

Justice and Leadership in Early Islamic Courts

قَالَ فَأَقْبَلَ الْقَاضِي عَلَى الشَّيْخِ وَقَالَ لَهُ بِخَيْرٍ تَمُونِي فَقَالَ



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Chapter Five

Words of ‘*Ajam* in the World of Arab: Translation and Translator in Early Islamic Judicial Procedure

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Within a hundred years of the death of the Prophet Muḥammad, the lands under Islamic rule had grown to triple the size of the Arabian Peninsula. The new abode of Islam, from the shorelines of the Atlantic to the Indian subcontinent, incorporated a substantial non-Arab population. Although Arabic developed as a *lingua franca* across the Islamic world, it never came to be the sole medium of communication in the everyday lives of its new subjects. This reality created a procedural predicament for Muslim jurists who had been setting new rules and regulations based on Islamic scriptures and socio-cultural norms beginning in the second/eighth century. Simultaneously, non-Arab Muslims began to rule over their own lands and they constituted the vast majority of the population under Islamic rule by the third/ninth century. Anxieties over the continued primacy of the Arabic language are rife in legal and literary sources, and yet discussions of language are rare in Islamic legal historiography.

This is not to overlook the voluminous writings on the role of non-Arabs in the development of Islamic law. Scholars have argued that non-Arab legal traditions such as Hellenistic, Roman Byzantine, provincial, and Persian Sassanian laws, together with the Jewish Talmudic and Christian canon laws, had contributed to the making of Islamic law through contributions by recent converts.¹ Ulrike Mitter and Harald Motzki questioned this long-

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¹ For a survey of earlier scholarship along these lines together with a new perspective, see Patricia Crone, *Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate*

existing argument of non-Arab dominance and suggested that indeed the Arabs had an equal or even dominant role in the development of Islamic law.² The statistical analysis of Monique Bernards and John Nawas on the Arab and non-Arab ratio in biographical entries on jurists who lived up to 400/1010 also has validated this argument.³ I do not enter into such debates, except to state that even the scholars who emphasized the non-Arab dominance or contributions in the making of Islamic law have hardly addressed the question of language as a predicament in judicial procedures as well as in legal thought. In this respect, the historiography furthermore disappoints for a very simple fact that most of the non-Arab *mawālī* about whom these scholars talk in detail were first, second, third, or even fourth generation non-Arabs who were born and brought up in such Arab regions as Mecca, Medina, Yemen, and hence language rarely posed a problem in their communications and they did not have to depend on a translator for their legalistic practices or formulations.⁴ This was not the case for the people who lacked in-depth knowledge of Arabic or for those who lived in a region whose majority did not speak the language.

In the long-running expansion of Islamic polities from the early seventh century until the Mongol invasions in the thirteenth century, the new converts and other new subjects in “foreign” lands expected Islamic governors and judges to arbitrate in their everyday problems, and the Muslim judges commonly did adjudicate issues relating to contracts, inheritance, and other daily disputes.⁵ More expansion thus meant more people and more diverse problems for jurists to encounter. The new subjects were not merely one part of the large dominion of Islam; rather

(Cambridge: Cambridge University Press, 1987); and Joseph Schacht, “Foreign Elements in Islamic Law,” *Journal of Comparative Legislation and International Law* 32, nos. 3–4 (1950): 9–17. Neither has gone beyond the Middle East to look for the “foreign influences” on early Islamic law. Schacht’s sensitivity to South Asian Islamic legal texts and translations can be found in his “On the Title of the *Fatāwā al-‘Ālamgīriyya*,” in *Iran and Islam: In Memory of the Late Vladimir Minorsky*, ed. C.E. Bosworth (Edinburgh: Edinburgh University Press, 1971), 475–78.

2 Harald Motzki, “The Role of Non-Arab Converts in the Development of Early Islamic Law,” *Islamic Law and Society* 6, no. 3 (1999): 293–317; and Ulrike Mitter, “Problemen van het onderzoek naar ontleningen aan niet-Arabische rechtsstelsels in het ontstaan en de ontwikkeling van het Islamitisch recht,” *Sharqiyyat* 9, no. 2 (1997): 107–23.

3 Monique Bernards and John Nawas, “The Geographical Distribution of Muslim Jurists during the First Four Centuries AH” *Islamic Law and Society* 10, no. 2 (2003): 168–81; cf. John Nawas, “The Emergence of *Fiqh* as a Distinct Discipline and the Ethnic Identity of the *Fuqahā’* in Early and Classical Islam,” in *Studies in Arabic and Islam: Proceedings of the 19th Congress, Halle 1998*, ed. S. Leder, H. Kilpatrick, B. Martel-Thoumian and H. Schonig (Leuven: Peters, 2002), 491–99.

4 For a marginal discussion on the issue of translation in court proceedings, see Ron Shaham, *The Expert Witness in Islamic Courts: Medicine and Crafts in the Service of Law* (Chicago: University of Chicago Press, 2010), 39–40.

5 I translate the Arabic term *‘ajam* or *‘ajamī* as foreign (language or land) or foreigner (individual), by which I mean foreign to the Arabs.

they formed its majority. Even so, their access to Islamic courts was restricted through a number of different measures and regulations. From a few patchy references, we do know that even some of the non-Arab, non-Muslims preferred the Arabic-language Islamic courts over the existing local legal systems.⁶

An obvious question then is, if most Muslim judges and law-givers were Arabs, and many plaintiffs or defendants were non-Arabic speakers, did language stand as a barrier in judicial proceedings? In this chapter, I examine this problem: How did the expansion of the Islamic empire beyond the Arab realm influence Islamic judicial procedures? How did jurists address the issue of language in their discussions? To what extent did the “translator” stand as a legitimate intermediary between the Arabic-speaking judge and non-Arabic-speaking litigants? How did the notions of “translator” and “language” become more flexible in legal articulations as the lands of Islam expanded, thereby giving access to the courts to those who otherwise would have been excluded?

Since the existing historiography of Islamic law—much like the early “Arab” jurists themselves—limits itself to the juridical developments in the central Islamic lands, it tends to ignore issues relating to the non-Arab population of the peripheries. I explore how non-Arabic speech communities navigated the constraints of the new legal system by focusing on the issues of translation and language in judicial processes. Combining a host of primary sources, I show that initially Arab jurists were reluctant to allow languages other than Arabic in the court proceedings, and they theoretically denied access to non-Arabs without a Muslim free male translator. Arab jurists always stressed the primacy of Arabic (not just in its theological supremacy in Islam, but also as a valid language of law), and emphasized that the judge is obliged to initiate the proceedings only if non-Arabs come along with a translator. The debate over translation and translators spread across several generations of jurists and the actual practices on the ground demonstrates that the translation both regulated and was shaped by judicial procedure, and affected judicial outcomes.

In this regard I utilize two sorts of sources: legal manuals and non-legal historical materials. In the legal manuals, I focus on the Shāfi‘ī texts as the changes of opinions found therein are very evident over time and the school had a wider appeal in the non-Arabic-speaking lands of Islam, including the Iranian, Indian, and Malay subcontinents before and after 1250 (roughly 650 AH). In the non-legal historical sources, I amass all sorts of contemporaneous sources relating to the non-Arabic lands of Islam up

⁶ For example, see Gladys Franz-Murphy, “The Reinstitution of Courts in Early Islamic Egypt,” *Bulletin de la société archéologique d’Alexandrie* 47 (2003): 71–84.

to the end of the seventh/thirteenth century that deal with Islamic legal practices and the question of language. As the early legal histories of regions outside the central Islamic (Arab) heartlands remain largely understudied, I gather any available evidence on the theme from various languages and sources.

ONCE THE ‘AJAM APPEAR IN THE COURT

In the early phases of Islamic political expansion, *amīrs* appointed the *qāḍīs*. After the first century of Islam, judges were also appointed by caliphs, and by the fourth/tenth century, they served as deputies to the chief judge in Baghdad. Like the *amīrs*, the *qāḍīs* were mostly Arabs throughout much of the early history. If we look at the list of *qāḍī*-appointments in Egypt provided by Muḥammad al-Kindī (d. 350/961), all of them were Arabs and only a few non-Arab *mawālī* appear. The first *mawlā* to be appointed to the post was Ishāq b. al-Furāt, who replaced Muḥammad b. al-Masrūq al-Kindī in 184/800 and a few more were appointed in the following decades and in the fourth/tenth century.⁷ The historian Kindī prepared a book on the distinguished *mawālī* of Egypt entitled *Kitāb al-mawālī*, which itself was dedicated to Muḥammad b. Badr, a *mawlā* who held the judgeship between 324/936 and 330/942.⁸ However, all these *mawālī*, as I mentioned above, were already well versed in Arabic and often knew no other languages but Arabic.

In such an Arab-dominated legal system, the functions and offices of the *qāḍī* in the newly conquered non-Arab lands often transcended boundaries of Islam and Arabic. It is beyond any doubt that the local population approached his court, despite the differences in religion, language, and/or ethnicity. We have several instances of non-Muslims and non-Arabs in the first/seventh and second/eighth centuries approaching Arabic-language Islamic courts. Non-Arabic-speaking Christians of Egypt preferred those courts over the existing local Greek and Coptic legal systems for a number of different reasons. The Islamic courts had a better enforcement mechanism than others, as we see in an episode as early as 91/709 during which the governor of Egypt, Qurra b. Sharīk, instructed the district official Zakariyā of Ishmūn to ensure justice for a Christian plaintiff

⁷ Abū ‘Umar Muḥammad b. Yūsuf al-Kindī, *The Governors and Judges of Egypt, or, Kitāb al-Umarā’ (el wulāh) wa Kitāb el-Quḍāh*, trans. Arthur Rhuvon Guest (Leiden: Brill, 1912), 393. He says that even al-Shāfi‘ī, whom we will meet below in detail, recommended Ibn al-Furāt to the judgeship by saying, “He chooses out of conflicting opinions, and he knows the contrarieties of earlier scholars” and “I have not seen anyone in Egypt more knowledgeable than Ishāq b. al-Furāt on the contrarieties of people.”

⁸ Guest, “Introduction,” to Kindī, *Kitāb al-Umarā’*, 10.

who approached the former with a complaint of loan default by a borrower.⁹

Even so, language must have stood as a major hurdle in the proceedings as most Muslim judges were Arabs in contrast to their plaintiffs or defendants who did not know Arabic. The historiography generally is silent on this, although we have some fleeting references. In the fourth/tenth century, records of a contract of sale of residential property in which a Christian woman is involved reads that it was “read to her in Arabic and explained to her in the ‘foreign’ language: *quri’a ‘alayhā bi’l-‘Arabiyya wa-fussira lahā bi’l-‘ajamiyya.*”¹⁰ The *fussira* in this sentence certainly connotes the translation process (*tarjama*) in which a certain official mediated between the two languages, and thus between the court and the litigants. In a number of Egyptian papyri documents, the plaintiffs or defendants were non-Arab non-Muslims, yet the documents themselves were written in Arabic and signed by registered Muslim witnesses from the second/eighth century onward.¹¹ Once we begin examining individuals who mediated between two languages and cultures, we have to deal with questions of their legal status, their religious and ethnic identity, and their involvement in the case. In most occasions, the translators were also witnesses, as we find in the papyri records.¹² Common-sense knowledge would suggest that a witness could not testify to the validity of a plaintiff’s claims unless he or she knew the language. This complexity of translator-*cum*-witness lies at the heart of the Islamic juridical discussions on language and translation in courts.

But before exploring those complexities, let me take a detour to the Pancatantra stories from the Indian subcontinent, whose early renderings from Sanskrit to Pahlavi and then to Arabic offer unexpected light on the respective roles of translator and witness in early Islamic practice. The Pancatantra and its famous Arabic translation *Kalila wa-Dimna* does not need any introduction, but to put it briefly: the text is a “mirror for princes” with moral philosophical teachings narrated through animal fables. It is known that there are many variations between the Indian and Arabic versions available today, and a major difference of interest to the present study is an interpolated section in the Arabic version on a court procedure against the protagonist Dimna (Damanaka in the Sanskrit version) for an act of treason he committed against the king and his friend.

This section is not found in the Sanskrit/Indian versions, and

9 Franz-Murphy, “The Reinstitution of Courts,” 80–81.

10 Franz-Murphy, “A Comparison of Arabic and Earlier Egyptian Contract Formularies, Part I: The Arabic Contracts from Egypt (3rd/9th–5th/11th Centuries),” *Journal of Near Eastern Studies* 40, no. 3 (1981): 203–25, esp. 209–13.

11 Franz-Murphy, “A Comparison,” 223; cf. Emile Tyan, *Histoire de l’organisation judiciaire en pays de l’Islam* (Leiden: Brill, 1960), 236–52.

12 Franz-Murphy, “The Reinstitution of Courts;” Franz-Murphy, “A Comparison.”

what is most striking to me is that its Arabic translation is done by Ibn al-Muqaffaʿ (d. ca. 139/757), the same scholar whom Islamic legal historians have called the first legal theorist of Islamic law.¹³ A recent study has presented the translation of this part as being rather problematic, since he “confused the legal procedure” and intermixed Islamic legal concepts with Sassanian judicial practices.¹⁴ It is quite possible that this translation reflects confusion, but the role of Ibn al-Muqaffaʿ suggests other possibilities that have been neglected. He had a distinct understanding of how Islamic law should work under the caliphal authority, believing in the discursive and interpretive components of law-making and judicial decisions, in contrast to his contemporary jurists who preferred religious law to be outside of governmental control. He emphasized these aspects in his *Risāla fī al-Ṣaḥāba*, a text that was not circulated widely in his time. Therefore, instead of seeing his potential additions to this episode of the Pancatantra as reflecting his confusion of Islamic law with Sassanian laws (such as the addition of *qāḍī* along with an investigation committee and the king’s participation in the trial), it is revealing to see them as his intentional interjections advocating for a better version of Islamic judicial procedure.

This discussion aside, what is even more interesting is a sub-story within the trial mentioned in this section, in which a foreign language and a few translators stand at the forefront. Toward the end of the legal procedure, the *qāḍī* finds himself at a crisis-point and suggests to Dimna that he could help himself by making a confession to eliminate “however small the doubt which remains in our minds” during the judicial examination.¹⁵ Dimna refuses to do so by saying that he is surprised to see that the judge is not bound by the rules of equity and indeed that this is a trick of the judge to persecute him. He says that self-confession is disastrous to an accused person like him. In the ensuing conversation, Dimna brings in a story of a falconer who accuses his master’s wife of adultery after she refused his love. To take revenge for the refusal, the falconer bought two parrots and taught one of them to say, “I saw the porter lying with my mistress in my master’s

13 Mathieu Tillier, “Legal Knowledge and Local Practices under the Early ‘Abbāsids,” in *History and Identity in the Eastern Mediterranean*, ed. Philip Wood (New York: Oxford University Press, 2013), 187–204; Joseph E. Lowry, “The First Islamic Legal Theory: Ibn al-Muqaffaʿ on Interpretation, Authority, and the Structure of the Law,” *Journal of the American Oriental Society* 128, no. 1 (2008): 25–40; Charles Pellat, *Ibn al-Muqaffaʿ: ‘conseiller’ du calife* (Paris: G.P. Maisonneuve et Larose, 1976); and S. D. Goitein, “A Turning Point in the History of the Muslim State (Apropos of the *Kitāb al-ṣaḥāba* of Ibn al-Muqaffaʿ),” in *Studies in Islamic History and Institutions* (Leiden: Brill, 1968), 149–67.

14 Jany János, “The Origins of the Kalīlah wa-Dimnah: Reconsideration in the Light of Sasanian Legal History,” *Journal of the Royal Asiatic Society* 22, no. 3–4 (2012): 505–18.

15 Bīdpāʿī, *Kalīla wa-Dimna* (Beirut: al-Maktabā al-Thaqāfiyya, n.d.), 84–85. Most of the quoted translations are from Wyndham Knatchbull, *Kalīla and Dimna or the Fables of Bidpai* (Oxford: W. Baxter, 1819), 184–89.

bed” and the other to say, “I will not tell tales.” He taught them these in a “foreign” language, that of Balkh which could be Pashto, Bactrian, or “Indian” (as an early English translator puts it).¹⁶ The parrots used to repeat these sentences all the time while none in the region understood it. After some months, a few friends from Balkh visited the nobleman and stayed with him. During their conversations, the talking parrots also became a point of discussion. The parrots were then brought in front of them, and the visitors were stunned to hear what the birds said. They hesitatingly translated it to their host and told him that they could not stay in such a house of ill fame. He begged them to talk more to the parrots in their language. They did so only to discover that they spoke nothing other than repeating the same sentences. Everyone was thus convinced of the wife’s innocence and the trick of the falconer. The nobleman called him to give his testimonial and he confirmed what the parrots said. Upon hearing this, a hawk in his hand sprung at his face and plucked out his eyes with its claws.

This sub-story comes as a justification for Dimna to prove his point against the confession and false testimonials. What is striking to me is how a “foreign” language and its translators mediated different sets of problems, and thus cultures. This would have been a crucial point for Ibn al-Muqaffa’ who not only was a legal theorist, but also a renowned translator of many Indian and Pahlavi texts in the early ‘Abbāsīd period. In the story, the translators and witness are separate, but the whole question revolves around the correct and incorrect testimonial that a translator can verify. Immediately after the falconer’s eyes were plucked out, the accused wife tells him, “You deserve this and it is a punishment from Allāh as you bore witness for what your eyes did not see.” The story reflects then-contemporary conceptions of the status and functions of translators, witnesses, and judgment in eastern Islamic lands. According to this story, the translator’s function paralleled that of witnesses, but it remained separate as it might in other legal traditions. This approach stands in sharp contrast to later attitudes toward the same questions. From the second/eighth to the fifth/eleventh centuries, the predominant Arab jurists’ view was that translators were witnesses.

Among the Islamic legal texts written by Arab jurists on the questions of translator and language, one of the earliest direct engagements comes from Muḥammad b. Idrīs al-Shāfi‘ī (d. 204/820) in his *Umm*. Although his discussion is rather short, he presents a very Arabic-centric view and presumes that the foreign complainant is familiar with the language of the *qāḍī* (which is Arabic). Even then, the judge is not obliged to listen to the litigation in un-fluent Arabic. He writes: “If a *qāḍī* is approached by an

¹⁶ Thomas North, trans., *Fables of Bidapai* (Edinburgh: Ballantyne, Hanson and Co., n.d.), 253.

‘*ajam* whose language is unfamiliar to him, then the foreigner’s translation [into the language of the *qāḍī*] should not be accepted unless there are two trustworthy/upright (‘*adl*) witnesses who know that language without any doubts. If they do doubt, it should not be accepted from them either.”¹⁷ He also says that those who translate will be considered to be witnesses, and all the rules of a witness will be applied to them. The position of the translator thus becomes synonymous to a witness in his view, although he does not inform us if either of them *substitute* for the actual witnesses who otherwise are required.

In his articulation then, the actual witness does not play a role in the translation, and translators take over the role of the witnesses, whereas in the story above, Ibn al-Muqaffa‘ differentiates between the potential witness (the falconer), who is also capable of speaking the language, and the translators, who now give testimony not to what the parrots said, but to what they did not say. Ibn al-Muqaffa‘ hence does not give any credibility to the witness, and the translators become interpreters of the larger context. He does not intermix the witness with the translators; rather he questions the credibility of the witness despite him speaking the language.

Toward the end of the story it becomes clear that the witness is giving false testimony to what the “foreign plaintiffs” (the parrots) have said in accusing the wife, and his deception is exposed thanks to the translators. Through this story, Ibn al-Muqaffa‘ thus rejects the role of the witness in the translation process, in contrast to Shāfi‘ī, who presumes that witnesses and translators should be identical with the same salient qualities. For Ibn al-Muqaffa‘, the translation is more important than the witness, and he rejects the notion that the translator’s qualities should be synonymous to that of a legitimate witness. The negation and differentiation of testimony from translation in ways that potentially simplify judicial procedure is crucial once we turn to later juristic positions, which also underestimate the importance of witnesses in translation. These elements also stand in opposition to Shāfi‘ī’s argument, in which he exhibits distrust for litigation conducted in a foreign language and for which he therefore requires additional attestations. In all these respects, the story is very enlightening even if the actual judicial procedures in formal court contexts might have been quite distinct.

We do not see Shāfi‘ī’s student Abū Ibrāhīm Ismā‘īl b. Yaḥyā al-Muzanī (d. 264/878) bringing in this discussion in his abridgement of the *Umm*, entitled *Mukhtaṣar al-Muzanī*. This text set the foundations for later Shāfi‘ī legal discourses through a number of commentaries and super-

17 Muḥammad b. Idrīs al-Shāfi‘ī, *al-Umm*, ed. Rif‘at Fawzī ‘Abd al-Muṭṭalib (Manṣūra: Dār al-Wafā’, 2001), 7:506.

commentaries.¹⁸ In a way, this negligence means that Shāfi‘ī’s position remained unchallenged among his followers throughout the third/ninth and fourth/tenth centuries. In the fifth/eleventh century, however, we see Shāfi‘ī scholars, especially the “eastern” jurists, taking up distinctive standpoints.

The approach of Shāfi‘ī and the inattentive attitude of his students and followers like Muzanī for a long period must have stemmed from their Egyptian contexts between the late-second/eighth and fourth/tenth centuries. By the mid-second/eighth century, Egypt already had become largely Arabized. Kindī talks about certain processes of Arabization initiated by the earlier *qāḍīs*. ‘Abd al-Raḥmān b. ‘Abd Allāh al-‘Umarī, who was appointed as the *qāḍī* of Egypt by Hārūn al-Rashīd in 185/801, following the aforesaid *mawlā*-judge Ibn al-Furāt, was approached by many clans asking him to recognize them as Arabs. The story of one particular clan called Ḥirs is very interesting, as they repeatedly bribed him with six thousand dinars to get their genealogy legally approved and connected to the Arab tribe of Ḥawtaka. After long negotiations, ‘Umarī approved them as Arabs—a decision that outraged many Arabs, who criticized him as a corrupt judge, since they believed that the Ḥirs were actually Coptic. But Hāshim b. Abī Bakr al-Bakrī, who took over the position from ‘Umarī, nullified this verdict by telling them, “Arabs do not need a certificate from a judge. If you were Arabs, no one would disprove you.”¹⁹ Relatedly, both ‘Umarī and Bakrī were “famous” wine-drinking *qāḍīs*, and Bakrī was known for not sitting for adjudication unless he consumed three glasses of wine. Kindī must have raised these tropes in their biographical entries to show how his informants questioned the validity of their judgments, including the one on Arab ethnicity.²⁰ However, these petitions reflect a larger tendency among the Egyptians of the time to claim an Arab ethnic ancestry, which would not have been possible unless they already were Arabized linguistically.

18 Ismā‘īl b. Yaḥyā al-Muzanī, *Mukhtaṣar al-Muzanī fī al-furū‘ al-Shāfi‘iyya*, ed. Muḥammad ‘Abd al-Qādir al-Shāhīn (Beirut: Dār al-Kutub al-‘Ilmiyya, 1998), 393–412.

19 Kindī, *Kitāb al-Umarā’*, 414.

20 Ibid., 416. On ‘Umarī, see *ibid.*, 400–01. We should keep in mind that such remarks on wine-drinking before or after a judicial session reflect a common trope in judicial biographies of early Islamic history. Although such anecdotes may not have been taken literally by biographers or their informants, authors recording the stories might have used them along with remarks on bribery to impugn the decisions of such judges as non-upright. However, it also indicates that the practice of wine-drinking was widespread among Muslim scholars, intellectuals, judges and other elites of the time—contrary to what is believed generally today. For more details, see Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton: Princeton University Press, 2015), 57–71, 417–24. Also, compare this trope with discussions on having food before adjudication as good judicial etiquette, Maribel Fierro, “Joking Judges: A View from al-Andalus,” Chapter 8 (this volume).

Mass conversions into Islam and the predominance of Arabic in communications had thus become the norm by the time Shāfi‘ī and Muzanī wrote their works. Furthermore, in the Egyptian context ‘*ajam*’ usually connoted a Christian population and the Coptic language—both of which had a rather limited reach by the early third/ninth century when the *Umm* by Shāfi‘ī and the *Mukhtaṣar* by Muzanī were written and circulated.²¹ Like the process of Islamization, the process of Arabization was both embraced and resisted by subject populations. Indeed, much of the Islamic world challenged the centrality of the Arabic language, instead of smoothly succumbing to the Arabization process as Egypt had done. Among the believing communities from al-Andalus to the Indian and Malay subcontinents, many rejected Arabic or transformed it via adaptation or vernacularization. And precisely for these reasons, the non-Arab jurists (by which I mean the jurists who were born, brought up, and/or found a successful career in foreign lands) began to play significant roles in asserting many non-Arab particularities of legal procedures, in which issues of language and translator received different treatments.²²

TWO JURISTS AND TWO TRANSLATORS

Two Shāfi‘ī authors from eleventh-century Khurasan catch our attention with their distinctive attitudes towards “foreigners” and translators: Abū al-Ḥasan al-Māwardī (d. 450/1058) and Imām al-Ḥaramayn al-Juwaynī (d. 478/1085). The former built a successful career as a jurist and judge in Khurasan, although he was born in Basra and grew up in Baghdad. The latter spent his entire life from childhood until death in Khurasan, with an unexpected interruption of more than a decade when he was forced to go into exile in Mecca. Both jurists are renowned among traditional Shāfi‘īs as well as among Islamic legal historians for their wide-ranging contributions. In his *Adab al-qāḍī*, Māwardī dedicates a long discussion to the nuances of translation and translator in judicial proceedings. Citing the aforementioned standpoint of Shāfi‘ī on the issue, he comes up with twenty-three multi-layered legal problems and possibilities.

He subdivides the issue into four major questions: the legal status of translation; whether the translator is a father or son of the litigant, or a woman; whether one litigant is a foreigner; and whether both plaintiff and

21 For example, see Muzanī’s discussion on ‘*ajamis*’ claim over the children born during their infidelity—Muzanī, *Mukhtaṣar*, 415. In addition to this, we should keep in mind that the once recurrent rebellions of the Coptic Christians were suppressed for last time in 217/832, marking thereafter the predominance of Islam in Egypt.

22 The “non-Arab jurists” here should not be confused with the existing legal historiographical identification of all *mawālī* as non-Arabs despite their birth, growth and entire life in the Arab lands.

defendant are foreigners.²³ The question of legal status—and whether the translation is witness-testimonial (*shahāda*) or a transmission (*khabar*)—is also a question of how many translators should be present if the judge does not understand the language.²⁴ Shāfi‘ī says that translation is testimony and thus there must be two witnesses, whereas Abū Ḥanīfa (d. 150/767) says that it is only a transmission and hence one is sufficient. The latter suggests two rational justifications as evidence: first, if the transmission of *sharī‘a* by the Prophet Muḥammad is accepted despite being reported by a single person, then its translation is even more strongly regarded as acceptable; second, if the translation of a blind person is accepted but not his testimony, this norm should follow the rules of religious transmission in which his *ḥadīth*-transmission is accepted. Māwardī rebuts both of these arguments, and adds that translation, like testimony, is legitimation of an avowal (*tathbīt iqrār*) and requires independence and honesty. Thus it requires at least two people to confirm its accuracy.²⁵

The next question, on the translation by blood-relatives of the litigant and by women is based on the previous argument. Hence, as the translation is testimony, Māwardī says that it will not be accepted from father or son. From women, it will be accepted only in matters in which her testimony is acceptable (such as *iqrār bi’l-amwāl* or in monetary lawsuits), and in such cases, it will be accepted from a man and two women. Although in the matters in which her testimony, and thus translation, is not accepted (such as *iqrār al-ḥudūd*, or offenses with fixed criminal penalties and marriage-related cases), there is a slightly different view that the translation can be accepted with the support of two trustworthy witnesses. However, with regard to cases of adultery, there should be four translators for each witness.²⁶

If one of the two parties is a foreigner, two translators should provide their accounts in front of the judge on what she or he has said, and they should do it following the format of testimonial and not of transmission or report. Māwardī writes that some Shāfi‘īs have opined that they should give accounts in the form of a report and not as official testimony, but he refutes this view.²⁷ Once the account is given, “the judge should inform the Arabic-

23 ‘Alī b. Muḥammad al-Māwardī, *Adab al-Qāḍī*, ed. Muḥyī Hilāl al-Sarḥān (Baghdad: Maṭba‘at al-Irshād, 1971), 1:695–700.

24 Ron Shaham, *Expert Witness*, 39–40.

25 Māwardī, *Adab al-qāḍī*, 1:695–97.

26 Ibid., 1:697–98.

27 He uses the term “some [or one] of our companions” (*ba‘d aṣḥābinā*) and does not specify who they are. But similar discussions can be found in the work of ‘Abd al-Wāḥid b. Ismā‘īl al-Rūyānī (d. 502/1108), who also uses the phrase (*aṣḥābunā*: our companions). See his *Baḥr al-madḥhab fī furū‘ madḥhab al-Imām al-Shāfi‘ī*, ed. Aḥmad ‘Izzū ‘Ināya al-Dimashqī (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2002), 11:272.

speaking litigant [of the account] and hear his response.”²⁸ Now, if both defendant and complainant are foreigners, can the same translators work for both parties? Māwardī relates this question to another debate among Shāfi‘īs on the permissibility of either of the two witnesses becoming an additional witness to the opposite party. He says that if it is permitted in such a case, then it would be permitted in translation too, otherwise it is not. Winding up the discussion, he says that the reverse translation—that is, translating the words of the judge—is purely a transmission and not testimony. Hence, one translator is sufficient for that purpose, even if he is a slave.²⁹

Māwardī’s elaborate discussions demonstrate how the issue of translation had gained central importance in his particular place and time, in contrast to Shāfi‘ī, Muzanī, and the like. But was he proposing a change in Shāfi‘ī’s view or was he reaffirming it? To answer this, let us turn to the second jurist from Khurasan.

In his *Nihāyat al-maṭlab*, Juwaynī engages with these same issues in detail and refutes the claim that the translator is a witness. He compares and contrasts the translator with the announcer (*musmi‘*), whom a *qāḍī* can depend on if he is deaf or if his hearing is impaired due to distance or height from the litigants. Regarding how many of them should be present, Juwaynī rejects the differences between the announcer and translator and then argues that both of them are equal as their responsibilities are similar, for one translates the meaning while the other conveys the very words. In the following lines, he presents multiple cases in which one *or* two translators and announcers must be present.

Juwaynī’s argument differentiates between those who have mastered Arabic and those who are not fluent. Consequently, if both parties know Arabic but are unable to articulate their claims meaningfully, one translator is enough (the same goes for the announcer if the judge alone is deaf while both parties can hear). If both litigants are foreigners, or if they and the judge are deaf, and if there is no one else around them, there must be two translators. If there are upright people around them who understand the language of the judge and/or of the litigants, there are different opinions. The preponderant view is that one translator and one announcer is enough. Some jurists have argued that the audience does not have any role in the procedure, thus two translators are required. But Juwaynī says that if the judge asks the upright audience to observe the process of translation (and announcement), that suffices, as they would

²⁸ Māwardī, *Adab al-Qāḍī*, 1:698–99.

²⁹ *Ibid.*, 1:699–700.

report if there were any alterations.³⁰

Based on all of these different opinions, Juwaynī says that the translation and announcement are not testimony and the laws of witnesses do not apply here, because “both translator and announcer are mediators between the litigant’s word and the judge’s grasp. That is why the discernments change according to the changes in situations as we saw above, whereas the number of witnesses does not change.”³¹ He continues refuting the claim that the translator is a witness and discussing the form that he or she should use (of testimony or transmission) while reporting to the judge. He remarks that he does not know anything like this [the opposite] in the *sharī'a*. This contradicts what Māwardī classified as “some” of Shāfi‘īs’ opinions.³²

All of these arguments challenge Shāfi‘ī’s ruling regarding the legal status and required number of translators. While Shāfi‘ī disqualified litigants who could not speak Arabic fluently, Juwaynī takes them into account. Juwaynī’s rulings also incorporate many other aspects that are otherwise ignored in Māwardī’s articulations. In comparing and contrasting the viewpoints of Māwardī and Juwaynī, it is very clear that the latter took a radical approach while the former restated Shāfi‘ī’s ruling. Māwardī’s elaborate attentiveness to the issue however, in contrast to Shāfi‘ī and Muzanī, only proves how the issue had become increasingly important in the non-Arabic-speaking eastern lands, though he did not depart from the view of the earlier jurists. However, Juwaynī criticized this approach outright and took a position that stood closer to the views of the Ḥanafīs and Mālikīs.

Intriguingly, Juwaynī’s approach gained wider currency among Shāfi‘ī scholars over the course of time, gradually becoming a majority view within the Shāfi‘ī school. Juwaynī’s student Abū Ḥāmid al-Ghazālī (d. 505/1111), who also hailed from Khurasan, followed his teacher’s approach to translators in his renowned law books *al-Wasīṭ* and *al-Wajīz*.³³ Writing a commentary on the latter work under the title *al-‘Azīz*, another Persian jurist, ‘Abd al-Karīm al-Rāfi‘ī (d. 623/1226) from Qazwīn, advanced this discussion and standardized the opinion that translators served as announcers, rather than as witnesses.³⁴ He also briefly mentioned this

30 Imām al-Ḥaramayn al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, ed. ‘Abd al-‘Azīm Maḥmūd al-Dayyib (Jedda: Dār al-Minhāj, 2007), 18:477–78.

31 Ibid., 18:478

32 See above, note 27.

33 Abū Ḥāmid al-Ghazālī, *al-Wasīṭ fī al-madhhab*, ed. Muḥammad Muḥammad Tāmir (Cairo: Dār al-Salām, 1997), 7:299–301; and Ghazālī, *al-Wajīz fī fiqh al-Imām al-Shāfi‘ī*, ed. ‘Alī Mu‘awwaḍ and ‘Ādil ‘Abd al-Mawjūd (Beirut: Dār al-Arḥam, 1997), 2:239.

34 ‘Abd al-Karīm al-Rāfi‘ī, *al-Faṭḥ al-‘azīz fī sharḥ al-Wajīz*, ed. ‘Alī Mu‘awwaḍ and ‘Ādil ‘Abd al-

position in his *al-Muḥarrar*, a text that endeavored to canonize the Shāfiʿī school of law.³⁵ Rectifying the lacunas of the *Muḥarrar*, Yaḥyā b. Sharaf al-Nawawī (d. 676/1277) from Damascus wrote *Minhāj al-ṭālibīn*, a text that became the canon of the school, and also reaffirmed this viewpoint.³⁶ How and why did this change of attitude toward translators' function in courts occur within a single school of law, especially when it clearly opposed the views of the eponymous founder?

“TRANSLATING” THE CONTEXT

It is beyond doubt that historical context plays a significant role in the various intellectual articulations discussed above, and this has been demonstrated well in the historiography of early Islamic law. Although research on the so-called post-classical phase of Islamic law (roughly after around 400/1000) in which earlier “original” and “independent” investigations were superseded by the “sterile commentarial literature” is only beginning to flourish, we know that Muslim jurists advanced legal thought from within the framework of their schools in order to address the necessities of their time and place. The existing historiography on this aspect of early Islamic law largely focused on the Mālikī and Ḥanafī traditions, whereas the Shāfiʿī one continues to be understudied. Why, then, did Juwaynī take a different stand on the issue than his predecessors in the Shāfiʿī school had? What prompted him to write a commentary on an earlier text (his *Nihāyat al-maṭlab* is a commentary on the *Mukhtaṣar* by Muzanī)? Was he responding to the particular needs of his time and place? Even if so, to what extent did he actually break away from an Arabic-centric view of law and legal procedure?

Returning to Ibn al-Muqaffaʿ’³⁷ story offers insight into these questions. On the basis of the story, we explained that Ibn al-Muqaffaʿ separated the translators from witnesses although the case was already proven with the help of the translators. In the text, we saw how the nobleman required testimony from the falconer, and the wife asked him specifically, “*Did you see what the parrots have said and informed us of?*”³⁷ If we resituate the entire plot in a court setting: the wife is the accused, the nobleman is the inquisitorial judge, the parrots are the “foreign” plaintiffs with the accusation, the friends are the translators, and the falconer is

Mawjūd (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 12:456–59.

35 ʿAbd al-Karīm al-Rāfiʿī, *al-Muḥarrar fī al-fiqh al-Shāfiʿī*, ed. Muḥammad Ḥasan Ismāʿīl (Beirut: Dār al-Kutub al-ʿIlmiyya, 2005), 487.

36 Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-ṭālibīn wa-ʿumdat al-muftīn*, ed. Muḥammad Ṭāhir Shaʿban (Beirut: Dār al-Minhāj, 2005), 560.

37 Bidpāʿī, *Kalila wa-Dimna*, 85 (emphasis mine, as is the translation).

the witness. In the course of the trial, the witness becomes the culprit, in contrast to the unified position of the translator and witness in Shāfi‘ī’s approach. The translators inform the judge of what the “foreigners” said, and this in turn necessitates another witness, particularly because the translators are not meant to provide testimony. This is what Juwaynī also meant when he said that the translator is only a mediator between the litigants and the judge, and does not stand as a witness. I am not suggesting that Juwaynī’s argument is influenced by what Ibn al-Muqaffa‘ articulated; rather both of them provide us a line of further inquiry outside the box of an Arabic-dominated Islamic legal system. Despite the long chronological gap between the two authors, they take a similar approach on issues of translation in judicial procedure.

Juwaynī affirms the centrality of the Arabic language to the functioning of a court; nevertheless, he allows non-Arabic speakers access to the court and simplifies their incorporation. Juwaynī argues that the judge must be an Arab or, at the least, fluent in Arabic. He writes: “It is unimaginable for a foreigner to be judge. It is essential for a judge that he be a *mujtahid* according to the dominant (*aṣaḥḥ*) view, as I shall explain later, God willing. To be a *mujtahid*, it is indispensable that he be well-versed in the Arabic language, as the *sharī‘a* is in Arabic.”³⁸ This approach, in a way, demonstrates that he concurs with the notion of the centrality of Arabic in the whole Islamic legal system. Yet, he recognizes the necessity of incorporating the people who did not master the language or who did not know anything about it at all. He also simplifies the proceedings by not burdening the translator as a witness, requiring only a minimal number of them as the case and context demand, giving slaves and women a chance to be translators, and depending upon the audience—who can also contribute to the translation process and thus to the entire trial. This approach certainly is indebted to his upbringing in and around Khurasan, where the primary medium of communication was not Arabic and many people did not master that language.

In Persia, as well as in Central, South, and Southeast Asia, Arabic was perceived as a “foreign” language by many Muslim writers and laypersons, if not by the jurists and royal elites. The historians tell us that the early Arab rulers were obliged to employ translators along with the local secretaries and civil servants to administer state affairs, that “the registers were all kept in Pahlavi until 697 in western Iran and until 742 in Khurasan,” and that “the early coins of the Arab rulers were struck with Pahlavi inscriptions.”³⁹ Although the Umayyad Caliph ‘Abd al-Mālīk b. Marwān (r. 65–86/685–705)

³⁸ Juwaynī, *Nihāya*, 18:478.

³⁹ A. Tafazzoli, “Iranian Languages,” in *History of Civilizations of Central Asia*, ed. C.E. Bosworth and M.S. Asimov (Paris: United Nations Educational, 2000), 4:328.

attempted to replace the Sassanian, Byzantine, and other hybrid types of currency with Arabic coins and symbols, that currency did not fade away completely as we see even a gold medal struck by the Buyid *amīr* ‘Aḍud al-Dawla in 359/969-70 with a Pahlavi inscription.⁴⁰

Naturally, Arabic swept into these regions and began to be widely used in religious gatherings, inscriptions on buildings and objects, charters of charitable endowments, royal letters to Arab governors, and so forth. Yet, it never became the sole or dominant medium of communication for the inhabitants. It did generate an Arabic script-based culture in many Central, South, Southeast, and East Asian languages and literatures, including Persian, Sindhi, and Eastern Turkic. But speech culture remained dominated by the local languages. This on-the-ground reality affected legal procedures and is well reflected in Persian texts like the *Shāhnāma* of Firdawsī, written in 400/1010, the *Chachnāma* of ‘Alī b. Ḥāmid b. Abī Bakr al-Kūfī, written in 613/1216, and the Chinese account of Chau Ju-kua of the twelfth and early thirteenth centuries.

The *Chachnāma*, a text that deals with the early Arab conquests of Sind, clearly distinguished its linguistic position in the “language of the people of the ‘Ajam” (*lugha-i ahl-i ‘ajam*) from the “language of the Hejaz” (*lugha-i Hijāzī*), and across the text we see how “the Persian tongue” (*zabān-i Pahlavī*) and translation into it offer access to the “garments of exquisite language, justice, and wisdom.” The very lettering of the text, or its translation from an Arabic original as it claims, is indebted to the fact that the Arabic text did not obtain currency among “the people of Fārs or other non-Arab countries,” to whom that language was foreign.⁴¹ In many legal matters too, the book states that language and translation are crucial for justice and wisdom.

For one simple example, consider the author’s discussion of Muḥammad b. Qāsim’s trial and treatment of a prison-warden, Qubla b. Mahtarā’ij, in Daybul, which was mediated by a translator. Muḥammad b. Qāsim had arrived in Daybul, following the command of Ḥajjāj b. Yūsuf, to

40 See Mehdi Bahrami, “A Gold Medal in the Freer Gallery of Art,” in *Archaeologica Orientalia in Memoriam Ernst Herzfeld*, ed. George C. Miles (Locust Valley, New York: J.J. Augustin, 1952), 5–10.

41 The full name of the Chachnama is “*Kitāb az Hikāyat-i Rāi Dāhir b. Chach b. Silā’ij wa Halakshudan aw bidast Muḥammad Qāsim Thaqaḥī*: The Book of Stories of the King Dāhir b. Chach b. Silā’ij and His Death at the Hands of Muḥammad b. Qāsim Thaqaḥī.” The edition consulted here is ‘Alī b. Ḥāmid b. Abī Bakr al-Kūfī, *Fatḥnāma-i Sind al-ma’rūf bi-Chachnāma*, ed. ‘Umar b. Muḥammad Dā’ūdputa (Hyderabad Deccan: Majlis Makhtūṭāt-i Fārsiya, 1939), 10–11, 248. Cf. Manan Ahmed Asif, *A Book of Conquest: The Chachnama and Muslim Origins in South Asia* (Cambridge: Harvard University Press, 2016), 55–64; and Manan Ahmed Asif, “The Long Thirteenth Century of the *Chachnama*,” *The Indian Economic and Social History Review* 49, no. 4 (2012): 467–70. Asif argues that the book is not a translation from Arabic as the would-be translator claims, and the author did so only to utilize “the prestige economy of the Arab descent” of the thirteenth century.

save a few Muslim prisoners who were captured by robbers when their ship was wrecked on the way from Ceylon to Arabia. Ḥajjāj had requested the help of the local ruler, but he refused to intervene.⁴² Once Ibn Qāsim reached Daybul with his army, he broke into a temple where the prisoners were kept and saved them. He summoned Qubla, who was in charge of prisoners, and ordered that he be executed on the spot. But Qubla pleaded with Ibn Qāsim by saying, “O Amīr, first inquire of the Muslim prisoners as to how I have been treating them, and how I have been trying my utmost to console and comfort them. When your Excellency learns this, my life will be spared.” Ibn Qāsim asked his dragoman to translate what he was saying. When he did so, Ibn Qāsim asked him, “Ask this man what kindness he did to the prisoners.” The man replied, “Make that inquiry from the prisoners themselves so that the real state of things and the truth of my assertion may become known to His Highness.” Ibn Qāsim asked the prisoners, “What kindness and sympathy has this Qubla shown to you?” They said, “We are much obliged to him. He did all he could to mitigate our misery and to comfort us. At all times he used to console us by giving us hopes of the speedy arrival of the army of Islam and of the conquest of Daybul.” Thereupon the man was set free and he eventually converted to Islam. In this story, the translator comes to the rescue of the accused, just before he was about to be executed, by communicating his innocence in keeping the prisoners safe and hopeful.⁴³

Similar examples of translations affecting legal procedures are plenty; the constraints of space prevent me from further elaboration. Regardless of the historicity of such stories, and whether or not they accurately depict the challenges of governing the new lands and ensuring justice in the second/eighth century, the text of *Chachnāma* reflects the seventh/thirteenth-century faith among the Muslims of South Asia in the capacity of Islamic rulers to mediate between “local” and “foreign” languages and between local subjects and universal notions of justice. This ability had increasing significance in the early seventh/thirteenth century, when Muslim rulers established new South Asian Islamic kingdoms that would rule the subcontinent for centuries. Therefore, even if the above story is not an official court procedure and the people involved are not court translators, judges, or plaintiffs, the *Chachnāma* reflects the wider attempts of the new Muslim ruling classes to negotiate with the local communities

42 For an earlier account of the episode, see Aḥmad b. Yaḥyā al-Balādhurī, *Futūḥ al-buldān*, ed. ‘Abd Allāh Anīs al-Ṭabbā‘ (Beirut: Mu’assasat al-Ma‘ārif, 1987), 611–12; cf. Asif, *A Book of Conquest*, 36–37.

43 Kūfī, *Fathnāma-i Sind*, 108–09. This translation is from *The Chachnamah: An Ancient History of Sind, Giving the Hindu Period down to the Arab Conquest*, trans. Mirza Kalichbeg Fredunbeg (Delhi: Idara-i Adabiyat-i Delli, 1979 [originally published 1900]), 84–85, with slight modifications, such as: Qubla son of Mahtarā’ij’s name is given as Kublah son of Mustrayeh.

through notions of justice, good governance and building alliances.⁴⁴

The Ghaznavid and Ghūrīd rulers who came to South Asia in this period followed Shāfi‘ism, and many of them chose that school over other Sunnī or non-Sunnī legal traditions. For example, Maḥmūd of Ghazna (r. 388–421/998–1030) of the Ghaznavid Dynasty converted from Ḥanafism to Shāfi‘ism;⁴⁵ Ghiyāth al-Dīn al-Ghūrī (r. 558–599/1163–1203) of the Ghūrīd Dynasty converted from the Karrāmiyya sect (founded in Sijistān by Abū ‘Abd Allāh Muḥammad b. Karrām, d. 255/869) to Shāfi‘ism in 595/1199 at the hand of Qāḍī Waḥīd al-Dīn (or Wajīh al-Dīn) Muḥammad al-Marwazī or Marwarrūdī. In this last instance, he is said to have converted following both the sultan’s and the *qāḍī*’s dream about Shāfi‘ī, the eponymous founder of the school, on the same night. Ghiyāth al-Dīn is also said to have extended his patronage to Shāfi‘ism against Karrāmism, and the great Shāfi‘ī Fakhr al-Dīn al-Rāzī is one of the scholars who received his patronage to fight against the Karrāmi preachers in the region.⁴⁶ Although the juridical affiliation of these (or any) rulers with a school should not be taken as synonymous with their subjects without clear evidence, the rulers’ conversions certainly offered their school of choice an advantage over others. Nevertheless, we need further research to get a clear picture of each school’s impact in judicial procedures of these regions and of the potential influences of the school’s ideas on contemporary writers like ‘Alī al-Kūfī, the author of *Chachnāma*, about whom we know very little.

Chu-fan-chī, written by the Chinese merchant Chau Ju-kua in the late twelfth and early thirteenth century presents a different picture of translation with regard to Islamic legal administration. The Islamic court that existed in Guangzhou (Canton) since the early third/ninth century, if not earlier, arbitrated civil and criminal cases and continued to function well until the seventh/thirteenth century, with a few occasional interruptions. A Chinese account of the early sixth/twelfth century informs us of how the “foreign” culprits from anywhere in the kingdom were handed over to the Muslim “foreign official” (who “wears a hat, gown, and shoes and carries a tablet just like a Chinese”) in Guangzhou to execute punishments either by

44 Asif, *A Book of Conquest*, 14, 92, 119, and passim.

45 On his conversion, see Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfi‘īyya al-Kubrā*, ed. Maḥmūd Muḥammad al-Ṭanāḥī and ‘Abd al-Fattāḥ Muḥammad al-Ḥulw (Cairo: Maṭba‘at ‘Īsā al-Bābī al-Ḥalabī, n.d.), 5:316. On another Ghaznavid ruler, see Muḥammad b. Sam (r. 1030–1040-41), and on his affiliation with the school, see Subkī, *Ṭabaqāt al-Shāfi‘īyya al-kubrā*, 8:60–61.

46 See Abū ‘Umar Minhāj al-Dīn ‘Uthmān b. Sirāj al-Dīn Jūzjānī, *Ṭabaqāt-i Nāṣirī*, ed. W. Nassau Lees, Mawlawī Khadīm Hosain and ‘Abd al-Hayy (Calcutta: College Press, 1864), 77–78. For a translation, see Jūzjānī, *Ṭabaqāt-i Nāṣirī: A General History of the Muhammadan Dynasties of Asia, Including Hindustān, from A.H. 194 (810 A.D.) to A.H. 658 (1260 A.D.) and the Irruption of the Infidel Mughals into Islām*, trans. Henry George Raverty (London: Gilbert & Rivington, 1881), 1:384–85. Cf. C. E. Bosworth, “The Rise of the Karamiyyah in Khurasan,” *The Muslim World* 50, no. 1 (1960): 5–14.

rattan-whips or banishment.⁴⁷ The legal administration in which Muslims were involved thus arguably functioned independently from the imperial courts, and the translation process was involved in the transfer of accused or convicted defendants and their adjudication. Further research into both Arabic and Chinese sources would enlighten us on more specificities of how language and translation must have been negotiated between the different legal cultures.

From South and Southeast Asia, we have interesting cases from the seventh/thirteenth century onward about the local and foreign Muslims pragmatically disentangling the linguistic complexities of their regions to ensure property rights, land acquisitions, charitable endowments, and to fight for justice. While Arabic stood as an unbreakable barrier for many, a few found more creative ways to overcome it. In some cases, Arabic was deployed alongside local languages in inscriptions, such as the bilingual inscriptions of land endowments from Somnath-Verval (Gujarat) dated 662/1264 in Arabic and Sanskrit, and from Calicut (Kerala) in Arabic and Malayalam dated in the seventh/thirteenth century. These inscriptions are pure legal documents that explained who endowed the property, as well as how, why, and when, and stated that they were exempted from taxation or secured revenue. If both of these documents are Islam-related land grants, consider the mid-ninth century copper-plates from Kollam-Terissappalli (Kerala) in which the document was drawn in Malayalam in Vaṭṭeḷuttu script, yet the witnesses undersigned their names in Kufic (fifteen people), Pahlavi (ten), and Hebrew (four), bringing together Christians, Muslims, Jews, Zoroastrians, and the Hindu kings into a single micro-site of one legal document. The Terengganu Inscription (in Northeast Malaysia) from 702/1303 in Jāwī provides another fascinating example of translating Islamic criminal and civil legal procedures by a “peripheral” Muslim community, which described itself as followers of Shāfi‘ī law.

In these documents we see different forms of translating Arabic, Islam and its law into vernacular languages and contexts through candid interactions with particular places and periods. These materials provide us a window onto the larger worlds of Islamic legal procedure, testimony, and authentication in pluralistic legal contexts. Translators and translated documents thus formulated, transformed, and influenced judicial procedure in the wider Islamic world in which Arabic was only one among many other languages, rather than the single Arabic-focused legal world that the early

47 Chau Ju-kua, *Chu-fan-chi*, trans. Friedrich Hirth and W.W. Rockhill (St. Petersburg: Printing Office of the Imperial Academy of Sciences, 1911), 16–17, 114–19. Cf. Jean Sauvaget, *Ahbār aṣ-Ṣīn wa l-Hind: Relation de la Chine et de l’Inde, rédigée en 851* (Paris: Belles Lettres, 1948), 7; and Eusèbe Renaudot, *Ancient Accounts of India and China by Two Mohammedan Travellers who Went to those Parts in the 9th Century* (London: S. Harding, 1733), 7–8.

Arab jurists envisioned.

CONCLUSION

Understanding the complexities of Islamic expansion and persistence across Asia, Africa, and Europe requires a deeper examination of the mediation process between law and languages in Islamic legal practices outside of the Arabian and Arabized lands. Even if the people from these lands formed the majority of the Islamic world, the early Arab jurists were theoretically reluctant to give them access to the Islamic justice system unless they brought in a trustworthy Muslim male translator. Over the course of time, however, jurists from non-Arab lands addressed the increasing need to accommodate non-Arabic speakers and resolved the related predicaments adhering to the framework of the Islamic legal tradition, as we see in the case of Māwardī, Juwaynī, and their successors. Later jurists from these regions also endeavored to institutionalize the position of the translator in the court: arranging for a translator is one of the ten good protocols (*adab*) that a judge should follow while taking office, according to Ghazālī. Some scholars even suggested that the salary for the translator should be paid from the state treasury.⁴⁸ Thus, if an early jurist like Shāfi‘ī approached finding a translator as the responsibility of non-Arabic speaking litigants, later jurists made translation and translators integral parts of a good court.

The debates over translation and translators that unfolded over several generations demonstrate how translation became increasingly important for jurists from non-Arab lands who had direct engagement with non-Arabic contexts. They therefore simplified the necessary procedures for non-Arabic speakers to get access to the courts, in contrast to Shāfi‘ī and Muzanī who were only familiar with Arabian and Arabized realms like those of the Hijāz and Egypt. Islamic law provided a platform for all of these jurists to negotiate with and reconcile the changing contexts and times. After all, it was the jurists’ law, and jurists from all over the Islamic world asserted their diverse views within the framework of the tradition, as Juwaynī did by contradicting the views of Shāfi‘ī, or as the Terengganu inscription did when it translated and conceived of Shāfi‘ī law differently. Precisely that “logic of internal contradiction” (taking a cue from Shahab Ahmed) is what enabled the survival not only of Islam, but also of the Islamic legal system.⁴⁹

48 Ghazālī, *Wasīṭ*, 7:300; Ghazālī, *Wajīz*, 2:239; Rāfi‘ī, *al-Faṭḥ al-‘azīz*, 12: 456–57; Rāfi‘ī, *al-Muḥarrar*, 487; and Nawawī, *Minhāj al-Ṭālibīn*, 560. On the detailed debates over the translator’s salary, see Ghazālī, *Wasīṭ*, 7:300; Rāfi‘ī, *al-Faṭḥ al-‘azīz*, 12:459; and al-Khaṭīb al-Shirbīnī, *Mughnī al-muḥtāj ilā ma‘rifat ma‘ānī alfāz al-Minhāj*, ed. Muḥammad Khalīl ‘Aytanī (Beirut: Dār al-Ma‘rifa, 1997), 4:520.

49 Ahmed, *What Is Islam?*, 109, 233.