-Dhahabī, and later, Kaḥḥāla declares in establishing his posthumous legacy—this was not merely because he had amassed an extensive knowledge of the school's literature. Al-Nawawī's fundamental contribution, I contend, consisted in his intermediary function of representing the authoritative voice of the school. In this sense, for later Shāfiʿite jurists, al-Nawawī occupied a special place not only because he was thought to be the one who had the final say about the *madhhab*, but also because he fit all the requirements needed for the continuous institutionalization of the *madhhab.*

This particular position is clearly articulated in the *Fatḥ al-Muʿīn bi-Sharḥ Qurrat al-ʿAyn* by Zayn al-Dīn al-Malībārī (d. 987/1579). Al-Malībārī stated that a jurist *mujtahid*, that is, one who reaches the level of knowledge to derive law from the scriptures, must follow his own *ijtihād* when issuing a *fatwā*. If he is a *muqallid*, or one who does not

have the same level of knowledge as the *mujtahid,* he must rely on whatever is agreed upon by the "two teachers"—that is, al-Nawawī and al-Rāfiʿī. In a special chapter discussing the matters of judiciary (*bāb al-qaḍā'*), al-Malībārī elaborates upon the authority of al-Nawawī in detail as follows:

> You ought to know that the established opinion in the Shāfiʿī *madhhab* for adjudication and *fatwā* is whatever is agreed upon by the two teachers [i.e. al-Nawawī and al-Rāfiʿī]. Then priority is given to al-Nawawī's opinion, then to al-Rāfiʿī's, then to what has been declared to be preponderant by the majority. The next is given to those more knowledgeable and then to those more pious. Our teacher [i.e. Ibn Ḥajar al-Haythamī] said that this is what has been agreed upon by the most scrupulous later jurists.[48]

In this passage, al-Nawawī, along with al-Rāfiʿī, is spoken of with such high esteem due to his role as a preserver of the established doctrine of the *madhhab*. They were idealized as authorities upon whom later jurists would rely for their legal inquiries. However, al-Nawawī was considered superior to al-Rāfiʿī probably because many of al-Rāfiʿī's opinions became the subject of al-Nawawī's *taṣḥīḥ* and *tarjīḥ* (two technical concepts that will be discussed in Chapter 4).[49] Therefore, in the case of a difference over legal interpretation between al-Nawawī and al-Rāfiʿī, the legal standing of al-Nawawī is given higher priority. Al-Nawawī's authority remained undisputed to the extent that only the opinion of the majority of jurists could render his opinions less preponderant.

Furthermore, as reflected in didactic and substantive works by later Shāfiʿite jurists, this recognition of authority was routine and well established within the *madhhab* for at least two more centuries following al-Nawawī's death. For

example, in his *al-Fawāʾid al-Madaniyya: fī-man Yuftā bi-Qawlihi min Aʾimmat al-Shāfiʿiyya*, Sulayman al-Kurdī (d. 1780) states that jurists affiliated with the *madhhab*, whose knowledge and ability is limited to weighing opinions in the school's *corpus juris*, should not issue a *fatwā* based on the school's doctrines except in the case of one that is deemed preponderant by al-Rāfiʿī and al-Nawawī.[50] Sulayman al-Kurdī does not detail the extent to which al-Rāfiʿī and al-Nawawī's opinions were considered relevant to the changing conditions facing Muslims in his era, but his statement reflects a common perception that through their respective authorities, the *madhhab* was able to effectively manage the social life and legal realities of Muslims. Referring to Ibn Ḥajar al-Haythamī, Sulayman al-Kurdī also added that jurists of the same category were all likewise not allowed to issue a *fatwā* based on opinions that contradicted those of al-Nawawī and al-Rāfiʿī, even if the *fatwā* appeared to confirm al-Shāfiʿī's opinion as recorded in his *al-Umm* or even if it reflected the opinion of the majority of jurists. The assumption behind this deliberate preclusion was that both al-Nawawī and al-Rāfiʿī were thought to have had a better knowledge of al-Shāfiʿī's texts than other jurists might possibly have. If there is contradiction between al-Nawawī and al-Rāfiʿī, again, al-Nawawī's opinion is preferred.[51]

As the main reference, or the one who had the final say about *madhhab* doctrine, al-Nawawī's position seems, at prima facie, to betray the hierarchy of juristic authority already established within the Shāfiʿī legal tradition. As we saw in the previous model of hierarchy of authority, al-Nawawī was placed at the bottom, below the level of high calibre jurists such as al-Muzanī, who was among the few jurists who sat at the top of the hierarchy, and even below the likes of al-Ghazālī, who occupied the second level of the hierarchy, as well as below those who were capable of

performing *takhrīj* in the third level.[52] This would mean that in theory, al-Nawawī's juristic authority did not replace that of jurists from earlier generations. Nowhere in the works of later jurists is it stated that al-Nawawī was more authoritative than, say, al-Ghazālī or al-Shīrāzī, who were assigned a higher level in the hierarchy of jurists. If we judge from al-Nawawī's existing works, such as the *Minhāj*, the *Majmūʿ*, and the *Rawḍa*, al-Nawawī was clearly never detached from the contributions of Shāfiʿite jurists before him in the development of the doctrine of the *madhhab*, for, as we know, the doctrine was cumulative. As will become clear in Chapter 3, the *Minhāj*, the *Majmūʿ*, and the *Rawḍa* are al-Nawawī's commentaries on legal works written by either al-Ghazālī or al-Shīrāzī. Hence, it should not come as a surprise to find that, in the hierarchy of authority of the Shāfiʿite jurists quoted earlier, al-Nawawī was placed at a lower level, below the rank of al-Ghazālī and his peers.

However, in practical terms, al-Nawawī's authority remained undisputed among Shāfiʿite jurists because he so expertly crystalized their legal opinions and presented them on the authority of the *madhhab*. Even here, al-Nawawī cannot be said to have attempted to exceed the privilege that all jurists before him had enjoyed because they contributed to the accumulation of the school's doctrines. This being said, al-Nawawī was by no means inferior to them. Al-Nawawī is still held in high regard among later Shāfiʿite jurists as the one who decided which of the school's doctrines were to be followed based on his compherensive understanding of and loyalty to al-Shāfiʿī's hermeneutic and juristic principles. Through al-Nawawī, the legal opinions of all high-calibre jurists might be deemed irrelevant for later jurists not because al-Nawawī was superior to them, but because al-Nawawī had the capacity to weigh their opinions based upon the supremacy of al-Shāfiʿī, who was firmly considered the founder of the

madhhab. In other words, al-Nawawī was the funnel of the *madhhab*, through whom the cumulative doctrine of the school and loyalty to it were channeled and given the highest articulation.

Viewing al-Nawawī within this scheme, it can safely be concluded that the legacy of al-Nawawī for later jurists rested on his authoritative ability to connect these jurists with the enormous body of legal literature written by previous jurists, including that of the founder of the school, and finally to supply them with the authoritative doctrines of the *madhhab*. It was precisely in this regard that al-Nawawī functioned as the extended authority construction in the Shāfiʿī school of law.

Legal change and the limits of al-Nawawī's authority

Given al-Nawawī's role as preserver and primary reference of the *madhhab*, whose authority was generally undisputed, it is important to bring up the question of legal change in light of the crystallization of the Shāfiʿite school's doctrines. The main concern in this section is not to discuss whether or not legal change took place after the formation of the *madhhab*, as this has been made obvious from established scholarship.[53] Rather, this section shall discuss how later jurists who were deeply rooted in the Shāfiʿite legal tradition responded to the need for legal change given that not all the school's doctrines were sufficient to cover the legal problems of Muslim communities. One thing that is certain is that, while providing the needed stability and authoritative doctrines, al-Nawawī in all his juristic works never had the intention of codifying the school's doctrine; his aim was to provide a short *opinio juris*, or legal opinion that he considered correct and preponderant. Hence, he did not imply that his legal opinions would be continuously applicable or that they would never need to be

verified by later jurists. In fact, al-Ramlī, one of the commentators on al-Nawawī, found out that not all the doctrines that al-Nawawī claimed as authoritative were representative of the *madhhab* and consistent with the school's methodology.[54] This is to say, what al-Nawawī enunciated as preponderant doctrines were not necessarily so for other jurists in different times and places.

Al-Nawawī is also known to have erred in formulating an opinion which he claimed was representing the doctrine of the Shāfiʿī *madhhab*, when in fact it had its origin in the doctrine of Abū Ḥanīfa and is not known among Shāfiʿite jurists. As in the case of estate division share (*irth*) between non-Muslims, al-Nawawī in his *Sharḥ Ṣaḥīḥ Muslim* is known to have said that two *ḥarbī*s (i.e. non-Muslims and non-citizens of Muslim territories who declare enmity toward Muslims) residing in two territories that are in a state of war with one another (*biladayn mutaḥāribayn*) may not inherit from each other. Al-Nawawī also added that his opinion on this case represented the doctrine of the *aṣḥāb*, that is, scholars or jurists upholding the Shāfiʿī *madhhab*.[55] However, al-Ramlī and al-Adhraʿī (d. 783/1381)[56] considered al-Nawawī negligent (*sahw*) in this instance because the opinion he put forward reflected the doctrine of Abū Ḥanīfa, not that of the Shāfiʿite jurists.[57]

What makes al-Nawawī's opinion on this case problematic and led it to become the subject of inquiry is not merely the fact that al-Nawawī derived the doctrine from the Ḥanafites. On the surface, later Shāfiʿite jurists appear to be perplexed by al-Nawawī's inconsistent statements regarding the nature of estate division shares between non-Muslims. Contrary to what he said in *Sharḥ Ṣaḥīḥ Muslim*, al-Nawawī states in his *Rawḍa* that the *ḥarbī*s may inherit from one another, irrespective of whether each of them resides in different territories caught up in war or not. In other words, a state of war between the

territories in which the *ḥarbī*s reside was not a condition that might prevent their rights to inherit from one another.[58]

The same inconsistency is also apparent from al-Nawawī's other books, especially the *Majmūʿ*. Nur al-Dīn Yūsuf al-Ushmūnī (d. 900/1496),[59] in his commentary on the *Majmūʿ*, *al-Yanbūʿ bi Sharḥ al-Majmūʿ*, points out the contradiction between al-Nawawī's statement in *Sharḥ Ṣaḥīḥ Muslim* and that found in his *Majmūʿ* in which he does not differentiate between the right of non-Muslims to inherit from their kin depending on the status of the territories where they reside. Al-Ushmūnī said: "Two *dhimmī*s (i.e. non-Muslims citizen of Muslim territories) and two *ḥarbī*s may inherit from one another, even if their territories and religions are different: such as the Byzantine Empire (*al-Rūm*) and India (*al-Hind*), or between Jews, Christians, Zoroastrians, and the pagans."[60] Here again the state of war between the territories where non-Muslims reside is not the prerequisite for the legality of individuals inheriting from one another. For the Ḥanafites, on the contrary, the right of non-Muslim individuals to inherit ceases if the territories where they reside are at war, even if they are of the same faith.[61] Judging from the later jurists' discussions on this case, what appears to have been an instance of inconsistency or carelessness on al-Nawawī's part in expressing the Ḥanafite position was ultimately understood as a matter of a principle that contradicted the Shāfiʿī *madhhab*. It was for this reason that later generations of Shāfiʿite jurists, from al-Ramlī and Ibn Ḥajar al-Haythamī, down to Sulaymān al-Kurdī, considered al-Nawawī's opinion regarding the estate division share between non-Muslims as recorded in *Sharḥ Ṣaḥīḥ Muslim* to be unreliable.

Perhaps, in order to anticipate similar problems of error or inconsistency, the generation of Shāfiʿite jurists after al-

Nawawī established their own way of maintaining the school's authority and of making the law dynamic and applicable to the continual changes in society. For example, in the case of conflicting messages within the corpus of al-Nawawī's legal works, later Shāfiʿite jurists made an assessment to decide which of al-Nawawī's opinions and which of his books was most authoritative to follow. Hence, according to Ibn Ḥajar al-Haythamī, those of al-Nawawī's works that most closely followed (*mutatabbiʿ*) the reports of the *aṣḥāb* or jurists upholding the Shāfiʿī *madhhab* were thought to be more preponderant than those which contained much more of his commentaries and reasoning. The books falling into this approved category were the *Majmūʿ*, *al-Taḥqīq*, and *al-Tanqīḥ*. Some of al-Nawawī's other, more popular books, such as the *Minhāj, Rawḍa*, *Sharḥ Ṣaḥīḥ Muslim, Taṣḥīḥ al-Tanbīh*, and his collections of *fatwā*s are of secondary to the former category.[62] The reasoning behind this ranking seems to be that the works based on more independent jurists were considered more reliable than those generated from the opinions of jurists of lower calibre. This explains why the *Majmūʿ*, and the *Tanqīḥ* were considered to be more reliable than the *Minhāj* or *Sharḥ Ṣaḥīḥ Muslim* since the former two works contain many opinions from jurists of high authority in the *madhhab*. Furthermore, to solve a legal case that had not been covered in al-Nawawī's juristic works, they resorted to the authority of certain first-rate jurists of their generation who would make legal inferences on the basis of the methodology and hermeneutic principles of al-Shāfiʿī.[63]

Nevertheless, a knowledge of al-Nawawī's writings became one of the criteria that later jurists had to acquire so that they could legitimately issue *fatwā*s. Hence, jurists who had an outstanding mastery of al-Nawawī's works, in addition to general knowledge of the school's literatures and methodology, were thought to be the ones that were

most relied upon in the *madhhab*. Among Shāfiʿite jurists in the post-Nawawī era, it was Ibn Ḥajar al-Haythamī and al-Ramlī who were regarded as the most distinguished and whose legal opinions could serve as the school's authoritative doctrine for *fatwā*.[64] As already noted in the first section of this chapter, both Ibn Ḥajar al-Haythamī and al-Ramlī wrote commentaries on al-Nawawī's *Minhāj* for their respective learning communities and audiences. It might even be suggested that it was through Ibn Ḥajar al-Haythamī and al-Ramlī that the Nawawīc character of the Shāfiʿī school's doctrines further developed and was transmitted down to subsequent jurists. Al-Nawawī's mediating authority, in other words, remained significant for later jurists, even when he was no longer there to provide new solutions for their new legal problems.

Final remarks

The above discussion has shown how al-Nawawī's reputation and legacy were developed, evolving from a jurist whose capacity was limited to weighing already established legal opinions to becoming one who had the say about the doctrine of the *madhhab*. His significance was highlighted by the later Shāfiʿite jurists in order to accommodate the need of Muslims to anchor law in certain authority. In this sense, al-Nawawī became an extended axis of authority that mediated the positions of later jurists with the authority of the eponym and the enormous collection of the school's doctrines, and supplied them with the ones he considered as preponderant. Despite the fact that not all the doctrines which he deemed authoritative were practical and relevant for the legal realities of Muslims in different time and places, he nevertheless gained an unequivocal status in biographical dictionaries as the mainstay of the Shāfiʿite school's doctrine.

Notes

1 Abū al-Faḍl Abd al-Raḥmān b. Muḥammad Jalāl al-Dīn al-Suyūṭī, "al-Minhāj al-Sawī fī Tarjamat al-Imām al-Nawawī," in *Rawḍat al-Ṭālibīn*, Vol. 1, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 65.

2 He was Abū al-Ḥasan ʿAlī b. ʿAbd al-Kāfī al-Subkī (d. 756/1355). For his biographical information, see Tāj al-Dīn ʿAbd al-Wahhāb b. ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, (eds) Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥilw, 10 vols. (Cairo: ʿĪsā al-Bābī al-Ḥalabī, 1964), 10:139–338; Abū Bakr b. Aḥmad Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, (ed.) Ḥāfiẓ ʿAbd al-ʿAlīm Khān, 4 in 2 vols. (Beirut: ʿĀlam al-Kutub, 1987), 3:37–42.

3 He was Jamāl al-Dīn b. al-Zakī al-Qaḍāʿī al-Kalbī al-Mizzī (d. 742/1341). See *Ṭabaqāt al-Shāfiʿiyya*, 3:74–76.

4 al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 10:169.

5 He was ʿUmar Ruslān b. ʿAbd al-Ḥaqq al-Kinānī al-ʿAsqalānī al-Bulqīnī. For his biographical dictionary, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 4:36–43.

6 Cited in Shihāb al-Dīn Abī al-Saʿādāt Aḥmad Kūyā b. ʿAlī al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya* (Cairo: Dār al-Baṣāʾir, 2010), 67.

7 He was Aḥmad b. Muḥammad b. ʿAlī Najm al-Dīn Ibn ʿAbbās al-Anṣārī al-Bukhārī. For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:211–13.

8 R. Kevin Jaques, in his study of Ibn Qāḍī Shuhbah's *ṭabaqāt* work, classifies Ibn Rifʿah along with al-Rāfiʿī as independent *mujtahid*. Ibn Rifʿah's commentary on al-Ghazālī's *Wasīṭ*, known as *al-Maṭlab fī Sharḥ al-Wasīṭ*, is considered one of the most authoritative works for later Shāfiʿite jurists. See R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden; Boston, MA: Brill, 2006), 171, 245–46.

9 al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 68.

10 Further information on this rule within Islamic legal theory, see, among others, Abū Isḥāq Ibrāhīm al-Shīrāzī, *al-Lumaʿ fī Uṣūl al-Fiqh*, (ed.) Muḥammad ʿAlī Bayḍūn (Beirut: Dar al-Kutub al-ʿIlmiyya, 2009), 83–86, 117–20. See also, Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 128–29.

11 For general discussion of the hierarchy of juristic authority in Islamic law, see Hallaq, *Authority, Continuity, and Change in Islamic Law*, 2–23.

12 *Takhrīj* is the process of deriving legal norms, usually by limited *mujtahid*, according to the principles and methodology of the independent *mujtahid*. For more discussion on this activity, see Wael B. Hallaq, "*Takhrīj* and the Construction of Juristic Authority," in *Studies in Islamic Legal Theory*, (ed.) Bernard G. Weiss (Leiden; Boston, MA; Cologne: Brill, 2002), 320–30; Muḥammad Abū Zahra, *Tārīkh al-Madhāhib al-Islāmīyya*, 2 vols. (Cairo: Dār al-Fikr al-ʿArabī, 1963), 2:276–77. See also, Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-*

Dīn al-Qarāfī (Leiden: E. J. Brill, 1996), 91–96; Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law*, 169–71.

13 Aḥmad b. Luʾluʾ Ibn al-Naqīb, *ʿUmdat al-Sālik Wa ʿUddat al-Nāsik* [Reliance of the Traveller: A Classic Manual of Islamic Sacred Law], trans. Nuh Ha Mim Keller (Evanston, IL: Sunna Books, 1994), 869.

14 See, al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 69.

15 Ibid., 61.

16 He was ʿAbd al-Raḥīm b. al-Ḥusayn Zayn al-Dīn al-ʿIrāqī. For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 4:29–33.

17 al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 70.

18 For example, in the case of laughing during the ritual prayer, Aḥmad b. Ḥanbal is known to have said: "It does not require repetition of the ritual ablution. The *ḥadīth* report from Abū al-ʿĀliya is weak. It is related from Abū Mūsā and Jābir that one repeats the prayer but not the ritual ablution. Al-Shaʿbī also took that position." Cited in Christopher Melchert, "Traditionist-Jurisprudents and the Framing of Islamic Law," *Islamic Law and Society* 8:3 (2001): 389.

19 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:156. See also, its published version, Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *al-Taqrīb Wa-l-Taysīr li-Maʿrifat Sunan al-Bashīr al-Nadhīr fī Uṣūl al-Ḥadīth* (Beirut: Dār al-Jinān, 1986). For an example of how his theory of *ḥadīth* being applied in a substantive case, see pp. 88–90.

20 Cited in Kāmil Muḥammad Muḥammad Uwayḍah, *al-Imām al-Nawawī: Shaykh al-Muḥaddithīn Wa-l-Fuqahāʾ* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1995), 77.

21 See Abū al-Faḍl Abd al-Raḥmān b. Muḥammad Jalāl al-Dīn al-Suyūṭī, *Tadrīb al-Rāwī fī Sharḥ Taqrīb al-Nawāwī* (Medina: al-Maktabah al-ʿIlmiyya, 1959), 20–21.

22 Cf. Jonathan Brown, *The Canonization of al-Bukhārī and Muslim* (Leiden; Boston, MA: Brill, 2007), esp. 240–45.

23 al-Suyūṭī, "al-Minhāj al-Sawī," 62–63.

24 Ibid., 64.

25 Taqī al-Dīn al-Subkī's project of continuing the writing of the *Majmūʿ*, known as *Takmila,* is bound together with the *Majmūʿ*; hence it does not have separate writing with its own binding.

26 al-Suyūṭī, "al-Minhāj al-Sawī," 65.

27 The tradition of memorizing the *Minhāj* continued until modern times, despite the fact that the Islamic learning tradition has been systemically dismantled by modern education and the state apparatuses that promote it. The practice of memorizing the *Minhāj* ended only recently, following the decease of the last two Shāfiʿite scholars who were known to have memorized it: Ismāʿīl ʿUthmān al-Zayn al-Yamanī al-Makī (d. 1414/1993) and Muʿawwaḍ Dahmūsh (d. 1416/1995). See editor's note in Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-Ṭālibīn*, (ed.) Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, 3 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2005), 13.

28 For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:276–78.
29 Ibid., 3:42.
30 al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 74.
31 For his biographical information, see ʿAbd al-Ḥayy b. Aḥmad Ibn al-ʿImād, *Shadharāt al-Dhahab fī Akhbār Man Dhahab*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1998), 7:85.
32 al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 75.
33 Ibid.
34 Ibid.
35 Marshall G. S. Hodgson, *The Venture of Islam: Vol. 1 The Classical Age of Islam* (Chicago, IL; London: The University of Chicago Press, 1977), 349.
36 On the detailed construction of authority, see Hallaq, *Authority, Continuity, and Change in Islamic Law*, 25–43.
37 The shift was outlined by Hallaq, see "From Regional to Personal School of Law? A Reevaluation," *Islamic Law and Society* 8:1 (2001): 1–26.
38 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:172–73.
39 Abū Isḥāq Ibrāhīm al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, (ed.) Khalīl al-Mays (Beirut: Dār al-Qalam, n.d.), 132.
40 Ibid., 135.
41 Ibid., 137.
42 Ibid., 138.
43 Ibid., 118.
44 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:189.
45 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Mukhtaṣar Ṭabaqāt al-Fuqahāʾ*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ (Beirut: Muʾassasat al-Kutub al-Thaqāfiyya, 1995), 375–78. The name of cities, such as Nishapur or Gorgan, should never imply the existence of "geographical school" as suggested by the early modern Islamic legal scholarship. For this early discussion of geographical school, see Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964), 28. For its revision, see Hallaq, "From Regional to Personal School of Law," 1–26.
46 See Shams al-Dīn Muḥammad b. Aḥmad al-Dhahabī, *Tadhkirat al-Ḥuffāẓ*, 4 vols. (Hyderabad: Osmania Oriental Publications Bureau, 1958), 4:1472.
47 See ʿUmar Riḍā Kaḥḥāla, *Muʿjam al-Muʾallifīn: Tarājim Muṣannifī al-Kutub al-ʿArabiyya*, 15 in 8 vols. (Damascus: Dār Iḥyāʾ al-Turāth al-ʿArabī, 1980), 13:202.
48 Zayn al-Dīn b. ʿAbd al-ʿAzīz al-Malībārī, *Fatḥ al-Muʿīn bi-Sharḥ Qurrat al-ʿAyn* (Singapore; Jeddah: al-Ḥaramayn, 1980), 140.
49 On al-Rāfiʿī's opinion that became the subject of al-Nawawī's *taṣḥīḥ* and *tarjīḥ*, see for example, Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925), 9:14–15.
50 Muḥammad b. Sulaymān al-Kurdī, *al-Fawāʾid al-Madaniyya fī man Yuftā bi-Qawlihi min Aʾimmat al-Shāfiʿiyya* (Cairo: Dār al-Fārūq li-l-Istithmārāt al-Thaqāfiyya, 2008), 35.
51 Ibid., 37.

52 Ibn al-Naqīb, ʿ*Umdat al-Sālik Wa ʿUddat al-Nāsik*, 869.
53 See, among others, Baber Johansen, "Legal Literature and the Problem of Change: The Case of Land Rent," in *Islam and Public Law*, (ed.) C. Mallat (London: Graham and Trotman, 1993), 29–48; Hallaq, *Authority, Continuity, and Change in Islamic Law*, especially Chapter 6.
54 Shams al-Dīn Muḥammad b. Aḥmad al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj fī al-Fiqh ʿalā Madhhab al-Imām al-Shāfiʿī*, 8 vols. (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1938), 1:38.
55 al-Kurdī, *al-Fawāʾid al-Madaniyya*, 81.
56 He was Aḥmad b. Ḥamdān Shihab al-Dīn Abū al-ʿAbbās al-Adhraʿī. For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 3:141–43.
57 al-Kurdī, *al-Fawāʾid al-Madaniyya*, 81.
58 Ibid., 86–87.
59 For his biographical information, see Kaḥḥāla, *Muʿjam al-Muʾallifīn*, 7:184.
60 al-Kurdī, *al-Fawāʾid al-Madaniyya*, 87–88.
61 Ibid., 88.
62 Ibid., 50–52.
63 Ibid., 53.
64 Ibid., 54. Note that the later Shāfiʿite jurists maintained their disagreement about who, between Ibn Ḥajar al-Haythamī and al-Ramlī, was the more authoritative as the main reference for the issuance of *fatwā*s. For Shāfiʿite jurists in certain places such as Malabar, Ḥaḍramawt, Syria, Dagestan and the Malay-Indonesian world, Ibn Ḥajar al-Haythamī was placed at a higher authority than al-Ramlī due to the influence of the former through his students, among them Zayn al-Dīn al-Malībārī, especially, in these regions. By contrast, other Shāfiʿite jurists in different geographical regions such as Egypt and certain parts of Yemen placed al-Ramlī over Ibn Ḥajar al-Haythamī as their *madhhab* reference. This difference may just have been a matter of loyalty to one's genealogy of learning circles over another's, and not necessarily a matter of the juristic quality or the knowledge of either jurist. See al-Shālyātī, *al-ʿAwāʾid al-Dīniyya fī Talkhīṣ al-Fawāʾid al-Madaniyya*, 80–81.

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3 Two communities of interpretation
Ṭarīqa of the Iraqians and the Khurasanians

The significance of the respective *ṭarīqa*s (methods of interpretation) of the community of the Iraqian and Khurasanian jurists in the history of the Shāfiʿī *madhhab* cannot be exaggerated. Their emergence represented an important element in the long-term development of the school's doctrine. So important were these *ṭarīqa*s that one of the main reasons behind al-Nawawī's elevation to chief authority among later Shāfiʿite jurists was his ability to understand the legal interpretation of the two communities of jurists and reconcile their differences though his own lens. However, at least until the publication of Wael Hallaq's *Authority, Continuity, and Change in Islamic Law*, the *ṭarīqa*s and their significance within the Shāfiʿī *madhhab* remained a mystery to both Western and Muslim scholarship. Even among those who dealt with the history of the Islamic schools of law, no light was shed on the substantive role of the *ṭarīqa*s. This may be said, for instance, of Muḥammad Abū Zahra's *Tārikh al-Madhāhib al-Islāmiyya*, where despite making a reference to the difference in legal approach between jurists of Iraq and Khurasan, the author makes no further attempt to explain how they had differed.[1]

Christopher Melchert, in his monograph *The Formation of the Sunni Schools of Law*, also mentions the "Khurasani school" and rightly points to Abū Bakr al-Qaffāl al-Marwazī al-Ṣaghīr (d. 417/1026) as the one who systematized the

group as a separate entity within the larger Shāfiʿī legal tradition.[2] However, he too does not offer any further discussion on the nature of this sub-school entity. Eric Chaumont, in his entry about the Shāfiʿī school in the *Encyclopaedia of Islam*, similarly mentions the existence of the Iraqian and Khurasanian branches of Shāfiʿism, with the later being identified as "more speculative" than the former.[3] But the sources and narrative history that he provides are inadequate to allow readers to appreciate the significance of the *ṭarīqa*s. A brief insight into the *ṭarīqa*s may also be gleaned from George Makdisi's *The Rise of Colleges*, in which he amply discusses the polarization of the methods of argumentation of jurists as part of the proliferation of scholastic legal literature.[4] Yet despite this observation, the substance of these two *ṭarīqa*s remains obscure, given Makdisi's focus on deciphering learning traditions at the expense of the growth of substantive doctrines in the Shāfiʿī school of law.

This chapter will investigate the origins of these *ṭarīqa*s, their substantive differences and transmitters, and al-Nawawī's juristic efforts to reconcile the two *ṭarīqa*s. It must be noted that, in this case, al-Nawawī was by no means the only or even the first jurist who engaged in this conciliatory project. Throughout the history of the Shāfiʿī school of law, there were many others who made similar attempts at reconciling the two *ṭarīqa*s. However, in the long run, al-Nawawī's project stood out as the most successful and proved to have an enduring influence on later generations of Shāfiʿite jurists. What he accomplished was more than simply copying or continuing the attempts already initiated by his predecessors; he expanded his effort onto a different level, covering the opinions of jurists of the *ṭarīqa* from the fourth/tenth century until those who lived in the fifth/eleventh century.

The origins and meaning of the *ṭarīqa*s

The origins of the *ṭarīqa*s in the Shāfiʿī school of law must be understood as part of the long process of the synthesis between traditionalism and rationalism in Islamic law. This synthesis, as modern scholars have generally agreed, was initially triggered by al-Shāfiʿī, who radically challenged the practices of jurists of his generation to base their legal decision on *raʾy* (opinion) and the consensus-based of the Companions, and forced them to break with their practice, insisting instead on the authority of the *ḥadīth* of the Prophet and naturally the Qurʾān[5] as the sources of the law.[6] The impact of al-Shāfiʿī's challenge was pervasive in that it significantly decreased the arbitrary activity of the "people of opinion," or *ahl al-raʾy*, in deriving law without a direct reference to the *ḥadīth* of the Prophet. As al-Nawawī recounts in his *Tahdhīb*, for example, before al-Shāfiʿī arrived in Baghdad, there were twenty teaching circles promulgating the doctrine of the *ahl al-raʾy* in the western mosque of Baghdad. Al-Shāfiʿī's influence dropped the number to such an extent that there were no more than three or four circles active in the mosque in his day.[7] Al-Nawawī also relates how Abū Thawr al-Kalbī (d. 240/854), who was known to have learned *raʾy* and the doctrine of the Iraqians (*qawl ahl al-ʿIrāq*), spoke favorably about al-Shāfiʿī: "I, Ishāq b. Rāhawayh [d. 238/853], Ḥusayn al-Karābīsī [d. 245/859] and many people of Iraq would never have abandoned out our innovation (*bidʿatuna*) had we not met al-Shāfiʿī."[8] Al-Karābīsī was also reported to have said: "We know how to derive law from many *sunan*[9] only with the teaching of al-Shāfiʿī."[10] In Egypt, a certain ʿAlī b. Muʿabid al-Miṣrī was also known to have said: "We did not know the *ḥadīth* until al-Shāfiʿī came to us."[11] "Many people," al-Nawawī added, "abandoned whatever they had taken from their teachers, no exception among senior scholars (*kibār*

al-aʾimma) who also leaned toward al-Shāfiʿī whenever they find something in al-Shāfiʿī what they never heard from others."[12]

Despite this challenge, al-Shāfiʿī did not go as far as to reject the activity of discretionary reasoning altogether. On the authority of Ḥarmalah (d. 243/857), al-Shāfiʿī was reported to have made the distinction as follows: "Whoever wants to master the sound *ḥadīth*, he shall learn with Mālik; whoever wants to master dialectic (*jadal*), he shall refer to Abū Ḥanīfa; and whoever wants to master the Quranic exegesis (*tafsīr*), he shall learn from Muqātil b. Sulaymān."[13] Here, *raʾy* remained an important instrument for legal activity in its own right. In fact, as he makes clear in his *Risāla*, al-Shāfiʿī made room for *raʾy* as an instrument of legal activity, which came to be known by the distinctive term of *qiyās*.[14] With this inclusion of *qiyās*, al-Shāfiʿī meant to wed rationalism with traditionalism.

That being said, al-Shāfiʿī's rudimentary attempt to synthesize the rationalist and traditionalist approaches did not bear fruit during his own lifetime. Here there is no good reason to disagree with Hallaq, who has demonstrated that it took at least another century for the amalgamation that al-Shāfiʿī had initiated to gain a foothold among his followers.[15] Hence, al-Shāfiʿī's immediate students, such as al-Muzanī and Rabīʿ b. Sulaymān al-Murādī, for example, had a hard time understanding how the synthesis should inform their legal activity. In fact, posthumous reports plainly show their inability to articulate the synthesis, leading them to stray from al-Shāfiʿī's path over the span of their scholarly career. Ibn Qāḍī Shuhba relates how "Rabīʿ b. Sulaymān was more knowledgeable than al-Muzanī in the field of *ḥadīth*, while al-Muzanī was more knowledgeable than Rabīʿ b. Sulaymān in *fiqh*,[16] it was as if one did not know anything but the *ḥadīth* and the other nothing but *fiqh*."[17] Some followers of

al-Shāfiʿī who were unable to comprehend this reconciliation effort eventually went as far as to reinforce their teacher's doctrine at its extremes. This led to the emergence of staunch Shāfiʿites, the most notable among these being Aḥmad b. Ḥanbal (d. 241/855), who confidently used to issue legal opinions based entirely on al-Shāfiʿī's doctrine, including, if necessary, al-Shāfiʿī's theory of *qiyās*.[18] Another extreme interpreter was Dāwūd b. ʿAlī b. Khalāf (d. 270/884), who wandered far from doctrines of the former, particularly in his unconditional rejection of *qiyās,* which often became a subject of ridicule among later Shāfiʿites.[19]

Other followers of al-Shāfiʿī reconciled their legal understanding (*fiqh*) with the *ḥadīth* according to their own discretion. This was the case with Abū Thawr, Isḥāq b. Rāhawayh, and Muḥammad b. Isḥaq al-Sulamī (d. 312/924),[20] who were reported to have synthesized their knowledge of *ḥadīth* and *fiqh*. For others, such as in the case of Abū ʿAbd Allāh b. Naṣir al-Marwazī (d. 294/907), such a conciliatory effort was elusive and painful, so much so as to lead him to confess: "I have recorded *ḥadīth* for 27 years, I have heard many statements (*qawl*) and legal cases, but I still do not have a good opinion of al-Shāfiʿī."[21] Hence, despite the fact that al-Shāfiʿī's personal teachings captivated some, they did not immediately gain wide acceptance.

Nevertheless, with the constant growth of *ḥadīth* scholarship, the synthesis process continued by bridging and reconciling the two binary positions in legal thought. Yet, while more and more people of *raʾy* joined the traditionalist band, the rationalists did not disappear altogether. Their continuing influence was ensured by the efforts of the *ahl al-kalām*, who gained the upper hand by momentarily winning the support of Caliph al-Maʾmūn, who initiated the *miḥna*.[22] Joseph Schacht describes the

rationalists as being of two kinds: the first were those who rejected the traditions altogether, that is, “the extreme wing of the anti-traditionists,” and the second those who disagreed with the authority of the *khabar al-khāṣṣa* (i.e. a *ḥadīth* only reported by an individual transmitter).[23] What is significant for the purposes of this section is that, during the whole course of the third/ninth century, the people of *raʾy* began to adopt the methods of the traditionalists in justifying their own traditions, even when a tradition was only related by a single Companion and reached back only to that Companion himself, as opposed to the Prophet.[24]

By that same period, jurists had begun to record their legal positions on those matters with which they agreed or disagreed. According to the biographical dictionaries, one of the earliest to do so was Abū Yaḥyā Zakarīyyā al-Sājī (d. 307/919), who had learned *fiqh* from Rabīʿ and al-Muzanī. He wrote a book on the deficiencies of *ḥadīth* (*ʿilal al-ḥadīth*) and the disagreement of jurists (*ikhtilāf al-fuqahāʾ*).[25] Similarly, Abū Bakr Muḥammad al-Nīsābūrī (d. 309–10/921–22) was also reported to have compiled a book on disagreement that was “unprecedented” in his time (*lam yuṣannif aḥad mithlahā*).[26] In addition, Abū al-Ḥasan al-Tamīmī (d. before 320/932) was also known to have compiled doctrines upon which jurists had reached agreement (*lahu muṣannafāt fī al-madhhab malīḥa*).[27] Wael Hallaq, and later Christopher Melchert, consider that, of all the scholars who flourished during this era, it was Ibn Surayj (d. 306/918) who offered the clearest articulation of the synthesis between the *ahl al-raʾy* and *ahl al-ḥadīth*.[28] Indeed, Ibn Suryaj was known to have paved the “middle way” (*sālik sabīl al-inṣāf*), and to have refuted “two opposing legal positions” directed at al-Shāfiʿī (*nāqiḍ qawānīn al-muʿtariḍayn*).[29] These two opposing legal positions were those of none other than the people of *raʾy* and the followers of Dāwūd b. Khalāf.[30]

Ibn Surayj's synthesis between rationality and the textual tradition eventually led to the conceptualization of legal theory (*uṣūl al-fiqh*), whose detailed elaboration was carried even further by his students. However, one must be cautious about giving full credit to Ibn Surayj and his direct students for the final elaboration and systematization of Islamic legal theory. Some of Ibn Surayj's students, such as Abū Isḥāq al-Marwazī (d. 340/951),[31] Abū Bakr al-Fārisī (fl. ca. 350/960),[32] Abū Bakr b. Muḥammad al-Qaffāl al-Shāshī, nicknamed "al-Qaffāl al-Kabīr" (d. 336/948),[33] and Abū Bakr al-Ṣayrafī (d. 330/942)[34] were indeed known to have written works on *uṣūl al-fiqh,* which probably depended heavily on the *Risāla* of al-Shāfiʿī. However, they were also preoccupied with the task of clarifying their understanding of the *uṣūl*, that is, the synthesis between rationality and the textual tradition (as described above), and its application to substantive law, including methods of disputation with those who differed or disagreed with them. This was the case with Abū Bakr al-Fārisī (one of the students of Ibn Surayj listed above), who wrote about criticism and disagreement in opposition to al-Muzanī (*kitāb al-intiqād ʿalā al-Muzanī*),[35] or Ibn al-Qāṣṣ (d. 336/947), who once devoted his time to writing summaries of legal cases derived directly from the texts and interpolation from them (*masā'il manṣūsa wa mukharraja*),[36] and al-Qaffāl al-Kabīr, who wrote on examples of "good dialectic" (*al-jadal al-ḥasan*).[37]

This preoccupation continued among those jurists who studied with Ibn Surayj's pupils, such as Abū ʿAlī b. Qāsim al-Ṭabarī (d. 350/961), who wrote a book on "pure disagreement" (*al-khilāf al-mujarrad*) titled *al-Muḥarrar fī al-naẓar*.[38] We may also include Abū Zayd al-Marwazī (d. 371/982), a student of Abū Isḥāq al-Marwazī, who was said to have excelled not only in doctrines of the school, but also in methods of disputation in defence of his doctrinal

position.[39] The list can go on to a considerable length, as biographical dictionaries preserve a tremendous amount of information related to jurists who wrote on the subject of disagreement and refutation. This information suggests that Ibn Surayj might indeed have been the one who attracted jurists with the general premise of his synthesis, and systematically grouped them under al-Shāfiʿī's banner as the genuine founder of the school.[40] However, when it came to detailed elaboration of substantive doctrines, these jurists appear to have produced doctrines significantly different from others. As Abū Ḥāmid al-Isfarāʾīnī (d. 406/1016) verbally acknowledged: "We go along with Abū al-ʿAbbās (Ibn Surayj) on the broad outline of jurisprudence, not the details."[41] Hence, while Ibn Surayj's synthesis steadily gained supporters, his students and followers may have developed the theory he outlined to reflect different understandings of the school's doctrinal foundation.

Nevertheless, allowing his students to develop their own understanding of the school's doctrine might have been exactly what Ibn Surayj intended to do. In fact, in addition to directing his students to write on *uṣūl*-related subjects, Ibn Surayj also required his advanced students to write a commentary on a substantive work (a *taʿlīqa*), usually centered on al-Muzanī's *Mukhtaṣar*.[42] Going by the information in the biographical dictionaries, Abū Isḥāq al-Marwazī and Ibn Abī Hurayra (d. 345/956) appear to have been among those of Ibn Surayj's students who wrote such *taʿlīqa*s.[43] But this tradition of explaining the *Mukhtaṣar* of al-Muzanī was not exclusive to the circle of learning connected to Ibn Surayj; it extended down to at least the fifth/eleventh century, that is, the period of Abū Isḥāq al-Shīrāzī (d. 476/1083) and Abū Ḥāmid al-Ghazālī (d. 505/1111).

The most interesting fact about the *taʿlīqa* form, as Makdisi has noted, is that it was not simply the product of writing activity. When someone engages in writing a *taʿlīqa*, what he is doing is not merely repeating the legal notions being discussed in the *matn*; rather, he is also contemplating or disputing them as well as applying the method (*ṭarīqa*) of interpretation he had mastered from his teacher.[44] Again, here is another achievement of Ibn Surayj; the fact that he required his advanced students to write *taʿlīqa* (dubbed by Melchert as a "doctoral dissertation"[45]), basically provided a cradle of development for the *ṭarīqa.* Hence, through the proliferation of the *taʿlīqa*, 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. In fact, judging from the biographical dictionaries, we find many *aṣḥāb al-wujūh* whose juristic achievements were recorded in terms of the quality of *ṭarīqa* they had excercised, such as in the following phrases: "correct methods" (*ṭarāʾiq al-ḥaqāʾiq*),[46] "he has a method of disputation" (*lahu ṭarīqa fī-l-khilāf*),[47] "he has a well-known method of disputation" (*lahu ṭarīqa mashhūra fī-l-khilāf*),[48] "pleasing method" (*marḍī al-ṭarīqa*),[49] or simply "good method" (*al-ṭarīqa al-jamīla*).[50] Moreover, the term *aṣḥāb al-wujūh* also happened to be used in conjunction with the term *ṭarīqa*, such as in the phrase *aṣḥāb al-wujūh wa-l-ṭuruq,* which signified an equation between the "people of *wujūh*" and the "people of *ṭarīqa.*"[51] *Ṭarīqa* and *taʿlīqa*, in other words, were understood as two sides of the same coin.

Be that as it may, not all juristic *taʿlīqa*s or *ṭarīqa*s rose to prominence. Some *ṭarīqa*s were known to be superior and attractive, but others remained unheard or abandoned. For example, the *ṭarīqa*s of Ibn Surayj and Abū Isḥāq al-

Marwazī, or that of Abū Bakr al-Qaffāl al-Ṣaghīr, were among those given primary importance in Shāfiʿite works.[52] The influence of their model of reasoning and argumentation was apparently huge, so much so as to attract other jurits to use them as common models of interpretation. Here we come to the notion of the *ṭarīqa*s of the Iraqians (*tarīqat al-ʿIrāqiyyīn*) and the Khurasanians (*tarīqat al-Khurāsāniyyīn*), which represented common methods of interpretation originating from the respective *taʿlīqa*s of the Iraqian and Khurasanian jurists.

The term "Iraqians" (*al-ʿIrāqiyyūn*) in the context of this *ṭarīqa* was often synonymously called the Baghdadis (*al-Baghdādiyyūn*), for a large number of them lived in Baghdad, as opposed to the Kūfans (*al-Kūfiyyūn*), which was commonly associated with Abū Ḥanīfa (d. 150/767),[53] Ibn Abī Laylā (d. 148/765),[54] and their associates.[55] Likewise, the term "Khurasanians" (*al-Khurāsāniyyīn*) was associated with the community of jurists who lived in the greater area of Khurasan, sometimes interchangeably referred to as the "Marwazis" (*al-Marāwiza*), since the majority of their teachers had their *nisba* from the city of Marwa (Merv), although many jurists belonging to this *ṭarīqa* were known to come from Nishapur or Ṭūs.[56] Another point to be remembered is that these Khurasanian jurists, as well as their Iraqian counterparts, were known to have been mobile, studying and teaching jurisprudence in several different places during their juristic careers. For example, al-Ghazālī, who is associated with the *ṭarīqa* of the Khurasanians, spent a considerable portion of his juristic and intellectual career in places such as Baghdad, Damascus, and Nishapur.[57] Therefore, the term "Khurasanians," or "Iraqians" should be thought of as referring to a community of jurists who happened to share certain methods of interpretation common to this area, but not necessarily to the geographical area itself.

It should now be clear that the *ṭarīqa* ought to be understood as a method of legal interpretation generally associated with, but certainly not limited to, the activity of the *aṣḥāb al-wujūh* among Shāfiʿī jurists. Its origins were developed from their contemplating and understanding the whole of al-Shāfiʿī's personal doctrine and hermeneutic principles as recorded in their *taʿlīqa*s, which proliferated after the period of Ibn Surayj. The individual nature of their activity in writing *taʿlīqa*s led them to develop different *ṭarīqa*s, as we noticed in the individual *ṭarīqa*s of Ibn Surayj, Abū Isḥāq al-Marwazī, and al-Qaffāl al-Ṣaghīr. This individuality, however, did not preclude other jurists who shared certain elements of al-Shāfiʿī's hermeneutic principles from holding and transmitting the same method of reasoning in a particular case, which later became identified as the common model of interpretation among members of the community of the Iraqian and Khurasanian jurists.

The transmitters of the *ṭarīqa*s

To identify the conveyer of the *ṭarīqa* of the Iraqians and Khurasanians was by no means difficult as Shāfiʿite jurists maintained an accurate record of their chains of transmission. The elusive challenge, however, is to determine exactly which jurists transmitted the doctrinal positions of each *ṭarīqa* down to al-Nawawī's time, since the available evidence on this process does not directly serve our purpose. On the one hand, the biographical dictionaries tend to concentrate on certain jurists considered to have a certain reputation and hence worth recording, regardless of their role in transmitting the doctrine of the *ṭarīqa*. On the other hand, information available from al-Nawawī's substantive works are equally limited to dealing with the thematic materials that happened to draw the attention of the jurists representing

each *ṭarīqa*s. At times, al-Nawawī does mention the names of jurists transmitting the principles of the *ṭarīqa*s, but in many cases he does not make any connection between a given jurist and a given *ṭarīqa*, despite the fact that the jurist may have been linked to one or another tradition.

Be that as it may, basing ourselves on the available evidence, it is still possible to piece together the carrier of the two *ṭarīqa*s and systematize their chain of transmission. As was seen from al-Nawawī's and Ibn al-Ṣalāḥ's lists of teachers in Chapter 1, the existence of the *ṭarīqa*s of the Iraqians and Khurasanians jurists began to emerge after the period of Abū Isḥāq al-Marwazī, an advanced student of Ibn Surayj. "Upon him," says al-Nawawī, "the *ṭarīqa*s of our Iraqians and Khurasanians associates devolved."[58] Indeed, among Ibn Surayj's students, Abū Isḥāq al-Marwazī gained considerable influence not only among Iraqian Shāfiʿites, but also among their fellow members of the school in the greater region of Khurasan. Other students of Ibn Surayj, for example, Ibn Abī Hurayra or Ibn al-Qaṭṭān (d. 359/970),[59] enjoyed rather limited influence on the Iraqian jurists, whereas Ibn al-Qaṣṣ (d. 335/946),[60] or Abū al-Walīd al-Nīsābūrī (d. 349/960)[61] established their legacy primarily among the Khurasanian jurists. However, these two *ṭarīqa*s did not show a clear demarcation until at least a few decades after the death of Abū Isḥāq al-Marwazī. Two of al-Marwazī's students, Abū al-Qāsim al-Dārakī (d. 375/986) who taught in Baghdad,[62] and his colleague Abū Zayd al-Marwazī (d. 371/982), who established a teaching circle in Marwa,[63] may be credited for having initiated the crystallization of each *ṭarīqa* as a separate juristic community. In the hands of these jurists, common juristic methods began to gain a foothold in each of these two places. Hence, having been imbued with a different legal approach (*ikhtilāf*) depending on their line of transmission, jurists who traveled between Iraq and Khurasan eventually

realized that what they had learned in Iraq might not necessarily be similar to what was being taught in Khurasan, and vice versa.

Among the Iraqian jurists, Abū Ḥāmid al-Isfarā'īnī, who studied with Abū al-Qāsim al-Dārakī, was considered the *imām* of the *ṭarīqa*.[64] This was the same al-Isfarā'īnī who was posthumously venerated as the "Second al-Shāfiʿī" due to his juristic legacy among later jurists in the school.[65] His teaching circle is reported to have been surrounded by no less than three hundred students of jurisprudence, while his *taʿlīqa* of the *Mukhtaṣar* of al-Muzanī is reported to have reached as many as fifty volumes.[66] Through him, the *ṭarīqa* was transmitted to younger influential jurists, among others, al-Qāḍī Abū al-Ṭayyib al-Ṭabarī, Abū al-Faraj al-Dārimī (d. 449/1058),[67] and Abū Ḥātim al-Qazwīnī (d. 440/1049).[68] From these three jurists, the *ṭarīqa* was then transmitted to Abū Isḥāq al-Shīrāzī (d. 476/1083), whose book *al-Muhadhdhab fī fiqh al-Imām al-Shāfiʿī* formed the subject of one of al-Nawawī's commentaries.

Among the Khurasanian jurists, the axis of their *ṭarīqa* lay in the person of Abū Bakr al-Qaffāl al-Ṣaghīr, who had studied with Abū Zayd Muḥammad al-Marwazī.[69] Some jurists who were known to have been transmitters of this Khurasanian branch of Shāfiʿism were Abū Muḥammad al-Juwaynī (d.438/1064),[70] his son Imām al-Ḥaramayn al-Juwaynī (d. 478/1085),[71] al-Qāḍī al-Ḥusayn (d. 462/1069),[72] Abū Ḥāmid al-Ghazālī (d. 505/1111) and Abū al-Ḥasan ʿAlī Ilkiyā al-Harāsī (d. 504/1110).[73]

In addition to the above jurists, there were others who had links to both Abū Ḥāmid al-Isfarā'īnī and Abū Bakr al-Qaffāl al-Ṣaghīr, but who nevertheless were not clearly associated with one or the other of the *ṭarīqa*s. This was the case with Abū ʿAlī al-Sinjī al-Marwazī (d. 427 [430]/1036 [1039])[74] and Abū al-Ḥasan al-Būshanjī (d. 467/1075);[75] that is to say, despite the fact that both were

known to have studied with the two *imām*s of the *ṭarīqa*s, they did not associate themselves with either *ṭarīqa.* Another case in point was Salīm b. Ayūb al-Rāzī (d. 4471055), who studied with and even taught in Abū Ḥāmid al-Isfarā'īnī's learning circle before the latter moved to Syria. Like Abū ʿAlī al-Sinjī, Salīm too did not associate himself with the *ṭarīqa* of the Iraqian jurists. When Salīm was asked about the difference between his juristic writings and those of al-Maḥāmilī (d. 414–15/1024–25), his colleague, who also studied with Abū Ḥāmid al-Isfarā'īnī, he said: "The difference between the two writings is that al-Maḥāmilī's was written in Iraq, whereas mine was composed in Syria."[76] Clearly, by dissociating himself from al-Maḥāmilī and Iraqian influence, Salīm established himself as independent of the Iraqian Shāfiʿite tradition, while at the same time not identifying with the Khurasanian *ṭarīqa*.

This seems to suggest that despite the seeming polarization of the two *ṭarīqa*s, not all Shāfiʿite jurists conformed to one or the other mode of juristic reasoning and argumentation adopted by the members of the *ṭarīqa*s. The fact that there were Shāfiʿite jurists who were concentrated in places such as Syria, the Hejaz, and Egypt, and all of them with a genealogy of learning different from that of Ibn Surayj and Abū Isḥāq al-Marwazī, suggests that there were many others who were not incorporated within these two *ṭarīqa*s.[77] However, the evidence at our disposal and the space available in this section do not permit us to explore this phenomenon except in relation to the Iraqian and Khrurasanian jurists. Suffice it to confine our analysis only to the two *ṭarīqa*s with those jurists who clearly identified with the common method of interpretation dominant in Iraq and Khurasan.

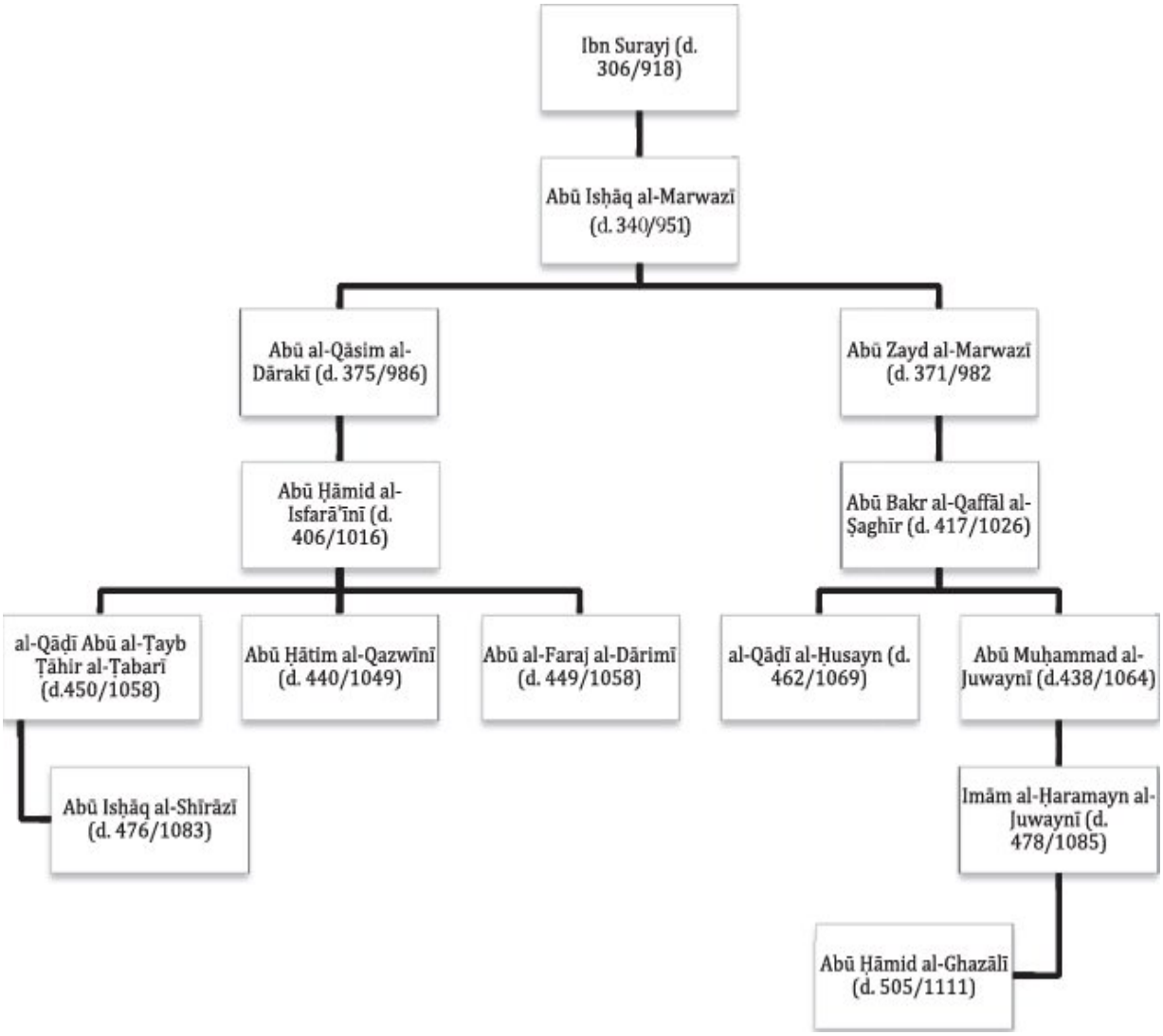

Figure 3.1 Some representative jurists in the *ṭarīqa* of the Iraqians and Khurasanians and their line of transmission up to Ibn Surayj

The conflicting doctrines of the *ṭarīqa*s

Having identified the meaning and origins of the *ṭarīqa*s, and also their transmitters, it is now necessary to account for the effect of the presence of the different *ṭarīqa*s among Shāfiʿite jurists. In principle, their existence was not considered a problem because, as we saw in our previous discussion of the *taʿlīqa*, each mode of interpretation was basically elaborated from the same source, that is, the personal doctrine of al-Shāfiʿī usually transmitted through

al-Muzanī's *Mukhtaṣar*. Furthermore, as the *ṭarīqa*s grew, jurists associated with the common method of interpretation identified with the Iraqian and Khurasanian models still shared certain doctrinal resources. In fact, as al-Nawawī states in his *Tahdhīb*, the Iraqian and Khurasanian jurists actually drew upon the same sources: "You ought to know that the axis of the literatures (*madār*) of our Iraqian associates or their masses (*jamāhīruhum*), along with a number of the Khurasanians, lies in the writings of Abū Ḥāmid al-Isfarā'īnī, and these writings number around fifty volumes."[78] In the same book, al-Nawawī also notes that al-Qaffāl al-Kabīr was regarded by many as an axis of both *ṭarīqa*s. His book *al-Taqrīb* was reported to be the reference for the *takhrīj* of both the Khurasanian and Iraqian jurists.[79]

However, the fact that jurists associated with different *ṭarīqa*s may have studied in the same teaching circles or shared doctrinal references did not prevent al-Nawawī from elaborating in detail on their differences in legal reasoning, especially when it led to conflicting doctrines. This was very important for practical reasons, because conflicting doctrines among the *ṭarīqa*s would have made it difficult to determine which legal solution was valid. Consider the following discussion regarding the *zakāt* (or alms tax) imposed on an apostate in al-Nawawī's *Rawḍa*:

> The obligation upon Muslim to pay the due *zakāt* is no longer applied to an apostate. However, if the person retains his property at the time of his apostasy, there are two *ṭarīqa*s: The first *ṭarīqa*, as narrated by Ibn Surayj, states that *zakāt* is obligatory upon him, as is family maintenance (*nafaqāt*) and compensation for damages (*gharāmāt*). The second *ṭarīqa*, as reported by the majority of jurists, states that the condition of his property must be determined: if we declare his property decreased with his apostasy, then *zakāt* is not necessary;

> if we declare his property to have remained intact, *zakāt* is obligatory upon him. Likewise, if we determine that his property suspended (*mawqūf*), then it is suspended. If we say *zakāt* is obligatory upon him, and the person paid his due, the *madhhab* opinion allows us to take from him. However, the author of *al-Taqrīb* (al-Qaffāl al-Kabīr) reverses the position: his *zakāt* must be returned. He says the man is not obliged to pay his due *zakāt* as long as he remains an apostate.[80]

This passage clearly states that *zakāt* is obligatory only upon Muslims, and not upon non-Muslims. However, it becomes problematic when a Muslim converts to another religion, for this makes it difficult to determine whether the person must pay his due *zakāt* or not. The detailed elaboration of this question resulted in two conflicting *ṭarīqa*s; the first held by Ibn Surayj and the second held by the majority of jurists. Ibn Surayj stated that the person must indeed continue to pay his due. However, for the majority of jurists, *zakāt* might be taken from him or might not, depending how jurists assess his property. Within this *ṭarīqa* of the majority, al-Qaffāl al-Kabīr held the firm position that the person is not obliged to pay his due *zakat*. He even went further, stating that if *zakāt* were taken from him, it must be returned. Needless to say, al-Qaffāl's position diametrically reversed the reasoning of Ibn Surayj.

The following example further illustrates how the different reasoning of a certain case could generate several conflicting *ṭarīqa*s. In the chapter on *iʿtikāf*, that is, the ritual of seclusion in the mosque during the last ten days of Ramaḍān, al-Nawawī states that among the prerequisites for the ritual is that the person who performs it must be a Muslim and must be conscious. In the case of a person who is intoxicated during his *iʿtikāf*, then recovers, or of another person who becomes an apostate while performing his *iʿtikāf*, but then returns to being a Muslim afterwards, can

they be said to have continued valid *iʿtikāf*? In response to this case, al-Nawawī cites the position of different *ṭarīqa*s of jurists: The position of the followers of Abū Ḥāmid al-Isfarāʾīnī, meaning the *ṭarīqa* of the Iraqian jurists, states that the intoxicated person cannot continue his seclusion in the mosque. The reason is that his condition of being intoxicated forbids him from staying in the mosque in the first place (*iʿtikāf* must be performed in a mosque, so that leaving it, in effect, invalidates the ritual *ab initio*). However, the apostate may remain in the mosque, and hence, continue his *iʿtikāf* as long as he reverts to being a Muslim. Compare this Iraqian solution to that of al-Ghazālī, who belonged to the *ṭarīqa* of Khurasanian jurists. He states that the intoxicated person who turns sober may continue his *iʿtikāf*, but the same does not apply to a former apostate. The reason is that being intoxicated can be interpreted as no more than falling asleep, whereas apostasy is tantamount to contradicting the whole purpose of *iʿtikāf*.[81]

We may better understand the whole picture of conflicting *ṭarīqa*s by looking at another example that shows how jurists sharing a common *ṭarīqa* could also develop different elaborations of the same legal question. Let us analyze al-Nawawī's commentary on al-Shīrāzī's *al-Muhadhdhab* regarding the conflicting elaboration of the impurity of water among the Iraqian jurists:

> [al-Shīrāzī]: In the case of a man who finds two vessels, then one person reports to him that a dog had licked one of the vessels so as to render the water in the vessel impure, but he wasn't quite sure of his report because he was merely informed by someone else, then another person reports that a dog licked the vessel other than the one which was previously indicated; both vessels are considered impure, because both reports might be true and a dog may have licked both vessels on two different

> occasions. If one person saw with his own eyes that the dog licked one vessel at a certain time and not the other vessel, and the other person saw the contrary at the same time and also with his own eyes; both statements become two evidences. [The first *ṭarīqa*]: If we consider that the two evidences are contradictory (*taʿāraḍatā*) and both reports are to be aborted (*tasquṭān*), then both evidences become invalid, and the water in both vessels can be used for the ritual of purification (*al-ṭahāra*) because it cannot be established which vessel was rendered impure. [The second *ṭarīqa*]: However, if we consider that both reports are to follow, then both or one of the vessels are to be emptied of water, and the man should do a *tayammum* (ritual of purification using dust or sand as there is no clean water available).[82]

In this passage, al-Shīrāzī recounts more than one legal argument, the first being that in the case of two different reports regarding the impurity of the water in both vessels, both are considered impure because a dog might have licked the two of them at two different times. The water in both vessels, therefore, may be deemed contaminated and cannot be used for the ritual of purification. Al-Shīrāzī also mentions another attempt at legal reasoning, representing another *ṭarīqa*, that considers the water in both vessels still uncontaminated because the reports of its impurity are contradictory. Then, al-Nawawī continues with his commentary on the passage:

> [Al-Nawawī's commentary]: First, if the reporter was convinced and could describe clearly that the dog had licked one of the vessels at a certain time, and the second reporter was also convinced but could not be sure which of the vessels was contaminated; according to al-Shāfiʿī as was reported by Ḥarmalah, al-Maḥāmilī, Abū Ḥāmid as well as other later jurists, it is obligatory

> for the man to follow the report of the person who witnessed the case and thus the man should perform ablution with the water that is not deemed contaminated. There is no *khilāf* on this issue and no further *ijtihād* is necessary. Second, if both of the reporters were convinced of the fact that the dog licked both vessels respectively, then both are rendered contaminated without *khilāf*, as was also reported from al-Shāfiʿī in his *al-Umm,* from Ḥarmalah and the agreement of our associates regarding the probability that a dog licked both vessels at two different times, if both reporters are convinced, then it is obligatory to follow both of them (that is to consider both water impure altogether). Additionally, if one of reporters was convinced that the dog licked one of the vessels, for example on Thursday, and the other was convinced that the dog licked another vessel on the same day, our associates disagree on this issue. Al-Baghawī and al-Ṣaydalānī[83] insisted that that the man should perform *ijtihād* regarding the quality of both vessels and choose which one he deems pure and then use that water for ablution. The man must never use water from one of the vessels without *ijtihād*, because both reporters agree on the impurity of one of the vessels, and therefore, their reports cannot be abrogated.[84]

In this passage, al-Nawawī explains that the two *ṭarīqa*s were originally developed from two of al-Shāfiʿī's *qawl*s and transmitted through the same person: Ḥarmalah. After Ḥarmalah, however, further elaborations of jurists on the same case brought about different *wujūh* positions which rejected the position of one and another. Al-Nawawī, like al-Shīrāzī, does not specify which *ṭarīqa* is proponderant over another, but he clearly indicates that following one *ṭarīqa* implies that the other *ṭarīqa* is redundant, or at best invalidated. Hence, the choice is whether to follow the

report of the person who witnessed the case without further *ijtihād*, or to follow another report which requires *ijtihād* to determine the quality of the water and to choose which one is lawful for ablution.

Delving further into al-Nawawī's work, one finds cases in which jurists of the same *ṭarīqa* could not agree on the solution of a legal case. In the case of the legality of performing the obligatory prayer when no cloth or carpet is available, for example, the *ṭarīqa* of the Khurasanian jurists was split into two streams and remained so because there was no way to reconcile them.[85] Then there were instances where a jurist generally known to have followed the legal method of one *ṭarīqa,* ended up producing legal opinions similar to those of a different *ṭarīqa* that he identified with. This was the case of Abū al-Maḥāsin al-Rūyānī (d. 503/1108),[86] who often identified with the *ṭarīqa* of the Khurasanian jurists, but al-Nawawī found that some of his opinions were similar to those of the *ṭarīqa* of the Iraqian jurists.[87] This leads us to conclude that, despite jurists of each *ṭarīqa* holding certain communal methods of interpretation, this did not preclude them from producing different or even conflicting legal opinion.

It was due to the contradictory solutions to legal cases, like the one above and others, that differences between the *ṭarīqa* became the subject of juristic inquiry. For a jurist or lay Muslim who does not have the skill to analyze which *ṭarīqa*'s solutions is preponderant, the above differences would have made it difficult to decide on one valid solution for daily legal queries. This was apparently the concern widely shared between al-Nawawī and jurists of his generation, who inherited a huge accumulation of school doctrine spread by different genealogies of learning and lines of transmission. Shihāb al-Dīn Ibn Abī Shāma (d. 665/1266), the former head of the Ashrafiyya College before al-Nawawī took the office after the former died,

once expressed his concern as follows: “The source of the diversity (of the *ṭarīqa*s) was from one *imām* and from his recorded writings that remain extant; why cannot the jurists return to these sources and reconcile their differences back to him?”[88] It was apparently to respond to this concern that al-Nawawī devoted considerable attention to reconcile the conflicting *ṭarīqa*s, as I shall discuss in the following section.

Al-Nawawī’s reconciliation of the *ṭarīqa*s

Having identified the different doctrinal elaborations of each *ṭarīqa*, we shall now discuss how al-Nawawī reconciled these *ṭarīqa*s with the *madhhab*. What I mean by the phrase “reconciliation of the *ṭarīqa*s” in this section is to bring the legal elaborations of the *ṭarīqa*s in line with the hermeneutic principles of al-Shāfiʿī, that is, with the true yardstick of the *madhhab*. Before moving further, however, one must also note that the initiative to harmonize legal elaboration of the *ṭarīqa*s was not original to al-Nawawī. Two centuries before al-Nawawī, Abū ʿAlī al-Sinjī al-Marwazī (d. 427 [430]/1036 [1039]), who happened to be a student of Abū Bakr al-Qaffāl al-Ṣaghīr and Abū Ḥāmid al-Isfarāyīnī, respectively the leaders of the community of the Khurasanian and Iraqian jurists, had begun the initiative to reconcile the teachings of his teachers with the *madhhab*.[89] Tāj al-Dīn al-Subkī, in his *Ṭabaqāt*, notes that Abū al-Ḥasan al-Būshanjī (d. 467/1075) was also known to have reconciled in his doctrine the two *ṭarīqa*s after he studied with his teachers from both *ṭarīqa*s. As al-Subkī’s phrase has it: “I don’t think there was any other Shāfiʿite jurist who integrated [the differences of the two *ṭarīqa*s] in his work as did al-Būshanjī.”[90]

Another excellent case in point was Abū Muḥammad al-Mūṣilī al-Muʿāfī (d. 630/1233), who was known to have attempted to reconcile the doctrines of both *ṭarīqa*s (*kutub*

al-ṭarīqayn) as reflected in his work *Kitāb al-Kāmil fī-l-Fiqh*.[91] Yet another was al-Rāfiʿī, who, through his work *Fatḥ al-ʿAzīz* (the subject of al-Nawawī's commentary), was also reported to have intimately reconciled the two *ṭarīqa*s.[92] In his *Tahdhīb*, as has been seen, al-Nawawī expressed his fondness for those of his teachers who happened to study with Ibn al-Ṣalāh, because the latter was known to have inherited the learning tradition from the *ṭarīqa*s of both the Khurasanian and Iraqian jurists.[93] The number of Shāfiʿite jurists who attempted to bridge these *ṭarīqa*s reflects the constant need of early scholars to reduce the differences over legal methods and doctrines in the *madhhab*. This concern was apparently aimed at facilitating day-to-day legal inquiries, that is, to make it clear on what basis rulings had been made, or whose legal opinions among the scholars of each *ṭarīqa*s were considered authoritative.

There is no doubt that al-Nawawī's reconciliation of the *ṭarīqa*s of the Iraqian and Khurasanian jurists was motivated by the same concern to facilitate daily legal reference. In order to do so, he delved into the writings of each *ṭarīqa*, followed their reasoning and legal analysis, and finally, came up with his own position, which he framed as representing the position of the Shāfiʿī school. Among the representatives of the *ṭarīqa*s of the Khurasanian and Iraqian jurists, he considered al-Ghazālī and al-Shīrāzī to be the two most important authors. The works of these two authors were known to have been very popular as object of study and memorization among students of law. Of al-Shīrāzī's works, he considered *al-Muhadhhab* and *al-Tanbīh* as the two most important juristic works for the Iraqian jurists, while of al-Ghazālī's works, he considered *al-Wasīṭ fī-l-madhhab* as the masterpiece among the Khurasanian jurists.

Al-Nawawī's book *al-Majmūʿ Sharḥ al-Muhadhdhab* and *Taṣḥīḥ al-Tanbīh* each serves as a commentary on al-Shīrāzī's two works mentioned above. Similarly, al-Nawawī's *Rawḍa* and *Minhāj* also served as commentaries on the legal stands of the community of the Khurasanian jurists. However, the *Rawḍa* and *Minhāj* are not direct commentaries on al-Ghazālī's work. Al-Nawawī did write a commentary on al-Ghazālī's *al-Wasīṭ*, which he named *al-Tanqīḥ*, but he never finished the book.[94] The *Rawḍa* instead constitutes a critical commentary on *Fatḥ al-ʿAzīz* (also called *Sharḥ al-Kabīr*), written by al-Rāfiʿī. Likewise, al-Nawawī's *Minhāj* is an abridgment of *al-Muḥarrar*, written by the same al-Rāfiʿī. Nevertheless, despite being written by al-Rāfiʿī, both *Fatḥ al-ʿazīz* and *al-Muḥarrar* traced their genealogy back to al-Ghazālī's *al-Wasīṭ.*[95]

Al-Nawawī's works *al-Majmūʿ*, *Rawḍa* and *Minhāj* are however more than commentaries on the works of al-Shīrāzī's and al-Ghazālī's; they represent the medium through which he investigated the epistemological status of doctrines of each *ṭarīqa*, the transmitters or conveyers of the doctrines, and, where necessary, the internal differences among jurists within the *ṭarīqa*s. At the same time, the same books represent effective instruments for delivering his own juristic reasoning, which he built upon his knowledge of the school's literature, the Qurʾān and *ḥadīth* science.[96] Hence, while presenting the doctrines of each *ṭarīqa*, al-Nawawī exercised his freedom to analyze and reconcile their differences by championing the one doctrine that he considered the most consistent with al-Shāfiʿī's legal principle.

To take an example, let us return to al-Nawawī's discussion of alms tax or *zakāt* in his *Rawḍa*.[97] We must first note that the established doctrine in Islamic law stipulates that anyone who owns between 40 to 120 sheep is required to pay a levy equal to the value of one sheep.

Furthermore, anyone who owns between 120 to 200 sheep is liable to pay a levy in the amount of two sheep.[98] Here, al-Nawawī elaborates a complex case involving the alms tax of two persons whose properties' values, if combined, could result different requirements to pay the levy:

> [al-Rāfiʿī] How to divide a returned *zakat*: If two men equally combined twenty sheep with another twenty, then one sheep is levied from the share of the two. Each person shares a half of the value of one sheep. In the case of one person owning thirty sheep (X) and the other owning ten sheep (Y), hence, totalling forty sheep; if one sheep is levied from X, then Y pays a quarter value of the sheep to the former. If one sheep is taken from Y, then X pays a three-quarter value of the sheep to the latter. In the case of a combined flock of one hundred fifty sheep, where one person owns one hundred sheep (A) and another owns fifty sheep (B), the levy is two sheep. If the levy of two sheep is taken from A, then B pays one-third of the value of the *two* sheep to A, not one-third of the value of *one* of the two sheep. If the levy of two sheep is taken from B, then A pays *two*-thirds of the value of the two sheep to B. If each person (A and B) contributes one sheep to the levy of two sheep, then A pays one-third of the value of one sheep to B; and B pays two-thirds of the value of the sheep to A. That is, despite both A and B contributes each sheep, both must return the value equal to the balance that each owes to another … [99]

At this point, al-Nawawī does not interfere with al-Rāfiʿī's elaboration. He seems to follow al-Rāfiʿī's legal inference, that is, both A and B contributes to paying the levy according to the value of their respective shares. Next, he elaborates further:

> If one person owns thirty cows (A), and the other owns forty cows (B), hence, totalling seventy cows, both must contribute to the levy one female cow three years of age (*tabīʿ*),[100] and one adult female cow four years of age or more (*musinna*),[101] the value of which is distributed as follows: B contributes four-sevenths, and A contributes three-sevenths. If the levy is taken from B, then A must pay three-sevenths from the value of the levy to B. Likewise, if the levy is taken from A, then B must pay four-sevenths from the value of the levy to A. If the *zakāt* collector (*sāʿī*) takes a *tabīʿ* from B and a *musinna* from A, then the collector returns four-sevenths of the value of a *musinna* to A and three-sevenths of the value of a *tabīʿ* to B. If the collector takes a *musinna* from B and a *tabīʿ* from A, then he returns three-sevenths of the value of a *musinna* to B and four-sevenths of the value of a *tabīʿ* to A.[102]

After quoting the legal inference above, al-Nawawī inserts his own position: "The model of legal inferences above was originally reported from Imām al-Ḥaramayn al-Juwaynī and his associates … I disagree with their inferences on the basis of al-Shāfiʿī's doctrine (*naṣṣ al-Shāfiʿī*)."[103] Then, al-Nawawī presents his legal solution, which he thought was the most consistent with al-Shāfiʿī's hermeneutic principles:

> If the number of sheep of the two persons is equal, then both are required to pay the levy of two sheep, each contributes one sheep. If the value of each sheep taken as the levy is different, there is no need for one party to return the difference in value to the other, because nothing is taken from either of them except the sheep they both contribute. That is the doctrine of al-Shāfiʿī. Regarding the disparity between the requirement to pay a *tabīʿ* and a *musinna*, al-Shāfiʿī stipulates that A must

pay a *tabīʿ* and B must pay a *musinna*, or each of them must pay according to the value of their levy.[104]

The crux of three passages above is to clarify possible disparities between the two persons in contributing to the levy for the flocks of sheep or herds of cows they own jointly. Al-Rāfiʿī passed on the doctrine which al-Nawawī identified as originally reported from Imām al-Ḥaramayn al-Juwaynī, a representative of the Khurasanian interpretive tradition. The model of reasoning that al-Juwaynī elaborated appears to derive from the syllogistic reasoning associated with the teachings of the Greek logicians. In fact, al-Juwaynī is known to have been one of many jurists who adapted the doctrines of the logicians to his juristic reasoning.[105] However, in this case al-Nawawī was not interested in dealing a *coup de grâce* to logic, nor was he interested in prolonging his commentary on al-Juwaynī's reasoning in the *ṭarīqa*. He quickly made his point by presenting his solution to the case, which he derived in accordance with the methodology of al-Shāfiʿī. Here, al-Nawawī sent the message to his readers that, as long as the reasoning transmitted from al-Juwaynī through al-Rāfiʿī above was consistent with that of al-Shāfiʿī, one may take the doctrine as representing the position of the Shāfiʿī *madhhab*. Anything that contradicts the reasoning or methodology of al-Shāfiʿī, by default, is deemed irrelevant. However, despite this negative judgment, he still preserved al-Rāfiʿī's doctrine (i.e. Khurasanian in term of his learning transmission) in his *Rawḍa*, probably as a sign of respect toward the historic differences in the school.[106]

To further illustrate how al-Nawawī reconciled the doctrine of the *ṭarīqa*s of the Iraqian and Khurasanian jurists, let us return to his discussion of *iʿtikāf*, addressed in the previous pages.[107] The case involved whether or not a person who is intoxicated during his *iʿtikāf*, but then

recovers, and whether another person who becomes an apostate while performing his *iʿtikāf*, but then returns to being a Muslim thereafter, can continue their *iʿtikāf*. As already noted, al-Nawawī found that the solutions proposed by both the Iraqian and Khurasanian jurists contradicted each other. Thus, for the *ṭarīqa* of the Iraqian jurists, the intoxicated person cannot continue his seclusion in the mosque, because his condition of being intoxicated forbids him from staying in the mosque in the first place. But the apostate who reverts to being a Muslim and remains in the mosque can continue his *iʿtikāf.* For the Khurasanians, the intoxicated person who turns sober may continue his *iʿtikāf*, because his intoxicated condition may be seen as equivalent to falling asleep. The former apostate, however, can no longer continue his *iʿtikāf* since apostasy is tantamount to contradicting the whole purpose of *iʿtikāf*. The following passage is al-Nawawī's response to this conflicting solutions of the *ṭarīqa*s—a response that he considered to represent the true position of the Shāfiʿī *madhhab*:

> The *madhhab* position is that the *iʿtikāf* of both persons is invalidated since their states of intoxication and apostasy are to be understood as acts with greater implications than leaving the mosque (even though they may remain in the mosque). Al-Shāfiʿī's position deems the *iʿtikāf* of an apostate invalidated, but if he reverts to being Muslim, he can continue his *iʿtikāf*, because the act of apostasy does not nullify what has been done, except if he had died while in the state of apostasy (i.e. all his good deeds are deemed void). Al-Shāfiʿī also established that the intoxicated person who turns sober may continue his *iʿtikāf*.[108]

Al-Nawawī's solution to the contradictory positions of the Iraqian and Khurasanian *ṭarīqa*s is clear: unlike the

Khurasanian jurists, he would allow the apostate who reverts to being Muslim to continue his *iʿtikāf*; and likewise, contrary to the Iraqian jurists, he would also allow the intoxicated person who turns sober to continue his *iʿtikāf*. He established this position on the grounds of al-Shāfiʿī's general principle, that is, *the act of apostasy does not nullify what we have done*. This principle means that the former apostate who reverts to Islam does not lose credit for his previous deeds. If he decides to continue his *iʿtikāf* upon his reversion to Islam, he may do so. The reasoning of al-Ghazālī, as we previously quoted, would have forbidden the former apostate from continuing his *iʿtikāf* given that the apostate's decision to leave Islam contradicted the whole purpose of *iʿtikāf*. For al-Nawawī, however, this reasoning cannot be accepted because unless a person dies while in the state of apostasy, his decision to revert to being Muslim restores his deeds before his renunciation of Islam. Al-Nawawī also reverses the solution of the *ṭarīqa* of Iraqian jurists, which forbids the intoxicated person who turns sober to continue his *iʿtikāf.* Here al-Nawawī based himself on what al-Shāfiʿī might have argued: the reasoning of the Iraqian jurists that being intoxicated is tantamount to leaving the mosque cannot be accepted since the person physically remained there. Here al-Nawawī effectively reconciled the different methods of reasoning used in the *ṭarīqa*s of the Iraqian and Khurasanian jurists. His understanding of al-Shāfiʿī's legal principles became the basis upon which conflicting doctrines within the *ṭarīqa* were analyzed and from which the solution most in keeping with the *madhhab* position was derived.

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-Shāfiʿī's methodology may be found in all of al-Nawawī's legal writings. In his *Majmūʿ,* for instance, which is essentially a

collection of the doctrines of the community of the Iraqian 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 Iraqian elaboration of a particular case contradicts the doctrine and reasoning of al-Shāfiʿī, he interposes his own reasoning, with reference to his mastery of al-Shāfiʿī's teaching and the literature of other jurists in the *madhhab*.[109] 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-Shāfiʿī's hermeneutic principles, and it was this that allowed him to narrow the differences between the major *ṭarīqa*s among Shāfiʿite jurists. Following this model of reconciliation, al-Nawawī traced all the doctrines of the *ṭarīqa*s as transmitted by al-Shīrāzī and al-Ghazālī (through al-Rāfiʿī), and brought any doctrine he thought of as deviating from the *madhhab* back into line with al-Shāfiʿī's juristic paradigm.

For the later Shāfiʿī jurists, the impact of al-Nawawī's reconciliation between the *ṭarīqa*s and the *madhhab* was pervasive in that he relieved them of the burden of dealing with such disparity in the legal elaborations of the *ṭarīqa*s. A closer look at one popular later Shāfiʿite work, the *Mughnī al-Muḥtāj* of al-Khaṭīb al-Sharbīnī, confirms that many of the *ṭarīqa* positions that al-Nawawī considered to have deviated from the *madhhab* were no longer discussed at length given the fact that al-Nawawī had reconciled their differences with the position of the *madhhab*. Taking as our example the familiar case in the *Rawḍa* regarding the status of the two men who, respectively, apostatized and became intoxicated during their *iʿtikāf*, we find that al-Khaṭīb al-Sharbīnī says:

> In the case of a *muʿtakif* (person who performs *iʿtikāf*) who renounces his Muslim faith and another who

> becomes intoxicated, the *madhhab* position considers their *iʿtikāf* is invalidated. However, the *madhhab* position also allows them to continue their *iʿtikāf*.[110]

In this passage, al-Khaṭīb al-Sharbīnī no longer includes the different *ṭarīqa* elaborations of the validity of the *iʿtikāf* of both men. For him, it was sufficient to restate al-Nawawī's position on the case as stated with full details in his *Rawḍa* —considered the most authoritative solution. As a jurist of a certain calibre, al-Khaṭīb al-Sharbīnī would doubtless have been familiar with the Khurasanian and Iraqian positions regarding this case, but he saves himself the burden of detailed discussion by referring to al-Nawawī, who was thought to best represent the position of the *madhhab*.

Likewise, a closer look at another popular Shāfiʿite work, the *Nihāyat al-Muḥtāj* of al-Ramlī, leads us to conclude similarly, that is, that the solution of a given *ṭarīqa* on any case that al-Nawawī saw as having deviated from the *madhhab* were no longer discussed at length given the fact that al-Nawawī would have reconciled its differences with the position of the *madhhab*. Here let us recall our previous discussion of the value of *zakāt* in a partnership between the respective owners of forty and thirty cows. Al-Ramlī writes:

> Suppose Zayd owns forty cows and ʿAmr owns thirty cows; if the *zakāt* collector takes a *tabīʿ* and a *musinna* from ʿAmr, he should return four-sevenths of the total value to ʿAmr. If he takes a *tabīʿ* and a *musinna* from Zayd, he should return three-sevenths of the total value to Zayd. However, if both ʿAmr and Zayd contribute to their levy, then there is no need for them to return the different value to each other.[111]

This passage contains substantially the same information transmitted by al-Rāfiʿī and found in al-Nawawī's *Rawḍa*. However, further elaboration of the difference in the value of the *tabīʿ* and *musinna* that each partner has to pay, which al-Nawawī traced as having come from the reasoning of Imām al-Ḥaramayn al-Juwaynī, is no longer considered. Al-Juwaynī's model of reasoning, according to al-Nawawī's estimation, was not thoroughly consistent with the doctrine and methodology that al-Shāfiʿī upheld. Al-Nawawī's position on the case was clear: al-Shāfiʿī stipulates that in such instances A must pay a *tabīʿ* and B must pay a *musinna*. For al-Ramlī, al-Nawawī's solution to the case was sufficient: he no longer had to deal with the doctrine of the Khurasanian jurists that appeared not to reflect the position of the *madhhab*. It was precisely in this way that al-Nawawī became the focus of extended authority construction, connecting the later jurists with the authority of al-Shāfiʿī, promoting a shared legal paradigm and the doctrine of the *madhhab*, making it unnecessary for them to examine the entire legal tradition of the Shāfiʿī school of law.

Final remarks

The foregoing discussion has shown that the *ṭarīqa*s of the Khurasanian and Iraqian jurists emerged out of the long-term process of synthesis between rationalism and traditionalism in Islamic law. It particularly emanated from the activity of jurists in composing *taʿlīqa*s that began to proliferate during the period of Ibn Surayj and his circle and apparently reached its peak during the generation of the *aṣḥāb al-wujūh*. Despite the individual approaches of jurists in exercising *ṭarīqa*s of their own, some of them did share certain characteristic methods of reasoning that later generated the Iraqian and Khurasanian *ṭarīqa*s. What distinguished them from one another was their different

respective understandings of the rudimentary principles laid down by al-Shāfiʿī and how these should be applied in each substantive case. Basing himself on the practical need of jurists to find authoritative solutions for legal cases arising in the evolving Muslim community, al-Nawawī ventured to reconcile the different legal elaborations held by the *ṭarīqa*s with his own understanding of al-Shāfiʿī's doctrine and legal principles. His achievement in this project was significant in that he brought the doctrines of each *ṭarīqa* in line with al-Shāfiʿī's general principles, which he saw as ideally representing the *madhhab*'s approach to legal decision-making. Through this latter, al-Nawawī contributed to the accumulation of the school's doctrines and became an axial authority that linked the legal realities of later Shāfiʿite jurists with the doctrinal references that historically represented the Shāfiʿī school of law.

Notes

1 See, Muḥammad Abū Zahra, *Tārīkh al-Madhāhib al-Islāmīyya*, 2 vols. (Cairo: Dār al-Fikr al-ʿArabī, 1963), 2:236.

2 Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden; New York: Brill, 1997), 100.

3 Eric Chaumont, "al-Shāfiʿiyya," in *The Encyclopaedia of Islam: New Edition*, (eds) C. E. Bosworth, *et al.* (Leiden: E. J. Brill, 1995), 9:187.

4 George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 116–17.

5 The Qurʾān's transmission, guaranteed by the authority of *tawātur*, is considered a major source of legal decision since the time of the Prophet. As Snouck Hurgronje pointed out: "[T]he first community lived quietly conscious that all its activities were ruled by the Koran. Even after the mouthpiece of Allah had disappeared, the certainty that only the revelation regulated the lives of the Faithful prevailed". See Christiaan Snouck Hurgronje, "Islam," in *Selected Works of C. Snouck Hurgronje*, (eds) Georges-Henri Bousquet and Joseph Schacht (Leiden: E. J. Brill, 1957), 48. Cf. Wael B. Hallaq, "Groundwork of the Moral Law: A New Look at the Qurʾān and the Genesis of Sharīʿa," *Islamic Law and Society* 16 (2009): 271–78. For further discussion of *tawātur*, see for example, Hallaq, "On Inductive Corroboration, Probability and Certainty in Sunnī Legal Thought," in *Islamic Law and Jurisprudence*, (ed.) Nicholas L. Heer

(Seattle, WA: University of Washington Press, 1990), 21–24; Hallaq, "The Authenticity of Prophetic Ḥadīth: A Pseudo-Problem," *Studia Islamica* 99 (1999): 78–83; Aron Zysow, "The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory" (PhD Dissertation, Harvard University, 1984), 14–19; Bernard G. Weiss, "The Primacy of Revelation in Islamic Legal Theory as Expounded by Sayf al-Dīn al-Āmidī," *Studia Islamica* 59 (1984): 90–91.

6 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 83–94; Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 18–19.

7 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 1:68.

8 See ibid., 1:66.

9 Al-Shāfiʿī, in this context, precipitated the transformation of the Sunna into religious paradigm by insisting the establishment of the chain of transmission (*isnād*) to the Prophet. In the early century of Islam, however, the Sunna (pl. sunan) by no means directly corresponded to the Prophet, but simply meant general "example" that often takes it root in the Companions and even to the pre-Islamic established social and legal norms. For further discussion, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 46, 70–71; Weiss, "The Primacy of Revelation," 82; Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge: Cambridge University Press, 1986), 54–55.

10 al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, 1:66.

11 Ibid., 1:67.

12 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925), 1:9.

13 Abū Isḥāq Ibrāhīm al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, (ed.) Khalīl al-Mays (Beirut: Dār al-Qalam, n. d.), 87.

14 In this case, *qiyās* was to be used in the absence of the relevant reference from the Qur'ān and the *ḥadīth* of the Prophet. See Muḥammad b. Idrīs al-Shāfiʿī, *al-Risāla*, (ed.) Aḥmad Muḥammad Shākir (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1940), 477.

15 See Wael B. Hallaq, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25 (1993): 588–600.

16 Here, the word *fiqh* is likely to signify understanding of God's law. As such, it does not necessarily derived from foundational text as al-Shāfiʿī prescribed. For further information of the word *fiqh*, see Wael B. Hallaq, "On the Origins of the Controversy About the Existence of Mujtahids and the Gate of Ijtihad," *Studia Islamica* 63 (1986): 131; Bernard G. Weiss, *The Spirit of Islamic Law* (Athens, GA: Georgia University Press, 1998), 116.

17 Abū Bakr b. Aḥmad Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, (ed.) Ḥāfiẓ ʿAbd al-ʿAlīm Khān, 4 in 2 vols. (Beirut: ʿĀlam al-Kutub, 1987), 1:65.

18 See al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, 1:56.

19 Tāj al-Dīn al-Subkī reported that a certain Muḥammad b. ʿAbda visited Dāwūd (for an opinion). When ʿAbda came to Aḥmad (b. Ḥanbal), the latter was discontent and refused to talk to him. Then, a man told Aḥmad: "O Abā ʿAbd Allāh, he just confronted Dāwūd." "On what matter?" asked Aḥmad. The man replied on matter relating to who should wash a dead body of a hermaphrodite (*al-khunthā*). Dāwūd said that a servant should wash the death body. But Muḥammad b. ʿAbda said the body should be washed by a male-servant. Dāwūd shook his head (*yuyammim*). Aḥmad smiled and said: "He was right! I do not have better answer than his." See Tāj al-Dīn ʿAbd al-Wahhāb b. ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, (eds) Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥilw, 10 vols. (Cairo: ʿĪsā al-Bābī al-Ḥalabī, 1964), 2:286–87. For further references on Dāwūd and his followers, see al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:198–99; Muḥammad b. Abī Yaʿqūb Ishāq Ibn al-Nadīm, *al-Fihrist*, (ed.) Yūsuf ʿAlī Ṭawīl (Beirut: Dār al-Kutub al-ʿIlmiyya, 2002), 362–65.

20 See al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, 116.

21 Ibid.

22 See John A. Nawas, "The Miḥna of 218 A.H./833 A.D. Revisited: An Empirical Study," *Journal of the American Oriental Society* 116:4 (1996), 698–708.

23 Schacht, *The Origins of Muhammadan Jurisprudence*, 40–41.

24 Ibid., 44; Melchert, *The Formation of the Sunni Schools of Law*, 35.

25 al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, 114; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:94–95; Ibn al-Nadīm, *al-Fihrist*, 357.

26 al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, 118.

27 Ibid., 117.

28 Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh*, 33; Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.*, 87–92.

29 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:90.

30 Abū Bakr Aḥmad b. ʿAlī Khaṭīb al-Baghdādī, *Tārīkh Baghdād Aw Madīnat al-Salām*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 24 in 21 vols. (Beirut: Dār al-Kutub al-ʿIlmīyya, 1997), 5:43.

31 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:39.

32 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:123.

33 Ibid., 1:148–49.

34 Abū Bakr al-Ṣayrafī was dubbed as "the most knowledgeable person on *uṣūl* after al-Shāfiʿī" (*kāna aʿlamu al-nās bi-l-uṣūl baʿda al-Shāfiʿī*). See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:116; Ibn al-Nadīm, *al-Fihrist*, 358.

35 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:123.

36 This is probably a commentary on the *Mukhtaṣar* of al-Muzanī. See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:107.

37 Ibid., 1:149. For further analysis of development of disagreement, disputation, and dialectic method, see Walter Edward Young, "The Dialectical Forge: Proto-System Juridical Disputation in the *Kitāb Ikhtilāf al-ʿIrāqiyyīn*" (PhD diss., McGill University, 2012).

38 al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, 123; Ibn al-Nadīm, *al-Fihrist*, 358.

39 *Kāna ḥāfiẓan li-l-madhhabi husn al-naẓār mashhūran bi-l-zuhdi*. See al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 123.
40 The rise of al-Shāfiʿī's authority as the eponym of the school might be precipitated by the emergence of Abū Ḥanīfa and Mālik as the eponym of their respective schools. A dramatic narrative found in al-Nawawī's *Tahdhīb* reflects this reaction: "There is no one among us an expert in jurisprudence except one who gathers the opinions of people and chooses after them. Then, who was the real *faqīh*? The real *faqīh* was the person who deduces (*yastanbiṭu*) law originally from the Book or the Sunna which none has preceded him, then ramify (*yushaʿibu*) his method into one hundred branches (*shuʿab*). Who was the strongest on this (activity)? Muḥammad b. Idrīs al-Shāfiʿī!" See al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, 1:67. For more discussion of al-Shāfiʿī's image that began to gain significance after Ibn Surayj's synthesis, see Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh*, 33–35.
41 *Najrī maʿa Abī al-ʿAbbās fī ẓawāhir al-fiqh, dūna al-daqā'iq*. Cited in Melchert, *The Formation of the Sunni Schools of Law*, 90. For the Arabic reference, see al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 118.
42 Melchert, *The Formation of the Sunni Schools of Law*, 102.
43 al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 121.
44 Makdisi, *The Rise of Colleges*, 116–17.
45 Melchert, *The Formation of the Sunni Schools of Law*, 102.
46 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:127.
47 Ibid., 2:66.
48 Ibid., 2:62.
49 Ibid., 1:301.
50 Ibid., 1:324.
51 See Abū ʿAmr ʿUthmān b. ʿAbd al-Raḥmān Ibn al-Ṣalāḥ al-Shahrazūrī, *Kitāb al-Fatwā Wa-Ikhtilāf al-Qawlayn Wa-l-Wajhayn al-Mashhūr bi-Adab al-Muftī Wa-l-Mustaftī*, (ed.) Muṣṭafā Maḥmūd al-Aẓharī (Riyadh; Cairo: Dār Ibn al-Qayyim; Dār Ibn ʿAffān, 2006), 137.
52 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:126–27. For an example of the *ṭarīqa* of Ibn Surayj, see *Rawḍat al-Ṭālibīn*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ, 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 5:509.
53 For his biographical information, see ʿAlī Jalabī b. Amr Allāh Qinālīzādah, *Ṭabaqāt al-Ḥanafiyya*, (eds) Sufyān b. ʿĀyish b. Muḥammad and Firās b. Khalīl Mashʿal (Amman: Dār Ibn al-Jawzī, 2004), 99–103.
54 For his biographical information, see al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 85.
55 al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, 2:160.
56 Nishapur and Ṭūs are the hometown of Imām al-Ḥaramayn al-Juwaynī and al-Ghazālī, two representatives of the *ṭarīqa* of the Khurasanian jurists. See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:255–56; 1:93–94.
57 See ibid., 1:293–94.
58 "*Ilayhi yantahi ṭarīqat aṣḥābunā al-ʿIrāqiyyīn wa-l-Khurāsāniyyīn*." See al-Nawawī, *Tahdhīb al-Asmā' Wa-l-Lughāt*, 2:39.
59 For Ibn al-Qaṭṭan's juristic career, see ibid., 2:82.
60 For Ibn al-Qaṣṣ's juristic career, see ibid., 2:125.

61 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:126.
62 See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:136.
63 Ibid., 2:104.
64 Ibid., 2:75–76.
65 See Chapter 2, pp. 62–63, n. 27.
66 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:173. Abū Ḥāmid al-Isfarāʾīnī was reportedly very angry when one of his students Abū al-Ḥasan al-Maḥāmilī (d. 414–15/1024–25) abridged his book: "God shortened the age of he who abridged my book!" See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:77.
67 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:234–35.
68 Ibid., 1:218; al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 5:312–13.
69 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:26.
70 al-Nawawī, *Mukhtaṣar Ṭabaqāt al-Fuqahāʾ*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ (Beirut: Muʾassasat al-Kutub al-Thaqāfiyya, 1995), 449–50.
71 See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:255–56.
72 He was Abū ʿAlī al-Ḥusayn b. Muḥammad al-Marwazī. See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:178.
73 Both Ilkiyā al-Harāsī and al-Ghazālī studied together and served as the teaching assistants (*muʿīd*) of al-Juwaynī. See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:288.
74 Ibid., 1:207.
75 al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 3:228; Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:249.
76 al-Nawawī, *Mukhtaṣar Ṭabaqāt al-Fuqahāʾ*, 423.
77 See note 81.
78 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:77–78.
79 Abū ʿĀṣim Muḥammad al-ʿAbbādī, *Kitāb Ṭabaqāt al-Fuqahāʾ al-Shafiʿiyya* (Leiden: E. J. Brill, 1964), 106. See also, Muḥammad Ḥasan Hītū, *al-Ijtihād Wa-Ṭabaqāt Mujtahidī al-Shāfiʿiyya* (Beirut: Muʾassasat al-Risāla, 1988), 178–79.
80 al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:4.
81 Al-Nawawī's elaboration of this case does not stop with only these two solutions of the Iraqian and Khurasanian jurists. In the same passage, he offers different solutions to the same case proposed by other *ṭarīqa*s. According to al-Nawawī, one *ṭarīqa* of jurists does not consider the *iʿtikāf* of an apostate and that of the intoxicated person void. Hence, according to this reasoning, both the apostate who reverts to being a Muslim and the intoxicated person who goes back to being sober can continue their *iʿtikāf* without interference. The other *ṭarīqa* also allows both persons to continue their *iʿtikāf*, but limits the condition of being intoxicated and apostasy to only a short period of time. If the state of unconsciousness and being non-Muslim is prolonged, they may no longer continue their *iʿtikāf*. However, the solutions of these two *ṭarīqa* were apparently less convincing than those of the Iraqian and Khurasanian jurists, making them insignificant for al-Nawawī's overall discussion of the case. See al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:263–64.

82 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:177.
83 He was Abū al-Qāsim b. al-Ṣaydalānī al-Kitānī (d. 380/1000). See al-Khaṭīb al-Baghdādī, *Tārīkh Baghdād Aw Madīnat al-Salām*, 11:267–68.
84 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:177–78.
85 Ibid., 3:183. See also another case, al-Nawawī, *Rawḍat al-Ṭālibīn*, 1:117.
86 For his biographical information, see Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:287.
87 al-Nawawī, *Rawḍat al-Ṭālibīn*, 5:613, 33, 69.
88 "*Wa-l-marjiʿ fī hādhā kulluhu ilā imām wāḥid wa-kutubihi mudawwanatin marwiyyatin mawjūwdatin, afalā kānū yarjiʿūna ilayha wa-yunqūna taṣānīfihim min kathrati ikhtilāfihim ilayhā*." See Shihāb al-Dīn b. Ismāʿīl Ibn Abī Shāma, "Mukhtaṣar Kitāb al-Muʾammal Li-l-Radd Ilā al-Amr al-Awwal," *Majmūʿat at al-Rasāʾil al-Munīriyyā* 3(1927): 28.
89 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:207.
90 Ibid., 1:249; al-Subkī, *Ṭabaqāt al-Shāfiʿiyya al-Kubrā*, 3:228.
91 Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 2:93; al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:78.
92 Chaumont, "al-Shāfiʿiyya," 9:188.
93 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:25.
94 See p. 24.
95 Al-Rāfiʿī's *Fatḥ al-ʿAzīz* (*Sharḥ al-kabīr*) was known as a commentary on al-Ghazālī's *al-Wajīz*, and *al-Wajīz* itself was an abridgement of *al-Wasīṭ* written by al-Ghazālī himself. See editor's introduction, al-Nawawī, *Rawḍat al-Ṭālibīn*, 1:13.
96 The *Majmūʿ*, *Rawḍa*, and *Minhāj* were apparently written to serve different audiences. We may group the *Majmūʿ* and *Rawḍa* in the same category, and put the *Minhāj* on the other. The difference between the *Majmūʿ* and *Rawḍa* is that the former is an extended commentary aiming to justify, to explain and to investigate the evidences and legal reasoning of jurists in the *ṭarīqa*s and the *madhhab*. In the introduction of the book, al-Nawawī said: "I do not exclude the mention of any of al-Shāfiʿī's opinions, *wajh* opinions, or other opinions even if they happen to be weak or insignificant" (*lā atruk qawlan wa-lā wajhan wa-lā naqlan wa-law kāna ḍāʿīfan aw wāhiyan*). See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:4. The latter, however, is more straightforward and devoid of sophisticated legal language and prolonged discussion as found in the former category. The other category, the *Minhāj*, represents a canonized version of the school's doctrine intended as the standard reference for jurists who may not have the skill and capacity to analyze the opinion of the previous jurists. It contains all doctrines that al-Nawawī thought to have corrected in accordance with the *madhhab*. See al-Nawawī, *Minhāj al-Ṭālibīn*, (ed.) Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, 3 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2005), 1:75.
97 Note that the *Rawḍa* represented the collective doctrine of the *ṭarīqa* of the Khurasanian jurists carried to al-Nawawī through al-Rāfiʿī.
98 See for example, Muḥammad b. Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* [The translation of the meanings of *Ṣaḥīh al-Bukhārī*: Arabic–English], trans.

Muḥammad Muḥsin Khān, 9 vols. (Chicago, IL: Kazi Publications, Inc., 1979), 2:308.

99 al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:32.

100 The cow is called *tabīʿ* because it is young and still follows its mother. See Ibrāhīm Ismāʿīl Shahrakānī, *Muʿjam al-Muṣṭalaḥāt al-Fiqhiyya* (Beirut: Muʾassasat al-Hidāya, 2002), 397; Edward William Lane, *An Arabic–English Lexicon*, 8 vols. (Beirut: Librarie du Liban, 1968), 1:295.

101 Shahrakānī, *Muʿjam al-Muṣṭalaḥāt al-Fiqhiyya*, 417; Lane, *An Arabic–English Lexicon*, 4:1439.

102 al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:32.

103 Ibid.

104 Ibid., 2:32–33.

105 See for example, Wael B Hallaq, *Ibn Taymiyya Against the Greek Logicians* (New York: Oxford University Press, 1993), l, 13, 46–47. In his *Mukhtaṣar Ṭabaqāt al-Fuqahāʾ*, al-Nawawī highlights the role of the instrument of logic in the juristic works of one al-Juwaynī's student, al-Ghazālī. See al-Nawawī, *Mukhtaṣar Ṭabaqāt al-Fuqahāʾ*, 269–76. Earlier in this chapter, Eric Chaumont is quoted to have characterized the Khurasanian branch of Shāfiʿism as "more speculative" than their Iraqians counterpart. Al-Nawawī, for his part, noted that on the one hand the Iraqian jurists were more reliable than the Khurasanians in their transmission of al-Shāfiʿī's texts (*nuṣūṣ*), school's principle (*qawāʿid madhhab*), and the *wajh* opinions of the previous Shāfiʿite scholars (*wujūh mutaqaddimī aṣḥābunā*). The Khurasanian jurists, on the other hand, were better in their conduct (*taṣarruf*), examination (*bahth*), derivation (*tafrīʿ*) and their arrangement of legal materials. See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:69. On the basis of al-Nawawī's statement and of al-Juwaynī's tendency to use the Greek logician's method in elaboration of legal case as seen above, we can tentatively agree with Chaumont's suggestion. However, more elaboration is necessary to make substantive claim about speculative character of the *ṭarīqa* of the Khurasanian jurists and cannot be accommodated in this book.

106 Al-Nawawī is known to have said that *ikhtilāf* among jurists is God's mercy: "You ought to know that understanding the *madhhab* of the forefathers and their legal proof is important, because their difference in *furūʿ* is a blessing." See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:5. For the development of idea of *ikhtilāf* in the Shāfiʿī school of law, see Norman Calder, "*Ikhtilāf* and *Ijmāʿ* in Shāfiʿī's *Risāla*," *Studia Islamica* 58 (1983): 61–67.

107 See p. 63.

108 al-Nawawī, *Rawḍat al-Ṭālibīn*, 2:263–64.

109 See the previous case of the impurity of water from the *Majmūʿ* in al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:177–78.

110 Muḥammad Khaṭīb al-Sharbīnī, *Mughnī al-Muḥtāj ilā Maʿrifat Maʿānī Alfāẓ al-Minhāj*, 4 vols. (Cairo: Sharikat wa-Maṭbaʿat Muṣṭafā al-Bābī al-Ḥalabī, 1933), 1:454–55.

111 Shams al-Dīn Muḥammad b. Aḥmad al-Ramlī, *Nihāyat al-Muḥtāj ilā Sharḥ al-Minhāj fī al-Fiqh ʿalā Madhhab al-Imām al-Shāfiʿī*, 8 vols. (Cairo:

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4 The canonization of the school's doctrines

Al-Nawawī's posthumous legacy as the one entrusted with leadership of the *madhhab* and the one with the final say on which doctrine was authoritative was largely precipitated by his juristic achievement in canonizing the school's doctrines. As were his efforts in reconciling the *ṭarīqa*s with the *madhhab*, his contribution in the latter was crucial in that it provided later Shāfiʿite jurists with a sense of determinacy in law. In a legal tradition that inherently contains a plurality of legal opinions, like that of Islam, having a determinate collection of doctrines was highly desirable for practical reasons. This collection of canonical doctrines functioned as the primary rules by which jurists could discover legal solutions for certain cases. With these canonical doctrines, not only did later jurists benefit from al-Nawawī's juristic elaborations, but they also saved themselves from the burden of re-deriving law from the original sources or scrutinizing the entire corpus of a school's legal solutions. However, these canonical doctrines were not understood to be a closed body of doctrine or codified rule; they were simply those that al-Nawawī considered most authoritative. The discussion will begin with the issue of indeterminacy in the Shāfiʿī school of law, followed by an examination of *tarjīḥ* and *taṣḥīḥ* as measures of certainty, and finally an elaboration of the multi-layered authoritative doctrines that formed the outcome of al-Nawawī's canonical formulation of the school's doctrines.

Canonization and the problem of indeterminacy

Every jurist who embarks on formulating the solution to a legal case risks the possibility of coming into an indeterminate solution since the kinds of evidence that lead to certainty are very limited. For the most part, legal doctrines in Islamic law are based on flexible and speculative interpretation of these evidences, leading inevitably to some degree of indeterminacy. But restricted or vague evidence is not the sole cause of the problem of indeterminacy. The accumulation of substantive doctrines in the form of *furūʿ* works, which themselves emanated from past legal cases recorded in *fatwā* collection,[1] may also have contributed to the problem of indeterminacy. Moreover, changing historical circumstances in the Muslim community often led to a changing legal approach, or to a different approach to legal reasoning, which eventually perpetuated the already diverse legal doctrines. This was apparently the situation that al-Nawawī, like every other jurist, had to face. As a jurist who had inherited the Shāfiʿite legal tradition through his learning and who at the same time lived and worked with it, indeterminacy in law was a familiar dilemma. In fact, in the very introduction to his *Majmūʿ*, al-Nawawī addresses the problem of indeterminacy as a matter that was bound to happen given the accumulation of compendia (*al-mukhtaṣarāt*) as well as in extended works (*mabsūṭāt*) produced by jurists in the *madhhab*. "You ought to know that the *corpus* of the school's doctrine (*kutub al-madhhab*) contains significant disagreements among the Shāfiʿite jurists (*aṣḥāb*), so much so that the reader cannot be confident that a certain opinion from an author represents the authoritative opinion of the *madhhab*, until the reader examines the majority of the well-known law books of the *madhhab*."[2] This legal indeterminacy subsequently brought about the problem of legitimacy in legal practice, in the sense that it was not

easy for jurists in this period to determine which legal solution was considered authoritative or whose opinion, among the many scholars in the *madhhab*, was considered valid and worthy of following.

Having acknowledged the prevailing legal indeterminacy in his time, al-Nawawī goes on to reflect on how the plurality of opinion in the school had developed in the first place. He identifies four layers of legal opinion that make up the totality of the school's doctrine. The first layer is made up of the personal opinions of al-Shāfiʿī, which consisted of two different sets of doctrine, that is, the opinions he expressed while he was in Baghdad and those that he developed after his move to Egypt. As al-Nawawī states in his *Majmūʿ*: "For each legal question, there are two personal opinions of al-Shāfiʿī: the 'old doctrine' and the 'new doctrine'" (*kullu masʾalatin fīhā qawlān li-l-Shāfiʿī qadīm wa-jadīd*).[3] The old doctrine is known to have been transmitted by four of al-Shāfiʿī's students in Baghdad, that is, Ḥasan b. Muḥammad b. al-Ṣabāḥ al-Zaʿfarānī (d. 260/874), Aḥmad b. Ḥanbal (d. 241/855), Abū Thawr al-Kalbī (d. 240/854), and Ḥusayn al-Karābīsī (d. 245/859), whereas the new doctrine is known to have been transmitted by al-Shāfiʿī's students after he moved to Egypt. They were Yūsuf b. Yaḥyā al-Buwayṭī (d. 231/846), Ḥarmalah b. Yaḥyā (d. 243/857), Rabīʿ b. Sulaymān b. Dāwūdd al-Jīzī (d. 256/870), al-Muzanī (d. 264/878), Yūnus b. ʿAbd al-Aʾlā al-Miṣrī (d. 264/877), and Rabīʿ b. Sulaymān al-Murādī (d. 270/884).

After identifying the first layer of the school's doctrine, al-Nawawī moved on to explain the second layer, which consists of the opinions of al-Shāfiʿī's immediate students who are known to have been often departed his legal methodology.[4] For example, in the *Tahdhīb,* al-Nawawī notes that despite having been the student of al-Shāfiʿī, al-Muzanī was known to have written a treatise according to

his own *madhhab*, not that of his teacher (*ṣannafa al-Muzanī kitāb mufarrid ʿalā madhhabih lā ʿalā madhhab al-Shāfiʿī*).[5] Quoting Imām al-Ḥaramayn al-Juwaynī, al-Nawawī also notes that where al-Muzanī exercises his opinion, he does so according to his own *madhhab*, but where he conducts *takhrīj* from al-Shāfiʿī, he is attached to the Shāfiʿī *madhhab*.[6] Al-Muzanī's tendency to formulate opinion independently from the personal opinions of al-Shāfiʿī became an acknowledged feature of his juristic approach, so much so that Shāfiʿite biographers never failed to mention his distance from the *madhhab* in accounts of his life and works. Ibn Kathīr, for example, in his *Tabaqāt al-Shāfiʿiyya*, writes that al-Muzanī had isolated *wajh* opinions and many legal choices that differed from the *madhhab* (*lahu wujūh gharīb wa-ikhtiyārāt mukhālifat li-madhhab*).[7]

Similar to al-Muzanī, one of al-Shāfiʿī's students in Baghdad, Abū Thawr al-Kalbī, was also known to have established an independent school (*madhhab mustaqil*), in that he often agreed on certain matters with al-Shāfiʿī but disagreed on others so much that many wondered if he were truly one of al-Shāfiʿī's students.[8] Another of al-Shāfiʿī's students in Baghdad, Aḥmad b. Ḥanbal, was to become the eponym of a truly independent *madhhab*. This was in spite of the fact that Ibn Ḥanbal was said to have once issued legal opinions entirely based on al-Shāfiʿī's teachings. He is supposed to have claimed: "If I find a case which has no legal reference to it (*athar*), I would issue a legal opinion based on al-Shāfiʿī's statement (*qawl*)."[9]

The third layer is the opinions of the *aṣḥāb al-wujūh*, that is, the views of those of the generation of jurists who derived law by way of *takhrīj*.[10] Their legal opinion was designated as "*wajh*" (or in its plural form "*wujūh*" or "*awjuh*"), which signified that it was not part of al-Shāfiʿī's personal opinions, but nevertheless derived from al-Shāfiʿī's legal methodology.[11] The numbers of jurists who

fell into the category as the *aṣḥāb al-wujūh* were many, and included the Shāfiʿite jurists who lived during the entire span of the fourth/tenth century. Some of the early *aṣḥāb al-wujūh* were: Abū al-Ṭayyib b. Salma (d. 308/920),[12] Abū ʿAbd Allāh b. Zubayr (d. before 320/932),[13] Abū Bakr al-Nīsābūrī (d. 324/936),[14] and Abū al-ʿAbbās b. al-Qāṣṣ (d. 335/947).[15] The activities of these *aṣḥāb al-wujūh* in formulating law and in responding to new legal cases that continued to emerge by the way of *takhrīj* inevitably brought about an accumulation of doctrines attributed not only to the founder of the *madhhab* (al-Shāfiʿī), but also to themselves, which may or may not have been consistent with the *madhhab*.

The fourth layer is the opinions identified as belonging to the jurists of the later period (*aṣḥābuna al-muta'akhkhirīn*).[16] These jurists were not at the same level as the *aṣḥāb al-wujūh*, but they had extensive knowledge of the *madhhab* and the proofs of their *imām*, which enabled them to decide which doctrines in the *madhhab* were preponderant and thereby issue *fatwā*s based on this legal knowledge. Their contribution to the crystallization of the school's doctrines was reflected in their treatises and collections of *fatwā*s, as many of them were active as *muftī* and as author-jurists. The majority of the well-known jurists who lived during the fifth/eleventh century fell into this category.[17] This time frame is important as al-Nawawī seems to limit the generation of Shāfiʿite jurists known as the *aṣḥāb al-wujūh* only to those who flourished in the fourth/tenth century, even though jurists of the later period might have continued to perform a similar activity of *takhrīj* in responding to new legal cases.[18] In other words, according to al-Nawawī, these later jurists did not form a distinct group within the *madhhab* as was the case with the *aṣḥāb al-wujūh*, but their contribution to producing the school's doctrine was just as significant as that of the

previous generation. All these four layers of doctrine, extending from al-Shāfiʿī's personal teaching, his immediate students, the *aṣḥāb al-wujūh*, and the jurists of the *mutaʾakhkhirīn*, contributed to the problem of indeterminacy in the Shāfiʿī school.

Al-Nawawī's scholarly activity and juristic investigation, as reflected in his *Majmūʿ* and *Rawḍa*, were apparently directed at reducing this indeterminate plurality of legal opinions. What he did was to create a set of canonical doctrines, similar to what the modern legal philosopher, H. L. A. Hart, terms "rules of recognition."[19] The school's doctrines that al-Nawawī classified as canonical consisted of different layers of opinion, the most important of them being that of "the *madhhab*," meaning the authoritative opinion of the school.[20] Here one must note that both the use of term canon and al-Nawawī's concept of the *madhhab* have the same connotation of perfection. The term canon was originally used by the Greeks to refer to some ideal rules by which sciences, poetry, and music were composed. The idea was that by having an exemplary model for further study, reference, and composition, Greek society would achieve perfection in everyday life, or a "canon" of human nobility, as Aristotle would say.[21] Al-Nawawī's doctrinal selection representing the *madhhab* is similar in form to the ideal reference of the Greeks. It is a logical answer to the demand of legal reality that required a system to evaluate which legal doctrine has a higher degree of certainty and which is most consistent with al-Shāfiʿī's legal principles.

As we have seen, al-Nawawī was by no means the only or even the first jurist in the Shāfiʿī school to deal with the problem of indeterminacy. Before him, there were others who attempted to classify which legal opinions or doctrines were preponderant and which had higher epistemic value in each case. The difference between al-Nawawī's endeavor

to canonize the school's doctrine and previous jurists' attempt to deal with indeterminacy lies in the scope and legal rules supposedly imposed on the former. In other words, while previous jurists who lived in the tenth or eleventh century had to deal with plurality of opinions credited to the founder of the school and his immediate students, later writers like al-Nawawī had to deal with the accumulation of opinion of these jurists, including the plurality of opinion of the founder and his students. Additionally, while the jurists who flourished prior to al-Nawawī were not necessarily bound by legal theory, since full elaboration of rules dealing with the plurality of opinions was still in the making, al-Nawawī had to deal with the production of legal theory that in many ways controlled and regulated the activities of jurists dealing with the issue of indeterminacy in the school's legal tradition. I shall elaborate more on al-Nawawī's method of canonization in relation to the legal theory he inherited in the following sections.

The measure of certainty: *tarjīḥ* and *taṣḥīḥ*

The necessity of dealing with the problem of indeterminacy has long preoccupied earlier generations of Muslim jurists. Among the Shāfiʿites before al-Nawawī, we have countless jurists who devoted their time to dealing with this issue. In fact, al-Shāfiʿī himself was known to have painstakingly engaged in evaluating the indeterminacy of textual evidence in one of his books, titled *Ihktilāf al-ḥadīth*.[22] One may speculate that the practice of determining the reliability of evidence was also common among the Companions of the Prophet in the first century of the hijra at which time the report of Abū Bakr was decided to have higher epistemic value over the report of ʿUmar, ʿUthmān, and ʿAlī due to Abū Bakr's close proximity to the Prophet.[23]

Despite the fact that the concept of indeterminacy was familiar to Muslim since the first or the second century of the hijra, it did not mean that its theoretical elaboration has been thoroughly articulated during the same period. As al-Subkī points out, at the time when legal knowledge was still fluid, jurists of the past (*al-mutaqaddimūn*) were not bound by any rule in their attempt to determine the value of a legal opinion or to decide which of many positions might be considered a sound one. According to al-Subkī, each jurist who had a certain level of legal knowledge would issue a legal opinion based on his current legal reasoning, even if it chanced to contradict his previous legal opinion, because there was no stable legal rule or theory to guide his activity.[24]

With the emergence of legal theory in the fourth century of the hijra, jurists began to elaborate on the issue of indeterminacy at fuller length and recorded their understanding of the problem as part of the larger discussion in the *uṣūl* works. Their main focus in this subject was on the legal evidence that became the basis of legal reasoning or *ijtihād*. Evaluating the strength of evidence was indispensable because to be able to distinguish between stronger and weaker evidence was essential to increase certainty in the law. In other words, jurists realized that it would be perilous to dispense laws without knowing which evidence ought to be considered as outweighing another. The technical term used here was *tarjīḥ*, which means determination of preponderance.[25] A similar term often used interchangeably with *tarjīḥ* is *taṣḥīḥ*, namely, determination of the evidence that is considered "correct" (*ṣaḥīḥ*).[26] The outcome of both *tarjīḥ* and *taṣḥīḥ* is understood to be the authoritative doctrine that must be taken into consideration in issuing *fatwā*s or in court decisions (*qaḍā*).

Despite the difference in terminology, *tarjīḥ* and *taṣḥīḥ* are often understood to be almost synonymous in that both connote to the same scrupulous activity to determine the epistemic value of opinion or evidence. Wael Hallaq observes that author-jurists such as Ibn al-Ṣalāḥ, Tāj al-Dīn al-Subkī, and al-Nawawī often made this obvious connection between *tarjīḥ* and *taṣḥīḥ*.[27] A subtle distinction between the two terms, following Hallaq, may however be deciphered in their general usage as different genres of Islamic legal learning; *tarjīḥ* appears more frequently in works of legal theory, whereas *taṣḥīḥ* (and its derivative *ṣaḥīḥ*) often occurs only in works of substantive law.[28]

Among Shāfiʿte jurists, al-Shīrāzī was one of those who devoted considerable attention to determining preponderance, especially in his book *al-Tanbīh*.[29] Abū al-Maḥāsin al-Rūyānī (d. 503/1108), who was dubbed the "Shāfiʿī of his time," was also reported to have partaken in the same activity, as reflected in his work *Kitāb al-Qawlayn Wa-l-Wajhayn*.[30] Another was Najm al-Dīn ʿAbd al-Karīm al-Qazwīnī (d. 665/1267), who wrote *al-Ḥāwī al-ṣaghīr*, a work that generated further commentary by later generations of scholars, such as Sirāj al-Dīn Ibn al-Mulaqqin (d. 802/1400).[31] The number of biographical entries reporting jurists engaging in *tarjīḥ* activity leads us to believe that weighing the preponderance opinions was a constant activity among jurists following the growth and proliferation of the school's doctrine. In other words, *tarjīḥ* was the natural outcome of the accumulation of various legal opinions (*aqwāl* and *wujūh*) and the increased number of generations of Shāfiʿite jurists. It goes without saying that *tarjīḥ* eventually became one of the most important topics addressed in the *uṣūl* works.

Tarjīḥ, however, was not a task for everyone, and not every case could be subjected to this activity. Realizing this complexity, some Shāfiʿite jurists were determined to draw

up rules aimed at defining the nature and scope of *tarjīḥ*. Al-Shīrāzī, for example, overruled *tarjīḥ* before jurists had determined if the legal evidence at their disposal was subject to abrogation or not.[32] In this sense, al-Shīrāzī emphasized the necessity of assessing the hierarchy of the evidence before a jurist proceeds to issue his decision. Hence, for example, evidence that prescribes action was given weight over other evidence that does not prescribe any order. Furthermore, al-Shīrāzī specified the domain of *tarjīḥ* as falling within two ranges—the quality of the textual evidence (*matn*) and its transmission (*isnād*), and the quality of the ratio legis (*ʿilla*) being used as a basis of analogical inference. From these two domains, he outlined no less than forty-four rules in total.[33]

Emulating al-Shīrāzī's endeavor to outline the scope of *tarjīḥ*, al-Ghazālī, in one of his legal works, *al-Mankhūl Min Taʿlīqāt al-Uṣūl*, also offers ample analysis of the area of *tarjīḥ*. He insists that the domain of *tarjīḥ* is that of evidence whose value falls within the range of probability. Legal opinion that is derived from textual evidence deemed to be certain (*al-qaṭʿiyyāt*) was decisive *ab initio*, and therefore not subject to *tarjīḥ*.[34] From this insight, al-Ghazālī outlines *tarjīḥ* in terms of assessing the texts (*nuṣūṣ*), which include the transmitter and the content or the apparent meaning of the texts (*ẓawāhir*, pl. of *ẓāhir*). Like his colleague al-Shīrāzī, al-Ghazālī discusses the breadth of *tarjīḥ* in regard to conflicts between analogies. Upon defining all the categories of evidence, he sets thirty-two rules to guide jurists when faced with weighing conflicts.[35]

Sayf al-Dīn al-Āmidī (d. 631/1233), from the next generation of Shāfiʿite jurists, offers even more extensive rules for *tarjīḥ* than did al-Shīrāzī and al-Ghazālī. In his *uṣūl* work *al-Iḥkām fī Uṣūl al-Aḥkām*, he elaborates 173 principles aimed at helping jurists to determine the

preponderant legal opinion. He states, for example, that a text with a greater number of transmitters outweighs a text with fewer transmitters. He also made an effort to limit the jurists' field of reference by stating that textual evidence found in books that were known for their reliability (e.g. the books of Bukhārī and Muslim) outweighs a text found in books that did not enjoy the same reputation. As for *qiyās*, al-Āmidī sets several rules, for example, that a *qiyās* involving an original rule that is known not to have been abrogated outweighs a similar *qiyās* whose foundations in term of abrogated status may be debatable.[36]

All these rules were certainly meant to be practical, that is, to both facilitate the activity of *tarjīḥ* for jurists who were deemed capable of performing it and regulate the operating structure of the legal activities of these jurists. The latter was essential to maintaining the functionality of the legal system that they upheld in the first place. This involved, in part, assessing the hierarchy of evidence before engaging in *tarjīḥ*. According to this hierarchy, *ijmāʿ* was ranked above the Qurʾān, followed by the traditions of the Prophet that were transmitted by many individuals (*mutawātir*), then those transmitted by solitary reports (*āḥād*), and finally *qiyās*.[37] Hence, for example, the *tarjīḥ* of a jurist could never rescind any opinion accepted by consensus (*ijmāʿ*). In this case, al-Ghazālī also adds that jurists wishing to engage in *tarjīḥ* had to abide by the specific rule for issuing *fatwā*s that governs the scope of *ijtihād*ic activity, that is, that the opinion of the jurist-*mujtahid* of high calibre carries greater weight than that of the jurist-*muqallid* who is less knowledgeable and therefore obliged to follow the method of the former.[38] Maintaining the hierarchy of evidence and authority of the entire range of jurists operating within this legal tradition would guarantee their achieving the judgment that best represented God's law.

Al-Nawawī's justification of *tarjīḥ*

Al-Nawawī broadly confirms in his *Majmūʿ* the rules of *ijtihād* as found in the traditional corpus of *uṣūl* works. He was aware that the jurist-*muqallid* who sought further analysis on legal matters, as al-Ghazālī had made clear, was obliged to follow the *ijtihād* of a jurist of higher caliber. But he also insisted that he had the duty to make a qualitative assessment of the plurality of opinions available to jurists working in his era. In fact, what he encountered in reality was not just raw legal evidence derived from the sources, but also the product of the *ijtihād* of previous jurists, which had attained vast proportions in the school's literature. This situation forced al-Nawawī to find a means by which jurist-*muqallid*s like him could justifiably reduce indeterminacy in the school's doctrines without betraying its hermeneutical rules altogether.

What al-Nawawī did in order to lessen the constraints of rules in legal theory was to construct a typology of jurists, one that has been expertly examined by Norman Calder and Wael Hallaq.[39] This typology distinctly defined the structure and distribution of authority among jurists in the *madhhab*. It also described the capacity of each generation of jurists to formulate laws in a fully elaborated manner.[40] Al-Shāfiʿī, who was regarded as an independent jurist (*al-mujtahid al-muṭlaq al-mustaqil*) and the founder of the school, was placed at the highest point in the hierarchy. He was considered "independent" because he was thought to have derived law from revelation without relying on anyone or any particular *madhhab* (*bi-ghayr taqlīd wa taqyid bi-madhhab ahad*).[41] For a reason al-Nawawī did not explain, the independent jurist such as al-Shāfiʿī had long since ceased to exist. What remained in al-Nawawī's day were affiliated jurists (*muftī muntasib*), which he categorized into four hierarchical ranks.[42]

The first rank belongs to jurists who have the quality of being independently able to derive law without *taqlīd,* but they follow the method of the *imām* founder having found that the opinion of al-Shāfiʿī was "more preponderant" (*arjaḥ*) than the opinions of other *mujtahid*s of the same caliber. This is the quality attached to al-Shāfiʿī's immediate students and other generations of jurists of the same level, who in many ways often disagreed with their teacher. The second rank is identified with jurist-*mujtahid*s who are bound to the legal method of the founder of the school, but are independent in establishing their legal principle by proof (*mujtahid muqayyad fi madhhab imāmihi mustaqil bi taqrīr uṣūlihi bi-l-dalīl*). The third is the rank of jurists who master the legal methodology of the *imām* founder and who are capable of engaging in *tarjīḥ*, but are considered to fall short of the former category because they lack knowledge in foundational theory and interpretative argument. The bottom rank is the camp of jurists who have mastered or memorized the literatures of the *madhhab*, be these the books of the *imām* or the elaborations of the scholars within the school. These jurists are capable of deriving a *fatwā* based on their knowledge of schools doctrine and legal principles.[43]

Now, with the establishment of this typology, al-Nawawī applied the rules of *tarjīḥ* to jurists who fall under category three and four because they do not have the foundational knowledge to go beyond the transmitted doctrines. For jurists in these categories, the rule of *tarjīḥ* functions as a template on which to apply their limited legal knowledge. At the same time, and with the same typology, al-Nawawī also meant to provide space for jurists with greater knowledge, that is, those in category one or two, to assess the opinions of previous jurists and if necessary to manoeuver around the rules of legal theory that may limit their freedom in *tarjīḥ*. Here, the term *tarjīḥ*, which is

generally understood in the corpus of legal theory as the weighing of legal evidence, gained a broader meaning to signify weighing the opinions of previous jurists, including those of the jurist-*mujtahid*s. With this meaning, the jurist-*muqallid* became theoretically allowed to assess the opinions of the jurists-*mujtahid* whenever there was a need to do so. This did not mean, however, that later jurists were authorized to override the authority of the *imām* founder of the school, or of the jurists who succeeded him. The facilitation of *tarjīḥ* within the operating structure of *ijtihād* within the *madhhab* did not entitle a jurist to be independent of the school's principles. Quite the contrary, this facilitation of *tarjīḥ* epitomized both acceptance and attachment to the legal methodology of the school's founder. After all, it was only on the basis of knowledge of this methodology that they could exercise of *tarjīḥ*.

Al-Nawawī's theory of *tarjīḥ*

It should now be clear that al-Nawawī's conception of juristic typology has a double edge in the sense that it both describes the reality of law and justifies his own juristic activity of engaging in *tarjīḥ*. That being said, it would be erroneous to assume that circumventing the legal rules was al-Nawawī's ultimate purpose. On the contrary, al-Nawawī's object was to strengthen the institutionalized rules by restating them in a different context, while at the same time having to explain his hermeneutical elaborations so as to situate his overall juristic activity within the Shāfiʿite juristic traditions. The following sub-sections discuss how al-Nawawī applied the rules of legal theory and what references he took into consideration in his practice of *tarjīḥ* or *taṣḥīḥ*.

Reference to ḥadīth *criticism*

The most important reference for the activity of *tarjīḥ* and *taṣḥīḥ* was none other than the corpus of the *ḥadīth* of the Prophet. In this respect, al-Nawawī did not necessarily differ from the precepts of legal theory or the *uṣūl* works of Shāfiʿite jurists. His approach to the *ḥadīth*, however, sometimes prevails over the established legal theory when this is more relevant to his purpose. A good example of this can be seen in al-Nawawī's re-evaluation of al-Shāfiʿī's *qawl*, that is, the evolution of the "New" doctrine (*al-qawl al-jadīd*) from the "Old" doctrine (*al-qawl al-qadīm*).[44] Al-Nawawī was perfectly aware of the rule in legal theory that the new doctrine was considered preponderant and therefore replaced the legislative value of the old doctrine. However, on the basis of his reading of the collection of the *ḥadīth* of the Prophet, al-Nawawī re-evaluated opinions categorized as part of the old doctrines and salvaged up to fourteen opinions that he considered preponderant over the new ones. These opinions ranged from matters of rituals to cases of daily social and economic transactions.[45]

Direct reference to the collection of the *ḥadīth*, however, was not the only avenue open to jurists faced with conflicting legal opinions. The sciences of the *ḥadīth*, or to be precise, the rules that are used to verify the epistemic value of a *ḥadīth,* were also being applied as references in *tarjīḥ* and *taṣḥīḥ* activity. In his compendious introductory work to the study of *ḥadīth*, *al-Taqrīb*, al-Nawawī elaborated several key principles: among others, that of weighing two equal traditions of the Prophet.[46] One of the principles in this field is that the report transmitted by a majority has a greater propensity to be more correct and sound than one transmitted by a minority. The epistemic value of *tawātur* in a Prophetic report that enjoys the highest authority in comparison with other reports is built upon this principle.[47] With his knowledge of the science of the *ḥadīth*, al-Nawawī regularly applied the same principle

in weighing two equal and conflicting opinions from Shāfiʿite jurists. Hence, he maintained that legal opinions held by the majority of jurists enjoyed more weight than those held by only a minority.[48] Although this principle was not conclusive among Shāfiʿite jurists, it nevertheless became their standard of reference in conducting *tarjīḥ*. As we saw in the previous section, al-Shīrāzī, al-Ghazālī, and al-Āmidī also applied the same principle in their corpus of legal theory.[49]

For example, in the chapter on the last will and testament (*kitāb al-waṣāyā*) of his *Rawḍa*, al-Nawawī enumerated two conflicting legal opinions on a certain matter of testamentary disposition and stated that the more correct (*ṣaḥīḥ*) of the two was the one held by Ibn Surayj and the *jumhūr*.[50] The notion of the *jumhūr* in this case refers to the "majority of jurists," even though al-Nawawī did not always indicate what the *jumhūr* really constituted or how many they numbered. In certain cases, he mentioned that a preponderant opinion is one held by the *jumhūr* of Iraqian jurists.[51] In many other cases, however, he provided no definition other than the term itself.[52] Another term used to signify the majority is *aktharūn/aktharīn*, as exemplified in the case of a man who disposes his will to his concubine: "I dispose a will to her pregnancy," or "to her present pregnancy," or "to her future pregnancy." In this case, al-Nawawī listed several opinions (*awjuh*); the most correct (*aṣaḥḥ*) was the one held by the *aktharīn,* which considered this disposition to be void, as opposed to another opinion held by Abū Isḥāq [al-Marwazī] and Abū Manṣūr, which would have permitted the disposition.[53]

Besides the principle of upholding the report of the majority, another element of *ḥadīth* criticism applied by al-Nawawī in *tarjīḥ* was the rule of closer relationship to the Prophet. We saw earlier that the report of Abū Bakr was given a higher value than the report of other Companions

due to his closer relationship to the Prophet. Al-Nawawī applied the same principle in weighing the opinions of al-Shāfiʿī that were known to have been transmitted by different jurists who happened to be his direct students. Hence, the legal opinions of al-Shāfiʿī narrated by al-Buwayṭī, Rabīʿ al-Muradī, and Muzānī are given higher consideration than those reported by Rabīʿ al-Jīzī and Harmalah.[54] The reason for this was that al-Buwayṭī, Rabīʿ al-Muradī, and Muzānī were all known to have enjoyed a close relationship with al-Shāfiʿī.[55] Rabīʿ al-Jīzī and Harmalah on the other hand carried less weight simply because they did not have the same access to the eponym. Their contributions to the transmission of al-Shāfiʿī's doctrines, therefore, were correspondingly fewer in number.

After considering the number of transmitters and the closeness of their relationship to al-Shāfiʿī, the level of knowledge and the piety of the jurists came to be regarded as additional important assessments of *tarjīḥ*.[56] In the case of a person wishing to dispose his last will for a mosque, for example, al-Nawawī found conflicting reasoning between "one of the jurists" and al-Rāfiʿī. The phrase "one of the jurists" (*baʿḍa al-ʿulamāʾ*/*baʿḍahum*) retains a less favorable connotation in the sense that this opinion is considered abrogated in comparison with another opinion. Al-Nawawī did not need to specify in detail who this jurist was, and only invoked him by the word *baʿḍ*. This jurist's opinion was that the disposition of the man's will to a mosque was void because the mosque could never serve as the beneficiary of his will. Al-Rāfiʿī, the person al-Nawawī regarded as a *mujtahid* in the *madhhab*,[57] considered that the man's will was acceptable with the condition that he should determine how his property could benefit the mosque. His disposition in this case would have to take the form of endowment (*waqf*) to the mosque. Al-Nawawī found that legal

reasoning established by al-Rāfiʿī to be more preponderant (*arjaḥ*) because he considered him more knowledgeable (*afqāh*) than the unnamed jurist above.[58] In a case like this, the level of knowledge superseded even the level piety, that is, even if both al-Rāfiʿī and the particular jurist had been equally pious, the preponderant opinion would be that of the more knowledgeable, which was al-Rāfiʿī.

Some Shāfiʿite jurists considered that a certain legal opinion that is corroborative of the doctrines of the *imām* founders of other schools was also given higher consideration than the opinions of a singular and a lower caliber jurist within the *madhhab*. Thus, in a case where Shāfiʿite jurists maintained their disagreement over similar legal opinions of Abū Ḥanīfa and one of two al-Shāfiʿī's *qawl*s, which opinion of al-Shāfiʿī was to be considered preponderant? The *ṭarīqa* of the Iraqian jurists, as represented by Abū Ḥāmid al-Isfarāyinī, considered al-Shāfiʿī's opinion that contradicted Abū Ḥanīfa as having more weight. Al-Qaffāl al-Ṣaghīr, on the other hand, who represented the *ṭarīqa* of the Khurasanian jurists, did not consider the corroboration with Ḥanafite jurists as a factor in determining preponderance. Al-Nawawī considered al-Qaffāl's position as the "most correct" (*aṣaḥḥ*). The point he made was that al-Shāfiʿī's legal opinions, regardless of their corroboration with those of other school's positions, must be analyzed and evaluated according to various considerations known in the corpus of legal theory.[59]

We also saw in the previous section how the school's substantive doctrine was built not only upon al-Shāfiʿī's personal opinion, but also upon legal views accumulated by leading jurists who came after him. These jurists were known to have produced their own legal reasoning through the method of *takhrīj*. Their legal opinions were assumed to be similar to those of al-Shāfiʿī because they made use of the legal methodology established by him. This also means

that had al-Shāfiʿī encountered the same case that they solved with *takhrīj*, he would probably have come to the same conclusion as they did. The opinions derived by way of *takhrīj*, however, carry less weight compared to similar opinions known collectively as al-Shāfiʿī's *naṣṣ*. This echoes the more usual meaning of the term *naṣṣ,* which denotes the univocal language of the Qurʾān and the Sunna. When something is considered as *naṣṣ*, it implies that the thing is sufficiently clear or that no further reasoning is necessary.[60] However, al-Nawawī seems to have wanted to restrict the term *naṣṣ* to al-Shāfiʿī's opinion, which is inherently clear and corresponded to the Qurʾān or the Sunna, and hence, was considered authoritative. He states: "Whenever I say *naṣṣ*, it means al-Shāfiʿī's *naṣṣ*; it is used in opposition to weak *wajh*-opinion, or *qawl* derived by the way of *takhrīj*."[61] He also says, "If a person finds two opinions, one is considered al-Shāfiʿī's *naṣṣ* (*manṣūṣ*) and another is an extracted opinion from other jurists (*mukharrij*), the most preponderant and correct is the former. It became the basis of legal practice (*alayhi ʿamal*)."[62]

It has to be admitted that none of these hermeneutical considerations are much different from the established and institutionalized rules found in other works on legal theories. That is to say, what al-Nawawī elaborates does not indicate a completely novel approach, but rather constitutes an expansion of the applicability of the school's foundational theory into a different legal reality. Al-Nawawī is a jurist who lived in a different period than the majority of the authors of the school's legal theory—with the exception of al-Āmidī, who is among his contemporaries. He, however, was able to bridge the gap by inserting himself into the school's hermeneutical discourse and then become part of the established rules.

Public interest and necessity

Al-Nawawī's consideration of *tarjīḥ* includes an artful rational elaboration of legal theory in the form of *qiyās*, by which he infers preponderant opinion from a corresponding decision based on necessity or public interest. A case in point is his discussion of the legality of using impure oil for lighting a lantern. Based on a *ḥadīth* of the Prophet, which prohibits the use of contaminated oil, standard Shāfiʿite doctrine states that such impure oil cannot be used for illumination. However, in his *Mukhtaṣar,* al-Muzānī reports that al-Shāfiʿī permitted using the contaminated oil to make light. Al-Shīrāzī and some jurists of the Iraqian *ṭarīqa* were known to have upheld this position. The jurists of the Khurasanian *ṭarīqa*, however, could not reconcile themselves to the permissibility of utilizing the oil to light the lantern. Some of them therefore did not share the opinion of their Iraqian counterparts. Other Khurasanian jurists, however, applied reason to the prohibition, and argued for the permissibility of its use. In al-Nawawī's *tarjīḥ*, the contaminated oil is indeed fit for illumination on the grounds of necessity. He based his reasoning on *qiyās* to the permissibility of Muslims wearing unclean clothes.[63]

The use of contaminated oil was certainly not the only case for which al-Nawawī extended the meaning of the textual evidence. There are many more cases that exemplify how public interest and rational consideration were given precedence over textual evidence. The point being made here is that al-Nawawī did not stop with the literal precept of the textual evidence. He expanded the meaning with his particularization of the case so as to limit prohibition or acceptance based on an opinion delivered in an analogous case. Hence, for the sake of necessity or public interest, a prohibition or allowance based on textual evidence might be understood in a different way.

Empirical experience

Examples of *tarjīḥ* also include the observations of a jurist regarding what is considered the experience of the Muslim community. This consideration occurs at times when there is a case that may or may not bring benefits to the community at large. The following passage taken from the *Majmūʿ* is a relevant case for our purpose:

> Our associate said that any statement that is made under compulsion for other than a rightful purpose (*ḥaqq*) is void; this includes apostasy (*ridda*), buying and selling transaction (*bayʿ*), hiring and leasing (*ijāra*) and all other daily social and economic transactions (*muʿāmalāt*) such as marriage (*nikāḥ*), divorce (*ṭalāq*), dissolution of marriage (*khulʿ*), and manumission (*iʿtāq*). A compulsion that is based on the rightful purpose, however, is deemed valid (*ṣaḥīḥ*). Following this, they said if an apostate or a *ḥarbī* (i.e. a non-Muslim and non-citizen of Muslim territories who declare enmity toward Muslims) is forced to embrace the religion of Islam, his conversion is valid because the act is understood to be based on the rightful purpose. Similarly, a compulsory act of buying and selling transaction that is based on the same rightful purpose also is considered valid. However, for a *dhimmī* (i.e. a non-Muslim citizen of Muslim territories) who is forced to embrace Islam, this compulsion cannot be deemed valid, for we have accepted the *dhimmī*s to retain their religion. If he is forced to convert, is his conversion valid? There are two *ṭarīqa*s: the first *ṭarīqa*, as represented by the author (al-Shīrāzī), considers it void. The second *ṭarīqa* has two *wujūh* (opinions) as reported by Imām al-Ḥaramayn al-Juwaynī in the book *Ṭalāq* and *Kaffāra* (penance), and also by al-Ghazālī within the same topics of his book. However, al-Ghazālī reported two opinions in the

> chapter of *Kaffāra,* and his choice is irregular (*shādhdh*). The widespread is two *wujūh;* the correct of the two is the one in accordance with our associates, that is, his conversion is null. Al-Juwaynī argued that the entrail of his argument is that although the coercion is not permissible, it is nevertheless valid because coercion upon a *ḥarbī* is considered *ḥaqq*. A coercion toward a *dhimmī*, however, is not permissible. Al-Juwaynī also said that if a *ḥarbī* is forced to become a Muslim, he must pronounce the two declarations of faith (*shahādatayn*) under the sword to guarantee his conversion. I [al-Nawawī] agree with this method; however there is a lack of clarity (*ghumūḍ*) in its meaning since the two declarations of faith also mean two expressions from the same pronoun and statement. The *ẓāhir* is that those who declare statements under the sword usually lie.[64]

The underlying premise in this passage is that each person, regardless of his faith, has the freedom to engage in any legitimate daily social and economic transaction. A transaction is invalid if there is any coercive activity in the process of dealing with or making the decision. In certain cases, however, a coercion that is thought to bring about a benefit to the community may be justified. In the case related in the passage above, a forced conversion of a *ḥarbī* to Islam is considered to be valid because his conversion is perceived to be good for himself and might reduce enmity toward the Muslim community. By contrast, the forced conversion of a *dhimmī* is considered to be void since such a person is free to exercise his belief, and his insistence on retaining his religion should not be considered a threat. Unlike al-Juwaynī, who would allow a certain degree of coercive conversion of a *ḥarbī*, al-Nawawī considers otherwise. His first statement, that is, that he agrees with al-Juwaynī that the man be sworn under the sword, is

unimportant, since at the end of the passage he abandons al-Juwaynī's reasoning altogether. Al-Nawawī's opinion is plain and simple, and is based on his perceived empirical experience: a *ḥarbī* who is forced to convert usually lies.

Customary practices (ʿurf)

In certain cases, *taṣḥīḥ* and *tarjīḥ* were conducted on the basis of the established customary practice (ʿ*urf*) of a society. Here, al-Nawawī made an attempt to accommodate what had been the common practice in a given society and used this practice as one of the sources of his *tarjīḥ*. An excellent case in point was that of sales without a formal offer and acceptance (*ījāb qabūl*). The general Islamic doctrine of sale and commerce holds that a transaction must be followed by mutual consent, that is, that both the seller and the purchaser should agree on the conditions of the transaction and the object therein. Examples of the offer take many forms, such as "I sell to you," or "I make you owner of such or such a thing." The purchaser, in response, follows the offer by stating his acceptance such as "I buy the goods," or "I accept it."[65] A transaction that is not followed by such formulas of agreement is considered null because a contractual agreement has not been established. Among the Shāfiʿites, there was, however, widespread *wajh* opinion that is reported to have been originated with Ibn Surayj. Ibn Surayj considered that a transaction could be executed without such agreements and could still be valid. The technical reference being used here is *bayʿ al-muʿāṭā,* which means a transaction through a simple common execution.[66]

Imām al-Ḥaramayn al-Juwaynī, al-Ghazālī and other jurists of the Khurasanian camp, including al-Rāfʿī, believed that the opinion of Ibn Surayj was derived by way of *takhrīj* from the doctrine of Abū al-Ḥanīfa. Abū al-Ḥanīfa was thought to have allowed the sale without *ījāb qabūl* in the

transaction of goods of insignificant value (*mahqarāt*), but not on precious goods (*nafīsa*).[67] A transaction involving goods of higher value does require the statement of offer and acceptance because only through this mutual consent can the contractual agreement be established. Al-Juwaynī noted that Ibn Surayj did not explicitly specify the difference between objects that are considered precious and those of insignificant value, as Abū Ḥanīfa did, but his opinion nevertheless is accepted because he might have wanted to do so. Ibn al-Ṣalāḥ is adamant about accepting this position and insists that *takhṣīṣ*, or specification between the two is imperative for a transaction of *al-muʿāṭā* to become valid. Al-Nawawī however, states that the majority of the Shāfiʿite jurists consider *al-muʿāṭā* transaction as valid as long as the transaction is understood as such in a given society. The foundation of this preponderant position lies in the customary practice that accepts a mere exchange without the specification of any agreement. Jurists of the Khurasanian *ṭarīqa*, according to al-Nawawī, were known to have established *fatwā*s for the legality of this transaction. The fact that the opinion was derived from the doctrine of Abū al-Ḥanīfa, and despite the lack of specification on Ibn Surayj's part, did not hinder the practice from becoming one of the school's accepted doctrines for daily legal rulings (*al-mukhtār li-l-fatwā*). The Qurʾān permits sale and commerce; however, it does not prescribe a standard mutual agreement as may be found in formal offer and acceptance. Nor did the practice of the Prophet and his Companions exemplify a legacy of how mutual agreement can be reached. Therefore, the practice should conform to what had traditionally been considered as an acceptable transaction within the community.[68]

The cases here indicate that, for al-Nawawī, customary practice could function as a legal reference of *tarjīḥ*, which he perfectly epitomizes. The school's doctrinal teaching,

the rules of legal theory, and the opinions of individual jurists are indeed understood as significant elements of the law's derivation. However, these cases recapitulate that legal doctrine in Islamic law is not a mere set of principles isolated from the experience of the Muslim community. As we have seen in the case of the transaction of *al-muʿāṭā*, the opinions of jurists and established customs were closely intertwined so as to make the latter part and parcel of the school's doctrinal reference.

The canonical doctrines of the school

The immediate result of al-Nawawī's activity in *tarjīḥ* and *taṣḥīḥ* was the creation of a set of preponderant opinions, which in turn became al-Nawawī's canonical version of the school's doctrine. This collection of canonical doctrines came to represent the primary rules for later Shāfiʿite jurists, as I indicated in the previous section. The value of this collection of canonical doctrines, however, has never been singular or one-dimensional. The fact is that the canonical doctrine of the school consists of multiple layers of doctrines, each of which has its own magnitude of preponderant.

The most common technical reference al-Nawawī used in the classification of canonical opinions in his legal works was one that employed the superlative form of descriptive adjectives.[69] For example, he used the term *aṣaḥḥ* and *arjaḥ*, the superlative forms of *ṣaḥḥa* and *rajaḥa* respectively, to identify the most correct and most preponderant opinions in the school's doctrine.[70] Terms like these represented the relative strengths of two legal opinions and were usually employed after al-Nawawī analyzed the epistemic value of the opinion. Hence, when al-Nawawī describes an opinion as *aṣaḥḥ* because al-Rūyānī and al-Qaffāl al-Kabīr said so, he comes to this opinion because he has analyzed the reasoning of both these

scholars and deemed their opinions to be the most correct.[71] Similar superlative terms commonly found in al-Nawawī's texts are *aẓhar*, which means the most distinctive or clear out of other opinions, and *ashhar*, which refers to the most "known" or most widely circulated opinion among jurists.[72] Other terms variably used on the same pattern are *aḥsan* (the best), *aqwā* (the strongest), and *ashbah* (the most likely).[73] The first two terms are typically used to weigh two legal methods in approaching cases, while the latter additionally refers to a preponderant opinion developed by analogy.

The superlative terminology was certainly not the exclusive pattern for classifying two or more conflicting opinions. In most cases, al-Nawawī simply used the term *ṣaḥīḥ* to describe the pedigree of a preponderant opinion. In a reading based on *argumentum e contrario*, which is Latin for "appeal from the contrary," the *ṣaḥīḥ* opinion may denote a higher degree of preponderance than its superlative form (*aṣaḥḥ*). Thus, it can be assigned priority in legal rulings without overriding the validity of an *aṣaḥḥ* opinion.[74] A relevant example is the issue of the milk of an animal whose meat is deemed forbidden to consume, for which al-Nawawī determined that the *aṣaḥḥ* and the most widely known opinion is that which declares the milk impure and therefore banned from sale and consumption. However, while noting that the *aṣaḥḥ* opinion forbids the sale and consumption of the milk, al-Nawawī deems the non-*aṣaḥḥ* opinion, which allows for the sale and consumption of the milk when someone finds it beneficial, as preponderant.[75] In this case, al-Nawawī considers the non-*aṣaḥḥ* opinion to hold some degree of *ṣaḥīḥ*. Hence, it can be considered as the basis of *fatwā*, whereas the non-*ṣaḥīḥ* opinion would certainly be excluded from consideration for this purpose. We shall return to the technical reference of the non-*ṣaḥīḥ* shortly.

At times, the term *ṣaḥīḥ* is variably used in tandem with other technical references of *tarjīḥ,* such as *naṣṣ* or *manṣūṣ*, which suggests that the opinion has a direct reference to al-Shāfiʿī's authoritative opinion. This pairing is usually applied in reference to an opinion that was derived from *takhrīj*.[76] In different contexts, the term *ṣaḥīḥ* is also paired with the term *mashhūr*, which indicates that an opinion is considered correct and preponderant due to having gained popularity among jurists.[77] Both *mashhūr* and *manṣūṣ* (or *naṣṣ*), however, are also used liberally without the attachment of *ṣaḥīḥ*.[78] Nonetheless, one should note that while al-Nawawī was almost consistent with the prestige of an opinion he determined to be *manṣūṣ*, he does not seem to have been consistent with the superiority of the widely known opinion. In fact, whenever he encounters two *mashhūr* opinions, al-Nawawī is often known to apply *taṣḥīḥ* in defining which of the widespread opinions should be given weight over another.[79] It is therefore perfectly possible to argue that the term *mashhūr* among the Shāfiʿite jurists operates as a preponderant category only at a secondary level to that of *manṣūṣ*, since the former may still become the subject of *tarjīḥ* or *taṣḥīḥ*.

Another variation of preponderant terminology similar to that of *ṣaḥīḥ* is *ṣawāb,* which simply means correct, and *ẓāhir*, literally meaning apparent or obvious. With respect to the common usage in al-Nawawī's *tarjīḥ* activity, *ẓāhir* seems to have been applied more frequently than *ṣawāb*. This term is usually applied by al-Nawawī, after careful analysis, to an established opinion that happens to be similar to his own reasoning. "This is what al-Rāfiʿī has said, and his opinion is *ṣawāb*," al-Nawawī explains in his evaluation of al-Rāfiʿī's position regarding the obligation of a guardian to protect the property of his protégé.[80] Another example may be found in the case of the legality of a transaction stipulating that one or both parties to a

transaction have the right to cancel it for any reason, but without a fixed period of time. Al-Nawawī deems the *ẓāhir* opinion on the transaction valid but declares the stipulation of no fixed period of time to be void. His *ẓāhir* opinion is similar to that of the Kufan rationalist Ibn Abī Laylā (d. 148/765) and of al-Awzāʿī (d. 150/767),[81] placing himself outside the mainstream of Shāfiʿite legal thinking on the issue.[82]

Concomitant with the highly subjective reasoning of jurists in determining the magnitude of preponderance, there is another technical reference that is relevant here. The specific term used is *mukhtār* or chosen, which is a passive participle of the verb *ikhtāra,* or "to choose." As we have seen in the case of the transaction of *al-muʿāṭā,* al-Nawawī considered the opinion of Ibn Surayj to be preponderant due to its having long been the school's chosen legal ruling (*al-mukhtār li-l-fatwā*). Akin to this peculiar expression is its verbal noun, which is *ikhtiyār*, meaning a choice made by jurists based on attentive consideration. Any of these variations may be used when a jurist finds two or more legal opinions that are known to be equally preponderant. This was exactly what happened when a-Shāfiʿī opted to "choose" the practice of Abū Bakr over that of ʿUmar even though both of their positions were equally valid.[83] However, the epistemic value of these terms is more complex than their literal meaning as a matter of simple choice. In al-Nawawī's operative discourse, to choose or to find the choice or the chosen opinion is no less elusive than performing *taṣḥīḥ*. Hence, we find in al-Nawawī's texts that the *ikhtiyār* of some of the *aṣḥāb al-wujūh,* such as al-Qaffāl[84] and al-Qāḍī al-Ḥusayn,[85] for example, are put aside because al-Nawawī found different considerations that eventually made their positions less preponderant. In certain cases, the *ikhtiyār* of al-Nawawī runs in a diametrically opposite direction to

what had been commonly held by some of the Shāfiʿite jurists. For example, the established doctrine of certain of the latter maintained that the usurpation of a dog or the skin of animal would not incur any liability since a dog or the skin of animal is understood to have no commercial value. In al-Nawawī's *ikhtiyār*, however, the misappropriation of the rights of others is still a misappropriation.[86]

The last technical term al-Nawawī used to classify the most authoritative opinion of the Shāfiʿī school is "the *madhhab*."[87] The term *madhhab* here is not to be confused with the same term that connotes an individual opinion on a certain subject. In many substantive works, one may find a specific opinion that is identified with particular jurists, as seen in formulas such as "the *madhhab* of Ibn Surayj," "the *madhhab* of al-Muzānī" or "the *madhhab* al-Buwayṭī."[88] Unlike this personal designation, al-Nawawī reserves an opinion he considers as *madhhab* to represent a collective position held by Shāfiʿite jurists. The *madhhab* hold a broad spectrum of opinion; this could range from al-Shāfiʿī's own opinion, the *takhrīj* of the *aṣḥāb al-wujūh*, or other opinions of high-caliber Shāfiʿite jurists, as long as al-Nawawī considered them to be reliable and consistent with the school's methodology. To illustrate al-Nawawī's point, let us consider how he defined the *madhhab* in the following passage:

> If one happens to have only a half of the consensual agreement (ʿ*aqd*), then it is required [for both parties] to produce another half of the agreement. Also, it is required that both parties are present and competent to conclude their agreement. Hence, if one party departs, or dies or becomes insane or unconscious before concluding the other half of the agreement, the offer (*ījāb*) is void and the following statement of acceptance

> would not be taken into account. With this rule, if a woman is given consent [by her parent or a guardian] to conclude her marriage, but then the person who gave the consent falls unconscious before the conclusion of marriage, his consent is void. Similarly, if a seller says "I sell to you" and he dies before the acceptance of the buyer, the agreement is void, even if his heir is present and concludes the agreement, or in other case if the seller becomes insane and his guardian is to conclude the agreement, the agreement is void. This is the *madhhab* and upon this Shāfiʿite jurist of each *turuq* (pl. of *ṭarīqa*) firmly agreed.[89]

The passage above indicates that the *madhhab* is a doctrine on which jurists of both the Khurasanian and Iraqian *ṭarīqa*s happened to agree, because the doctrine was consistent with al-Shāfiʿī's methodology. There are many other cases exemplifying the kind of opinion that al-Nawawī considered as *madhhab*, and if jurists representing one of the *ṭarīqa*s held a different position, then for this reason their opinion could not be counted as the *madhhab*.[90] "This is the *madhhab* as it is written in the literature of al-Shāfiʿī's associates" was al-Nawawī's way of expressing it. Then in the next passage he continues: "Al-Ghazālī, however, comes up with two opinions (as the *madhhab*), but his consideration is unknown."[91]

As a collective doctrine, the *madhhab* opinion functions as a general reference for daily legal practice. Its substantive role is not so much different from other categories of preponderance that al-Nawawī deemed as *ṣaḥīḥ*, *aṣaḥḥ*, *mashhūr*, *ẓāhir,* and *mukhtār*—all representing normative opinion in legal application and practice. However, the *madhhab* does differ from the others in the sense that it represents a self-authorizing instrument on behalf of the collective authority of Shāfiʿite jurists.

Other types of preponderance doctrine, such as *ṣaḥīḥ*, *mashhūr*, etc. also represent a self-authorizing act, in this case al-Nawawī's personal authority, but they do not claim to represent the totality of the authority of jurists in the school. It is precisely in this context that the notion of "the *madhhab* al-Buwayṭī," "the *madhhab* of al-Muzānī," or "the *madhhab* of Ibn Surayj" can be substantiated as representing nothing other than the personal authority of the purported jurists. Hence, the opinion that al-Nawawī classifies as the *madhhab* has a higher degree of certainty than any other type of preponderance opinion introduced above.

Extrapolating from the process of determining the preponderant opinion using the terms *ṣaḥīḥ*, *ẓāhir*, *ṣawāb*, *mukhtār* or *ikhtiyār*, and *madhhab*, the non-preponderant categories would be identified as *Ḍaʿīf* (weak), *fāsid* (void), *shādhdh* (irregular), or *gharīb* (unknown). While all preponderant opinions would naturally be considered as the basis of adjudication and *fatwā,* the non-preponderant could almost certainly no longer be used for this purpose. As an example, consider the following passage: "Al-Shāfiʿī said it is forbidden to consume any predatory animal that has *nāb* (that is, a canine tooth, or tusk, or fang) and any bird that has *mikhlab* (claw or grip) … all these species are unanimously considered forbidden to consume, and while there is one *wajh shādhdh* or irregular opinion which allows the consuming of elephant as reported by al-Rāfiʿī … the 'correct and widespread' opinion is that it is nevertheless forbidden."[92] In this case, al-Nawawī considered al-Rāfiʿī's opinion, which permits the consuming of an elephant, to be irregular, since elephants have tusks and hence can be considered to be predatory animals. In addition to this, there are instances in his writings where al-Nawawī overrules the lesser known rulings of al-Juwaynī

and al-Ghazālī due to the irregularity of their legal stance, which al-Nawawī labels as an "error" (*ghalaṭ*).[93]

However, by declaring their opinions to be non-preponderant, al-Nawawī did not make the ultimate claim that their non-preponderant opinions were irrelevant altogether. For *muqallid*s or jurists who have less capacity to engage in independent reasoning, the *madhhab* opinion, like the *ṣaḥīḥ*, *aṣaḥḥ*, *mashhūr*, and *ẓāhir*, does serve well as a reliable legal reference. For later jurists who have reached the qualification of *mujtahid*, they may evaluate these doctrines and may or may not disagree with al-Nawawī's doctrinal elaboration.[94] As a matter of fact, al-Nawawī did not seem to insist that all preponderant doctrines are permanently preponderant. As we saw earlier, al-Nawawī reclaimed fourteen cases from al-Shāfiʿī's "old doctrines" that were theoretically no longer preponderant.[95] Here, al-Nawawī provided an example of how a doctrine enjoying high veracity could be revised by the subjective reasoning of jurists who are deemed competent, should circumstances lead them to do so.

With all these canonization efforts, al-Nawawī contributed to reducing the problem of indeterminacy and plurality of legal opinions in the Shāfiʿī's school of law. Despite the fact that the doctrines which al-Nawawī rendered as canonical could be revised by later jurists who disagreed with him, these doctrines function as a sort of master rule, by which later Shāfiʿite jurists decide which legal solution was representative of the rulings of the *madhhab*.

Final remarks

The above discussion has amply shown the constant need of Muslim jurists to deal with the problem of indeterminacy resulting from the accumulation of past substantive doctrines and novel cases arising in the Muslim community.

Al-Nawawī's response to this demand was to develop a qualitative assessment of past doctrines and extract from them a selection of canonical opinions that could function as guiding rules for juristic decisions. While his method of canonization and the outcome of it may have reflected his independence as an individual jurist, his overall juristic reasoning remained securely grounded in the legal tradition of the Shāfiʿites. The latter is best illustrated in his conception of "the *madhhab*" as the most authoritative doctrine, as representing the genuine position of al-Shāfiʿī and of the totality of jurists in the school's legal tradition. By virtue of his achievement in canonizing the school's doctrines, combined with his commitment to uphold the school's principles, al-Nawawī was posthumously considered to be one of the key links between later jurists (facing new legal realities) with the authority of al-Shāfiʿī, who by then had become firmly regarded as the original founder of the school of law.

Notes

1 For a detailed account of how *fatwā* collections developed into *furūʿ* works, see Wael B. Hallaq, "From *Fatwā*s to *Furūʿ*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1:1 (1994): 29–65.

2 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925), 1:4–5.

3 Ibid., 1:66.

4 Ibid., 1:72.

5 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 2:161.

6 See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:72. See also, Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 58.

7 See Ismāʿīl b. ʿUmar Ibn Kathīr, *Tabaqāt al-Shāfiʿiyya*, (ed.) ʿAbd al-Ḥafīẓ Manṣūr, 2 vols. (Beirut: Dār al-Madār al-Islāmī, 2004), 1:130.

8 See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:67–68; Hallaq, *Authority, Continuity, and Change in Islamic Law*, 59.

9 See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:56. In her study of Aḥmad b. Ḥanbal's *fiqh*, Susan A. Spectorsky suggested that Ibn Ḥanbal maintained a distance from al-Shāfiʿī due to his reluctance to acknowledge the authority of *ijmāʿ* and the use of systematic reasoning in legal

questions. See Susan A. Spectorsky, "Aḥmad Ibn Ḥanbal's Fiqh," *Journal of the American Oriental Society* 102:3 (1982): 462. Cf. Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013), 196.

10 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:5.

11 For further information of this term, see Maryam Muḥammad Ṣāliḥ al-Ẓufayrī, *Muṣṭalaḥāt al-Madhāhib al-Fiqhīyya Wa-Asrār al-Fiqh al-Marmūz Fī-l-Aʿlām Wa-l-Kutub Wa-l-Ārāʾ Wa-l-Tarjiḥāt* (Beirut: Dār Ibn Ḥazm, 2002), 267.

12 See Abū Bakr Aḥmad b. ʿAlī Khaṭīb al-Baghdādī, *Tārīkh Baghdād Aw Madīnat al-Salām*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 24 in 21 vols. (Beirut: Dār al-Kutub al-ʿIlmīyya, 1997), 4:77–78.

13 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:127.

14 Ibid., 2:64.

15 Ibid., 2:125.

16 See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:44.

17 Ibid.

18 This observation is similar to that of later Shāfiʿite biographers in the post-Nawawī era. For example, in his analysis of Ibn Qāḍī Shuhbah's *Ṭabaqāt al-Shāfiʿiyya*, R. Kevin Jaques shows that some later Shāfiʿite jurists who lived in the eighth/fourteenth century are known to have performed *takhrīj*, as was the case of Ibn Rifʿah (d. 710/1311), Abū al-Ḥasan b. al-ʿAṭṭār (d. 724/1324), and Abū al-Rabīʿ al-Maqdisī (d. 789/1387). However, they were not described as the *aṣḥāb al-wujūh.* See R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden; Boston, MA: Brill, 2006), 171–73.

19 See H. L. A Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), 92–120. See also the analysis of a possible application of Hart's theory of recognition in the Mālikī school, in Mohammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3:2 (1996): 210.

20 I shall elaborate on this layer of canonical doctrines in the last section of this chapter.

21 Philip R. Davies, *Scribes and Schools: The Canonization of the Hebrew Scriptures* (Louisville, KY: Westminster John Knox Press, 1998), 7.

22 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *al-Taqrīb Wa-l-Taysīr li-Maʿrifat Sunan al-Bashīr al-Nadhīr fī Uṣūl al-Ḥadīth*, (ed.) ʿAbd Allāh ʿUmar al-Bārūdī (Beirut: Dār al-Jinān, 1986), 79–80. In this case, al-Nawawī states that if one finds two *ḥadīth*s, he has to decide whether (a) to follow both or (b) to weigh (*rajjaḥa*) which one is preponderant based on the perceived quality of their chains of transmission.

23 Ibid., 82; Abū Ḥāmid Muḥammad al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl*, (ed.) Muḥammad Ḥasan Hītū (Damascus: Dār al-Fikr, 1980), 426.

24 Cited in Thāʾir Ḥamīd Ṭuʿmah Ḥabīb al-Ḥanafī, *Al-Taṣḥīḥ Wa-l-Tarjīḥ ʿinda al-ʿAllāmah Ibn ʿĀbidīn* (Amman: Dār ʿAmmār, 2010), 211. For a detailed elaboration of the development of the science of *uṣūl al-fiqh,* including an analysis of the problem of indeterminacy, see Wael B. Hallaq, "Was al-

Shafiʿi the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25 (1993): 587–605.

25 *Tarjīḥ* is a verbal noun (*maṣdar*) of the basic verb *rajaḥa*, literally means "to weigh something with hand or to measure the weight of something" (*rajaḥa al-shayʾa bi-yadihi, wazanahu, wa-naẓara mā thiqluhu*). See Muḥammad b. Mukarram Ibn Manẓūr, *Lisān al-ʿarab*, 15 vols. (Beirut: Dār Ṣādir, 1955), 2:445.

26 The term *taṣḥīḥ* is derived from the verb *ṣaḥḥa,* meaning to authenticate or to attest (*ṣaḥḥa, yaṣiḥḥu, fa-huwa ṣaḥīhun, wa-ṣahāḥun min qawmin ṣiḥāhin*). See Muḥammad b. Yaʿqūb al-Firūzābādī, *al-Qāmūs al-Muḥīt*, (ed.) Naṣr al-Hūrīnī, 4 in 2 vols. (Cairo: Maṭbaʿat al-Saʿāda, 1950), 1:233.

27 Hallaq, *Authority, Continuity, and Change in Islamic Law*, 133–35. This irregular usage of the two terms in different genres tacitly reflects the individual nature of Islamic law, that is, that the jurist may employ a specific terminology that suits his purpose.

28 Ibid., 133.

29 al-Nawawī wrote a commentary of this book titled *Taṣḥīḥ al-Tanbīh*. See p. 24.

30 Abū Bakr b. Aḥmad Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, (ed.) Ḥāfiẓ ʿAbd al-ʿAlīm Khān, 4 in 2 vols. (Beirut: ʿĀlam al-Kutub, 1987), 1:287.

31 al-Ḥanafī, *Al-Taṣḥīḥ Wa-l-Tarjīḥ ʿinda al-ʿAllāmah Ibn ʿĀbidīn,* 159.

32 Abū Isḥāq Ibrāhīm al-Shīrāzī, *al-Lumaʿ fī Uṣūl al-Fiqh*, (ed.) Muḥammad ʿAlī Bayḍūn (Beirut: Dar al-Kutub al-ʿIlmiyya, 2009), 83.

33 However, it is not the purpose of this section to list all detailed rules here. See al-Shīrāzī, *al-Lumaʿ fī Uṣūl al-Fiqh*, 83–86, 117–20.

34 *Wa-lā majāl al-tarjīh fī al-qaṭʿiyyāti li-annahā wāḍiḥ wa-l-wāḍiḥ lā yastawḍaḥ*. See al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl*, 427.

35 Ibid., 428–50.

36 See Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writing of Sayf al-Dīn al-Āmidī* (Salt Lake City, UT: University of Utah Press, 1992), 734–38.

37 Najm al-Dīn b. Saʿīd al-Ṭūfī, *Sharḥ Mukhtaṣar al-Rawḍa*, (ed.) ʿAbd Allāh b. ʿAbd al-Muḥsin al-Turkī, 3 vols. (Beirut: Muʾassasat al-Risāla, 2003), 3:674–76.

38 *Yuqaddimu madhhabun mujtahidun ʿalā mujtahidin bi-masālik*. See al-Ghazālī, *al-Mankhūl Min Taʿlīqāt al-Uṣūl*, 427.

39 See Norman Calder, "Al-Nawawī's Typology of Muftīs and Its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3:2 (1996); Hallaq, *Authority, Continuity, and Change in Islamic Law*, 2–14.

40 See also a similar typology discussed in Chapter 2, p. 37.

41 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:42.

42 *Wa-min dahrin ṭawīlin ʿadama al-muftī al-mustaqili wa-ṣārat al-fatwā ilā al-muntasibīna ilā aʾimmat al-madhhabi al-tubūʿati*. al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:43.

43 Ibid., 1:43–44.

44 The old doctrine consists of legal opinions al-Shāfiʿī developed while he was in Iraq, whereas the new doctrine constitutes legal opinions he developed after he moved to Egypt.

45 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:66.
46 al-Nawawī, *al-Taqrīb Wa-l-Taysīr li-Maʿrifat Sunan al-Bashīr al-Nadhīr fī Uṣūl al-Ḥadīth*, 80.
47 On *tawātur*, see Abū Bakr Aḥmad b. ʿAlī Khaṭīb al-Baghdādī, *Kitāb al-Faqīh Wa-l-Mutafaqqih*, (ed.) Abū ʿAbd al-Raḥmān ʿĀdil b. Yūsuf al-ʿAzzāzī, 2 vols. (Riyadh: Dār Ibn al-Jawzī, 1996), 1:276–77. For further discussion, see Wael B. Hallaq, "On Inductive Corroboration, Probability and Certainty in Sunnī Legal Thought," in *Islamic Law and Jurisprudence*, (ed.) Nicholas L. Heer (Seattle, WA: University of Washington Press, 1990), 21–24.
48 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:68.
49 al-Shīrāzī, *al-Lumaʿ fī Uṣūl al-Fiqh*, 95; al-Ghazālī, *al-Mankhūl min Taʿlīqāt al-Uṣūl*, 430; Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writing of Sayf al-Dīn al-Āmidī*, 735.
50 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Rawḍat al-Ṭālibīn*, (eds) ʿĀdil Aḥmad ʿAbd al-Mawjūd and ʿAlī Muḥammad Muʿawwaḍ, 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2000), 5:95.
51 Ibid., 5:545.
52 Ibid., 5:408.
53 Ibid., 5:96.
54 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:86–87.
55 Al-Buwayti was known to have transmitted many of al-Shāfiʿī's opinions. He also was thought to be the only trusted person to be al-Shāfiʿī's teaching assistant, sitting in his seat and giving lectures in the latter's teaching circle (*laysa aḥad ahaqqu bi-majlisī min Abī Yaʿqūb* [al-Buwayṭī]). See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:71. Equally important is al-Muzani, who also enjoyed personal closeness to al-Shāfiʿī and was known to have recorded many of al-Shāfiʿī legal opinions (*qawl*). In fact, al-Shāfiʿī called him with the highest respect as the "promoter of his *madhhab*" (*nāṣir madhhabī*). See Ibn Qāḍī Shuhbah, *Ṭabaqāt al-Shāfiʿiyya*, 1:58. Rabīʿ al-Muradī, was also given special status as the most important transmitters over Rabīʿ al-Jīzī and Harmalah because of the quantity of opinions he transmitted from al-Shāfiʿī. In fact, it was he who was labeled as *the* transmitter of Shāfiʿī teaching. Even al-Buwayṭī was known to have admitted that Rabīʿ al-Muradī is more reliable than him in the transmission of al-Shāfiʿī doctrine. See al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:204.
56 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:68.
57 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:137.
58 al-Nawawī, *Rawḍat al-Ṭālibīn*, 5:102.
59 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:68–69.
60 Wael B. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 45, 96.
61 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-Ṭālibīn* (ed.) Aḥmad b. ʿAbd al-ʿAzīz al-Ḥaddād, 3 vols. (Beirut: Dār al-Bashāʾir al-Islāmiyya, 2005), 1: 76.
62 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 1:68.
63 Ibid., 9:237–38.
64 Ibid., 9:159–60.

65 Ibid., 9:165–66.
66 Ibid., 9:162.
67 It is tempting to know how they measured the quality of goods being of "significant value" or "insignificant value." In this case, al-Nawawī returned the answer to the customary practice of a society. Al-Rāfiʿī was known to have reported that the amount of the "insignificant value" is below the financial worth in the assessment of theft (*sariqa*); that is, equivalent to the value of a thing that does not imply severe punishment if it were stolen. Al-Nawawī, however, dismissed al-Rāfiʿī's reasoning and considers the latter's opinion being unknown in the school's tradition. For him, the amount of the "insignificant value" is determined by customs and hence varies between one place and another. See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:164.
68 Ibid., 9:162–63.
69 These patterns, to be sure, are not unprecedented to al-Nawawī and jurists of his generation. Other Shāfiʿite jurists also were known to have employed the same pattern in their verification of preponderant opinion. Al-Ghazālī and al-Shīrāzī also have consistently utilized various superlative terms such as *aṣaḥḥ* and *aẓhar* in their respective *furūʿ* manuals. See for example, Abū Ḥāmid Muḥammad al-Ghazālī, *al-Wasīṭ fī al-Madhhab*, (ed.) Abī ʿAmr al-Ḥusaynī b. ʿUmar b. ʿAbd al-Raḥīm, 4 vols. (Beirut: Manshūrāt Muḥammad ʿAlī Bayḍūn, Dār al-Kutub al-ʿIlmiyya, 2001), 1:292, 311; Abū Isḥāq Ibrāhīm al-Shīrāzī, *al-Muhadhdhab fī Fiqh al-Imām al-Shāfiʿī*, (ed.) Zakarīyā ʿUmayrāt, 3 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1995), 1:152, 203. See also, Wael Hallaq's analysis of similar terms, in Hallaq, *Authority, Continuity, and Change in Islamic Law*, 133–55.
70 For *aṣaḥḥ*, see for example, al-Nawawī, *Minhāj al-Ṭālibīn*, 2:35; al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:167. For *arjaḥ*, see al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:339.
71 al-Nawawī, *Minhāj al-Ṭālibīn*, 2:313.
72 For *aẓhar*, see al-Nawawī, *Minhāj al-Ṭālibīn*, 2:101; al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:79. For *ashhar*, see al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:74.
73 For *aḥsan* and *aqwā*, see respectively, al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:82, 356. For *ashbah*, see for example, al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:352, 61.
74 See also, Hallaq, *Authority, Continuity, and Change in Islamic Law*, 138.
75 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:227.
76 For example, al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:108, 69, 79, 237; al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:88.
77 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:15.
78 On *mashhūr*, see al-Nawawī, *Minhāj al-Ṭālibīn*, 3:387. On *manṣūṣ*, see for example, al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:108.
79 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:170.
80 al-Nawawī, *Rawḍat al-Ṭālibīn*, 5:423.
81 For his biographical information, see Muḥammad b. Abī Yaʿqūb Ishāq Ibn al-Nadīm, *al-Fihrist*, (ed.) Yūsuf ʿAlī Ṭawīl (Beirut: Dār al-Kutub al-ʿIlmiyya, 2002), 376.
82 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:225.
83 al-Ghazālī, *al-Wasīṭ fī al-Madhhab*, 1:274–75.

84 al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:88.
85 Ibid., 4:355.
86 Ibid., 4:93.
87 Cf. Hallaq's discussion of the term, in Hallaq, *Authority, Continuity, and Change in Islamic Law*, 155–58.
88 See for example, al-Ghazālī, *al-Wasīṭ fī al-Madhhab*, 1:67, 263, 305.
89 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:169.
90 Ibid., 9:180.
91 *Hādhā huwa al-madhhab wa-l-maʿrūf fī kutub al-aṣḥāb, wa dhakara al-Ghazālī fīhī wajhayn, wa laysa bi-maʿrūf.* See al-Nawawī, *Rawḍat al-Ṭālibīn*, 4:97.
92 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:14–15.
93 Ibid., 9:107.
94 See Chapter 2, pp. 45–47.
95 For example, al-Nawawī, *Rawḍat al-Ṭālibīn*, 5: 632.

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5 Al-Nawawī's definition and vindication of the *madhhab*

Al-Nawawī's posthumous legacy as the pre-eminent source of authority for later Shāfiʿite jurists owed much to his efforts in restructuring the Shāfiʿī *madhhab* as a guild-like institution and his vindication and defense of its hermeneutic and juristic principles. Al-Nawawī's purpose in this case was both immediate and historical. He sought to gain immediate results by showing the Shāfiʿī school's superiority compared to other schools of law. He also sought to enhance its historical pre-eminence by defining the *madhhab*'s identity, boundaries, and the jurists belonging to it. In doing so, al-Nawawī's intention was not to create a guild institution *ex nihilo*, but rather to continue the authority construction that had already been undertaken by previous Shāfiʿite jurists. He acknowledged the achievements of al-Shāfiʿī and his followers that had been recorded in the *manāqib* and *furūʿ* works, as well as in the genres of exegesis, *ḥadīth*, and chronicle. What he did, however, was far more than simply refine their already established images. He reconstructed their scholarly virtues and the achievements of these jurists according to his own template. In addition, in order to promote the Shāfiʿī school's distinction over other *madhhab*s, al-Nawawī also engaged in polemical debates to rationalize and defend al-Shāfiʿī's hermeneutic principles. This rationalization and defense was an integral part of his vindication efforts and a point of central importance in his juristic works such as the *Majmūʿ* and *Rawḍa*.

The *madhhab*'s evolution to al-Nawawī's lifetime

In order to understand al-Nawawī's conception of the Shāfiʿī *madhhab*, it is necessary to examine the evolution of this institution from its rise down to its later development around al-Nawawī's lifetime. The very question of how the *madhhab*s came to rise has been the subject of scholarly investigation since modern Islamic studies were established in Western academia. Ignaz Goldziher has ventured to suggest that the *madhhab* was born out of the gradation between two contending references in the juristic formulation of the legal materials, that is, between the straight reference to the formal narrative of the *ḥadīth* of the Prophet, and the reliance on the discretionary of reasoning and local custom.[1] Al-Shāfiʿī was claimed to be the first person to perpetuate this polemic and to introduce the disciplinary method, which insists on the prerogative of the Qurʾān and the tradition of the Prophet, and at the same time restricts the free arbitrary usage of opinion (*raʾy*).[2]

Goldziher did not advance us with any chronological clue as to how these two opposing tendencies expanded and affected to the growing of *madhhab*s. Thus, after proposing the rise of the *madhhab* from the interplay between the two legal approaches, Goldziher passed over the chronology to explain the functioning of the various *madhhab* in a mutual respect, with a note that there were only a few horizontal antagonists at the adherent's level. "From the very beginning," Goldziher continues, "representatives of these divergent schools maintained a steadfast conviction that they all stood on the same ground."[3] Furthermore, Goldziher stated that the basis of the mutual tolerance of the *madhhab*s was traced back to the Prophetic *ḥadīth*: "Difference of opinion within my community is a (sign of

divine) mercy."[4] Notwithstanding the relevance of this inference to the vitality of the schools, Goldziher's view of the *madhhab* reflected the reality of the fourth/tenth century, which mirrors the much-advanced Muslim legal reality.

Christiaan Snouck Hurgronje, contemporary to Goldziher, made other important remarks on the emergence of the *madhhab* as the outcome of the jurist *ijtihād* in interpreting the law. Similar to Goldziher, his reference to the chronology of the *madhhab* suffered from the same shortcoming, as he seemed to generate all his evidences from the later construction of Muslim traditions. Snouck Hurgronje highlighted the achievements of certain individuals and labeled them as founders of the schools. He also counted on the ability of the adherents of the *madhhab*s to live side-by-side, despite their doctrinal differences which were there to stay.[5] Nevertheless, in his other writing Snouck Hurgronje captured the evasive development of the *madhhab* as the inevitable consequence of the growth of the "science of *uṣūl*," particularly on the doctrine of infallibility, which singles out individual jurists to be the sole representatives of the infallible will of the community. This process, following Snouck Hurgronje, took place at the end of the second century of the hijra, and al-Shāfiʿī was claimed to be the first jurist to write on the *uṣūl*.[6] "By that time," Snouck Hurgronje continues, "some of those who were later regarded as 'head of schools (*madhhab*s)' were already dead, others were in their maturity, still others at the beginning of their activity."[7] With the increase of influence of this science, Snouck Hurgronje implied that the *madhhab* was literally in the making. Then, Snouck Hurgronje added: "After the council-chamber of Medina had been transformed into a school, the doctrine of duties soon came to be treated in a scholastic

manner, and its study spread from its birthplace over the past territories of Islam."[8]

It is important to note that before the doctrine of infallible prevailed, Snouck Hurgronje did not posit the vivacity of the "school" as an entity that has distinctive character of its own. The variations of doctrines were named in a loose geographical terms; although each had a head, they did not have definite boundaries. Snouck Hurgronje states: "By the beginning of the second century people were already speaking of the *fiqh* of A. or of B., the *fiqh* of Medina, Syiria, or Iraq … all this did not imply variations of any importance because the principle was everywhere the same."[9] However, Snouck Hurgronje did not elaborate on the transpiration of these geographical doctrines, as his attention in the remaining part of his writing was on the communality of the schools in the later period.

The upshot of Snouck Hurgronje's rudimentary description of the *madhhab* found its best articulation in Joseph Schacht's publications several years later.[10] That Schacht was familiar and indebted to Snouck Hurgronje is a point not to dispute. After all, he translated Snouck Hurgronje's writing into a wider English readership. Schacht covered Snouck Hurgronje's portrayal of the *fiqh* of Medina, Syria, and Iraq into his own phrase the "ancient schools," which also emerged in the first few decades of the second century of the hijra. Echoing Snouck Hurgronje, Schacht defined the ancient schools of law as "neither any definite organization nor strict uniformity of doctrine within each school, nor any formal teaching … The more important ancient schools of law of which we have knowledge are those of Kufa and Basra in Iraq, of Medina and of Mecca in Hijaz, and of Syria."[11]

Schacht never clearly explains what he meant by the term of "school" in his concept of the early *madhhab*. He

only gave *a contrario* definition, that is, by describing what the school is "not" rather than what it is. Thus, the term "school" in Schacht's concept of "geographical school" (or in its interchangeable counterpart, the "ancient school"), does not imply "definite organization," or "formal teaching," or "the existence of a body of law in the Western meaning of the term."[12] Having established the peculiarity of the ancient schools as being geographic in nature, Schacht goes beyond Snouck Hurgronje's rough outline by showing the transformation of this early school into the later type of school, which emphasized its boundary on personal allegiance. This transformation, Schacht confers, is a logical outcome of the continuous opposition of the Traditionist movement, which upholds the formal reference to the Prophet supported by the uninterrupted mode transmission (*isnād*), against the living tradition of the ancient school, whose legal doctrine was traced back only to the Companions of the Prophet and was compounded with personal opinion.[13] This opposition parallels with the "literary activity" of jurists that was on the rise in the middle of the second century of the hijra; a trend which eventually gave rise to eponymous status of certain masters.[14]

As far as the chronological schools are concerned, and the later type of schools is taken as a point of reference, Schacht may assume that his concept of ancient schools "transformed" into the more confined schools based on allegiance to prominent jurists. "This transformation," Schacht continues, "was completed about the middle of the third century of the hijra (c. 865)."[15] Then Schacht points out what Goldziher and Snouck Hurgronje have said about the role of al-Shāfiʿī in precipitating the transformation process. Al-Shāfiʿī's vindication of the Traditionist thesis had pushed the ancient schools to minimize their legal reasoning and interpretation and eventually to adopt the

authority of the Prophetic tradition. The degree of acceptance and diffidence toward al-Shāfiʿī's disciplining theory prompted the ancient schools to form different personal schools, with al-Shāfiʿī, though he was originally of the Medinese school, forming his own school from a fully personal thesis.[16]

This model of chronology and early development, acquainted with by Goldziher and Snouck Hurgronje, and further elaborated by Schacht, had been paradigmatic in the modern study of Islamic schools of law. Indeed, there is no good reason to disagree with Goldziher's theory of gradation between two contending groups, that is, between those who uphold the *ḥadīth* of the Prophet and those who favor local custom and discretionary opinion as previously explained. Nevertheless, Snouck Hurgronje's understanding of the geographical doctrines as the proto-*madhhab* entities (or the ancient schools in Schacht's term) remains contentious and sparks continuous debate. Until a decade ago, the existence of geographical schools and their transformation into personal schools has been perceived as a normative pattern of the evolution of the *madhhab*s in the first three centuries of the hijra. Chief among those accepting this was George Makdisi; it is reflected in his seminal work *The Rise of Colleges*, in which he reiterates Schacht's designation of geographical schools, their crystallization into individual masters in the beginning of the second century, and their definite transformation into "personal" schools in the middle of the third century of the hijra.[17]

This gradual development of the *madhhab* began to be seriously questioned in Christopher Melchert's work published in 1997. Although Melchert emulated Schacht's transformation thesis, he put Schacht's chronology into doubt by negating the existence of the full personal schools of law in the middle of the third or ninth century.[18]

Melchert did not suggest a precise time when exactly the transformation of the school of Kufa into Ḥanafī school took place. What certain is that many of the accounts that trace the transformation in that period were projected backward following the same cause which Schacht had suggested, that is, the constant challenge of the adherent of *ḥadīth* against the adherent of opinion.[19] This eventually forced the latter to make their legal thinking more sophisticated and begin to adopt the technique of the Traditionalists by having their legal references rely on prominent authorities, such as Abū Ḥanīfa. The asummption goes as follows: reliance on the authority of Abū Ḥanīfa, while Abū Ḥanīfa has relied himself on the Book, the Prophet, and the Companions, has given a much greater sense of security, rather than relying on oneself or on another late authority.[20]

An overall effort to dismantle this "Schachtian" transformation is proposed by Wael Hallaq in his article specifically addressed to this issue.[21] Hallaq denies the early existence of the *madhhab*s as geographical entities, which Schacht proposed. Although he admits that the geographical references correspond to the sources, there is no basis to substantiate these geographical notions as being "schools".[22] The presumed Iraqian and Medinan schools, following Hallaq, consist of highly diverse individuals.[23] Even if these individuals established agreements on certain matters, for example, as in the case of the "Medinese practice", these agreements were anchored on the individuality of these jurists.[24] My own reading of substantive works does show that there seems little evidence to afford modern scholars proper references to assume the existence of regional entities of the legal community. For example, on the issue of a man who wished to purchase meat by way of *salam*, that is, a method of purchase in which the buyer has paid the price for goods

that will only available at a future date, al-Shāfiʿī, in a chapter titled *Kitāb Ikhtilāf al-ʿIrāqiyyīn* of his *al-Umm,* shows how much Abū Ḥanīfa, Ibn Abī Laylā, and Abū Yūsuf differed to each other, even though these three jurists shared a geographical space as the Iraqians. Al-Shāfiʿī says:

> On a person who purchases meat by the method of *salam*, Abū Ḥanīfa opined there is no good in it because the object of sale is unknown, this is the position he upheld. Ibn Abī Laylā, however, said that there is no objection to it. Abū Yūsuf followed the opinion of Ibn Abī Laylā and said: If the condition of the meat is fully described such as of legs, ribs, or anything similar of these kinds, then the sale is permitted. Al-Shāfiʿī said: If a person loans (*aslafa*) from another person a certain quantity of meat, with a specified value, conditions, and stipulation, then the loan is permitted.[25]

This passage clearly exemplifies that even though Abū Ḥanīfa, Ibn Abī Laylā, and Abū Yūsuf shared a geographical space as the Iraqians, their opinions were quite apart from each other. This difference alone refutes any reference to geographical doctrine because the legal boundaries rest on individuals.

One may defend Snouck Hurgronje and Schacht for not inventing the term *ex nihilo* in their thesis of the existence of geographical schools. But again, this geographical notion was used by biographers and author-jurists only as a common category to band the generation scholars together during the period in which they were dispersed and fluid, and not to show the existence of a solid geographical doctrine.[26] The fact that geographical notions were still being used after the *madhhab* had been established might lead us to conclude that Schacht's two-stage evolution of the *madhhab*, from a geographical to a personal school of law, can no longer be maintained. An alternative to the

Schachtian evolution of *madhhab*, following Hallaq, was that they set out from personal to doctrinal schools. The latter was built through being based on a particular event exclusive to the third and fourth century of the hijra, that is, the emergence of *taqlīd* activity, which defines the modus operandi of the *madhhab*s.

Quite similar to Hallaq's theory of developing "from personal to doctrinal school," Ahmed El Shamsy argues that the Shāfiʿī *madhhab*, since its nascent, had formed a set of accepted assumptions or paradigmatic frameworks upon which al-Shāfiʿī's followers relied (*taqlīd*) for their legal inquiry.[27] For early followers of al-Shāfiʿī, this concept of *taqlīd* does not reflect blindly following al-Shāfiʿī's legal reasoning, but rather is conditional upon their own verification of al-Shāfiʿī's theory of evidence.[28] However, contrary to Hallaq's skeptical position about the role of al-Shāfiʿī as the master architect of school, El Shamsy posits that al-Shāfiʿī was the "genuine founder" of the *madhhab*.[29]

The operations of *madhhab*s, which generally and particularly have their focus on a doctrinal affiliation to their supposed founders, are coming under increasing scrutiny by scholars applying a more modern analysis. George Makdisi, in his series of publications, proposed the concept of the *madhhab* as representing the "guild" or professional association and collective identity of jurists revolved around the eponyms of the schools. The *madhhab*, according to Makdisi, resembled a guild of jurists in that it constituted an organization of legal professionals with a specific framework of thought, that is, legal matters as opposed to philosophy-theological matters or *kalām*.[30] Makdisi's theory of the guild was developed even further by Sherman A. Jackson. Jackson highlighted the character of the *madhhab* or guild as a corporate type of organization, by which individual members of the guild were protected or exempted thereby from sanctions of other political or legal

authorities. Thus, an individual member of the Mālikī school of law, for example, was not obliged to follow the opinion of a Shāfiʿte jurist even if the latter acted as a representative of the ruler, and this was because the person's membership in the Mālikī school justified his option of not following another school's ordinances.[31]

This model of elaboration of the *madhhab* as corporate entity is useful in explaining the basis that united professional jurists to adhering to the same guild institution. But, seeing the *madhhab* or the guild as a corporate entity might also imply that the *madhhab* had become a closed source of collective doctrine that had to be upheld by its followers. For this reason, Jackson aptly argues that there had been an inevitable transformation involving the two competing tendencies in Islamic law, that is, from the regime of *ijtihād* to the regime of *taqlīd*. With this transformation, Islamic law—after the establishment of the *madhhab*—adapted itself perfectly to the regime of *taqlīd* that became the dominant tendency, in opposition to the regime of *ijtihād*. The latter, according to this scheme, no longer prevailed among jurists who lived after the sixth/twelfth century.[32] Significant as it may be, however, Jackson's theory does little to explain the activity of jurists within the *madhhab* who often disagreed with other jurists, nor does it account for the need to change the established doctrine of the *madhhab* or to derive new solutions to legal situations arising in the Muslim community.

Mohammad Fadel also notes the necessity of *taqlīd* for introducing stability and reducing perpetual indeterminacy as a result of independent reasoning. Like Jackson, Fadel suggests that submission to the body of the school's doctrine was inevitable. This doctrine functioned as an authoritative reference, allowing jurists some relief from the instability of legal interpretation.[33] Insofar as it deals with the perennial problem of legal indeterminacy, Fadel's

thesis no doubt is plausible. However, in light of al-Nawawī's overall juristic activity, it again does not shed sufficient light on the complex reality of law in the later period. As we already noted in Chapter 4, al-Nawawī was aware of the problem of indeterminacy as the result of the work of generations of jurists and the accumulation of legal doctrines they produced. He was also aware of the production of legal theories that in many ways were directed at navigating jurists' reasoning and containing the perceived indeterminacy on their part. Nevertheless, and as strange as it may sound to modern legal theoreticians, the stability of the law was only one concern that al-Nawawī wished to address in his legal project. The other concern was to ensure the possibility of developing and reinterpreting the established doctrines for any jurists capable of doing so. Hence the importance of analyzing al-Nawawī's idea of the *madhhab,* for by deciphering his definition of the latter and his efforts to vindicate it, we may gain an understanding not only of al-Nawawī's historical achievement in promoting the *madhhab*, but also of the nuances he added to the current theory of the *madhhab*.

Al-Nawawī's definition of the *madhhab*

The *madhhab* or guild of Shāfiʿite jurists that al-Nawawī envisaged was not so different from Jackson's image of a corporate entity. It was also built upon *taqlīd* or shared loyalty to the authority of the school tradition. However, the *taqlīd* that al-Nawawī promoted revolves around the legal paradigm laid down by the eponym of the school, that is, al-Shāfiʿī's theory of evidence and legal reasoning, which emphasises the authority of the *ḥadīth* of the Prophet and legal elaboration through *qiyās*, as opposed to the substantive, mostly personal, doctrines of Shāfiʿite jurists. In this understanding of *taqlīd*, the school's doctrines

indeed represented a vital source for jurists in the post-formative periods, yet at no time were they given a primary role. With conscious submission to the principles laid down by the founder, members of the guild shared similar legal authority by which they solved cases that arose in the community and it was in this way that they developed the body of legal rules embodied as the doctrine of the *madhhab*.

Al-Nawawī's definition of the *madhhab* involved a back projection in which he reconstructed the scholarly virtues and achievements of all jurists whose legal opinions were recorded in the school's literature, uniting them under the single banner of al-Shāfiʿī, and grounding their legacy directly on the foundation of the Prophet and his Companions. This projection is particularly reflected in his reference work, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*,[34] and to some extent, in the *Majmūʿ*. In these two books, he began to rewrite the achievements and virtues of al-Shāfiʿī, the independent *mujtahid* and founder of the guild, placing these immediately after the biography of the Prophet Muḥammad that he had composed. This arrangement of the book seems to suggest that the legal tradition established by al-Shāfiʿī constituted a direct line of transmission from the Prophet. By aligning al-Shāfiʿī's virtues next to those of the Prophet, al-Nawawī ignored chronological order. He deliberately diminished the intermediary agents (i.e. al-Shāfiʿī's teachers and jurists before him), to whom al-Shāfiʿī must have been indebted for his legal elaboration. Nevertheless, al-Nawawī does mention that al-Shāfiʿī had teachers that maintained the line of transmission (*isnād*) from the Prophet. Among others, he points to the fact that al-Shāfiʿī learned one or more *isnād*s from Mālik b. Anas, from Rabīʿa, from Anas b. Mālik and Nāfiʿ, from Ibn ʿUmar, and from the Prophet.[35] However, al-Nawawī does not mention al-Shāfiʿī's indebtedness toward his teachers. To

do so would have been tantamount to degrading al-Shāfiʿī to the status of a less-than-absolute *mujtahid,* and would have undermined his overall purpose of uniting the jurists under al-Shāfiʿī's banner. Al-Shāfiʿī, as al-Nawawī states in his *Majmūʿ*, was considered an absolute-*mujtahid* because he was assumed to have in-depth knowledge of legal methodology, Quranic exegesis and *ḥadīth* criticism, allowing him to derive law from the sources without relying on any other jurist.[36] Here, al-Nawawī contributed, as did the jurists who wrote *manāqib* literature before him, to the exaltation of al-Shāfiʿī as the actual founder of the *madhhab*.

After reconstructing al-Shāfiʿī's image as the eponym of the school, al-Nawawī also rewrote the life history and achievements of other high-caliber jurists who, despite their close affinity with al-Shāfiʿī, found their membership in the Shāfiʿī *madhhab* called into question. These were jurists who, according to al-Nawawī's typology of jurists discussed in Chapter 4, were capable of deriving law independently from the scriptures, but followed al-Shāfiʿī's hermeneutic paradigm, which they considered sound inasmuch as it complied with their own reasoning. A fine example of this was the case of Abū Thawr al-Kalbī, whose legal opinions often appeared in the *Muhadhdhab* of al-Shīrāzī, the *Wasīṭ* of al-Ghazālī, and al-Nawawī's *Rawḍa*. The inclusion of Abū Thawr in the guild became a subject of controversy for a time because he often derived law independently of al-Shāfiʿī. For this reason, al-Rāfiʿī considered him to have abandoned al-Shāfiʿī's methods and he therefore excluded Abū Thawr from the ranks of Shāfiʿīte jurists.[37] For al-Nawawī, however, Abū Thawr deserved to be regarded as a member in good standing of the Shāfiʿī guild because most of his legal opinions were believed to have been in accordance with al-Shāfiʿī's legal

principles and even to have included stronger evidence than those of al-Shāfiʿī.[38]

Similar to the example of Abū Thawr was the case of Abū Bakr b. al-Mundhir al-Nisābūrī (d. 309–10/921–22), whose legal opinions were also often quoted in the *Muhadhdhab* and *Rawḍa*. Abū Bakr was known to have extensive knowledge of the *ḥadīth* and foundation of various *madhhab*s in his lifetime. His affiliation to a particular guild, however, was not clear because he based his legal opinions only on the sound *ḥadīth* of the Prophet, without inclination toward any established *madhhab*. His tendency to adhere to the *ḥadīth* of the Prophet as the guiding principle of his legal reasoning motivated al-Nawawī to re-establish him as a member of the Shāfiʿī *madhhab*.[39]

Al-Nawawī's projection of the guild also involved rewriting the image of many of the *aṣḥāb al-wujūh*, especially those who had produced solitary legal opinions (*gharīb,* pl. *gharāʾib*), which according to al-Nawawī's analysis were not considered the preponderant opinions in the school's literature. He listed in this category, *inter alia*, Abū Bakr al-Ṣayrafī (d. 330/941),[40] Abū Bakr al-Fārisī (fl. ca. 348/960),[41] Ẓāhir al-Sarakhsī (d. 389/999),[42] Abū al-Ḥasan al-Māsarjisī (d. 384/994),[43] and al-Qāḍī al-Ḥusayn (d. 462/1069)[44] to have produced *gharīb* opinions in the school's tradition. However, even when explaining how some of the opinions of these jurists went contrary to the school's doctrine, al-Nawawī never failed to mention that these jurists had good knowledge of the *ḥadīth* of the Prophet. For example, he states that al-Sarakhsī was a *ḥadīth* specialist in Khurasan,[45] and points out also that al-Ṣayrafī mastered the knowledge of the *ḥadīth* from a certain Aḥmad al-Manṣūr al-Rumādī.[46] Of al-Māsarjisī, al-Nawawī writes that he learned *ḥadīth* from the students of al-Muzānī, a direct student of al-Shāfiʿī.[47] In the same tone, al-Nawawī describes al-Qāḍī al-Ḥusayn as a jurist-cum-

ḥadīth narrator.[48] The identification of these jurists with their knowledge of the *ḥadīth* was enough to portray them as bona fide members of the Shāfiʿī guild.

Al-Nawawī's back projection did not end with the *aṣḥāb al-wujūh*. He also refashioned the image of the later generation of jurists, with whom he often disagreed, such as al-Juwaynī, al-Ghazālī, al-Shīrāzī and al-Rāfiʿī. As seen in Chapter 4, in certain cases al-Nawawī claimed that some of al-Juwaynī's and al-Ghazālī's opinions were not based on the preponderant choice and therefore could not be counted as a basis for legal practice.[49] In the case of al-Rāfiʿī, whom al-Nawawī considered to be a *mujtahid fi-l-madhhab*, there were enough weak opinions that he too could not be counted to represent the school's doctrinal position.[50] Nor were al-Shīrāzī and other Iraqian jurists of his generation immune from criticism if al-Nawawī found a reason to level it.[51] Despite all these disagreements, however, al-Nawawī never suggested that these jurists were less Shāfiʿite than others. He considered them to be part of the Shāfiʿite guild, not simply because they were known to have studied in the Shāfiʿite learning circles, but because they showed loyalty to the authority of al-Shāfiʿī and his hermeneutic and juristic principles that substantively relied on the *ḥadīth* of the Prophet. This identification of the Shāfiʿite guild as epitomized in the member's loyalty to the authority of al-Shāfiʿī and his hermeneutic principles should not lead us to conclude that the members of the guild are required to follow al-Shāfiʿī's personal authority. Rather, this signifies the loyalty of jurists associated under his name to the supremacy of the legal tradition of the Prophet. Al-Shāfiʿī, as we have pointed out before, is widely thought to have initially laid the foundation of a legal system that submits to the authority of the Traditions of the Prophet, as opposed to the consensual doctrines of the Companions and the discreet opinions of

the jurists (*raʾy*). Therefore, what identifies all these jurists as followers of the Shāfiʿī school, according to al-Nawawī, was their adherence to a broad principle of legal interpretation and a hermeneutic approach that made direct reference to the *ḥadīth* of the Prophet.[52]

This identification of loyalty to the formal *ḥadīth* of the Prophet, *ḥadīth* specialist, or *ḥadīth* scholar is apparently very important for two reasons. First, al-Nawawī wished to show that these jurists did not employ arbitrary reasoning in their hermeneutic enterprises, in contrast to the early Ḥanafites who would do so in the absence of valid textual source.[53] In other words, by emphasizing their identity as *ḥadīth* scholars, al-Nawawī aimed to establish the fact that these jurists saw the ultimate authority as lying in the *ḥadīth* of the Prophet. Second, attachment to the authority of *ḥadīth* also meant that these jurists had no particular loyalty to regionaly-based practice, as al-Nawawī often maintained to have been the case with the followers of Mālik. Al-Nawawī's objection toward this regionally-based practice echoes al-Shāfiʿī's criticism toward the followers of Mālik, Awzāʿī, and some early Iraqian jurists, particularly the Kūfans.[54] The followers of Mālik were known to have accepted the established practice of the people of Medina as the basis of legal decision, even when it did not resort to the *ḥadīth* of the Prophet. Their assumption was that the people of Medina had maintained a legal tradition that corroborated with the life and practices of the Prophet.[55] Similarly, Awzāʿī and his followers were also known to have considered their legal tradition as uninterrupted practice with its roots in the time of the Prophet and maintained under the patronage of the Umayyad caliphs in Damascus.[56] The Kūfans, who grounded their legal basis on the authority of the Companions of the Prophet, also believed that they had maintained the same continuity with the Prophet. Despite their claim of deriving legal authority

from the same Prophetic traditions, these three groups were the subjects of al-Shāfiʿī's criticism, as they did not refer to the formal *ḥadīth* of the Prophet.[57] By applying the label of loyalty to the authority of the *ḥadīth* of the Prophet, al-Nawawī attempted to break the jurists' attachment to local tradition and to replace it with al-Shāfiʿī's principle of abiding by the formal *ḥadīth*.[58]

Notwithstanding al-Shāfiʿī's theory of the supremacy of the *ḥadīth* of the Prophet, one must not forget that al-Shāfiʿī never denied the activity of discretionary reasoning altogether. He rescued the use of reasoning in the absence of direct reference from the Qurʾān or the *ḥadīth* of the Prophet by means of *qiyās,* but insisted that the application of *qiyās* be grounded in scriptural evidence.[59] This being the rule, al-Nawawī made use of the principle when rewriting the image of the jurists who did not adhere to al-Shāfiʿī's theory of *qiyās*, most notably Dāwūd b. Khalāf al-Ẓāhirī (d. 270/884) and his followers.[60] For example, on the authority of Imām al-Ḥaramayn al-Juwaynī, al-Nawawī described them follows: "Those who rejected *qiyās* are not considered scholars of the community or bearers of the Sharīʿa because they are stubborn and deny what has been established by many jurists in an uninterrupted way, and because the bulk of the Sharīʿa is established by *ijtihād* (interpretation)."[61] Despite the fact that Dāwūd and many of his followers were known to have been educated exclusively in the Shāfiʿte learning tradition, their rejection of al-Shāfiʿī's theory of *qiyās* caused them to be excluded from the *madhhab*, since one of the bases that united jurists under this *madhhab* was adherence to the eponym's hermeneutic and juristic principles.

The Shāfiʿī guild or *madhhab* that al-Nawawī imagined, therefore, was neither identical to one's affiliation with Shāfiʿite learning circles, nor was it identical to the rigid submission to the personal authority of al-Shāfiʿī, nor to the

cumulative body of the school's doctrine. The school's doctrines indeed represented vital legal sources for jurists in the same guild, but it was common loyalty to al-Shāfiʿī's hermeneutic and juristic principles that served as the main tie that bound jurists together under the same banner called the Shāfiʿī *madhhab*.

Vindication of the school's principles and doctrines

Having defined the basis of association with the Shāfiʿite guild as adherence to al-Shāfiʿī's hermeneutic and juristic principles, it is now necessary to point out how this attachment to the principles was manifested in the elaboration of daily legal cases. One thing that is certain is that jurists who were members of the Shāfiʿī guild accepted the school's principles as a general premise, while those who questioned or were not convinced by them were clearly identified as not belonging to the Shāfiʿī guild or *madhhab*. In the elaboration of various legal cases, the legal stands of jurists belonging to other *madhhab*s were often exploited as sources of polemical confrontation to defend the superiority of Shāfiʿī's hermeneutic approach. Consider the following passages regarding the legality of *khiyār al-majlis*, that is, an option whereby both parties involved in a transaction had the right to withdraw or to continue the transaction as long as they had not departed from the place of the transaction:

> Our *madhhab* has determined that the right of *khiyār al-majlis* remains with both of the two contracting parties. This is what has been said by the *jumhūr* of scholars, from the Companions and the Followers, among others, and was reported from Ibn Mundhir from Ibn ʿUmar and Abī Barza al-Aslamī al-Ṣaḥābī and Saʿīd b. al-Musīb, Ṭāwūs, Aṭāʾ, Surayj, Ḥasan al-Baṣrī, al-Shaʿbī, al-Zuhrī,

> al-Awzāʿī, Aḥmad [Ibn Ḥanbal], Isḥāq [Ibn Rāhawayh], Abī Thawr, and Abī ʿUbayd. Also, from Sufyān b. ʿUyayna, Ibn Mubārak, ʿAlī b. Madāʾinī and others generally known as *ḥadīth* scholars. It was also reported from al-Qāḍī Abū al-Ṭayb; from ʿAlī b. Abī Ṭālib, Ibn ʿAbbās, Abī Hurayra and Ibn Abī Dhūayb. [In contrast,] Mālik and Abū Ḥanīfa said that *khiyār al-majlis* would not be established except as it is stipulated in the agreement. Surayj, al-Nakhaʿī and Rabīʿa reported that this view is upheld based on the Quranic verse [4:29]: "Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good-will." However, the *ẓāhir* (the apparent meaning) of the verse allows *khiyār* as long as both parties remain in the place of contract (*majlis*). And there is also another *ḥadīth* of the Prophet as reported by Ibn ʿUmar: "Whoever bought food, do not sell it until he takes possession." This *ḥadīth* indicated that sale with *khiyār al-majlis* is permitted before both parties departed.[62]

With this passage, al-Nawawī began his elaboration of the legality of *khiyār al-majlis* by stating what is thought to be a general doctrine of the Shāfiʿī school of law: "Our *madhhab* has determined that the right of *khiyār al-majlis* remains with both of the two contracting parties." Here, al-Nawawī does not once mention the name of al-Shāfiʿī, mainly because al-Shāfiʿī's hermeneutic and juristic principles were symbolized in the phrase "our *madhhab*," and once these principles were accepted, jurists other than al-Shāfiʿī could present the *madhhab* opinion.[63] To buttress this position, al-Nawawī has recourse to a list of the *ḥadīth* of the Prophet that were relevant to issues at hand. He also mentions the names of the Companions of the Prophet, the Followers, and some early *ḥadīth* scholars, including Awzāʿī and Aḥmad b. Ḥanbal (who are considered the eponyms of the Awzāʿī and Ḥanbalī schools of law respectively). The

reference to specific *ḥadīth* and to *ḥadīth* scholars was a powerful instrument that strengthened his case, that is, that the principle held by al-Shāfiʿī was indeed based on *ḥadīth*s with complete *isnād*s and that the Companions and the majority of the *ḥadīth* scholars shared the same legal stand. In the end, on this basis he justified the doctrine that the two parties involved in a transaction had the right to cancel or to continue the transaction as long as they did not depart from the place of the transaction. Their transaction could even be immediately effective if they stipulated other types of *khiyār,* for example, *khiyār al-ʿayb,*[64] *khiyār al-ruʾya,*[65] *khiyār al-sharṭ*.[66]

The passage, however, does not end by merely stating what had been obvious for Shāfiʿite jurists. Al-Nawawī was aware of the doctrines of other *madhhab*s, in this case the schools of Abū Ḥanīfa and Mālik, who did not recognize *khiyār al-majlis* in any transaction. He then contrasts the Shāfiʿite position with those of Mālik and Abū Ḥanīfa, which denied the establishment of *khiyār al-majlis* without any stipulation between both parties. To support his argument and to make his case even stronger, al-Nawawī quotes some more relevant *ḥadīth* of the Prophet as follows:

> Ibn Shuʿayb also narrated another *ḥadīth* from his father and his grandfather that the Prophet said: "The two contracting parties have the right of *khiyār* until they separated, except if there is another deal of *khiyār,* it is not permissible for him to depart from his partner out of fear that he would resign from the transaction." Abū Dāwūd, al-Tirmidhī and others narrated this *ḥadīth* with sound and good chain of transmission. Al-Tirmidhī said that the *ḥadīth* is of the *ḥasan* type. They [the followers of Mālik and Abū Ḥanīfa] said that this *ḥadīth* is the basis of the opinion that a partner does not have the option to cancel the contract (*faskh*) to guarantee it

> from retraction of the contract. The *qiyās* to support this view is the contract of marriage (*nikāh*) and dissolution of marriage (*khulʿ*) in which *khiyār al-majlis* is unknown, and the interval of the contract to be still under the condition of *al-majlis* is unspecified, the analogy is therefore similar, that is, *khiyār al-majlis* is unknown.[67]

After quoting this *ḥadīth*, al-Nawawī marshalls no less than ten more similar *ḥadīth*, which, because they uphold the Shāfiʿite position on this case, shall not be listed here. Then, al-Nawawī makes a sharp turn to critique the propositions of Abū Ḥanīfa and Mālik that rejected *khiyār al-majlis*.

> Al-Bayhaqī narrated a *ḥadīth* from Ibn Mubārak who said: "Two contracting parties have *khiyār* as long as they have not separated." I [al-Nawawī] have confirmed that al-Bayhaqī narrated these stories (*asāṭīr*) with *isnād* from ʿAlī b. al-Madā'inī, from Ibn ʿUyayna, that this is the *ḥadīth* of the people of Kūfa, narrated from Ibn ʿUmar, that the Prophet said: "Two contracting parties have *khiyār* as long as they have not separated." He said that the people of Kūfa transmitted the *ḥadīth* to Abū Ḥanīfa. But Abū Ḥanīfa said: "This is not always the case; how would you explain if the contract is on a ship?" Ibn al-Madā'inī said that God asked him the question. Al-Qāḍī Abū al-Ṭayb and associates said that Abū Ḥanīfa and Mālik objected to all the *ḥadīth* above. Mālik said that only Ibn ʿUmar narrated the *ḥadīth*. Abū Ḥanīfa said that they could not accept it since it does not explain the case while the contract is on a ship, because both parties could not be separated. Mālik said: "The practice among us in Medina contradicted the *ḥadīth*. The jurist of Madina did not acknowledge the practice of *khiyār al-al-majlis*." The *madhhab* of Mālik is that he would leave any *ḥadīth* that contradicts the

practice of the people of Medina. But our associate said that these *ḥadīth* are all *ṣaḥīḥ*, therefore Abū Ḥanīfa's and Mālik's refusals to accept these *ḥadīth* are unacceptable as it is equal to discarding the correct, trusted, and elaborated practice.

As for the objection of Abū Ḥanīfa regarding the case while on a ship, we would say that the *khiyār* of parties continues as long as they still remain together on the ship, even if [the voyage] lasts for a year or more. I have already explained the case and the evidence from the *ḥadīth* above. As for Mālik's position, he derived his isolated opinion from other jurists. Therefore his opinion to abandon the *ḥadīth* that contradicts the practice of the people of Medina cannot be accepted. How can this *madhhab* be justified given the fact that the jurists who narrated the report [about *khiyār al-majlis*] were no longer present at the time of Mālik, nor during the period before him when they were concentrated in Medina or Hejaz. The fact is that the jurists who narrated the report were already spread all over different locations with each of them carrying parts of the report. They did not share the report with each other, yet they transmitted the same report. How can Mālik insist that each Muslim follow the jurists of Medina? This issue had been thoroughly discussed in field of legal theory (*uṣūl al-fiqh*). It was also not true that the jurists of Medina were in agreement regarding the non-existence of *khiyār al-majlis*. One of the prominent jurists of Medina, Ibn Abī Dhaʾib, who was one of Mālik's contemporaries, disagreed with Mālik about this case. He expressed his disagreement to the extent that Mālik would repent of holding his opinion. How then can agreement of the jurists of Medina be justified?[68]

In the above passage, al-Nawawī again states that the position of the Shāfiʿī *madhhab* on *khiyār al-majlis* was based on sound *ḥadīth*. He notes that, despite the fact that

the *ḥadīth* reported by Ibn‘Umar was probably known only among the people of Kufa, it nevertheless had a valid *isnād* back to the Prophet. Yet, on the basis of reasoning, Abū Ḥanīfa rejected the *ḥadīth* as the basis of *khiyār al-majlis,* since the *ḥadīth* does not explain how the *khiyār al-majlis* might be applied when the two contracting parties are on a ship. Similarly, Mālik also could not accept the *ḥadīth* as allowing the practice of *khiyār al-majlis* since it was known only among the Kūfans, and not among the Medinese. After elaborating on the objections of both Abū Ḥanīfa and Mālik, al-Nawawī argues that their propositions did not justify their rejection of *khiyār al-majlis.* He also denounces Abū Ḥanīfa’s extension of his reasoning so as to make the sound *ḥadīth* irrelevant to the case of two contacting parties journeying on a ship. For al-Nawawī, the right to cancel or to continue the transaction would have remained with both contracting parties, even if their journey by ship lasted for a year or more. Al-Nawawī was also aware that Abū Ḥanīfa’s position in invalidating *khiyār al-majlis,* as shown in the earlier passage, was derived from a Quranic verse (4:29). His own understanding of the verse, however, contrasted with that of Abū Ḥanīfa in that he argued that it, on the contrary, provides a green light to the practice of *khiyār al-majlis*.

Al-Nawawī’s response to Mālik and his followers was even more devastating than that to Abū Ḥanīfa. As was seen earlier, Mālik and his followers considered that the consensual practice of the people of Medina is more authoritative as a basis for law than a solitary report, even if the report is traced back to the Prophet. This is the reason why Mālik rejected *khiyār al-majlis,* because the practice was known only among the Kūfans and not the Medinan jurists. For al-Nawawī, Mālik’s preference for Medinan practice over the *ḥadīth* of the Prophet was unjustifiable for two reasons. First, the Companions who reported the practice of *khiyār al-majlis* from the Prophet

were no longer in Medina when the legality of the practice became a subject of juristic disagreement. That being said, the Medinans may not have known if the practice was established among the early Companions who traveled outside Medina, in this case, to Kūfa. Second, the notion that the Medinan jurists were in agreement on the invalidity of *khiyār al-majlis* is misleading because such a consensus never existed.

Al-Nawawī's recurring emphasis that al-Shāfiʿī's hermeneutic principle was always grounded on the formal *ḥadīth* of the Prophet does not mean that the hermeneutic approaches of Mālik or Abū Ḥanīfa disregarded the use of *ḥadīth*. All the surviving *madhhab*s were in fact inclined to respect the authority of the *ḥadīth*. However, the degree of each school's admission of the *ḥadīth* of the Prophet and the use of reasoning in legal theory, as well as the use of particular *ḥadīth* as evidence for application in each particular legal case, was rarely the same. These three elements seemed to be main reason why the Shāfiʿites differed from other schools. Taking the case of the permissibility of eating the flesh of a horse, for example, al-Nawawī contrasted the Shāfiʿite doctrine that deemed its consumption as permissible, with the opinion of Abū Ḥanīfa, which considered it blameworthy. The Shāfiʿite position, in this case, was also shared by many *ḥadīth* scholars, including the likes of Aḥmad (Ibn Ḥanbal), Dāwūd (b. Khalāf al-Ẓāhirī), and two of Abū Ḥanīfa's high-ranking students: Abū Yūsuf and Muḥammad (al-Shaybānī). To justify the Shāfiʿite doctrine, al-Nawawī quoted several *ḥadīth* with sound chains of transmission, which exemplified the practice by the Prophet and his Companions. Abū Ḥanīfa, on the contrary, considered eating the flesh of a horse to be blameworthy based on a Quranic verse (16:8): "Horses, mules, and donkeys are intended for you to ride, and for ornament." In addition, he also cited a *ḥadīth* from Ṣāliḥ b. Yaḥyā b. al-Miqām, from

his father, from his grandfather (the Companion) Khālid b. al-Walīd who said: “The Prophet forbade [eating] the meat of horses, mules, and donkeys and all predatory animals.”[69]

For al-Nawawī, the above *ḥadīth* cannot be used in support of Abū Ḥanīfa’s claim that eating the flesh of a horse is blameworthy. The transmitters of the *ḥadīth*, Ṣāliḥ b. Yaḥyā b. al-Miqām and his father, were not recognized by *ḥadīth* scholars as being reliable transmitters. Even if the *ḥadīth* were regarded as sound, it might have been abrogated by other sound *ḥadīth* that suggested otherwise. Abū Ḥanīfa’s reference to a Quranic verse (16:8) is also rebuffed since it does not directly forbid consumption of horseflesh.[70] What al-Nawawī meant to accomplish here was to expose Abū Ḥanīfa’s use of weak *ḥadīth* and indefinite interpretation of the Qurʾān that did not directly correspond to the case in hand, already sanctioned by sound and reliable *ḥadīth*s. In doing so, once again, al-Nawawī aimed to vindicate al-Shāfiʿī’s principles and doctrine as being superior to those of Abū Ḥanifa.

This being said, the differences between the Shāfiʿī and other schools are not necessarily diametrical in every case. In some cases, al-Nawawī remarks on the similarity of doctrines between al-Shāfiʿī, Mālik, and Aḥmad b. Ḥanbal, in contrast to that of Abū Ḥanīfa.[71] In other cases, al-Nawawī also highlights where Abū Ḥanīfa’s use of reasoning does not differ from that of al-Shāfiʿī. This similarity is most often referred to on those occasions when al-Nawawī wants to score a point against Dāwūd b. Khalaf, who rejected the use of *qiyās*. In the case of butter contaminated with an impure substance, for example, al-Shāfiʿī and Abū Ḥanifa were known to have held the opinion that the butter could not be consumed. Using *qiyās*, al-Shāfiʿī and Abū Ḥanifa both extended this impermissibility to the case of oil contaminated with the same impure substance. For Dāwūd, however, their *qiyās*

was inapplicable because the *ḥadīth* appealed to as textual evidence does not say anything about the impermissibility of eating contaminated oil.[72]

Mālik was perhaps more often the antagonist as he maintained a very different doctrine from that of al-Shāfiʿī, Abū Ḥanīfa, and the *jumhūr* of jurists. The following passage may illustrate the case in point:

> The opinion of jurists regarding the legality of the animal killed in hunting by Jews and Christians: Our school considered that [eating] the flesh of an animal killed through hunting by Jews and Christians is lawful, as is an animal they slaughtered. If they use a hunting dog or arrow to kill, the animal is also lawful. This has been said by ʿAṭāʾ, Abū Ḥanīfa, Layth, Awzāʿī, Aḥmad, Ibn Mundhir, Dāwūd, and the *jumhūr* of jurists. Mālik said it is not permissible [to eat] the hunted animal brought down by Jews and Christians, excepting their slaughtered animals. But this position is weak.[73]

This passage suggests that al-Shāfiʿī's doctrine on the legality of the flesh of an animal killed through hunting by Jews and Christian is irreconcilable with that of Mālik. Al-Nawawī does not state Mālik's source of evidence, but his decision to mention Abū Ḥanīfa, Aḥmad b. Ḥanbal, Dāwūd b. Khalāf, Awzāʿī, and the *jumhūr* of scholars seems to suggest that Mālik was stubborn in his loyalty to the practice of the Medinan jurists. His logic is that, if Abū Ḥanīfa, Aḥmad, and Dāwūd do not differ from al-Shāfiʿī, they must have shared indisputable textual evidences, which would most certainly have been in the form of *ḥadīth*. Al-Nawawī enhanced his defence of al-Shāfiʿī by mentioning Awzāʿī who believed that his doctrine represented uninterrupted practice since the time of the Prophet, just as what Mālik was to believe about the doctrine of the people of Medina. But Awzāʿī's doctrine, for

al-Nawawī, had a greater propensity to be correct than the practice of the people of Medina because the majority of jurists shared his legal stance. For this reason, al-Nawawī deemed that Mālik's doctrine on the impermissibility of eating the flesh of animals killed while hunting by Jews and Christian cannot be sustained.

Final remarks

It is by now clear that al-Nawawī's efforts to set the boundaries of the *madhhab* and vindicate Shāfiʿite hermeneutic and juristic principles over those of other schools involved detailed elaboration of the theory of evidence and reasoning of each school. He also contrasted the use of particular *ḥadīth* by each school in grounding their positions on certain cases, explaining which one was stronger than another. Based on his discussions of the cases above, al-Nawawī seems to have accomplished his goal in rationalizing and justifying the school's principles and substantive rules. This was exactly the achievement, as I have contended, that made him one of the most important jurists in the development of the Shāfiʿī school of law. Although the doctrines that al-Nawawī upheld were not necessarily new to the school, he nevertheless made a genuine and progressive effort to reproduce the school's doctrines and vindicate them with respect to other schools of law. This effort, together with his elaboration of the Shāfiʿite guild, earned him the status that he enjoys in the biographical dictionaries.

Notes

1 Ignaz Goldziher, *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton, NJ: Princeton University Press, 1981), 47.
2 Ignaz Goldziher, *The Ẓāhirīs: Their Doctrine and Their History*, trans. Wolfgang Behn (Leiden: E. J. Brill, 1971), 20–21.
3 Goldziher, *Introduction to Islamic Theology and Law*, 47.
4 Ibid., 47–48.

5 Christiaan Snouck Hurgronje, “Islam,” in *Selected Works of C. Snouck Hurgronje*, (eds) Georges-Henri Bousquet and Joseph Schacht (Leiden: E. J. Brill, 1957), 52–54.
6 Christiaan Snouck Hurgronje, “The ‘Foundations’ of Islamic Law,” in *Selected Works of C. Snouck Hurgronje*, (eds) Georges-Henri Bousquet and Joseph Schacht (Leiden: E. J. Brill, 1957), 278.
7 Ibid.
8 Ibid.
9 Ibid., 279.
10 Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950); Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Oxford University Press, 1964).
11 Schacht, *An Introduction to Islamic Law*, 28.
12 Ibid.
13 Ibid., 34–35, 48.
14 Ibid., 40–41.
15 Ibid., 58.
16 Ibid., 48, 58.
17 George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981), 2. Makdisi gave the credit of bringing the idea of the geographical schools to Schacht, not to Snouck Hurgronje, although the latter was the one who introduced the designation.
18 Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th–10th Centuries C.E.* (Leiden; New York: Brill, 1997), 35.
19 Ibid., 35–36.
20 Ibid., 38. Cf. Ahmed El Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (New York: Cambridge University Press, 2013), 183.
21 Wael B. Hallaq, “From Regional to Personal School of Law? A Reevaluation,” *Islamic Law and Society* 8:1 (2001). Nimrod Hurvitz also found similar findings that negates the existence of geographical schools and denies the fact that there was ever a Schachtian’s transformation. See Nimrod Hurvitz, “Schools of Law and Historical Context: Re-Examining the Formation of the Ḥanbalī *Madhhab*,” *Islamic Law and Society* 7:1 (2000): 42–46.
22 Hallaq, “From Regional to Personal School of Law? A Reevaluation,” 5.
23 Ibid., 6–10.
24 Ibid., 11–12.
25 See Muḥammad b. Idrīs al-Shāfiʿī, *al-Umm*, (ed.) Maḥmūd Maṭrajī, 9 in 8 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 1993), 7:175.
26 This was the case of Abū Isḥāq al-Shīrāzī’s *Ṭabaqāt al-Fuqahā’*, in which he used geographical category to map the generation of scholars who lived after the period of the Companions of the Prophet as the “scholars of the Successors in Medina, Mecca, Yemen, Syria and North Africa, Egypt, Kūfa and Basra” (*fuqahā’ al-tābiʿīn bi-l-madīna,* etc.) Al-Shīrāzī even continues to use this geographical category to classify the generation of successors of the Successors, which he simplifies as “scholars of Baghdad” or

"scholars of Khurasan" (*fuqahāʾ Baghdād*, *fuqahāʾ Khurāsān*). Here, al-Shīrāzī considered the regional category as the practical model to diversify the early legal scholars because there was no other feasible way to map the fluidity of these scholars. See Abū Isḥāq Ibrāhīm al-Shīrāzī, *Ṭabaqāt al-Fuqahāʾ*, (ed.) Khalīl al-Mays (Beirut: Dār al-Qalam, n.d.), 37–97, 99–108.

27 El Shamsy, *The Canonization of Islamic Law*, 182.

28 Ibid., 176–77, 88.

29 Ibid., 176. For Hallaq's position to this case, see Wael B. Hallaq, "Was al-Shafiʿi the Master Architect of Islamic Jurisprudence?" *International Journal of Middle East Studies* 25 (1993): 588–600.

30 Makdisi's theory presumes the emergence of the *madhhab* as the result of a separation between the class of legal specialists who strictly adhered to the prescriptions of the Qurʾān and the Sunna of the Prophet, and the philosopher or speculative theologians who were inclined to go beyond the scriptures. It also presumes the importance of pedagogy or the institution of the *madrasa* as the primary agency for the creation of legal specialists who emerged capable of teaching law and sitting as judges in court. 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), 237. See also, Makdisi, *The Rise of Colleges*, 6–9.

31 Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: E. J. Brill, 1996), 106.

32 Ibid., 77–78.

33 Mohammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3:2 (1996): 197–99.

34 Indeed, the purpose of the *Tahdhīb,* as the title indicates, was to clarify the names and the elusive concepts or languages that are found in the corpus of al-Nawawī's works. The content of the book also varies. It encompasses a wide range of generations of jurists, not only Shāfiʿites of the later period (*al-mutaʾakhkhirīn*), but also of the earlier period (*al-mutaqaddimīn*). It also includes the biography of al-Shāfiʿī; the eponym of other schools such as Abu Ḥanīfa, Mālik b. Anas, Aḥmad b. Ḥanbal, and Dāwūd al-Ẓāhirī—and even the biography of the Prophet and his Companions. However, it is also obvious that the *Tahdhīb* has a specific purpose of reconciling the generation of Shāfiʿite jurists and to unite them under the same collective identity. This task is instrumentally important apparently because many jurists tended to produce legal opinions that were not entirely consistent with al-Shāfiʿī hermeneutic principles.

35 Abū Zakarīyā Yaḥyā b. Sharaf al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, (ed.) Muṣṭafā ʿAbd al-Qādir ʿAṭā, 2 vols. (Beirut: Dār al-Kutub al-ʿIlmiyya, 2007), 1:26.

36 See al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 12 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, 1925), 1:42.

37 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 2:67.

38 Ibid., 2:68.

39 Ibid., 2:63.
40 Ibid., 2:59–60.
41 Ibid., 2:61.
42 Ibid., 1:208–9.
43 Ibid., 2:80–81.
44 Ibid., 1:178–79.
45 Ibid., 1:209.
46 Ibid., 2:59.
47 Ibid., 2:80.
48 Ibid., 1:178.
49 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:107.
50 Ibid., 3:279.
51 Ibid., 9:155.
52 In this case, Makdisi's theory that posits the binary identity of legal specialists and the speculative theologians as the modality of the *madhhab* is partially correct. It is only partially correct because all the surviving schools in fact are inclined to abide with the authority of scriptures. The degree of the admission of the scriptures in legal theories, as I shall show in the next section, is one of the reasons why one *madhhab* differs from the other.
53 See for example, al-Nawawī's critique of the Ḥanafite's reasoning on the persmissibility of eating the flesh of a horse on p. 119.
54 For the discussion of the follower of Mālik, Awzāʿī, and the Kūfan in regard to al-Shāfiʿī's criticism, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 105–7.
55 See ibid., 105–6.
56 Ibid., 107.
57 Ibid., 106–7.
58 See for example, al-Nawawī's discussion of the legality of *khiyār al-majlis* as a response to the position of Mālik and his followers on it on p. 117.
59 See Muḥammad b. Idrīs al-Shāfiʿī, *al-Risāla*, (ed.) Aḥmad Muḥammad Shākir (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1940), 477.
60 For more information on Dāwūd b. Khalāf, see Goldziher, *The Ẓāhirīs: Their Doctrine and Their History*.
61 al-Nawawī, *Tahdhīb al-Asmāʾ Wa-l-Lughāt*, 1:198.
62 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:184.
63 For further discussion on this case, see Hallaq, *The Origins and Evolution*, 152.
64 *Khiyār al-ʿayb* is an option to cancel the transaction on discovery that the object has a defect.
65 *Khiyār al-ruʾya* is an option to rescind a transaction after the object of transaction is inspected.
66 *Khiyār al-sharṭ* is an option to cancel the transaction within a specific number of days.
67 al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 9:184–85.
68 Ibid., 9:186–87.
69 Ibid., 9:4.
70 Ibid., 9:5.

71 See for example, al-Nawawī, *al-Majmūʿ Sharḥ al-Muhadhdhab*, 3:285–86.
72 Ibid., 9:38.
73 Ibid., 9:102.

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Snouck Hurgronje, Christiaan. “Islam,” trans. Joseph Schacht, in *Selected Works of C. Snouck Hurgronje*, (eds) Georges-Henri Bousquet and Joseph Schacht. Leiden: E. J. Brill, 1957, 1–108.

Conclusion

The reputation and scholarly achievement attached to al-Nawawī as recorded by biographers and the substantive works of the later Shāfiʿite jurists should not be understood as a mere idealization of the past. He gained a special place in Muslim legal tradition as the one who had rearticulated and canonized the doctrine of the *madhhab* not only due to his intellectual capacity as a learned jurist and *ḥadīth* scholar, but also due to the need to accommodate the requirements of premodern Muslims to anchor legal authority in certain figures encapsulated in term of the *madhhab*ic authority. Al-Nawawī's juristic authority, therefore, was instrumental in mediating the legal realities of the Shāfiʿite jurists with the doctrinal authority of the eponym of the school, which was assumed to be faithful to the legal tradition of the Prophet. This intermediary function explains why he was labeled posthumously with such high esteem as the mainstay of Shāfiʿite jurists.

One of al-Nawawī's significant achievements that led to his rise as an axial authority in the school was his identification of different *ṭarīqa*s among the Shāfiʿites, particularly those of the Iraqian and Khurasanian jurists, and his genuine effort at reconciling them with the doctrinal position of the Shāfiʿī *madhhab*. Central to the formation of the *madhhab*, these *ṭarīqa*s or methods of legal interpretation were offshoots of the long process of synthesis between traditionalism and rationalism in Islamic law, which began to take form after the period of Ibn Surayj. The conflicting elaborations of the Iraqian and Khurasanian jurists on certain legal cases, as discussed in Chapter 3, indicated that Ibn Surayj's synthesis of al-

Shāfiʿī's foundational theory was understood rather differently among his students and jurists after them. In the context of legal practice, these differences often led to confusion on the part of lay Muslims as it was difficult for them to decide which doctrine was valid for each legal inquiry. Al-Nawawī's effort at reconciling the different methods of reasoning and doctrines of the Iraqian and Khurasanian jurists was both intelligent and loyal to the legal tradition of the Shāfiʿite communities. He analyzed the representative doctrines held by the *ṭarīqa* of the Iraqian jurists (i.e. *al-Muhadhdhab* and *al-Tanbīh* of al-Shīrāzī) and by their Khurasanian counterparts (in this case, the *Fatḥ al-ʿAzīz* of al-Rāfiʿī), evaluated their respective methods of reasoning and analyses of cases, and supplied his own reasoning and solution for each case, which he considered to be representative of the authoritative position of the *madhhab*.

The impact of his elaboration was pervasive in that it helped later jurists to deal with the different legal solutions of the *ṭarīqa*s. A close reading of later Shāfiʿite works, such as the *Nihāyat al-Muḥtāj* of al-Ramlī, especially in the case regarding the status of two men who apostatized and became intoxicated during their *iʿtikāf*,[1] confirms that the details of the different legal solutions of the Iraqian and Khurasanian *ṭarīqa*s were no longer felt to be useful to readers of this legal manual, since it sufficed for al-Ramlī to refer to al-Nawawī's solution of the case. Similarly, a reading of the *Mughnī al-Muḥtāj* of Khaṭīb al-Sharbīnī, particularly on the case of *zakāt* in a partnership between two persons owning livestock of different value,[2] also confirms that the detailed solution of the *ṭarīqa* of the Khurasanian jurists, which al-Nawawī identified as having been derived from the reasoning of Imām al-Ḥaramayn al-Juwaynī, was no longer considered at length since the latter's reasoning was thought to have deviated from the

doctrine and principle that al-Shāfiʿī upheld. What Khaṭīb al-Sharbīnī presented in his book was al-Nawawī's selected opinion, which was assumed to represent the valid solution of the *madhhab*.

In addition to reconciling the doctrines of the *ṭarīqa*s so that they fell in line with the *madhhab*, al-Nawawī also contributed to creating a set of canonical doctrines. This selection of canonical doctrines was compiled as a direct response to the plurality of legal opinions among Shāfiʿite jurists and to demands that the legal indeterminacy generated by the former be reduced. As discussed in Chapter 4, what constituted the doctrines of the school were not only the personal doctrines of al-Shāfiʿī, but also those of his students and the *aṣḥāb al-wujūh* (who often derived their legal opinion by way of *takhrīj*), including those of jurists who flourished after them, such as al-Ghazālī and al-Shīrāzī. Al-Nawawī's goal in producing the canonical doctrines was to provide a body of reference by which later jurists could discover, from the existing doctrines, legal solutions for certain cases.

His creative reasoning in *tarjīḥ* and *taṣḥīḥ* was instrumental in helping later jurists to decide which selection of opinions was preponderant, generally described in specific terminologies such as *ṣaḥīḥ*, *mashhūr*, *ẓāhir*, *ṣawāb*, *mukhtār*, and *madhhab*, and which one was not, usually identified as *Ḍaʿīf*, *fāsid*, *shādhdh*, or *gharīb*. Of all the preponderant categories, the one al-Nawawī described as the *madhhab* opinion came to be thought of as the most authoritative position. By referring to al-Nawawī's doctrines, later jurists were no longer required to examine the school's extensive literature because relying on al-Nawawī's *ijtihād*ic investigation into the school's doctrines was thought to be sufficient. However, despite the fact that later jurists generally held al-Nawawī's opinions in high regard, they understood that they could disagree with al-Nawawī and the opinions he considered authoritative.

Some jurists in the post-Nawawī era, as was the case of al-Ramlī, did regard certain doctrines that al-Nawawī deemed preponderant as not in fact deserving this high status. But al-Nawawī himself never indicated in his writings that the opinions he considered preponderant would remain preponderant for all times and places. In fact, he had demonstrated that even authoritative opinions could be revised, should circumstances require a jurist to do so. This meant that any jurist capable of investigating the school's doctrines could revise al-Nawawī's opinions whenever his reasoning, evidence, or circumstances led him to do so. Therefore, the later jurists' reliance on al-Nawawī was actually not based on his personal authority, but on his intermediary capacity to connect them to the authority of al-Shāfiʿī and the hermeneutic principles of the school. Based on this commitment to follow the school's principles, later Shāfiʿite jurists would have wielded the same instruments when dealing with new legal cases arising long after al-Nawawī's day. This implies that the *madhhab*—in this context, the Shāfiʿī *madhhab*—did not stop evolving with al-Nawawī's achievements, but instead continued to grow in the hands of competent jurists. Their findings in solving these new cases were considered a contribution to the accumulation of the school's doctrine, upon which non-*mujtahid* jurists and lay Muslims would rely for their legal inquiry.

Bearing in mind this same attachment to the school's hermeneutic principles, it is important to highlight that al-Nawawī's *ijtihād*ic investigation in the form of *tarjīḥ* and *taṣḥīḥ* activity should not be viewed squarely as *ijtihād*, even though his thought process and reasoning in defining the preponderant opinion fell perfectly within the domain of *ijtihād*. As previously discussed, al-Nawawī understood that his juristic activity had to be confined by the rules upheld as the school's methodology. However, his constant effort to maintain a link with the achievements of previous

jurists, including those of al-Shāfiʿī, and his loyalty to the school's methodology should also not be understood as mere *taqlīd*. The fact is that al-Nawawī's *taqlīd* had some elements of *ijtihād* by which he could disagree with established school doctrines, improve or give extra weight, as well as defend those that he found unconvincing to some other jurists. *Taqlīd*, as a form of commitment and loyalty to the *madhhab*—or collective entity of jurists—and as the structure of legal authority centered on the eponym of the school, was important in guaranteeing the operation and survival of the *madhhab. Ijtihād* was also important since the established doctrines of the *madhhab* do not necessarily cover solutions for new legal cases. However, as much as *ijtihād* and *taqlīd* are both significant for deriving laws and maintaining the structure of authority, the two juristic activities should not be understood in terms of a simple polarization of competing juristic activities. What al-Nawawī had shown in his juristic activity is that both *ijtihād* and *taqlīd* could be performed by the same person.

Within the same process of *ijtihād*ic investigation in determining the school's canonical doctrines, al-Nawawī also contributed to defining the boundaries of the *madhhab* through his reconstruction of authority within the school's internal traditions and through his direct confrontation and polemical activity with jurists of different schools of law. The former was historically significant in grouping jurists as operating within the same guild called the Shāfiʿī *madhhab*, since some of them, especially the *aṣḥāb al-wujūh* and the generations before them, exercised methods of reasoning (*ṭarīqa*) and produced legal opinions that were not entirely consistent with those of al-Shāfiʿī. What united these jurists under the same guild, according to al-Nawawī, was their shared loyalty to al-Shāfiʿī's legal approach that made direct reference to the authority of the *ḥadīth* of the Prophet. Jurists of different *madhhab*s also referred to the

same Prophetic tradition. The differences between them were apparently rooted in their varying understandings of the mode of transmission of the text or Prophetic practice to Muslims residing in disparate locales and over their respective opinions on the proper use of reason in matters not directly corresponding to textual evidence. These two elements, as implied from al-Nawawī's discussion, distinguished the Shāfiʿites from the followers of other schools of law.

While distinguishing the Shāfiʿite jurists from other schools of law was historically important for defining the boundaries of the *madhhab*, this was obviously not al-Nawawī's main goal. His most urgent target was practical, that is, to vindicate the Shāfiʿite doctrines and principles over those of other schools. In order to do so, he elaborated the legal opinions enumerated in his *Majmūʿ* and *Rawḍa*, investigated and contrasted their evidence, examined the method of reasoning of jurists or the schools holding the opinions, and finally rationalized, justified, and defended the Shāfiʿite school's doctrines as being most faithful to the legal tradition of the Prophet. As we detailed in Chapter 5, in the case of the legality of *khiyār al-majlis* for example, al-Nawawī contrasted the doctrinal position of the Shāfiʿite jurists with those of the followers of Mālik and Abū Ḥanīfa. He did not shy away from exploiting the weak positions of the latter on this case as this was the only way to show which school's doctrine and hermeneutic principles were superior. This model of juristic engagement, as in the case of his extensive investigation of the *ṭarīqa*s of the Iraqian and Khurasanian jurists and his genuine efforts at reproducing the school's canonical doctrines, was fundamental to the continuous development of the Shāfiʿī school of law and had a lasting impact on the jurists who lived after him. *Wa-allāhu aʿlamu bi-l-ṣawāb*.

Notes

1 See pp. 70–71.
2 See p. 71.

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