Contents

List of maps and images xiii
Note on transliteration, terminology, and dates xv

Introduction 1
Studies of Islamic legal history 4
Sources and methodology 7
Outline of the book 10

1. The Mamluk sultanate and Islamic legal history 14
The Mamluk sultanate 14
Islamic legal history 24
Conclusions 36

2. Introducing the *muḥtasib* 38
Commanding right and forbidding wrong 38
A job description for the position of the *muḥtasib* 42
Walking the beat 47
Letters of appointment 50
Manuals of instruction 55
The *muḥtasib*s of Cairo and Fustat 62
Conclusions 71

3. Muslim devotional and pious practices 73
Case 3.1. Prayer lessons for merchants 74
Case 3.2. A longer call to prayer? 76
Case 3.3. The preacher, the *muḥtasib*, and the judge 80
Case 3.4. Prayer and fasting for plague relief 83
Conclusions 87

4. Serious crimes or minor offenses? 89
Case 4.1. Gambling with eggs 89
Case 4.2. Wine, women, and hashish 92
Case 4.3. Seeking a front-row seat 101
Case 4.4. What could stop a plague? 103
Conclusions 106

5. Managing Christians and Jews 109
Case 5.1. Destroying a church 111
Case 5.2. Public dress and the Pact of ʿUmar 116

Case 5.3. The problem of hiring Christians 119
Case 5.4. Payment of the *jizya* tax 121
Conclusions 124

6. Market regulation and consumer protection 127

Case 6.1. An upstart market on the edge of town 128
Case 6.2. Forbidden meat 132
Case 6.3. Towels, scales, lanterns, and a rival *muḥtasib* 135
Case 6.4. Concerning weights and measures 140
Case 6.5. Rotten birds 144
Case 6.6. Making a market for Mamluk soldiers 145
Conclusions 146

7. The markets for essential bread 149

Case 7.1. Crisis at the Fustat granaries 150
Case 7.2. The amirs force higher grain prices 156
Case 7.3. Underselling by merchants 158
Case 7.4. Attempts to lower prices 159
Case 7.5. The *wālī* takes charge 161
Case 7.6. The problem of forced sales 163
Case 7.7. The sultan as *muḥtasib* of last resort 167
Case 7.8. Price-setting in the final years of the sultanate 169
Conclusions 171

8. Currency and taxes 175

Case 8.1. Counterfeit copper coins 176
Case 8.2. New money 181
Case 8.3. Coins, complaints, and taxes 184
Case 8.4. The rising cost of water 186
Case 8.5. Collecting "*zakāt*" 187
Case 8.6. A tax to fight the Ottomans 191
Conclusions 191

9. Keeping the peace 194

Case 9.1. The mysterious talking wall 194
Case 9.2. A boycott in the markets 197
Case 9.3. Thefts as threat to public order 198
Conclusions 200

Conclusions 203

Glossary 211
Bibliography 215
Index 231

Introduction

This book studies social practices involving law in the cities of Cairo and neighboring Fustat during the Mamluk period (1250–1517). From the perspective of the daily life of a typical inhabitant, a common face of the law was the *muḥtasib*, an official who was as much a part of the legal landscape as the judge or mufti.[1] Best described as an inspector of public spaces, this legal official traversed the city carrying out his duty to command right and forbid wrong. He took direction from the rulers, the sultan foremost among them, and also was guided by legal doctrine (*fiqh*) as formulated by the jurists, combining these two sources of law in one site of authority. The actions of the *muḥtasib* show the interplay between law and society on a day by day basis, including the responses of the individuals whom the official attempted to regulate.

This project grew out of a longstanding interest in the way that law operates in matters of personal and social concern, ranging from the mundane and routine to the most fundamental and consequential. The approaches to the study of law that fall broadly under the heading of "law and society" were at the root of this interest and have persistently influenced my thinking about legal history.[2] In Muslim communities historically, the legal doctrine produced by jurists (*fuqahā'*) clearly was relevant to the regulation of society, but, in itself, it is not sufficient to explain the social dynamics by which individuals modulated their own behavior—willingly or not. In contemporary scholarly debates about the application of Islamic law in pre-modern Muslim societies, the topic is often cast in terms of whether doctrinal rules were applied in practice, calling for a yes or no answer.[3] This line of inquiry

[1] For an introduction to the position of judge, see Masud, Peters, and Powers, "Qāḍīs and Their Courts: An Historical Survey," in idem (eds.), *Dispensing Justice in Islam*, 1–44; Hallaq, *The Origins and Evolution of Islamic Law*, 57–101. For an introduction to the position of mufti, see Masud, Messick, and Powers, "Muftis, Fatwas, and Islamic Legal Interpretation," in idem (eds.), *Islamic Legal Interpretation*, 3–32.

[2] For a good introduction to this vast and diverse field, see Sarat (ed.), *The Blackwell Companion to Law and Society*.

[3] This line of questioning is typified by Joseph Schacht's claim in 1964 that the Sharia's "hold was strongest on the law of the family (marriage, divorce, maintenance, etc.), or inheritance, and of pious foundations (*waḳf*); it was weakest, and in some respects even non-existent, on penal law, taxation, constitutional law, and the law of war; and the law of contracts and obligations stands in the middle." Schacht, *An Introduction to Islamic Law*, 76. Schacht's work followed in the line of, and in part was intended as a correction to, the study of Islamic law by western scholars that began in earnest at the end of the nineteenth century, as summarized in Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, 1–3. Subsequent to Schacht, work in the field of Islamic legal history attempted to show that legal doctrine was applied and used in practice. Abraham Udovitch in 1970 compared legal writings on

may be able to indicate something about the relevance of doctrine in society, but it does not address the broader topic of the social dynamics of law more generally.

I am interested in a set of questions beyond whether doctrinal rules were actually applied, questions that begin with the premise that in any society the functioning of law is far more complicated than choices by legal actors to use or ignore legal texts. My aim is to widen the scope of inquiry to include not only the role and relevance of doctrine, but also questions such as: Which officials represented the force of law in society? What kinds of rules did they rely upon, and what were the sources of these rules? How did their personal backgrounds and preferences affect their work? How did the populace respond to legal application or enforcement, and what accounts for their different reactions to different officials, on different topics, and at different places and times?

Determining how to address these kinds of questions, however, was not so simple. When beginning this project, I hoped to focus on judges and judicial decisions. Scholars of the Ottoman Empire have made remarkable use of court records, but such documents are scarce for earlier Islamic history, which was my period of interest, and I was seeking a large archive.[4] Thus, I had to look beyond the most prominent types of actors and sources. Reading historical chronicles from the Mamluk era in Egypt, which exist in an abundance not seen for prior periods, guided me to the office of the *muḥtasib*. Unlike a judge, the *muḥtasib* did not have to wait for a claim to be brought before he could act: he patrolled the public spaces and had the discretion to take whatever action he thought best to stop wrongful acts or enforce obligatory ones. The *muḥtasib* could not, as a practical matter, deal with every infraction that might take place in the public sphere on a given day, but had to make choices and set priorities. Further, the sources that deal with the *muḥtasib* allow for a sense of how each *muḥtasib*'s individual background affected what he did and, in some cases, how the people responded. They also provide details of the social, political, and economic contexts of any particular event involving this official. As a result, the historical materials related to the office of the *muḥtasib* in the Mamluk period yielded a rich and detailed archive that was even fuller than I could have imagined initially.

partnerships and corporations from the late eighth and early ninth centuries with documentary evidence of daily practice of commercial relations in the eleventh and twelfth centuries. Udovitch, *Partnership and Profit in Medieval Islam*. His conclusions suggest that several centuries after the legal texts were written, merchants were operating at least in part in ways that bore a relationship to the legal doctrine. Jeanette Wakin's 1972 study compared model contracts as discussed by the scholar al-Ṭaḥāwī (d. ca. 933) with contracts that were used. Wakin, *The Function of Documents in Islamic Law*. The survey of the field of Islamic law and society by Stephen Humphreys reflects the state of this literature as of 1991. Humphreys, *Islamic History*, 209–227. For a recent effort to show the correlation between doctrinal rules of the Mālikī school and the opinions of Mālikī muftis, see Fadel, "Adjudication in the Mālikī *Madhhab*."

[4] The Mamluk-era collection at the Ḥaram al-Sharīf in Jerusalem, which includes some court records mainly from the fourteenth century, is a notable exception as far as is currently known. See Little, *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem*. For examples of what kind of research can be done with these court records, see Müller, "Settling Litigation Without Judgment."

One case discussed in this book illustrates the level of social detail available about the *muḥtasib*'s practices and highlights the kinds of questions that are suggested by the sources. In 1422, Cairo and Fustat were decorated in preparation for the elaborate annual pilgrimage caravan that departed from the Citadel and passed through the city streets before heading off to the Arabian peninsula. The *muḥtasib* of Cairo announced that women would not be permitted to stay out all night in the central marketplace, which they had typically done in order to stake out a good view of the caravan that would pass through Cairo the next day. He made this determination because in the past, inappropriate behavior had taken place between men and women during these camp-outs. While the women initially complied with the *muḥtasib*'s announcement, they soon headed out to claim their spots in the marketplace, because he was not vigilant in enforcing his order. This small piece of historical evidence both invites and allows an investigation of several questions: Why did this *muḥtasib* bar women's presence altogether rather than only the alleged objectionable activities? Upon what sources of law did he base his decision? Why did he forbid the women and not the men? Why did the women, or at least some of them, defy his order, and how did they decide that they could safely do so without facing punishment?

A study focused on this particular official also offers important insights into another topic in Islamic legal history: sources of legal authority. The position of *muḥtasib* was connected to legal doctrine and to the jurists, whose rules formed one source of guidance in the official's work, while at the same time, the position was connected to the sultan, who appointed and dismissed the *muḥtasib*s and also gave orders to them from time to time during their tenures. In terms of constitutional structure, these two sets of influences correspond to two fundamental concepts of authority: the authority of doctrine, associated with the jurists who formulated it, and the authority of policy-based decisions (*siyāsa*), associated with the rulers. The *muḥtasib* was guided by and responsible to both sources of authority, and the historical materials I study in this book show how these influences actually manifested themselves on a daily basis, allowing for a sense of how these two sources cooperated or competed through this official. In some cases, the jurists or the sultan personally took an interest in the *muḥtasib*'s activities, playing out through him their own sense of what rules should be applied and the jurisdictional boundaries between their spheres of influence.

This book, then, takes up two main and related issues: the dynamics of law and society at the hands of the *muḥtasib* and the sources of legal authority that influenced him. In terms of the first, I seek to discover for what, when, and why he punished people or required that they conform their behavior to his orders, and when and why he chose to pass over wrongful acts. Sometimes sheer pressure from an official of the sultanate influenced the *muḥtasib* to take an action, while in other cases, the *muḥtasib* struggled to apply a rule of doctrine as he understood it despite such influence. Sometimes his personal background or ambition affected how he acted. As for those individuals whose behavior the *muḥtasib* was attempting to regulate, they also made choices—to comply or resist, or, like the caravan watchers, to comply initially while the *muḥtasib*'s attention was focused on the matter and

then to return to their front-row seats in the marketplace as soon as they thought he was no longer watching.

Regarding sources of authority, I show how policy concerns and doctrine interacted, cooperated, and competed. Modern studies have justifiably concluded that jurists and rulers recognized the mutual need for the other—their relationship was "symbiotic."[5] But this does not mean that they had clear jurisdictions that were well recognized—quite the contrary, they each sought to extend the reach of their own notion of law, even at the expense of the other when they disagreed. The *muḥtasib* was influenced by both sources, sometimes in very immediate and tangible ways, allowing for a study of the dynamics between the rulers and jurists as prompted by actions involving the *muḥtasib*, which could create a triangular relationship. I am able to show the dynamics of these jurisdictional struggles and in particular the extent to which both jurists and rulers took an interest in the full spectrum of social regulation. The sultans involved themselves in topics that had elaborate doctrinal rules, and jurists concerned themselves with matters of broader social policy, each based on their own interests. As a result, inhabitants of Cairo and Fustat were governed by both sources in all aspects of public life.

Finally, while engaged in this historical project on the *muḥtasib*, I came to see more clearly how Islamic legal history is used in contemporary debates over the role of Islamic law in modern societies. For example, advocates for the application of Islamic law today often refer to (an idealized) Islamic history as a model for emulation. Their arguments fail to acknowledge that we actually have very little understanding of the historical experience of Islamic law, especially for the pre-Ottoman period. Lacking such knowledge, the notion of historical precedent stands as a blank slate upon which various visions can be projected in the service of any particular project. This book adds to our very limited understanding of the functioning of Islamic law in a particular location and time, adding to a still largely empty field of socio-legal history.

Studies of Islamic legal history

Scholars of Islamic history have only begun to study the lived experience of the law, in which legal rules intersect with social, political, and economic factors to produce context-specific events. Most of this kind of work uses court records and fatwas (the legal opinions of muftis) as its sources for the results of legal decision-making.[6] Research based on court records has come mainly from historians of the Ottoman

[5] Lev, "Symbiotic Relations."

[6] An important exception to the use of court record- and fatwa-based research is Roy Mottahedeh's *Loyalty and Leadership in an Early Islamic Society* (first published in 1980), in which he studied ways in which societies in western Iran and southern Iraq in the tenth and eleventh centuries C.E. formed their own social structures at a time when "the weakness of government threw society back on its own resources" (p. 39). His interest was not in formal legal institutions but rather in how society developed mechanisms of regulation through "self-renewing patterns of loyalty and of leadership." Ibid.

Empire, due to the wealth of these records that have survived from that period.[7] Leslie Peirce studied the court records of the Ottoman provincial capital of Aintab from 1540–1541 alongside doctrine and sultanic law to "flesh out the socio-legal culture in which all were operating, a culture in which normative law responded to the messy complexity of real life, the judge considered each case on its individual merits but in reference to normative law, and individuals strategized by drawing on local knowledge of the meaning and mechanics of legal rules and processes."[8] Boğaç Ergene examined the Islamic courts in Ottoman Anatolia in the late seventeenth and early eighteenth centuries with a focus on the place of these courts in Ottoman provincial life and on the relationship between the courts and the people of the two sub-provinces he studied. He concluded that "the court records attribute a rule-oriented character to judicial processes" while the courts also "had the ability to appropriate more socially conciliatory modes of dispute management, when this was deemed necessary. This flexibility is consistent with my claim in this book that the Ottoman courts were responsive to social, political, and cultural pressures in their localities."[9]

Fatwas have also been used as a source for socio-legal history. Two prominent examples illustrate the strengths and limits of fatwa-based studies. David Powers examined opinions from the *Kitāb al-Miʿyār* of Aḥmad al-Wansharīsī (d. 1508), a scholar who collected and commented on opinions of hundreds of muftis who lived in the Islamic West between 1000 and 1500 C.E. Powers' book, *Law, Society, and Culture in the Maghrib, 1300–1500*, focuses on seven primary fatwas that deal with the topics of "paternity, fornication, water rights, family endowments, slander of the Prophet, and disinheritance of children."[10] He shows that extra-legal considerations that were not explicit or even apparent influenced the opinions of the muftis, so that the outcomes were the "product of *combined* legal and extra-legal factors."[11] Since the contextual details are difficult to discern from fatwas, even from primary ones, Powers adds that to "achieve a better understanding of the underlying nature

[7] Most Ottoman historians using court records, however, do so as a source for social history. Important exceptions are scholars such as Leslie Peirce and Boğaç Ergene, who are concerned with the practice of law and socio-legal history generally.

[8] Peirce, *Morality Tales*, 111.

[9] Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, 211. See also a series of articles (listed in the bibliography) published by Ronald Jennings in the 1970s based on the court records of seventeenth-century Ottoman Kayseri.

[10] Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, 229. A primary fatwa "is one that mentions the names of the litigants, the location of the dispute, and the date of specific events; it may also include a transcription of one or more legal documents relating to the case." When a mufti or jurist sought to create a compilation of legal opinions for the benefit of judges or jurists generally, he typically edited and abridged primary fatwas by removing "concrete historical details such as the names of people and places, . . . words and phrases that were not of direct legal relevance, and . . . documents attached to or embedded in a primary fatwā." He then further summarized and condensed the opinion to produce what has been called a "secondary fatwā," which presents "an abstract case that refers to one or more nameless individuals living in an unspecified place at an undetermined time." Ibid., 7 (citing Hallaq, "From *Fatwā*s to *Furūʿ*," 43–48). Typically, such primary fatwas, superseded in importance by their secondary versions, were not preserved, making it impossible for a modern scholar to recreate the social context of a secondary fatwa. One of the distinguishing characteristics of the *Miʿyār* is that al-Wansharīsī did include a small number of primary fatwas, and Powers drew from these for the seven fatwas upon which his book is based. Ibid., 8.

[11] Ibid., 232.

of a given dispute, the historian must examine additional, especially non-legal, sources that may shed greater light on the litigants' lives and their positions within society."[12] And yet, given source limitations, this is difficult to accomplish.

Judith Tucker used fatwas to examine how three muftis dealt with questions of particular concern to women in Ottoman Syria and Palestine. By focusing on three muftis, she was able to assess how each one approached his work differently, even as they were familiar with the same set of authoritative texts on topics that related to gender relations. She found that the muftis who wrote the fatwas and the courts that in turn applied them "did not eschew the Islamic legal doctrines they had inherited, which viewed male-female difference as a fundamental reality of social life,"[13] but they "seemed to opt, whenever possible, for the broader and more flexible interpretation of the law, for the interpretation that appeared to best serve the interests of justice as well as the needs and stability of their community."[14] This was all done under the heading of the applicable law, which offered, in addition to "certain incontrovertible principles and rules," the possibility of an outcome that promoted community harmony through a selection of textual sources and of variable interpretations.[15]

The present study contributes to this emerging field of Islamic socio-legal history, and is one of very few studies dealing with pre-Ottoman Islamic law in practice. Identifying the point of entry into the legal experience does pose challenges, but they can be overcome by reading the primary sources and assessing the various levels of information that they convey. The sources for any particular period and place can guide a historian to a site where a confluence of texts, contexts, and actors allows for a meaningful study of law in a particular social setting. This book also provides the first English-language monograph on the *muḥtasib* from any period in Islamic history, and the first extensive study of the Mamluk-era *muḥtasib*.[16] For a legal official whose relevance to the practice of law compares to that of the judge and mufti, this attention is long overdue. By using the *muḥtasib* as the central legal actor, this book also shows that socio-legal studies beyond those centered on the judge or mufti can and must be undertaken to continue to develop an understanding of the life of Islamic law.

[12] Ibid.
[13] Tucker, *In the House of the Law*, 181.
[14] Ibid., 181–182.
[15] Ibid., 182.
[16] Pedro Chalmeta's 1973 book, *El "señor del zoco" en España*, examines in great detail the *muḥtasib* in Muslim Spain, 898–1492 C.E., and provides a study of the markets in pre-Islamic and early Islamic history more generally. Nicola Ziadeh's *al-Ḥisba wa-l-muḥtasib fī al-islām*, published in 1962, is a general overview of the office in Islamic history without regard to a geographical location, while Sihām Abū Zayd's *al-Ḥisba fī Miṣr al-islāmiyya* covers Egypt from the Arab conquest through the Mamluk period. Article-length studies on the *muḥtasib* in the Mamluk period include Berkey, "The *Muḥtasib*s of Cairo under the Mamluks"; ʿAbd ar-Rāziq, "La *ḥisba* et le *muḥtasib* en Égypte au temps des Mamlūks," and idem, "Les *muḥtasib*s de Fosṭāṭ au temps des Mamlūks," of which the latter two are lists of the individuals who held the position, along with biographical sources for each and some introductory commentary.

Sources and methodology

This book is built around actions taken by the *muḥtasib*. I begin with the details of the particular event, generally as reported in one or more chronicles, in order to understand the *muḥtasib*'s actions in their specific historical context. After examining the central event, I then bring in relevant other sources to piece together a full sense of the dynamics involved in the *muḥtasib*'s actions, including the reactions of those affected and the doctrinal and policy interests that were implicated. I am not comparing event and doctrinal rules, but rather assembling the whole range of relevant sources to allow connections among them to arise and resonate. Each case makes a point about the social practice of law or the sources of authority involved, and some do both.

The Mamluk-era *muḥtasib*s did not keep records of their actions (or if they did, there is no remnant of either the records themselves or references to them). I must rely on reports of their activities in chronicles, along with references to particular events in biographical dictionaries, topographies, and other writings, such as a treatise on weights and measures. Using chronicle reports as an archive requires caution in several regards. Historians were not writing a legal record and may not have been concerned about terminological precision, although from a legal perspective, particular details are very important. By virtue of their literary craft, however, historians were necessarily educated, and education at that time meant that they studied law among other topics. Thus, legal issues and their potential significance were certainly not beyond their comprehension. The educational backgrounds of the historians upon whose chronicles I rely in this book are fairly well known, and, indeed, they typically enjoyed legal training of some kind; some could be considered jurists in their own right, and some also even served as *muḥtasib*.

Presumably, chroniclers wrote down what they thought was interesting or important. That several chroniclers included different information about the same year in Cairo, or reported differing versions of the same events, shows that they made choices according to their own knowledge or their personal and often unstated criteria. Whereas a court record is expected to include most or all cases that came before the judge, we cannot know how any particular historian chose to record what he did about a *muḥtasib*'s actions or how those choices differed from one historian to the next, absent some explicit statement. In this study, I am therefore limited by what the chroniclers chose to include. Some took a particular interest in the activities of the *muḥtasib*, such as al-Maqrīzī, who himself served as *muḥtasib* three times in his career, while other chroniclers rarely mentioned the *muḥtasib*.

The use of chronicles as my main archive has some distinct advantages. Chronicles provide a fuller picture of context than do court records or fatwas. The chronicles identify social, political, and economic events along with what the *muḥtasib* did, making it very clear that a particular action followed a bread riot, or occurred in a time of rampant counterfeiting of coins, for example. I was thus able to line up all the relevant factors for each case in a way that is not possible for

research based on secondary fatwas, which present only the legal issue. Even when using primary fatwas, which include the names of the parties and the date and place of the events that formed the basis of the legal dispute, it is difficult to gain further details about the people involved if they did not merit discussion by authors of chronicles or biographical dictionaries.

For details about the backgrounds of the *muḥtasib*s, I relied heavily upon biographical dictionaries to provide context to their activities and decisions. Many of the *muḥtasib*s received one or more biographical dictionary entries, allowing for a discussion of how the individual's particular background, education, and interests may have influenced the actions he took. In her study based on court records, for example, Leslie Peirce regretted the lack of information regarding the judge of Aintab, Hüsameddin, who issued the decisions that formed the basis of her study.[17] She noted that biographical compilations "rarely included men who made their mark as provincial judges," such as Hüsameddin, but that "ideally, in a study of this sort one should know the identity of the provincial judge, the quality of his education, and the trajectory of his career."[18]

The geographies of Cairo and Fustat play an important role in the events discussed here as well, and the details of the location form part of my understanding and interpretation of each event. Did the *muḥtasib* treat a problem at the gates of the Citadel differently from an event on the edge of town, for example? Using historical maps, I identified the location of the *muḥtasib*'s stand (*dikka*) in Cairo, which functioned as a sort of "home base," and the location of the alley in Fustat where the *muḥtasib*'s stand likely was located. Most of the events in the book took place in Cairo, with only some in the second city of Fustat, and often I could identify precisely or roughly where they occurred and their locational relationship to the *muḥtasib*'s *dikka*.

Manuals written for the express purpose of guiding *muḥtasib*s in their work provided practical legal guidance, and formed a key source for this project. These manuals cover the *muḥtasib*'s qualifications and duties, caution against specific types of fraud and how to detect them, and suggest means of punishment. According to most views of the *muḥtasib*'s jurisdiction, the official was supposed to deal only in matters about which the jurists agreed; he should not impose his own view when there was juristic disagreement about the matter. Given this, the *muḥtasib* did not need to know the doctrinal complexities of every issue he encountered, and he did not need to have the same level of education as one who was known as a jurist. The manuals, then, were intended to present the basic rules of doctrine to the official in a simplified form, a kind of street-ready guidance. For each case, I determine how the three manuals relevant to the Mamluk period present the rules applicable to the factual scenario.

The rules presented in the manuals derive, in part, from the great corpus of *fiqh*, which is the product of the jurists' efforts at determining the legal rules according to which Muslims should live. Further, the content of the right and wrong that

[17] Peirce, *Morality Tales*, 93. [18] Ibid.

formed the basis of the *muḥtasib*'s jurisdiction came, in part, from the opinions of the jurists, and so *fiqh* rules are also important sources in this study. For each case, I determined the range of views on the particular topic, and while sometimes the matter was indeed agreed upon, often in fact the *muḥtasib* took the view of a particular school or even jurist, in which case I identified the particular view enforced. In the discussions of the relevant *fiqh* rules, I largely sought to determine what rules the manuals present, and then, in turn, the underlying or related rules in *fiqh* sources. The doctrinal discussions in each case are merely summaries of the dominant views; they are not intended as full surveys on the particular legal topic, for that is not a goal of this book. A comprehensive study of any of the doctrinal areas discussed—even one about which there was little disagreement—would necessitate its own lengthy article or monograph.

Additional sources I have used include a treatise on weights and measures and a treatise on church and synagogue destruction, both written by one of the early *muḥtasib*s of Fustat.[19] As part of the research for this project, I also walked through the geographical areas of the events in this book many times, getting a sense of the layout and distance from place to place: from the northern walls to the southern walls of Cairo; from the Citadel to the location of the Cairo *muḥtasib*'s *dikka*; from the Citadel to the center of Fustat. While Mamluk Cairo is now bisected by a major east–west road, the main streets and alleys stand on the same footprint as they did in the Mamluk period. Many of the buildings are still in existence and some have been newly "renovated" as part of a revitalization program.

The sources for this project impose some limitations on its scope. The book is organized topically, not chronologically, and, with a few exceptions, the material does not allow a study of how the treatment of a particular matter changed over time. For example, I cannot trace changes in the attitude of the *muḥtasib*s towards the length of towels that bathhouse attendants provided their customers (a matter of doctrinal and practical concern) because there is only one reported case on this topic from the Mamluk period. The substantive areas that do involve enough cases to see a development over time include prices and availability of food (and bread in particular, the essential food for the majority of the population) and, to a much lesser extent, tax collection and currency issuance and circulation. In terms of the officials themselves, a remarkable change relates to the qualifications of the individuals who were appointed to the office, as I discuss in Chapter 2.

Since this book is focused on events involving the *muḥtasib*, I do not delve into the writings that deal with "commanding right and forbidding wrong" more broadly, as it may be undertaken by any Muslim. There is a vast body of primary literature on this larger topic, which was covered in depth in Michael Cook's *Commanding Right and Forbidding Wrong in Islamic Thought*. I remain focused

[19] One source that yielded very little discussion of the *muḥtasib* was the Geniza collection of documents. S. D. Goitein noted that "the writers of the Geniza records are very reticent with regard to this office, all the more remarkable, since most of them deal with economic and legal matters and thus had good reason to make mention of the *muḥtasib*, if his presence made itself felt in the bazaars." Goitein, *A Mediterranean Society*, 2:369.

on materials that deal in particular with commanding right and forbidding wrong as practiced by the official appointed to carry it out, the *muḥtasib*, which is not covered in Cook's study. Likewise, my cases begin with events that involve the *muḥtasib*. The chronicles include many reports of legal events more generally, involving the sultan or the chief of police, to name just two, and these could form the basis of several other book-length projects, which would contribute greatly to our understanding of the social practice of law in Mamluk Egypt.[20]

The title of the book emphasizes its main themes and pursuits. The phrase "Islamic law in action," is, of course, in reference to the broad "law in action" approach to the study of law, which places emphasis on the observation of the legal practices of individuals and institutions.[21] Further, the position of *muḥtasib* itself embodies the "in action" concept. "Islamic law" is meant in the broad sense of Sharia, and is intended to encompass *fiqh* and to suggest that *siyāsa* might productively be considered *fiqh*'s necessary counterpart under the heading of Sharia. Reference to the issue of authority indicates the book's concerns with the role of individuals in mediating and determining what is understood as God's requirements; Islamic law does not exist on its own as a set of rules set forth by God. Even after doctrine has been articulated by jurists, that law is not itself an actor: humans, such as the judge, *muḥtasib*, mufti, sultan, and Muslims generally give it meaning at the social level. The notion of everyday experiences highlights the book's core interest with the ongoing interactions, which took place in specific social contexts, between the legal official and the people whom he regulated and disciplined. The historical evidence involving the *muḥtasib* shows in several ways how the individuals whom he was attempting to regulate took part in the overall event, shaping the factual scenario that demanded his attention and reacting to and engaging with him in ways that did not necessarily involve merely submitting to his orders.

Outline of the book

The first two chapters of the book provide essential background, with Chapters 3 to 9 revolving around the actions of the *muḥtasib* in specific topic areas. Chapter 1 gives an overview of the place and time of the book's events—Cairo and neighboring Fustat in the Mamluk period—and describes the inhabitants, ranging from the ruling Mamluks and their system of military hierarchy to the common people struggling to survive. The chapter briefly discusses the economic situation and the structure of the grain markets in particular, since the *muḥtasib*s were frequently engaged in efforts to ensure urbanites their daily bread. The chapter then moves to the two main sources of

[20] Carl Petry is working on a monograph that deals with crime and punishment generally in the Mamluk period, which will be a significant contribution to our understanding of crimes and their punishments as they involved any official of the sultanate.

[21] This phrase has been most closely associated with Stuart Macaulay. See Macaulay, Friedman, and Mertz, *Law in Action: A Socio-Legal Reader*.

legal authority, represented by the jurists and the sultans, and, finally, discusses the specific sites and institutions where law was applied.

Chapter 2 focuses on the position of the *muḥtasib* in theory and practice. Because the concept of *ḥisba* underlying the official's jurisdiction is believed to come from the Quran, this chapter begins with the Quranic origins of the charge to "command right and forbid wrong." Historically, jurists tried to articulate the *muḥtasib*'s duties and responsibilities, and the clearest and most influential explanation was given by the Shāfiʿī jurist al-Māwardī (d. 1058) in his book of public law, *al-Aḥkām al-sulṭāniyya*. His framing of the office and its jurisdiction and duties helps us to understand the Mamluk *muḥtasib*. Chapter 2 then outlines the details of the position of *muḥtasib* in Mamluk Cairo and Fustat. It identifies the geographical jurisdictions and analyzes the job description in the appointment document used by the sultan. The chapter then turns to the manuals, which contain street-ready legal rules for the *muḥtasib* to use. Finally, Chapter 2 provides a sense of the type of individuals who held the position, based on biographical information.

The historical case studies, organized by topics that represent the full range of the *muḥtasib*'s activities as reported by the chronicles, begin in Chapter 3. The term "case" is used in the general sense of "event." The ordering of Chapters 3 through 9 contributes to the larger argument of the book regarding sources of authority. I begin in Chapter 3 with topics of Muslim devotional practice, areas the jurists discussed extensively in their doctrine, and I end in Chapter 9 with orderly public behavior, a matter of great concern to the sultan but for which the jurists articulated few specific rules. This creates an overarching framework in which each chapter moves further along this spectrum, ranging from areas of intense doctrinal concerns to those dominated by matters of policy. As the cases show, however, no topic was beyond the reach of the *muḥtasib* or, in turn, either of the official's sources of authority of *fiqh* and *siyāsa*—the sultan involved himself in areas of doctrinal rules in his own way, and the jurists became involved in larger society-wide matters from their own perspectives.

Chapter 3 covers public displays of some of the most central components of Muslim devotional practice, such as fasting and prayer. The details of these topics may not seem of concern to a ruler, and, further, the rules in these fields were elaborated in great detail by the jurists. But a ritual matter could also serve a perceived need of the sultan, and the ruler did pay attention in this area and marshaled the *muḥtasib* to achieve his goals. The *muḥtasib* acting on his own tried to enforce agreed-upon doctrinal rules of devotion in creative ways and he also stepped into areas on the margins of doctrine, just beyond the scope of what the jurists concerned themselves with but not far enough away to escape entirely from their criticism. This chapter includes cases involving merchants praying in front of their shops; the call to prayer; the content of a popular preacher's sermons; and fasting and communal prayers of supplication in a time of plague.

Chapter 4 deals with topics loosely gathered under the heading of serious crimes and minor offenses, including gambling, consumption of intoxicants, prostitution, and accusations of other impermissible sexual conduct. Legal doctrine dealt explicitly with all of the topics discussed here. Discretionary punishment (*taʿzīr*), which figures prominently in the *muḥtasib*'s actions, functioned with the other main bases

of punishment, the fixed penalties of *ḥadd* crimes and the lesser-known policy-based punishment (punishment by *siyāsa*, or *siyāsatan*), to show the full range of headings under which an official might punish a wrongdoer. These cases show the *muḥtasib*'s broad discretion when dealing with offenders, and specifically his preference for applying *taʿzīr* to wrongful acts and his desire to avoid escalating the matter into a prosecution of a *ḥadd* crime (for which he would have to turn the offender over to a judge). Some *muḥtasib*s were not concerned with minor displays of bad behavior, engaged in quietly and discreetly, while others seemed to have enjoyed raids on vice, taking along some of the sultan's military men for good measure. For the sultan, public behavior that flouted doctrine could be a threat to public order because it showed that the sultan could not control what happened in society. It could also provoke God to punish by sending the plague, as seen in a case in this chapter, and the sultan's goal was to do whatever was necessary to stop it.

Chapter 5 turns to the regulation of Christians and Jews, who came under the governance of both their own religious authorities and the ruling Muslims. Matters of religious doctrine were determined by church and synagogue leaders, but the *muḥtasib* had the power to regulate public behavior. Jurists elaborated rules for non-Muslims in their discussions on *ahl al-dhimma*, meaning those who were under the protection of the Muslims. In exchange for that protection, non-Muslims had to comply with certain conditions, considered to have been articulated for the first time in the Pact of ʿUmar (the second successor to the Prophet, d. 644), and also pay a tax (*jizya*). The cases in this chapter invoke the Pact of ʿUmar, and in doing so show that it was not a fixed and finite list of rules but rather some of the details changed with time. Further, non-Muslims seem to have worked out a general understanding with the *muḥtasib* and the ruling Muslims generally about what was expected of them, and when the *muḥtasib* decided to heighten enforcement of particular matters, as seen in the chapter, they made their dissatisfaction known and even resisted. This chapter treats the destruction of a church on grounds that the church clappers were too loud; regulation of the dress of Christians and Jews in public; complaints that Christians dominated bureaucratic positions in the state; and the collection of the *jizya*.

Chapters 6 and 7 deal with commercial transactions, beginning in Chapter 6 with market regulation and consumer protection generally and moving to Chapter 7 for the specific markets of grain, wheat, and bread. The commercial matters treated in Chapter 6 include a new market on the edge of town; the sale of dog meat and carrion; towels provided to customers in the bathhouse; scales, weights, and measures used in the market; a merchant of salted birds who left his wares rotting in storage; and consumer protection generally. These topics are found under several headings in the *fiqh* books, including sales and slaughter, and were all matters of juristic concern. But in the busy marketplace, where every scale and measuring cup formed a possible means for a merchant to cheat customers (knowingly or not), priorities had to be determined by the *muḥtasib*, and this task was beyond the scope of doctrine. Should he test the scales of the merchants, for example, or dispatch his own appointees to the markets with weighing apparatus and require merchants and customers to use them instead? Should he punish butchers for selling dog meat in a time of famine,

customers for buying it, or both? In these kinds of decisions, he had to rely on his own judgment, which might be influenced by his own personal career goals or interests. Further, the sultan certainly could step in and direct the *muḥtasib* to act.

Chapter 7 focuses on the pricing and availability of grain, wheat, and bread, which were the most fundamental elements of the food supply. A common theme runs through these cases: people wanted access to cheap and abundant bread, the merchants (who included the sultan's officers, the amirs) wanted to maximize profit, and the *muḥtasib* negotiated the very difficult space between these competing sets of demands. Doctrine tended to protect the property of the merchants from price-setting and forced sales, except in the most serious of cases of need. The people, however, demanded that the *muḥtasib* make bread available in the market, and the sultan, wanting to avoid social unrest, often added to this pressure, even against the interests of his own amirs. This chapter shows that while the laws on hoarding and price-setting appear to have been widely understood and respected in their general contours, sometimes they had to yield to the needs of the day.

Chapter 8 deals with money: the coins that people used and the money that the sultan collected in the form of taxes. The material of this chapter thus moves closer toward the ruler end of the spectrum of topics of interest, with the sultan and his *siyāsa* apparatus even more clearly present in these case studies. The jurists formulated doctrine on matters of the charitable *zakāt* tax and gold and silver coinage, but had far less to say about the copper coins that were in widespread use, and the jurists' treatment of non-doctrinal taxes was mainly limited to criticizing them. *Muḥtasib*s were called into action to prevent the use of counterfeit coins and to supervise the sultan's attempts to issue new coinage. Likewise, the *muḥtasib* assisted with tax collection, sometimes collecting taxes that the jurists considered illegal. Actions in the areas of taxes and currency called for wide-ranging measures on the sultan's part, including the show of force to achieve compliance.

With Chapter 9, the topics of the case studies reach the other end of the arc—having begun with areas that the jurists dealt with extensively in their doctrine, with this chapter the book reaches public order generally, about which the jurists had little to say, deferring, explicitly or implicitly, to the ruler. The sultan certainly cared about social stability and public order, whether disrupted by one particular trouble-maker or by an entire class of rebellious merchants. As agents of the sultan, appointed by him and serving at his pleasure, the *muḥtasib*s played an important role in carrying out commands in the service of general social order.

The concluding chapter synthesizes new understandings of the position of *muḥtasib* in the Mamluk era as a result of this book's research, with a focus on the kinds of individuals who held it, the sources of their authority, the full expanse of their activities, and the ways that they interacted with the people they regulated. Moving to a broader methodological context, it identifies aspects of this study that can be carried into future research in pursuit of understandings of Islamic law in action. The chapter ends with a discussion of how the book's main concerns can be used to examine and better understand claims of legal authority and the practice of Islamic law today in general.