The Abū Ḥanīfah of His Time:

Islamic Law, Jurisprudential Authority and Empire in the Ottoman Domains (16th-17th Centuries)

by

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Abstract

This dissertation is an attempt to explain how different jurisconsults (*muftī*s) throughout the Ottoman domains perceived, constituted, and negotiated their jurisprudential authority over the course of the sixteenth and the seventeenth centuries. The debates and exchanges between the muftīs (as well as other actors) surrounding the nature of the institution of the muftī and the ways whereby his jurisprudential authority is constituted hold the keys to understanding the function and nature of Islamic law – and particularly of the Sunnī Ḥanafī school, one of the four legal schools in Sunnī Islam, which the Ottoman state adopted as its state-school – in the Ottoman Empire. More specifically, these debates offer an opportunity to investigate some significant legal aspects of the Ottoman doctrine of sovereignty, and the place the sultan (and the dynasty) occupied in the Ottoman political-legal imagination. Moreover, the exchanges between the jurisconsults (and, more generally, among members of the empire's scholarly circles) throw into sharp relief the implications of the Ottoman development of an imperial state-sponsored religious-judicial establishment (or a learned hierarchy) on the articulation of the content of Ḥanafī jurisprudence and its administration in the Ottoman realms.

I situate these exchanges, dialogues and debates against the backdrop of the Ottoman conquest of the Arab lands, and particularly of Greater Syria (Bilād al-Shām, roughly today's central and southern Syria, Lebanon, and Israel/Palestine), and their subsequent incorporation into the empire. Nevertheless, although this dissertation concentrates on some jurisprudential aspects of the incorporation of the Arab lands into the empire, the developments in the realm of Islamic law are merely examples of a wider set of interlocking processes whereby an identifiable Ottoman imperial Sunnī tradition emerged.

Note on Transliteration and Dates

As is well known, the Ottoman Empire was multilingual. This multilingualism is also reflected in the sources I have consulted. Most of the sources are in Arabic and Ottoman Turkish, but there are a few in Persian. The vocabularies of these languages often overlap but their pronunciations differ. For extended citations, I use the transliteration system to the language in which the source I am citing from was written. For convenience's sake, several words I use frequently – such as *madrasah, fatwá, muftī,* (and not *medrese, fetvâ, müftî*) – follow the Arabic transliteration system. I use the English spellings whenever they are widely recognized (e.g. Cairo, Damascus). Some names appear throughout the dissertation in their Turkish and Arabic forms (Muḥammad and Meḥmet, for instance). If the individual is from the Arab lands I follow the Arabic transliteration system, but if s/he is from the Turkish-speaking parts of the empire I use the Turkish transliteration. No one person will have her name spelled differently on different occasions.

Whenever I cite a Muslim *Hijri* date, it is followed by its Gregorian equivalent. For the most part, I cite the Gregorian date exclusively.

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Introduction

> Fine distinctions among groups attain an importance that appears exaggerated to observers outside a particular time and place but reflects participants' certain knowledge that they are struggling not just over symbolic markets but over the very structure of rule. [1]

> Lawmaking is an ongoing process of communication in which messages of content, authority, and control-intention are modulated in many formal and informal settings.[2]

The following pages are an attempt to explain how different jurisconsults (*muftī*s) throughout the Ottoman domains perceived, constituted, and negotiated their jurisprudential authority over the course of the sixteenth and seventeenth centuries. As I hope to show in this dissertation, the debates and exchanges between the muftīs (as well as other actors) surrounding the nature of the institution of the muftī and the ways whereby the jurisconsult's jurisprudential authority is constituted hold the keys to understanding the function and nature of Islamic law—and particularly of the Sunnī Ḥanafī school, one of the four legal schools in Sunnī Islam, which the Ottoman

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[1] Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History 1400-1900* (Cambridge: Cambridge University Press, 2002), p. 2.

[2] W. Michael Reisman, "Autonomy, Interdependence and Responsibility," *The Yale Law Journal* 103 (1993), p. 407.

state adopted as its state school—in the Ottoman Empire. More specifically, these debates offer an opportunity to investigate some significant legal aspects of the Ottoman doctrine of sovereignty, and the place the sultan (and, more broadly, the Ottoman dynasty) occupied in the Ottoman political-legal imagination. Moreover, the exchanges between the jurisconsults (and other members of the empire's scholarly circles) throw into sharp relief the implications of the Ottoman development of an imperial state-sponsored religious-judicial establishment (or a learned hierarchy) with fairly rigid hierarchical career and training tracks on the articulation of the content of Ḥanafī jurisprudence and its administration in the Ottoman realms.

I situate these exchanges, dialogues and debates against the backdrop of the Ottoman conquest of the Arab lands, and particularly of Greater Syria (Bilād al-Shām, roughly today's central and southern Syria, Lebanon, and Israel/Palestine), and their subsequent incorporation into the empire. In 1516-1517, the Ottoman sultan Selîm I (r. 1512-1520) brought to an end more than two centuries and a half of Mamluk rule in Aleppo, Greater Syria, Egypt, and the Hijaz (1250-1517). Although the new rulers relied on senior members of the Mamluk administrative and judicial bureaucracy in the years and decades after the conquest, the conquest was a watershed moment in the history of the empire and of the Arab Middle East. For our purpose here, the conquest set in motion an intense encounter between different Ḥanafī jurists and muftīs, and particularly between members of the imperial establishment and their counterparts

from what was now the Arab provinces of the empire, as they were all part of a single political framework.

All the muftīs studied in the following chapters were followers of the Ḥanafī school. The main reason for the focus on Ḥanafī muftīs is the connection between the Ottoman dynasty and the Ḥanafī school, which figures prominently in sixteenth- and seventeenth-century sources and is often replicated in modern historiography. Nevertheless, most accounts tend to use the adjective "Ḥanafī" in a somewhat vague and general sense without specifying what "Ḥanafī school" the Ottoman dynasty adopted as its state school. By looking at the experience of other Ḥanafī muftīs who were not affiliated with the imperial learned hierarchy and by drawing attention to the differences within the Ḥanafī school throughout the empire, this study intends to complicate the oft-cited account of the Ottoman adoption of the Ḥanafī school and to qualify the connection between the Ḥanafī school and the Ottomans.[3] While most members of the imperial ruling and judicial elites were indeed followers of a specific branch (or sub-school) of the Ḥanafī school, there were many Ḥanafīs throughout the empire, mostly across its Arab provinces, who did not follow the sub-school adopted

[3] Some of the most notable exceptions are: Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Ḥanafīte Legal Literature of the Mamluk and Ottoman Periods* (London and New York: Croom Helm, 1988); Martha Mundy and Richard Saumarez-Smith, *Governing Property, Making The Modern State Law, Administration and Production in Ottoman Syria* (London: I.B. Tauris, 2007), ch. 2-3; Kenneth M. Cuno, "Was the Land of Ottoman Syria Miri or Milk? An Examination of Juridical Differences within the Ḥanafī School," *Studia Islamica* 81 (1995), pp. 121-152. Recently, Abdurrahman Atcil has emphasized the institutional differences between the Ḥanafīs who were affiliated with the Ottoman imperial learned hierarchy and others. Abdurrahman Atcil, *The Formation of the Ottoman Learned Class and Legal Scholarship (1300-1600)* (University of Chicago: Unpublished Ph.D. dissertation, 2010).

by the state. In a nutshell, the Ḥanafī school in the Ottoman period was not, and should not be treated as, a homogenous school both socially and intellectually.[4]

Appreciating the tension between the shared Ḥanafī framework and the diversity within it is crucial for understanding some important dynamics of the incorporation of the Arab lands and the challenges it posed to the different jurists. As far as members of the Ottoman still-evolving religious-judicial establishment were concerned, the ruling elite as well as many of their constituency across the central lands of the empire (the Balkans and central and western Anatolia) could now address and consult Ḥanafīs from the Arab lands. While the Ottoman ruling and judicial elites tried to prevent this constituency from turning to jurists who were followers of the other Sunnī schools (the Shāfi'ī, the Ḥanbalī, and the Mālikī schools), they did not prevent them from addressing Ḥanafī jurists who were not affiliated with the imperial learned hierarchy.[5] From the vantage point of the Ḥanafīs from the Arab lands, their followers, too, had new options to resolve their legal issues, especially since the

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[4] An interesting example of this distinction between the various Ḥanafīs is the instruction sent to the deputy judges in Damascus. In eighteenth-century Damascus the chief judge, who was sent from Istanbul, instructed all his Damascene deputies, Ḥanafīs and non-Ḥanafīs alike, that certain legal issues should be resolved exclusively in his court. Although this aspect of the Ottoman administration of justice has not been explored in depth for earlier periods, it appears that this was the case in earlier centuries as well. For the eighteenth century see: Brigitte Marino, "Les correspondances (*murāsalāt*) adressées par le juge de Damas à ses substituts (1750-1860)," in Birigitte Marino (ed.), *Études sur les villes du Proche-Orient XVIe-XIXe siècle* (Damas: Institute français d'études arabes de Damas, 2001), pp. 91-111.

[5] Rudolph Peters, ""What Does It Mean to Be an Official Madhhab"? Ḥanafīsm and the Ottoman Empire," in Peri Bearman, Rudolph Peters, and Frank E. Vogel (eds.), *The Islamic School of Law: Evolution, Devolution, and Progress* (Cambridge: Harvard University Press, 2005), pp. 154-157.

jurists who were affiliated with the Ottoman state (and its legal system) enjoyed its support. Despite the fact that many of the Arab Ḥanafī jurists retained their teaching positions in madrasahs across these provinces, were appointed as deputies of the chief provincial judge, and even entered the ranks of the imperial establishment (although never reaching the upper echelon of the establishment),[6] vestiges of the anxiety the incorporation into the Ottoman Empire produced and recurring attempts to articulate the differences between the jurists can be traced in different instances throughout the period under consideration. In other words, the aforementioned tension explains the efforts different Ḥanafī jurists invested in drawing boundaries within the empire's Ḥanafī community, and, as far as members of the imperial learned hierarchy are concerned, in articulating a distinctive Ottoman Ḥanafī tradition.

Although this dissertation concentrates on some jurisprudential aspects of the incorporation of the Arab lands into the empire, the developments in the realm of Islamic law are examples of a wider set of interlocking processes whereby an

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[6] Baki Tezcan, "Dispelling the Darkness: The Politics of 'Race' in the Early Seventeenth-Century Ottoman Empire in the Light of the Life and Work of Mullah Ali," in Baki Tezcan and Karl Barbir (eds.), *Identity and Identity Formation in the Ottoman World: A Volume of Essays in Honor of Norman Itzkowitz* (Madison: University of Wisconsin Press, 2007), pp. 75-76.
Despite clear administrative continuities in the years following the conquest, there are some indications that the Ottomans introduced certain changes that affected Greater Syrian jurists. For example, the sixteenth-century Damascene chronicler and jurist Shams al-Dīn Muḥammad b. 'Alī Ibn Ṭūlūn complained that "the Rūmīs [the Ottomans] [did] not follow the stipulations of the endowers, unless it serve[d] their interests (*illa fīmā lahum fīhi maṣlaḥah*)." Shams al-Dīn Muḥammad b. 'Alī Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah Ghadāt al-Ghazw al-'Uthmānī lil-Shām, 926-951H: ṣafaḥāt mafqūdah tunsharu lil-marrah al-ūlá min Kitāb Mufākahat al-Khillān fī Ḥawādith al-Zamān li-Ibn Ṭūlūn al-Ṣāliḥī* (Damascus: Dār al-Awā'il, 2002), p. 270.

identifiable Ottoman imperial Sunnī tradition emerged.[7] Great deal of attention has been paid to the empire's relations with its neighbors, the Shī'ī Safavids to the east and the Catholic Habsburgs to the west, as an important factor in the evolution of the Ottoman self-definition as a Sunnī polity. On the other hand, the dynamics within the Sunnī constituency of the empire in the years following the conquest of the Arab lands and their contribution to the evolution of an Ottoman Sunnī tradition and distinctive Ottoman institutions remains relatively unexplored. To be sure, many elements of this imperial Sunnī tradition were rooted in the pre-conquest period. But, as I will demonstrate in the chapters that follow, the incorporation of the Arab lands contributed immensely to their consolidation and to their clearer articulation.

The dynamics between the empire's Sunnī (and specifically Ḥanafī) scholarly and judicial circles also provide an opportunity to consider the nature and limitations of the Ottoman state's (and its establishment's) administration of law throughout the Ottoman domains. Specifically, they stress the fact that the imperial learned hierarchy operated in the Ottoman lands but was not coterminous with them. In this respect, this dissertation joins several studies of the operation of different Ottoman legal institutions and of the empire's legal landscape. Recently, growing scholarly attention has been devoted to the interplay between different legal institutions that constituted

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[7] Some scholars have interpreted these developments as the emergence of "Ottoman Islam." See for example: Tijana Krstić, *Contested Conversion to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire* (Stanford: Stanford University Press, 2011), pp. 26-27.

the Ottoman imperial legal system.[8] These studies have expanded the scope of inquiry and traced legal cases throughout the imperial legal system and stressed the multiple sites that litigants had at their disposal. Although this study focuses on a particular legal institution, it also pursues the direction offered in these studies and seeks to illuminate the activity of the different muftīs in relation to other legal institutions and venues across the empire. In doing so, it hopes to contribute to a better appreciation of the diversity and complexity of the empire's legal landscape and to situate the imperial legal system within it.

It is precisely in this complex legal landscape that jurists, as individuals and groups, strove to establish, negotiate, and cement their jurisprudential authority. Jurisprudential authority, however, can be obtained in multiple, not necessarily compatible, ways. Therefore, the dissertation aims to examine different notions of jurisprudential authority that coexisted throughout the Well-Protected Domains (and specifically within Ḥanafī circles across the empire) during the sixteenth and seventeenth centuries. In addition, it seeks to trace the connection between these notions of authority and various scholarly and textual practices which different jurists employed in order to establish, preserve, and negotiate their authority within the

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[8] Richard Wittmann, *Before Qadi and Grand Vizier: Intra-Communal Dispute Resolution and Legal Transactions Among Christians and Jews in the Plural Society of Seventeenth Century Istanbul* (Harvard University: Unpublished Ph.D. Dissertation, 2008); Başak Tuğ, *Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia* (New York University: Unpublished Ph.D. dissertation, 2009); James E. Baldwin, *Islamic Law in an Ottoman Context: Resolving Disputes in Late 17th/early 18th- century Cairo* (New York University: Unpublished Ph.D. dissertation, 2010).

Ḥanafī jurisprudential tradition and within the expanding empire. Furthermore, this study intends to demonstrate that the different understandings of jurisprudential authority dovetail with the manner in which different Ḥanafī jurists perceived their position in the emerging imperial order.

Of particular importance in this context are the extent to which different jurists perceived the Ottoman dynasty as an important source of their jurisprudential authority, and the manner in which they understood the sultan's role in determining the content of Islamic law. For members of the imperial establishment, including the state-appointed muftīs throughout the Arab lands, the affiliation with an establishment that was created in close collaboration with the Ottoman dynasty and was organized and regulated through imperial decrees was fundamental.[9] Moreover, "constitutionally" speaking, members of the establishment were willing to accept the active intervention of the sultan, through the chief imperial jurisconsult and more generally the imperial religious-judicial establishment, in determining what constituted the *Sharī'ah* (*Şerî'at,* in Turkish) they were expected to apply. In contrast to the members of the establishment, prominent sixteenth- and seventeenth-century

[9] A caveat concerning my use of the tern "the imperial establishment" is in order. Throughout this study the main distinction is between establishment-affiliated jurists and jurists who did not hold a state-appointment. This is not to suggest that the establishment was monolithic and that there were not jurisprudential disputes among its members. It is important to note, however, that members of the establishment sought to preserve the distinction between its members and other jurists throughout the empire.
What is more, there were jurists who were affiliated with the imperial establishment for a while and then left its ranks and resumed a career as appointed jurists who were not "full members" of the learned hierarchy or even as non-appointed jurists.

jurists from the Arab lands who did not hold a state appointment accepted the Ottoman sultan as the leader of the community (*imām*) for certain legal purposes, such as the appointment of judges, but still advocated relative autonomy for the jurists in determining the content of Islamic law.

Ultimately, a word on texts and their role in this narrative is in order. Texts are, in addition to the jurisconsults and other jurists, the protagonists of this study. The sixteenth and seventeenth centuries witnessed an enormous production of jurisprudential texts, manuals, legal opinions, and other legal documents of various sorts. In part, these texts are the product of the different jurists' concerns and anxieties in face of the new reality the conquest of the Arab lands and their gradual incorporation created, as jurists sought to articulate, legitimize, and propagate the intellectual genealogies, legal doctrines, and scholarly and administrative practices they endorsed. As such, they also played an instrumental role in articulating the differences between the various jurists and muftīs across the empire and in establishing their jurisprudential authority. What is more, shared jurisprudential texts provided the basis for the ongoing dialogue and exchange between the different Ḥanafī muftīs throughout the empire. At the same time, different scholarly circles throughout the Ottoman realms had their particular jurisprudential texts, which distinguished them from members of other Ḥanafī textual communities across the empire (and beyond). It is for this reason that this study pays considerable attention to

the textual practices and to textual dialogues among the different muftīs, between the muftīs and the Ottoman ruling elite, and between the muftīs and those who solicited their opinion. To put it differently, the history of these texts and textual practices constitute an integral and indispensible element in the history of the incorporation of the Arab lands into the empire and in the different jurists' and muftīs' establishment of their jurisprudential authority.

In the rest of the introduction, I wish to elaborate on several issues and historiographical debates that thread throughout the chapters that follow and to situate this dissertation and its contribution within these debates.

Muftīs: Approaches, History, and Historiography

Although I have used thus far the phrase "Ḥanafī muftīs" quite freely, this is not a *histoire totale* of Ḥanafī jurisconsults throughout the empire or even in Greater Syria. This would be clearly too ambitious, as the community of muftīs and other religious scholars across the empire was diverse and heterogeneous. Even in terms of their mastery of the religious sciences there were substantial differences between jurists. Some were luminary figures that stood out for their erudition and scholarly credentials, while others had rudimentary familiarity. To this one may add economic, social, occupational, and other differences. In addition, there may have been jurists and scholars (including muftīs) whose activity was not recorded in the sources at our

disposal. This is particularly true as far as men (and possibly women) who were perceived as knowledgeable by their immediate community (neighbors, villagers, and co-prayers in the mosque), but not by other segments of the scholarly community, are concerned. In this study, therefore, I limit my inquiry to specific aspects of the activity of the better-documented Ḥanafī jurisconsults who operated across Bilād al-Shām and the central lands of the empire (central and western Anatolia and the Balkans) during the sixteenth and seventeenth centuries. Moreover, as I have already pointed out, my investigation will remain within the boundaries of the Ḥanafī school, and I will only occasionally allude to interactions between Ḥanafī muftīs and their peers who followed other schools.[10]

Before we proceed to our discussion concerning specific muftīs, a few introductory words on the institution of the muftī are in order. The institution of the muftī (often glossed as jurisconsult) is one of the fundamental institutions of Islamic legal systems. The muftī's role was to clarify a legal issue and guide those who solicited his opinion. He did so by issuing legal rulings (*fatwá* pl. *fatāwá* in Arabic, *fetvâ* pl. *fetâvâ* in Turkish), usually in response to a question posed by the solicitor. It is worth dwelling on the particular characteristics of the muftī's interpretation of the

[10] An interesting implication of the interaction with other schools is the seventeenth-century debate concerning the issue of *talfīq*. This debate, however, is beyond the scope of this dissertation. On this debate see: Barbara Rosenow von Schlegell, *Sufism in the Ottoman Arab World: Shaykh 'Abd al-Ghanī al-Nābulusī (d. 1143/1731)* (University of California, Berkeley: Unpublished Ph.D. dissertation, 1997), p. 42.

legal doctrine by contrasting it with the function of another legal interpreter, the judge (*qāḍī*).[11] Unlike the judge, whose role was to resolve disputes, the muftī articulates general principles. As Brinkley Messick aptly explains,

> Their interpretive thrusts are diametrically opposed. What is "constructed" in a fatwá is an element of doctrine: a fatwá is concerned with and based upon doctrinal texts, although it requires the specifics of an actual case as its point of departures. What is "constructed" in a judgment is a segment of practice: a judgment is concerned with and based upon practical information, although it requires a framework of doctrine as its point of reference. Fatwás use uncontested concrete descriptions as given instances necessitating interpretation in doctrine; judgments address the contested facts of cases as problematic instances that are themselves in need of interpretation.

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[11] A. Kevin Reinhart, "Transcendence and Social Practice: Muftīs and Qāḍīs as Religious Interpreters," *Annales Islamologiques* 27 (1993), pp. 5-25; Muhammad Khalid Masud, Brinkley Messick, and David S. Powers, "Muftīs, Fatwás, and Islamic Legal Interpretation," in Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (eds.), *Islamic Legal Interpretation: Muftīs and Their Fatwás* (Cambridge: Harvard University Press, 1996), pp. 3-32.
Over the last couple of decades or so several studies have been dedicated to the function of muftīs in different times and places (the works concerning the muftīs in the Ottoman Empire will be further discussed below): Brinkley Messick, "The Muftī, the Text and the World: Legal Interpretation in Yemen," *Man* 12(1) (1986), pp. 102-119; Baber Johansen, "Legal Literature and the Problem of Change: The Case of the Land Rent," in Chibli Mallat (ed.), *Islam and Public Law* (London: Graham & Trotman, 1993), pp. 29-47; Wael Hallaq, "From Fatāwā to Furū': Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1(1) (1994), pp. 29-65; Muhammad Khalid Masud, Brinkley Messick, and David S. Powers (eds.), *Islamic Legal Interpretation: Muftīs and Their Fatwás* (Cambridge: Harvard University Press, 1996); David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002); Etty Terem, *The New Mi'yar of al-Mahdi al-Wazzani: Local Interpretation of Family Life in Late Ninteenth-Century Fez* (Harvard University: Unpublished Ph.D. dissertation, 2007); Camilio Gomez-Rivas, *The Fatwās of Ibn Rushd al-Jadd to the Far Maghrib: Urban Transformation and the Development of Islamic Legal Institutions Under the Almoravids* (Yale University: Unpublished Ph.D. dissertation, 2009).

> Fatwás and judgments are thus interpretive reciprocals: they come to rest at opposed points on the same hermeneutical circle.[12]

Another important difference between the judge and the muftī in classical Sunnī legal theory is that the latter is not appointed by the state, as opposed to the judge. Moreover, according to the classical legal theory, since the muftī clarifies or articulates a principle, his rulings were not considered legally enforceable, unlike the judge's judgment, and solicitors were not obliged to follow the muftī's ruling.[13]

Nevertheless, in the core lands of the Ottoman Empire over the course of the fifteenth century and the first decades of the sixteenth century a new perception of the institution of the muftī gradually emerged. According to this perception, as we shall see in chapter 1, the muftī was appointed by the state and his rulings, as long as they corresponded to the cases under adjudication, were enforceable within the imperial legal system. This perception differed considerably from the classical understanding of the institution of the muftī that prevailed in the Mamluk lands.

In the decades and centuries following the conquest, as Greater Syria was increasingly integrated into the empire, the Ottoman understanding of the institution

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[12] Brinkley Messick, *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1993), p. 146.

[13] There were, however, some significant differences as far as the role the muftī played in different pre-modern legal systems is concerned. In the Maghrib, for example, muftīs were present in the qāḍī court and were part of the court procedure. Powers, *Law, Society, and Culture in the Maghrib,* p. 20.

became increasingly dominant throughout the province, and a growing number of jurists, including jurists who were raised and educated in learning centers across the Arab lands, sought a state appointment to serve as muftīs. Some muftīs, however, adhered to the pre-Ottoman perception of the institution and dispensed their legal opinion without holding an official appointment. In light of this sketchy survey, it would be somewhat misleading to lump all the muftīs together under the general heading "Ḥanafī muftīs." Therefore, throughout this study, I will try to be as specific as possible about the affiliation of the different Ḥanafī muftīs with the Ottoman state.

It is worth explaining how the different muftīs' rulings and scholarly output are used in this dissertation. Muftīs and their ruling have been the focus of several studies in recent years. One of the reasons for the modern interest in muftīs is their contribution to the evolution of Islamic law in general and particularly in the "post-formative," i.e., post-tenth century, period. As "worldly interpreters" of the doctrine in response to questions posed to them by solicitors, muftīs constantly developed new solutions to emerging legal problems. Some of these solutions were eventually incorporated into jurisprudential texts and manuals, thus introducing new legal issues (and new solutions) to the *furūʿ* (substantive law) literature.[14] Nevertheless, the approach that perceives the muftī as an interpreter of a legal tradition he inherited in response to worldly needs and challenges does not fully explain other aspects of the

[14] Hallaq, "From Fatāwā to furūʿ;" Messick, "The Muftī the Text and the World."

jurisconsult's jurisprudential activity. As this study hopes to show, muftīs (as well as other jurists) actively articulated the jurisprudential tradition they subsequently interpreted. In other words, it intends to question the understanding of jurisprudential tradition as passive inheritance that can be only interpreted in light of changing realities. As we shall see in chapter 2 and 3, at times muftīs could choose, to some degree at least, to affiliate themselves with specific jurisprudential traditions and textual communities within the Ḥanafī school. The jurisprudential tradition then was not only applied but also continuously redefined.

My approach differs from the approach that concentrates on the "legal content" of the rulings in another significant way. In this study, for the most part, the opinions of the different muftīs about specific legal issues will be discussed as far as they elucidate the dynamics between the different muftīs, their relationship with the imperial religious-judicial establishment, or the procedures whereby a ruling was issued.[15] This is particularly true for the collections of fatāwá issued by Arab (and

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[15] There are some noticeable exceptions: Uriel Heyd, "Some Aspects of the Ottoman Fetvâ," *Bulletin of the School of Oriental and African Studies* 32 (1969), pp. 35-56; Richard C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy* (London: Ithaca Press, 1986), pp. 62-68; Hülya Canbakal, "Birkaç Fetva Bir Soru: Bir Hukuk Haritasına Doğru," in *Şinasi Tekin'in Anısına Uygurlardan Osmanlıya* (Istanbul: Simurg, 2005), pp. 258-270; Selma Zecevic, *On the Margin of Text, On the Margin of Empire: Geography, Identity, and Fatwá-Text in Ottoman Bosnia* (Columbia University: Unpublished Ph.D. dissertation, 2007). On the activity of jurisconsults in Greater Syria see: Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998); Haim Gerber, *Islamic Law and Culture 1600-1840* (Leiden: Brill, 1999); Mundy and Saumarez-Smith, *Governing Property,* ch. 2-3.
In addition, other studies examined the activity of chief imperial jurisconsults: Repp, *The Müfti of Istanbul;* Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997).

specifically Greater Syrian) jurists who did not hold a state appointment during the sixteenth and seventeenth centuries arguably constitute the largest extant depository of legal documents that were produced outside the purview of the state and its legal system during the Ottoman period. Therefore, they offer a glimpse into legal sites that were not sponsored by the state and were not mediated by the state's legal bureaucracy. These rulings, moreover, reveal certain aspects of the imperial legal system that a study of this system from within often fails to observe. Due to the multiple perspectives that the fatāwá literature from the Ottoman period as a whole offers, this enormous body of legal texts serves as a convenient site for exploring the role the Ottoman state and its religious-judicial establishment played in the jurisprudential landscape of the empire. In addition, the fatāwá shed light on the exchange and dissemination of legal arguments between and among state-appointed and non-appointed muftīs.

Furthermore, the fatāwá literature from the Ottoman period as a whole (and to a considerable extent other jurisprudential textual corpuses) enable us to bridge a gap in modern historiography between studies of the imperial religious-judicial establishment on the one hand, and other studies of Greater Syrian jurists on the other. Most studies of the imperial religious-judicial establishment have limited themselves to the establishment and particularly to its upper echelon. While some of these studies have recognized the existence and activity of jurists who were not affiliated with the

establishment across the Ottoman domains, this historiographical trend has by and large ignored the activity of these jurists in general and their jurisprudential production (including their rulings) in particular. Since most of these studies have relied on biographical dictionaries dedicated to members of the imperial learned hierarchy, these studies, despite their enormous contribution, have tended to reproduce the logic of these dictionaries.[16] Therefore, the contacts between the members of the imperial establishment and their colleagues from the Arab lands, which are downplayed in these dictionaries, have been also downplayed in the studies. Other studies, by contrast, have focused on the activity of muftīs (and other religious scholars and jurists) who operated across the Arab lands, while overlooking the production of their counterparts who were affiliated with the imperial establishment. As a result, the imperial context of the activity of these muftīs is relegated to the margins.[17] This dissertation, on the other hand, points to multiple, both direct and indirect contacts between different jurisconsults throughout the empire. Furthermore, as the rulings analyzed in this dissertation were issued by both members of the imperial learned hierarchy and their Greater Syrian colleagues who

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[16] İsma'il Hakkı Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı* (Ankara: Türk Tarih Kurumu Basımevi, 1988); Madeline C. Zilfi, *Politics of Piety: the Ottoman ulamā in the Postclassical Age (1600-1800)* (Minneapolis: Bibliotheca Islamica, 1988)*;* Atcil, *The Formation of the Ottoman Learned Class and Legal Scholarship (1300-1600);* Abdurrahman Atcil, "The Route to the Top in the Ottoman *Ilmiye Hierarchy of the Sixteenth Century,*" *Bulletin of SOAS* 72(3) (2009), pp. 489-512; Ali Uğur, *The Ottoman 'Ulema in the mid-17th Century: An Analysis of the Vaḳā'i'ü'l-fużalā of Meḥmed Şeyḫī Efendi* (Berlin: K. Schwarz, 1986).

[17] For example: Tucker, *In the House of the Law.*

did not hold a state appointment, it is possible to explore the connection between a muftī's position in the "jurisprudential landscape" of the empire and his jurisprudential production.[18]

Lastly, despite the focus on muftīs in this dissertation, it is worth reiterating that the distinction between muftīs and other jurists should not be overstated. Many of the state-appointed muftīs served either before they were appointed to the office or in addition to their muftīship as professors in one of the imperial teaching institutions (*madrasah*s). Furthermore, the chief imperial muftī was usually appointed to this office after he had served in several judgeships of provincial capitals. On the other hand, many muftīs from the Arab lands also served as teachers and manned administrative, religious, and teaching positions. To put it differently, their capacity as muftīs was only one dimension of their activity as jurists. For this reason, some of the issues discussed in the following chapters (especially in chapters 2 and 3) are also pertinent to our understanding of the experience of other jurists.

Jurisprudential Authority

Since the activity of these jurisconsults was predicated on their jurisprudential authority, this concept forms one of the backbones of this dissertation. Nevertheless, as I have already suggested, several notions of jurisprudential authority coexisted

[18] Mundy and Saumarez-Smith, *Governing Property,* ch. 2-3.

throughout the empire. Therefore, the term "jurisprudential authority" requires unpacking.

Most legal systems of thought assume that specific individuals or institutions are entitled to determine what constitutes the law. What enables these individuals or institutions to fulfill this function is an understanding that they, for many possible reasons, are better qualified, or more authoritative, than other members of the community to fulfill this task. It is worth pointing out in this context that authority does not necessarily imply willing obedience.[19] The identification of authority with willing obedience, as Hussein Ali Agrama has recently argued, is rooted in the liberal legal tradition that perceives authority and coercion as two diametrically opposed concepts.[20] One may also add to the authority-coercion dichotomy the distinction between authority and persuasion. The authoritative speaker, according to this approach, does not need to persuade his audience about the validity of his speech.[21] Against the liberal notion of authority, Agrama has contended that the study of authority should "explore and belie the very complexity of the concepts and the distinctions presupposed within them regarding […] authority and coercion […], and

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[19] This view is promoted, for example, by Bruce Lincoln. Bruce Lincoln, *Authority: Construction and Corrosion* (Chicago: University of Chicago Press, 1994).

[20] Hussein Ali Agrama, "Ethics, Tradition, Authority: Toward an Anthropology of the Fatwa," *American Ethnologist* 37 (1) (2010), pp. 2-18.

[21] Lincoln, *Authority,* pp. 4-6.

how they have been historically constituted."[22] Following Agrama's critique, my intention in this dissertation is to explore multiple modes and perceptions of jurisprudential authority, some of which presume that authority rests on some sort of coercion or are constituted through ongoing dialogue and persuasion. According to this approach, coercion and persuasion are not signs of a crisis of authority but integral dimensions of particular perceptions of authority that are embedded in a specific historical context. In other words, I concentrate on the specific contexts in which an opinion is considered authoritative, and on the conditions on which this authoritativeness is predicated, for, as Sabine Schmidke and Gudrun Krämer have observed, "religious authority does not denote fixed attribute, but is premised on recognition and acquiescence. Put differently, it is relational and contingent."[23]

To be more concrete, I do not consider a state-appointed jurist, whose authority rests, to some degree at least, on the coercion of the state, less authoritative than a non-appointed one merely on this basis. Furthermore, my focus is not on willing obedience, since it is practically impossible to determine the extent to which a solicitor addressed a jurist willingly, although one may assume that this was the case in numerous instances. Moreover, my approach to authority does not underscore the

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[22] Agrama, "Ehtics, Tradition, Authority," p. 7.

[23] Gudrun Krämer and Sabine Schmidtke, *Speaking for Islam: Religious Authorities in Muslim Societies* (Leiden: Brill, 2005), p. 2.

distinctions between personal authority and the authority of the institution or the procedure.

In the Islamic context, the connection between authority and law has attracted the interest of several scholars. The studies of different aspects of the Sunnī schools of law are of particular relevance. These studies have pointed to the role the legal schools (*madhhab*, pl. *madhāhib*) played in transmitting and regulating jurisprudential authority. Some of these studies have paid attention to the mechanisms through which a jurist is invested with authority to transmit and interpret the Revelation, namely the Qur'ān and the Ḥadīth corpus. Nevertheless, it is worth mentioning that most studies of the question of jurisprudential authority in Sunnī Islam have concentrated on the "formative" and medieval periods.[24] In the Ottoman context, although the Ottomans' adoption of the Ḥanafī school as their official state school is almost a scholarly truism, the ways in which the Ottoman state and its imperial learned hierarchy regulated the jurisprudential authority of the Ḥanafī school and of its members has received very little attention. This dissertation sets out to explore precisely this aspect of the emergence of an imperial religious-judicial establishment.[25]

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[24] E.g.: Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th centuries C.E.* (Leiden: Brill, 1997); Nurit Tsafrir, *The History of an Islamic School of Law: The Early Spread of Ḥanafīsm* (Cambridge: Harvard University Press, 2004); R. Kevin Jaques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden: Brill, 2006).

[25] An important contribution in this direction is Rudolph Peters' study: Peters, "What Does It Mean to Be an Official Madhhab?"

Islamic Law and Ottoman Sovereignty

The issue of jurisprudential authority and its constitution is pertinent to a larger issue – the role the sovereign (sultan, dynasty, and the "state") played in defining what constitutes Islamic law. As the following chapters intend to demonstrate, the fifteenth century marks the opening of a new chapter in the long history of the relationship between the sovereign (the caliph, the sultan, the dynasty, and, more broadly, the state), the jurists, and the content of Islamic law. In order to appreciate this change, it would be helpful to survey briefly the function the sovereign fulfilled in determining the legal content of the *sharī'ah* in earlier centuries.

A courtier at the court of the eigth-century 'Abbasīd caliph al-Manṣūr, Ibn Muqaffa' (d. c. 756), compiled a treatise in which he encouraged the caliph to promulgate a standardized legal code because legal diversity among the various jurists was too inconvenient, in the courtier's mind, for running the vast empire. In response to this treatise the eminent jurist and the eponymous founder of the Mālikī school, Mālik b. Anas (d. c. 795), allegedly wrote his own treatise in which he defied any attempt by a single person, even by a prominent jurist, to draw a binding legal code. Instead, he endorsed plurality and diversity in legal matters. As a result of the events of the following decades, and especially the 'Abbasīd inquisition (the *miḥnah*) during the reign of Hārūn al-Rashīd's son, al-Ma'mūn (r. 813-833), jurists increasingly asserted their independence from the state in regulating the content of

Islamic law.[26] As Sherman Jackson explains, "the idea, thus, of state sovereignty entailing the exclusive right to determine what is and what is not law, or even what is and what is not an acceptable legal interpretation, is at best, in the context of classical Islam, a very violent one."[27]

At several instances, however, the ruling elites sought to regulate the adjudication procedures. In the Mamluk domains, for example, after the establishment of the quadruple system, in which all the four schools were endorsed by the state, the sultan assigned specific legal matters to specific schools, according to what he considered the relative advantage of a certain school in relation to the other.[28] Nevertheless, one should note that the sultan did not intervene in defining what is the accepted opinion of the school. This remained by and large the prerogative of the jurists. Moreover, the training of the jurists also remained, at least in theory, outside the purview of the state.

In the Ottoman domains in the fifteenth century, on the other hand, a new perception of the sultan's role in regulating the legal content of the school, and not

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[26] Muhammad Qasim Zaman, "The Caliphs, the 'Ulamā' and the Law: Defining the Role and Function of the Caliph in the Early 'Abbāsid Period," *Islamic Law and Society* 4(1) (1997), pp. 1-36.

[27] Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (Leiden: Brill, 1996), p. XV.

[28] Yossef Rapoport, "Legal Diversity in the Age of Taqlīd: The Four Chief Qāḍīs under the Mamluks," *Islamic Law and Society* 10(2) (2003), pp. 210-228. See also: Timothy J. Fitzgerald, *"Ottoman Methods of Conquest: Legal Imperialism and the City of Aleppo, 1480-1570)* (Harvard University: Unpublished Ph.D. dissertation, 2009), pp. 17-165. See also: Muhammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar," Islamic Law and Society* 3(2) (1996), pp. 193-232.

only the adjudication procedures, emerged. The emergence of this perception is reflected in the evolution of the Ottoman religious-judicial establishment in the second half of the fifteenth century. As chapters 1-3 show, according to the new perception, the sultan, as a charismatic leader at first and as an institution later, claimed authority to regulate the legal content members of the imperial establishment were to apply. To put it differently, either the sultan himself or the learned hierarchy that was formed by a series of imperial/sultanic edicts and regulations articulated a specific version of the Ḥanafī school.

Within the context of the imperial religious-judicial establishment, the state-appointed muftīs, and especially the chief imperial muftī (the *şeyḫülislâm,* in Turkish), were instrumental in regulating the legal content. As I hope to demonstrate in chapter 1, throughout the Mamluk period, with the exception of the muftīs of the sultan's supreme court (*maẓālim* courts, known as *Dār al-'Adl*), the muftīship was not considered an official position. As part of the emergence of the chief muftī as the head of the learned hierarchy in the first half of the sixteenth century, his rulings became enforceable, and his subordinates, state-appointed muftīs and judges, were required to follow his rulings. At least theoretically, his rulings became the dominant opinion of the school (*al-muftá 'alayhi*) within the boundaries of the imperial establishment. Furthermore, since the chief muftī's position as the head of the hierarchy was the product of edicts and regulations issued by the sultan, the authority

of the chief muftī's ruling rested, albeit not exclusively, on his appointment by the sultan.

Interestingly enough, this development has parallels in other parts of the eastern Islamic lands around the same time (roughly from the first half of the fifteenth century). Although this development in the broader Central and South Asian context has not been studied as thoroughly as the Ottoman case, it is noteworthy that around the time Sultan Murâd II appointed the first muftī (*şeyḫülislâm*) of the Ottoman polity, the Timurid Shāhrūh appointed a jurist to serve as the chief muftī of the his domains.[29] Several decades later, in the second decade of the sixteenth century, the

[29] Shiro Ando, "The Shaykh al-Islām as a Timurid Office: A Preliminary Study," *Islamic Studies* 22 (2-3) (1994), pp. 253-280; Beatrice Forbes Manz, *Powers, Politics, and Religion in Timurid Iran* (Cambridge: Cambridge University Press, 2007), p. 214.

scholar, chronicler, and jurist Faẓl Allāh b. Rūzbahān (d. 1519) wrote a treatise in which he urged the Shibānid (or Shaybānid) Khan to appoint a chief muftī.[30]

In modern historiography of the Timurid period, the reign of Shāhrūkh (d. 1447) is perceived as the period in which the tension between the *sharī'ah* and the dynastic law (*töre* or *yasa*) was somewhat accommodated.[31] A comparison to the Ottoman case, however, raises another possibility. Since the chief muftī was appointed by the dynasty, it appears that the Timurid and other Central and South Asian polities attempted to articulate their version of the *sharī'ah* by creating a learned hierarchy that was affiliated with the state. Moreover, the comparative

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[30] Faẓl Allāh b. Rūzbahān, *Sulūk al-Mulūk* (Tehran: Khvārazmī, 1984). He lists the duties of the *Shaykh al-Islām*:

> When the sultan (*pādīshāh*) charges the *Shaykh al-Islām* with the task of preserving the religious sciences, and grants him the letter of authority, then he should investigate the affairs of the 'ulamā' of the [his] dominion. He must keep [the sultan] informed of their level of knowledge and intelligence, their way of teaching, their power of discretion (*ijtihād*), the ability to issue legal opinions and teach (*quvvet-e iftā' ve-tedrīs-e īshān*), conversance with jurisprudence and mastery of expression. [p. 96]

In addition, Ibn Rūzbahān dedicates a few words to the appointment of muftīs by the sultan:

> […]Whenever a muftī if appointed, he is allowed to receive a salary from the treasury (*bayt al-māl*). If he is appointed [to this office], he must not charge any fee [for his services] […] If within the distance of *qasr* [roughly a distance of 48 miles] a post of a learned muftī is vacant, it is an obligation [of the sultan] to appoint a muftī in a town for otherwise all inhabitants of that place will be sinful, as it is a duty as a whole. [pp. 114-115]

On the relationship between the Uzbek Khan and the jurists in his realms see also: Andras J. E. Bodrogligeti, "Muḥammad Shaybānī Khān's Apology to the Muslim Clergy," *Archivum Ottomanicum* 13 (1993-1994), pp. 85-100.

[31] Furthermore, the *töre* was not fully abrogated in the Timurid realms. Maria E. Subtelny, *Timurid in Transition: Turko-Persian Politics and Acculturation in Medieval Iran* (Leiden: Brill, 2007), pp. 26-27. See also: Ken'ichi Isogai, "Yasa and Shari'a in Early 16th century Central Asia" in Maria Szuppe (ed.), *L'Heritage timouride: Iran-Asie Centrale-Inde XVe-XVIIIe siècles* 3/4 (Tashkent: IFÉAC; Aix-en-Provence: Édisud 1997), pp. 91-103.

perspective suggests that many post-Mongol Central Asian and Anatolian rulers, Sunnī and Shī'ī alike, shared the same notion of sovereignty and legal order. Against this background one can also explain the rise of a Shī'ī learned hierarchy in Safavid Persia.[32] According to this notion of sovereignty, which is encapsulated in the concept of dynastic law (be it *töre*, *yasa* or *ḳânûn*), the ruler, or more accurately the dynasty, is the ultimate regulator of the Law. This is not to say, however, that all the jurists rejected this notion of sovereignty. In fact, as in the Ottoman case, by participating in and contributing to the evolution of the learned hierarchy, jurists also participated in articulating this perception of the ruler and his involvement in determining what constituted the law. For this reason, the encounter between the Ottoman perception of the muftī and the perception that prevailed in the Arab lands in the late Mamluk period is not merely an Ottoman event. It is an encounter between post-Mongol and "Mamluk" (or "classical") notions of law and sovereignty.

One may complicate this picture by pointing to the complex relationship that many Ottoman sultans (and probably other Central and South Asian sovereigns) sometimes had with their appointed muftīs. As will be discussed in detail in chapter 1, the sultan was expected to consult the chief jurisconsult, seek his guidance, and show his respect to him.[33] Still, "constitutionally" speaking, the sultan's appointment of his

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[32] Rula Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (London: I.B. Tauris, 2004).

[33] This idea also appears in the abovementioned treatise by Ibn Rūzbahān.

chief muftī, and by extension the entire hierarchy, was a major break from the classical (and Mamluk) perception of the relationship between the sultan and the community of jurists.

Ultimately, it is fruitful to situate this perception of the sultan and the Ottoman dynasty in the context of other developments in Ottoman political thought over the course of the sixteenth century. As Hüseyin Yılmaz has demonstrated, the sixteenth century witnessed the fairly massive production of works on political theory. Many of these works were particularly interested in promoting a more legalistic view of the sultanate and stressed the importance of *ḳânûn* as the definitive law of government, at the expense of the personality of the ruler.[34] This study intends to elucidate other dimensions of this legalistic worldview by focusing on another textual corpus – the jurisprudential production of jurists who were affiliated with the Ottoman state.

Empire: Terminology, Time, and Space

As I have already mentioned, one of the main historiographical axes of this study is the incorporation of the Arab lands into the Ottoman Empire, and, more broadly, the gradual process of empire formation. It is therefore necessary to explain the geographical and chronological boundaries of my investigation.

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[34] Hüsyein Yılmaz, *The Sultan and the Sultanate: Envisioning Rulership in Age of Süleymân the Lawgiver (1520-1566)* (Harvard University: Unpublished Ph.D. dissertation, 2004). See also Colin Imber's discussion of the caliphate and Ottoman notions of sovereignty during the reign of Sultan Süleymân: Imber, *Ebu's-Su'ud,* pp. 66-111.

As to the geographical scope, the dissertation oscillates between the provincial and the imperial scale. On the one hand, it focuses on the incorporation of the province of Damascus into the empire, and on the way this process shaped the experience of the jurisconsults in this province. On the other hand, the dissertation seeks to draw attention to the impact the incorporation of the Arab lands had on the imperial religious-judicial establishment as a whole. The main advantage of the dual perspective is that it undermines the center/periphery dichotomy and demonstrates how challenges at the "provincial level" – in this case, the consolidation of the imperial learned and judicial hierarchy in Greater Syria – shape the experience of actors in the imperial center and in other, indirectly related provinces.

At the provincial level, this study focuses on the Ottoman province of Damascus. Two main reasons stand behind this decision. First, although the Arab provinces were conquered over the course of the sixteenth century, their incorporation assumed different forms.[35] Moreover, sixteenth- and seventeenth-century sources often differentiate between the various districts that constituted the "Arab lands" of the empire. Therefore, it is necessary to pay attention to the particularities of each

[35] Haghnar Zeitlian Watenpaugh, *The Image of an Ottoman City: Imperial Architecture and Urban Experience in the 16th and 17th Centuries* (Leiden: Brill, 2004); Doris Behrens-Abouseif, *Egypt's Adjustment to Ottoman Rule: Institutions, Waqf, and Architecture in Cairo, 16th and 17th Centuries* (Leiden: Brill, 1994). This was even the case in later centuries as different Arab provinces were integrated differently into the empire, some significant similarities notwithstanding. See for example: Jane Hathaway, *The Politics of Household in Ottoman Egypt: The Rise of the Qazdağlıs* (Cambridge: Cambridge University Press, 1997); Dina Rizk Khoury, *State and Provincial Society in the Ottoman Empire: Mosul, 1540-1834* (Cambridge: Cambridge University Press, 1997); Charles L. Wilkins, *Forging Urban Solidarities: Ottoman Aleppo 1640-1700* (Leiden: Brill, 2010).

province. Secondly, since a major concern of this study is the organization of the Ottoman legal administration it is convenient to preserve the provincial setting.

At the same time, this study seeks to undermine the rigidity that the focus on the imperial administration implies. Accordingly, the term "the Ottoman province of Damascus" – and more generally, the term "Arab lands" – is used to demarcate a territory in which the encounters and exchanges between people, ideas, and traditions occurred. To be sure, certain traditions and practices were rooted in these regions, as many sixteenth- and seventeenth-century jurists and chroniclers observed. Yet, it is necessary to differentiate between the territory and certain cultural practices, albeit for analytical ends. This approach also enables us to account for the multiple contacts and ties between the disparate parts of the empire and between certain provinces and other parts of the Islamic world. For example, one has to account for the fact that some of the Greater Syrian jurisconsults received questions from neighboring provinces as well as from the central lands of the empire. Moreover, many jurists traveled from and to other learning centers across the Arab lands (namely Cairo and the Holy Cities in the Hijaz) and the imperial capital. In addition, circulation of texts and students tied Greater Syrian jurists to other provinces across the empire and beyond.

The focus on the textual and legal production of senior members of the religious-judicial establishment, and mainly on the rulings of sixteenth- and

seventeenth-century chief imperial muftīs' rulings, is intended to provide a wider, imperial context. For pragmatic reasons, it would be impossible to cover all the production in the core lands of the empire or even in the imperial capital.[36] Nevertheless, the scholarly output of the most senior members of the establishment, who resided in the core lands of the empire (usually in Istanbul), reflects their opinion and concerns. Furthermore, since the establishment was hierarchical, the opinion of the chief imperial jurisconsult served as a yardstick for his subordinates. The establishment, however, was not monolithic and occasionally disputes among its members are recorded. It is also worth reminding that senior members of the establishment had some familiarity with the empire's provinces, since they were usually appointed to several positions (mostly judgeships) throughout the empire, including in the newly incorporated imperial capitals, such as Aleppo, Damascus, Cairo, and Baghdad.

Chronologically, this study focuses on approximately two centuries, from the last years of the Circassian Mamluks' rule in Greater Syria to the end of the seventeenth century. The relatively long time frame enables us to trace the gradual incorporation of Greater Syria into the empire and to examine the impact of this

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[36] For a survey of the jurisprudential production by members of the establishment in the fifteenth and the sixteenth century see: Atcil, *The Formation of the Ottoman Learned Class and Legal Scholarship (1300-1600)*; Şükrü Özen, "Osmanlı Döneminde Fetva Literatürü," *Türkiye Araştırmaları Literatür Dergisi* 3(5) (2005), pp. 249-378; Recep Cici, "Osmanlı Klasik Dönemi Fıkıh Kitapları," *Türkiye Araştırmaları Literatür Dergisi* 3(5) (2005), pp. 215-248.

incorporation on members of the imperial religious-judicial establishment and on their counterparts from the Arab lands.[37] Beginning this study in the last decades of the Mamluk rule is useful for assessing the impact of the Ottoman conquest on the scholarly circles of what was now the Ottoman province of Damascus.[38]

(Islamic) Law and (the Ottoman) Empire

In recent years several studies have emphasized the role law and legal regimes played in different imperial and colonial contexts. While some studies have paid closer attention to different types of imperial legal administration, others have focused on the interactions between different legal systems within a single empire (as well as on inter-imperial legal arrangements). Among the latter, Lauren Benton's studies of the organization and function of imperial legal regimes are particularly noteworthy. In her

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[37] Dror Ze'evi has suggested considering the seventeenth century as the "Ottoman century." In his words, "the second century of Ottoman rule, forming the time frame for this study, is perhaps the clearest manifestation in this region of the "Ottoman way" – the distinct set of norms and methods that represents the empire's rule in all realms." To the purpose of this study, Ze'evi's periodization is somewhat rigid and essentialist. Instead, I seek to draw attention to the complex dynamics that characterized the incorporation of the Arab lands into the empire, processes that are, to some extent at least, open-ended, yet equally "Ottoman." Dror Ze'evi, *An Ottoman Century: The District of Jerusalem in the 1600s* (Albany: State University of New York Press, 1996), pp. 4-5.
On the other hand, other studies of the incorporation of the Arab provinces in general and of Greater Syria in particular into the empire have tended to focus on the sixteenth century and on the consolidation and organization of the Ottoman rule in the newly conquered territories. Among these studies: Muhammad 'Adnan Bakhit, *The Province of Damascus in the Sixteenth Century* (Beirut: Librarie du Liban, 1982); Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003); Fitzgerald, *Ottoman Methods of Conquest.*
Nevertheless, as this study intends to show, an examination of the last decades of the sixteenth century and of the seventeenth century highlights significant dimensions of the incorporation that are not easily discernable in the sixteenth century.

[38] Astrid Meier, "Perceptions of a New Era? Historical Writing in Early Ottoman Damascus," *Arabica* 51(4) (2004), pp. 419-434.

studies, Benton has offered an analytical framework that allows weaving numerous legal actors in addition to the imperial state into the narrative. In addition, Benton has defined two main types of imperial legal orders. The first is a multicentric legal order in which the imperial state is one among many legal authorities. The second, by contrast, is state-centered. In this legal order the state claims dominance over other legal authorities.[39] More recently Benton has elaborated her study of legal regimes and pointed to the importance of the geographical spread of "legal cultures," institutions, and "carriers" of certain legal concepts, such as imperial officials, merchants, soldiers, and even captives. "Empires," she has argued, "did not cover space evenly but composed a fabric that was full of holes, stitched together out of pieces, a tangle of strings. Even in the most paradigmatic cases, an empire's spaces were politically fragmented; legally differentiated; and encased in irregular, porous, and sometimes undefined borders."[40]

This study draws on Benton's insights concerning the administration of law in different empires, and pays attention to the overlapping topographies of legal arguments, authority, and sovereignty across the Ottoman Empire. More concretely, this dissertation examines how the Ottoman state and its learned hierarchy functioned in – but also shaped – the empire's multicentric "legal landscape." As I have already

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[39] Benton, *Law and Colonial Cultures,* p. 11.

[40] Ibid., *A Search for Sovereignty: Law and Geography in European Empire, 1400-1900* (Cambridge: Cambridge University Press, 2010), p. 2.

mentioned, the new rulers did not ban the activity of some eminent jurisconsults who did not hold a state appointment, although they did ban the activity of non-appointed judges. Yet, in order to cope with this plurality of Ḥanafī jurists (and traditions), the Ottoman state and the jurists who were affiliated with it emphasized the importance of the state appointment and the importance of the affiliation with the imperial learned hierarchy, whose center was at the imperial capital.

Dissertation Outline

This dissertation is composed of five chapters. The first chapter compares the Ottoman imperial religious-judicial establishment's perception of the institution of the muftī with the perception of the institution that had prevailed in the Arab lands on the eve of the Ottoman conquest (but also in the decades following the conquest). While the former perceived the muftīship as a state-appointed office, for the latter the muftī was by and large a status that was conferred by a teacher on his student. The chapter also explores the encounter between these two perceptions as it unfolded over the course of the sixteenth and the seventeenth century. Although the chapter pays attention to cases in which the pre-Ottoman practice was preserved, it demonstrates that the state-appointed muftīship became the dominant practice throughout the Arab lands. Furthermore, the chapter reconstructs a debate that spans at least two centuries between the supporters of each of these perceptions of this institution of the muftī.

The chapter argues that the key issue was not merely the appointment procedures. What was at stake was the extent to which the sultan was allowed to define what the dominant opinion of the school was. More broadly, this debate opens up new avenues to examine the relationship between *sharī'ah* (or *şerî'at* in Turkish) and *ḳânûn* in the Ottoman political-legal thought.

The second chapter turns to examine a body of genealogies of the Ḥanafī school (*ṭabaqāt*), which were produced by both members of the imperial religious-judicial establishment and their counterparts from the Arab lands of the empire. By examining these genealogies, this chapter seeks to explain how different Ḥanafī jurists perceived their position within the Ḥanafī school and consequently within the emerging imperial order. Moreover, the chapter contends that the rise in the production of these texts may be ascribed to the challenge that the conquest posed to different Ḥanafī jurists throughout the empire. In response to these challenge, jurists recorded these genealogies to establish, cement, and propagate their authority. At the same time, the chapter demonstrates that these genealogies also reveal the gradual integration of some Ḥanafī jurists into the empire. In addition, the chapter links the production of these *ṭabaqāt* works to the emergence of a new genre, the biographical dictionaries dedicated to members of the imperial religious-judicial establishment (namely *al-Shaqā'iq al-Nu'māniyyah*). It argues that both the biographical dictionaries and the genealogies compiled by members of the imperial learned

hierarchy reflect the evolution of a distinctive "establishment consciousness" in the wake of the incorporation of the Arab lands, a consciousness that had institutional as well doctrinal dimensions. More concretely, the emergence of "establishment consciousness" was instrumental in consolidating the authority of the jurists who were affiliated with this establishment.

The genealogies of the Ḥanafī school were also intended to establish the authority of certain legal arguments and jurisprudential texts. These texts are the focus of the third chapter. The chapter traces the evolution of the canonization procedures employed by the imperial establishment and the development of a notion of an imperial jurisprudential canon. By comparing these canonization procedures to the canonization practices prevalent in other scholarly circles throughout the empire, the chapter points to the role these procedures played in the emergence of an "establishment consciousness" among members of the imperial establishment. Furthermore, it highlights the importance of the imperial jurisprudential canon for determining and regulating the legal content members of the establishment were to consult. The second part is a preliminary attempt to reconstruct the imperial canon by looking at the fatāwá collection of the mid seventeenth-century chief imperial muftī Minḳârîzâde. In addition to the reconstruction of the mid seventeenth-century imperial canon, this part also aims at comparing it to the bibliography of the mid seventeenth-century Khayr al-Dīn al-Ramlī, the Palestinian muftī who did not hold a

state appointment, and to the bibliography of the state-appointed Damascene muftī ʻAlāʼ al-Dīn al-Ḥaṣkafī. Through this comparison, the second part intends to cast light on some hitherto understudied aspects of the incorporation of the Arab lands into the empire. The chapter also seeks to draw attention to the attempts of the imperial establishment to coopt certain non-appointed muftīs by soliciting their opinion, as the comparison of the various bibliographies reveal.

The fourth and the fifth chapters expand the lens of inquiry beyond the scholarly circles, and examine the issue of jurisprudential authority from the perspective of wider segments of the society in which the different muftīs operated. More accurately, these chapters investigate the interplay between the scholarly discourses and practices whereby authority is constituted and the manner in which scholars, non-scholars, and even non-Muslims addressed and employed the multiple coexisting authorities to promote their legal (and other) interests. The discernable patterns in the manner different people made use of the multiplicity of authorities also reveal some of the practices, namely institutional practices, through which muftīs cemented their authority. At the same time, controversies between various muftīs concerning certain jurisprudential issues expose differences between them. Particularly, the controversies reveal how solicitors perceived these muftīs and the relations between different muftīs and the imperial legal system. As far as the muftīs who did not hold state-appointment are concerned, these controversies reveal the

extent to which they succeeded in preserving their authority within the "legal landscape" of the empire. From the perspective of the imperial establishment, on the other hand, the dynamics discussed in these chapters indicate that the imperial legal system had to compete with other legal sites and authorities.

The fourth chapter concentrates on the questions sent from the Arab lands of the empire (or possibly by Arab subjects of the empire elsewhere) to state-appointed muftīs, either the chief imperial muftī or the provincial one. The chapter analyzes a body of several tens of fatāwá in Arabic preserved mostly in the fatāwá collections of the chief imperial muftīs (but in other sources as well). It investigates three interrelated issues. First, the chapter traces the evolution of the conventions employed to address state-appointed muftīs in order to illustrate how the imperial establishment tapped into existing authoritative discourses to establish the authority of its appointed muftīs. Secondly, the chapter examines several case studies in order to explicate why solicitors decided to address the state-appointed muftī. Thirdly, through these case studies, the chapter seeks to explain how solicitors learned to address state-appointed muftīs and to articulate their questions properly. Particularly, it points to the pivotal role the imperial legal system played in establishing the authority of the state-appointed muftī, at least in some circles. Furthermore, this chapter intends to claim that knowledge and familiarity with the legal institutions are inextricably connected

to the gradual consolidation of the authority of these institutions, the chief and state-appointed muftīs in this case.

A jurisprudential controversy concerning the concept and practice of "renewal of faith" serves as the departure point of the fifth chapter. While members of the imperial establishment in the sixteenth century developed this concept, many of their colleagues from the Arab lands of the empire rejected it. At the same time, many state-appointed Arab muftīs accepted the establishment's position. The chapter uses the questions posed to the different muftīs concerning this concept/practice to explore the reasons for consulting specific muftīs, and, more specifically, for consulting muftīs who did not hold a state appointment. The second part of this chapter contextualizes this case study in a wider context. To this end, this part focuses on the experience of three non-appointed muftīs – Muḥammad al-Timūrtāshī, Khayr al-Dīn al-Ramlī, and ʻAbd al-Ghanī al-Nābulusī. In particular, this part intends to draw attention to certain patterns in the ways these muftīs were consulted and to illuminate concrete aspects of their relations with state authorities, the imperial legal landscape, and each other.

Chapter I

"According to His Exalted *Ḳânûn:*"

Contending Views of the Institution of the Muftī in Ottoman Greater Syria

Late in his career, after he had already served as the state-appointed Ḥanafī muftī of Damascus,[41] the eighteenth-century jurist and chronicler Muḥammad Khalīl b. ʻAlī al-Murādī (d. 1791 or 2) sat down to write *ʻUrf al-Bashām fīman Waliya Fatwā Dimashq al-Shām*, a biographical dictionary of the Ḥanafī muftīs of Damascus from the Ottoman conquest of the city up to his own time. In the introduction to this dictionary, al-Murādī explains why he decided to focus on those who held the office of the muftī of Damascus. In addition, he elaborates on the reasons for the chronological scope of the dictionary – the years of the Ottoman rule in Damascus. It is worth citing this fascinating passage in full:

> I wanted to compile a book that would include all the biographies of those who were appointed as muftīs (*waliya al-fatwá*) in it [in Damascus] from the time of the great sultan, the famous khaqān, the protector of the land and the frontiers, the grace of the

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[41] For al-Murādī's autobiography: Muḥammad Khalīl ibn ʻAlī ibn Muḥammad ibn Muḥammad al-Murādī, *ʻUrf al-Bashām fī-man Waliya Fatwá Dimashq al-Shām* (Damascus: Majmaʻ al-Lughah al-ʻArabiyyah, 1979), pp. 144-152. See also: Karl K. Barbir, "All in the Family: The Muradis of Damascus," in Heath W. Lowry and Ralph S. Hattox (eds.), *Proceedings of the IIIrd Congress on the Social and Economic History of Turkey* (Istanbul: The ISIS Press, 1990), pp. 327-353.

eras and the times, the merciful and helper, he who makes flow the fountains of benevolence in this world and [the fountains] of justice, the queller of the people of evil and corruption, the bearer of the standards of the *sharī'ah* and righteousness, the uprooter of oppressors, the defeater of tyrants, he who holds the throne, he who is auspiciously assisted by God, the Iskandar of the time and its Anushervān, the Mahdi of the time and its Sulimān, the Ottoman Sultan Selîm Khan, let him be enrobed with [God's] merciful contentment. This [the book starts] when he entered Damascus, renewed its affairs, implemented his edicts in it, and organized it according to his exalted *qānūn*, which is in accordance with the honorable *sharī'ah* (*al-shar' al-sharīf*). [He also] arranged its [the city's] offices of knowledge and *siyāsah*[42] according to his ability and his noble opinion. This was in 922 [1516]. Among these [new regulations] was the assignment of the position of the muftī (*takhṣīṣ al-iftā'*) of each school to a single person, and so he did with the judgeship. The kings and sultans before him, while they appointed a single person to the judgeship, left the affairs of issuing fatāwá to the jurists (*'ulamā'*): the jurists of each school issued their opinion when they were asked [on a certain issue], they answered [lit. wrote] questions, and constant dispute and strife prevailed among them [the jurists]. This was the state of affairs in Damascus until Sultan Selim Khān entered the city, conquered it, and arranged its affairs. [Then] he eradicated from the people of stubbornness their rebelliousness, perfected the [city's] regulation, and conducted according to the pure *sharī'ah* its [the city's] regulations. His successors, the

[42] *Siyāsah* (or Siyâset in Turkish) refers to the executive powers granted to state officials (*ehl-i 'örf*) whose authority derived ultimately from the Ottoman sultan. See Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), pp. 134-135. For *Siyāsah* in the Mamluk period see: Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford and New York: Oxford University Press, 2012).

> honorable Ottoman kings, employed this manner of assigning the muftīship of each school to a single person from the jurists of the school, and prevented all the other [jurists] from answering questions, and so was the case with the judges, up until our time in the rest of their lands.[43]

In this introductory paragraph, al-Murādī points to the existence of two radically different perceptions of the relationship between the muftī and the ruler on the eve of the Ottoman conquest of the Arab lands. The pre-Ottoman, the "Mamluk," model, explains al-Murādī, advances the independence of the muftī from state authorities, since the muftīship is an internal concern of the community of jurists and religious scholars. In the Ottoman perception of the muftīship, by contrast, it is the sultan who appoints the jurisconsult. Although al-Murādī does not explicitly explain the implications of the different models, he seems to imply that the change was deeper than the mere appointment procedure. The nature of the institution of the muftī and its role within the legal (and political) system were at stake.

In al-Murādī's eyes, the Ottoman conquest of the Arab lands led to an abrupt and intense encounter of these perceptions (or models). The aftermath of this encounter was decisive – the "Ottoman perception" of the muftīship prevailed. Fittingly, the office of the muftī in general and specifically that of the Ḥanafī muftī of

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[43] al-Murādī, *ʻUrf al-Bashām,* pp. 2-3.

Damascus, which up to 1516 had followed the pre-Ottoman model, underwent considerable change, as it was modeled after the Ottoman perception of the office.

Although al-Murādī's description of the three centuries that had elapsed since the Ottoman conquest should not be taken at face value, his understanding of the transformation the office underwent merits attention for three major reasons. First, in this passage al-Murādī unfolds his perception of the history of the office he himself held for several years. Secondly, and perhaps more importantly, as a religious scholar and a chronicler, this passage may be read as al-Murādī's attempt to reconcile the tension between his knowledge of what he considered the pre-Ottoman understanding of the institution of the muftī and the current Ottoman practice. Thirdly, it is quite possible, as we shall see below, that al-Murādī was defending this change in response to some of his colleagues' discontent with the transformation the office of the muftī had undergone in the past three centuries, discontent that stemmed precisely from the tension between the different views of the institution of the muftī.

As this chapter intends to show, al-Murādī astutely grasped some fundamental aspects of the change. The Ottoman practice of the muftīship was indeed substantially different from the way it was practiced under the Mamluks. On the other hand, one may question the chronology of the process and its scope. In other words, was it as abrupt and total as al-Murādī's description suggests?

This chapter uses al-Murādī's account as its departure point for a reconstruction of a debate concerning the nature of the institution of the jurisconsult that took place in the first three centuries of Ottoman presence in Greater Syria (and possibly beyond). More specifically, it seeks to explore the tension between the two perceptions of the institution of the muftī. Each of the first three sections deals with an element of al-Murādī's introduction. The first is dedicated to the muftīship in the late Mamluk sultanate. Chronologically speaking, however, the section does not end with the demise of the sultanate in the wake of the Ottoman conquest in 1516-1517. Doing so would be to merely reproduce al-Murādī's narrative. Instead, it traces the conditions – namely the scholarly and jurisprudential practices – that enabled the endurance of the pre-Ottoman muftīship until its marginalization in the seventeenth and the eighteenth centuries. Special attention, however, will be paid to the role muftīs played within the context of the late Mamluk legal system.

The focus on Greater Syria notwithstanding, my analysis of the late Mamluk muftīship will examine examples from Mamluk Egypt as well. Such an examination is possible due to the close and intense ties between the learned circles of Bilād al-Shām and the learning centers in Egypt. Therefore, there seems to be a remarkable coherence between these regions of the Mamluk sultanate in terms of the scholarly practices and the institutions studied here. Whenever there are differences between the practices in Egypt and those in Greater Syria I will point them out.

The second section engages the Ottoman understanding and practice of the muftīship as it was articulated, both doctrinally and institutionally, from the late fifteenth century to the end of the seventeenth century. As in the first section, it also pays considerable attention to the function of this institution within the larger context of the Ottoman judicial and political system. The encounter described by al-Murādī – between the pre-Ottoman perception of the muftīship and the Ottoman one – stands at the center of the third section. Specifically, this section traces the emergence of the state-appointed provincial muftī in the Ottoman province of Damascus. Taken together, the first three sections question two central aspects in al-Murādī's account – the sweeping and abrupt nature of the process and the lack of change since 1516.

The forth section turns to a treatise by a late seventeenth- early eighteenth-century Damascene muftī who did not hold a state appointment, ʻAbd al-Ghanī al-Nābulusī. In this treatise, he voices his critique of the Ottoman notion of muftīship. This section juxtaposes al-Nābulusī's opinion with al-Murādī's. Through the difference between these opinions, the section explores a debate within the Damascene community of Ḥanafī jurists regarding the transformation of the muftīship. The concluding section introduces the change in the nature of the muftīship into the wider historiographical debate concerning the relationship between *ḳânûn* and *sharīʻah* in the Ottoman legal system. What is more, because the emergence of the imperial religious-judicial establishment and of the institution of the

state-appointed muftī over the course of the fifteenth and the sixteenth centuries were inextricably linked, the debate surrounding the institution of the muftī elucidates how the notion and practice of an imperial learned hierarchy, which was presided over by the most senior state-appointed muftī, served the Ottoman dynasty in articulating the relationship between *ḳânûn* and *sharī'ah* and in regulating the latter.

The Institution of the Muftī in the Late Mamluk Sultanate

> The kings and sultans before him, while they appointed a single person to the judgeship, left the affairs of issuing fatāwá to the jurists: the jurists of each school issued their opinion when they were asked [on a certain issue], they answered questions, and there was constant dispute and strife among them.

Like many other jurists and religious scholars in the late Mamluk sultanate, the Ḥanafī Muḥammad b. Ibrāhīm b. Muḥammad al-Ghazzī (1421-1491) left his hometown of Gaza and traveled to Cairo to study with the great scholars of the time. One of his teachers in Cairo, Sa'd al-Dīn al-Dayrī,[44] granted him a permit to teach

[44] On Sa´d al-Dīn al-Dayrī see: 'Abd al-Raḥman b. Muḥammad al-'Ulaymī, *al-Uns al-Jalīl bi-Tārīkh al-Quds wa-al-Khalīl* (Najaf: al-Maṭba'ah al-Ḥaydariyyah, 1968), vol. 2, p. 227-228; Muḥammad b. 'Abd al-Raḥman al-Sakhāwī, *al-Ḍaw' al-Lāmi' li-Ahl al-Qarn al-Tāsi'* (Beirut: Dār Maktabat al-Ḥayāt, 1966), vol. 3, pp. 249-253; Boaz Shoshan, "Jerusalem Scholars ('Ulamā') and their Activities in the Mamluk Empire" [in Hebrew], in Joseph Drory (ed.), *Palestine in the Mamluk Period* (Jerusalem: Yad Izhak Ben-Zvi, 1992), pp. 95-96.

law and issue legal opinions (*idhn fī al-tadrīs wa-l-iftā'*). After he had spent a while in Cairo he traveled to Damascus, where he eventually settled down and issued legal opinions.[45] Al-Ghazzī was not a prominent jurist or a distinguished scholar. Nevertheless, his career is similar to many other contemporary and earlier ones. It was a common practice among jurists and scholars in the Mamluk sultanate (as was the case among their earlier and contemporary counterparts elsewhere) to travel to learning centers both within and without the Mamluk sultanate to obtain religious and jurisprudential knowledge. Of particular relevance to our discussion of the nature of muftīship in the late Mamluk sultanate is the license al-Ghazzī was granted to teach law and issue legal opinions, since this license turned him into a muftī in the most literal sense of the word – someone who is allowed to issue jurisprudential rulings.

Since George Makdisi published his *The Rise of Colleges,*[46] scholars have been debating the degree to which the transmission of religious and jurisprudential knowledge in Sunnī Islam in general and in the Mamluk sultanate in particular was institutionalized. The key issue in this "institutionalization debate" is the importance of two specific institutions – religious colleges (*madrasah*s) and certificates (*ijāzah*s), including the permit to teach and issue legal opinions – in the transmission of

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[45] Aḥmad ibn Muḥammad b. al-Mullā al-Ḥaṣkafī, *Mut'at al-Adhhān min al-Tamattu' bi-l-Iqrān Bayna Tarājim al-Shuyūkh wa-l-Aqrān* (Beirut: Dār Ṣādir, 1999), vol. 2, pp. 589-590.

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

religious knowledge. In their studies of transmission of religious knowledge in Mamluk Cairo and Damascus, Jonathan Berkey and Michael Chamberlain[47] respectively have stressed the importance assigned to the individual transmitter or professor, rather than to the institution (the *madrasah*) in which he taught. In addition, while both scholars have acknowledged the importance of the transmission from a teacher to his student, they have downplayed the importance of the certificate (as document) which permitted the student to teach and issue legal rulings as a significant institution within the Mamluk educational system. Instead, they have both emphasized the personal, flexible, informal and unsystematic nature of the transmission of religious and jurisprudential knowledge across the Mamluk sultanate.

Makdisi and more recently Devin Stewart, by contrast, have convincingly argued that both the *madrasah* and the certificates (*ijāzah*s) played a pivotal role in transmission of knowledge in Mamluk Egypt and Syria. Based on his reading of al-Qalqashandī's chancery manual and two biographical dictionaries from the fourteenth and first half of the fifteenth century, Stewart has shown that the permits (*ijāzah*s)

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[47] Jonathan Berkey, The *Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education* (Princeton: Princeton University Press, 1992); Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 1994).

were divided into three types,[48] each of which followed specific literary patterns and scribal rules. Therefore, Stewart has concluded, the license granted by the teacher to his student involved a document. Furthermore, granting a permit to teach and issue legal opinions was highly institutionalized as part of training of the student in the madrasah throughout the Mamluk period. At least from the fourteenth century, it was granted at a specific point in the student's training course, which most often took place in the madrasah assigned to the teacher.[49] Moreover, the *ijāzah* (or at times *idhn*) to teach and issue fatāwá served as a credential necessary for employment as a judge, deputy judge, professor of law (*mudarris*) and several other offices.[50]

An important dimension of the institutionalization of the permit to teach law and issue fatāwá is its preservation in biographical dictionaries from the Mamluk (and later) periods.[51] As Chamberlain has noted, one of functions of biographical dictionaries was to serve as communal archives of scholarly (and other) elites.[52]

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[48] al-Qalqashandī lists three types of *ijāzah*s: a license to teach law and issue legal opinions (*ijāzat al-futyā wa'l-tadrīs);* a certificate granted after the student have memorized certain works and presented their knowledge before a number of scholars (hence this certificate literally means 'presentation', *'arḍ*); and a license of transmission (*ijāzat al-riwāyah* or *ijāzah bi'l-marwīyāt 'alā' al-istid'ā'āt*). For a translation of these certificates: Devin Stewart, "The Doctorate of Islamic Law in Mamluk Egypt and Syria," in Joseph E. Lowry, Devin J, Stewart and Shawkat M. Toorawa (eds.), *Law and Education in Medieval Islam: Studies in Memory of Professor George Makdisi* (Cambridge: E.J.W. Gibb Memorial Trust, 2004), pp. 66-78.

[49] Stewart, *"The Doctorate,"* pp. 60-61.

[50] Ibid., p. 63.

[51] Ibid.

[52] Chamberlain, *Knowledge,* p. 18.

Through these "archives," as Stewart has contended, scholars and jurists sought "to establish [them]selves in authoritative chains of transmission, linking [their] own authority to that of the learned among earlier generations in the Muslim community,"[53] and perhaps to enhance their scholarly prestige among their peers.[54] To put is differently, the biographical dictionaries assisted in turning the permit into a "social fact" within the scholarly and learned circles.

It is difficult to assess the number of permits to teach law and issue fatāwá, but the data recorded in the biographical dictionaries suggest that they were granted regularly. Nevertheless, as Stewart has pointed out, the number of permits recorded in the dictionaries seems to represent a tiny fraction of the numbers actually granted in the major learning center across the Mamluk sultanate. The key point for the purpose at hand is that all those who were granted this license could have issued legal opinions, even if they were not appointed to a teaching or judging position. Moreover, as al-Murādī correctly observes, granting a permit to teach and issue fatāwá was an exclusive prerogative of the jurists and the scholars.

Since the learned circles across the Mamluk sultanate produced independently a large number of graduates who could issue legal opinions, the relationship between

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[53] Stewart, "The Doctorate," p. 52.

[54] It should be noted that biographical dictionaries vary widely regarding the frequency with which they mention *ijāzat al-tadrīs wa-l-iftā'*. As Makdisi and Stewart have shown, fourteenth and fifteenth-century biographical dictionaries, such as Ibn Ḥajar al-'Asqalāni's (d. 1449) and al-Sakhāwī's (d. 1497), mention the *ijāzah* to teach and issue *fatāwá* quite frequently. Stewart, "The Doctorate," p. 53.

the Mamluk ruling elites and these muftīs deserves a few words. Being a muftī was not an official religious position (*waẓīfah dīniyyah*) in the Mamluk administration, a fact that is reflected in the absence of the muftī as an office from the administrative and chancery manuals.[55] Moreover, although the biographical dictionary was a common genre throughout the Mamluk period, to the best of my knowledge, no biographical dictionary that was dedicated exclusively to muftīs, that is, to state-appointed muftīs, was ever compiled.[56] Indeed, as Stewart has pointed out, the division between muftīs and judges is not as strict as it might appear, as some of those who obtained a permit to issue legal opinions were appointed by the Mamluk state to judiciary positions (such as judges or deputy judges), and many judges also issued

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[55] al-Qalqashandī, for instance, does not list muftīs as office holders. Aḥmad b. ʻAlī al-Qalqashandī, *Ṣubḥ al-Aʻshā fī Ṣināʻat al-Inshāʼ* (Cairo: al-Muʼassasah al-Miṣriyyah al-ʻĀmmah lil-Taʼlīf wa-al-Tarjamah wa-al-Ṭibāʻah wa-al-Nashr, 1964), vol. 2, p. 192-193. Chroniclers did not list muftīs who were not appointed to a specific position among the office holders as well. For late Mamluk Damascus see, for instance: ʻAlī b. Yūsuf al-Buṣrawī, *Tārīkh al-Buṣrawī: Ṣafaḥāt Majhūlah min Tārīkh Dimashq fī ʻAṣr al-Mamālīk, min sanat 871 H li-ghāyat 904 H* (Damasucs and Beirut: Dār al-Maʼmūn lil-Turāth, 1988), pp. 189-190; Shihāb al-Dīn Aḥmad ibn Muḥammad ibn ʻUmar b. al-Ḥimṣī, *Ḥawādith al-Zamān wa-Wafāyāt al-Shuyūkh wa-l-Aqrān* (Beirut: al-Maktabah al-ʻAṣriyyah, 1999), vol. 2, pp. 191-192. Moreover, the Damascene chronicler and muftī Ibn Ṭūlūn adheres to this historiographical approach in his annals of the Ottoman conquest of Damascus. As in many other Mamluk chronicles, the account of the events that transpired in a certain year opened with the enumeration of all the office holders (the sultan, the governors, the judges, etc.). Muftīs are absent from this list. See Shams al-Dīn Muḥammad Ibn Ṭūlūn, *Mufākahat al-Khillān fī Ḥawādith al-Zamān: Tārīkh Miṣr wa-al-Shām* (Cairo: al-Muʼassasah al-Miṣriyyah al-ʻĀmmah lil-Taʼlīf wa-al-Tarjamah wa-al-Ṭibāʻah wa-al-Nashr, 1962-1964), vol. 2.

[56] In fact, al-Murādī seems to be the first chronicler from the Arab lands to compile such a work. In the core lands of the empire, roughly a contemporary of al-Murādī, Müstakimzâde Süleymân Saʻeddîn Efendi (d. 1787-1788), wrote a biographical dictionary entitled *Devḥatü l-Meşâyiẖ-i Kibâr* that is exclusively devoted to muftīs: Müstakîmzâde Süleymân Saʻeddîn, *Devḥatü-l-Meşâyiẖ: Einleitung und Edition* (Stuttgart: Steiner Verlag, 2005), 2 vols. See Repp, *The Müftī of Istanbul,* p. 11.

legal opinions.[57] Still, throughout the Mamluk period muftīs were not considered holders of a religious position.

The only official muftīship was the muftīship of the Hall of Justice (*Dār al-'Adl*), the superior *Maẓālim* court presided over by either the Mamluk sultan (in Cairo) or his deputy (in Syria).[58] But the opinion of the muftī of the Hall of Justice, like any other muftī in the Mamluk sultanate, was not in and of itself officially enforceable. The appointment deed of the late fourteenth century Abū Bakr al-Jaytī al-Ḥanafī (ca. 1358-1416)[59] to the Ḥanafī muftīship of *Dār al-'Adl* in Cairo offers a glimpse into the manner in which this office was perceived. As the Ḥanafī muftī of the Hall of Justice, al-Jaytī was to supervise the rulings (*al-aḥkām al-shar'iyyah*) of the Hall. Moreover, the deed states that his legal opinions should be the "foundation

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[57] Ibn al-Shiḥnah comments on the permissibility of qāḍīs to issue *fatāwá*. He argues that a qāḍī should not issue *fatāwá* in court (*majlis al-qaḍā'*). There is a debate among the jurists, he continues, whether a qāḍī should issue *fatāwá* when he is not serving as a judge. Some jurists suggested that he should issue *fatāwá* concerning rituals (*'Ibādāt*) but not concerning interpersonal issues (*mu'āmalāt*). Ibrāhīm b. Abī al-Yamn Muḥammad b. Abī al-Faḍl b. al-Shiḥnah, *Lisān al-Ḥukkām fi Ma'rifat al-Aḥkām* (Cairo: Muṣṭafá al-Bābī al-Ḥalabī, 1973), p. 219.

[58] On *Dār al-'Adl*: Emile Tyan, *Histoire de L'organisation Judiciaire en Pays D'Islam* (Leiden: Brill, 1960), pp. 433-525; Jørgen S. Nielsen, *Secular Justice in an Islamic State: Maẓālim under the Baḥri Mamlūks 662/1264-789/1387* (Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985), pp. 49-173; Nasser O. Rabbat, "The Ideological Significance of the Dar al-'Adl in the Medieval Islamic Orient," *IJMES* 27 (1) (1995), pp. 3-28; Jon E. Mandaville, *The Muslim Judiciary of Damascus in the late Mamluk Period* (Princeton: Unpublished Ph.D. dissertation, 1969), pp. 5-11, 69-73. In the fourteenth century there were official muftīs affiliated with the four legal schools present in every session of the Hall in Cairo. In Damascus, on the other hand, in the late Mamluk period only the Ḥanafī and Shāfi'ī schools were represented. Jon Mandaville has suggested that in late fifteenth-century Damascus, only a Ḥanafī muftī attended the sessions of Dār al-'Adl in the city. Nevertheless, al-Ghazzī mentions a Shāfi'ī muftī as well. Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawākib al-Sā'irah bi-A'yān al-Mi'ah al-'Āshirah* (Beirut: Jāmi'at Bayrūt al-Amīrikiyyah, 1945-1958), vol. 1, pp. 40-45.

[59] Muḥammad ibn 'Abd al-Raḥman Sakhāwī, *al-Ḍaw' al-Lāmi',* vol. 11, p. 50.

of our illustrious rulings" and that he "should issue legal opinions for the people of the time courageously and knowledgably." It is important to note, however, that the appointment deed does not specify that the appointee's rulings are binding or that he has the right to abrogate the rulings of the judges.[60]

Other than the muftī of the Hall of Justice, there was a fairly large number of muftīs that did not hold a state appointment, as any scholar who held a permit to issue legal rulings was virtually a muftī. Some held a teaching position in *madrasah*s and mosques across the sultanate, others might have earned their living through issuing legal opinions. More troubling, in the eyes of some jurists, was the fact that every muftī could issue legal opinion freely, even when they lacked proper knowledge. The late fourteenth-century historian and Mālikī chief judge Ibn Khaldūn, for instance, commented that the Mālikī muftīs in Cairo, some of whom he considered "quacks or lacked learning," served as legal advisors to anyone who asked for their opinion either before or after the case was adjudicated in court. Moreover, he emphasizes in his account the burden these muftīs and their opinions posed on his court and presumably on the legal system at large.[61] Roughly around the same time, the Mamluk sultan al-Ẓahīr Barqūq issued a decree that intended to curb the muftīs'

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[60] Taqī al-Dīn Abī Bakr b. 'Alī ibn Ḥijjah al-Ḥamawī al-Azrārī, *Kitāb Qahwat al-Inshā'* (Beirut and Berlin: Klaus Schwarz Verlag, 2005), pp. 112-113.

[61] Morimoto Kosei, "What Ibn Khaldūn Saw: The Judiciary of Mamluk Egypt," *Mamluk Studies Review* 6 (2002), pp. 109-131. Ibn Khaldūn's comment is an important indication that obtaining a permit to issue legal opinions did not necessarily mean scholarly accomplishment.

activity. In his decree Barqūq demanded that muftīs to follow the accepted doctrine of their respective schools. In addition, each muftī was to obtain a permit from the chief qāḍī (*qāḍī al-quḍāh*) of his respective school to issue legal opinions (thus obtaining an approval of his competence). Subsequently, the chief Shāfi'ī qāḍī of Damascus nominated seven muftīs, while his Ḥanafī counterpart appointed only three.[62] Approximately three decades later, in 1424, the Ḥanafī chief qāḍī was asked by sultan al-Ashraf Baybars to oversee the competence of some Ḥanafī muftīs.[63] Although these incidences seem to be the exception, they tell us something about the rule and about the problems it generated.

The sultan's demand to supervise the muftīs was an extreme measure. For the most part, muftīs were not institutionally restricted. Over the course of the fifteenth century, different jurists suggested different approaches to cope with this multiplicity of muftīs. In his manual for judges, the early fifteenth-century 'Alī b. Khalīl al-Ṭarābulusī, for instance, explains how a judge should decide which muftī to follow. In addition, al-Ṭarābulusī offers several rules that the muftī should follow in his ruling in case of disagreements between the leading authorities of the Ḥanafī school. By doing so, al-Ṭarābulusī aimed at limiting the range of possible solutions to jurisprudential

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[62] Lutz Wiederhold, "Legal-Religious Elite, Temporal Authority, and the Caliphate in Mamluk Society: Conclusions Drawn from the Examination of a "Zahiri Revolt" In Damascus in 1386," *International Journal of Middle East Studies* 31 (2) (1999), p. 320.

[63] Leonor Fernandes, "Between Qadis and MuftIs: To Whom Does the Mamluk Sultan Listen?," *Mamluk Studies Review* 6 (2002), pp. 101-102.

controversies within the school.[64] Several decades later, in another manual for judges, Ibrāhīm Ibn al-Shiḥnah simply reiterates the distinction between the non-binding (or, more accurately, non-enforcable) nature of the muftī's ruling and the binding ruling of the judge, thus placing the weight on the qāḍī's resolution rather than on the muftī's opinion.[65] Nonetheless, he does not suggest that the muftīs should be institutionally supervised, as Ibn Khaldūn does in his *Muqaddimah.*[66]

To be sure, the muftīs who operated throughout the Mamluk domains varied in their prominence and status. Although granted the permit to issue legal opinions, it

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[64]al-Ṭarābulusī cites al-Ḥasan b. Ziyād's *Adab al-Qāḍī*: If there is only a single jurist, the solicitor should follow his opinion. If there are two jurists and they disagree, he should follow the opinion of the jurist he deems sounder (*aṣwabihimā*). If there are three jurists, and two of them agree on a certain issue, he should follow their opinion, and not the third's. If the three disagree, however, the solicitor is to exercise *ijtihā*d on the basis of the three opinions. Then he should follow the opinion he deems soundest. 'Alā' al-Dīn Abī al-Ḥasan 'Alī ibn Khalīl al-Ṭarābulusī, *Mu'īn al-Ḥukkām fīmā Yataraddadu Bayna al-Khaṣmayn min al-Aḥkām* (Cairo: Muṣṭafá al-Bābī al-Ḥalabī, 1973), pp. 27-28.

[65] Ibn al-Shiḥnah, *Lisān*, p. 221.

[66] The fifteenth-century reality, however, was more complex than what both al-Tarābulusī and Ibn al-Shiḥnah's manuals might lead to believe. As Ibn Khaldūn's account of the state of affairs in late fourteenth-century Cairo suggests, using both muftīs and qāḍīs was a well-known practice. The Mamluk sultan and his ruling elite also manipulated both qāḍīs and muftīs in order to obtain legal approval of their deeds. When qāḍīs refused to approve of a decision made by a member of the Mamluk ruling elite, the latter often sought to obtain the opinion of some prominent muftī. This was especially true in the fifteenth century, as Leonor Fernandes has concluded following some Mamluk chroniclers, when the status of the qāḍīs somewhat deteriorated in the fifteenth century, possibly due to the fact that incompetent people were increasingly appointed to judiciary positions. According to the fifteenth-century chronicler and a Ḥanafī deputy qāḍī, Ibn al-Ṣayrafī, for example, the Mamluk sultan Qayitbay respected the Ḥanafī muftī Amīn al-Aqṣarā'ī to the extent that in one of the sultanic processions al-Aqṣarā'ī is reported to have walked before the qāḍīs ['Alī b. Dāwūd al-Jawharī al-Ṣayrafī, *Inbā' al-Haṣr bi-Abnā' al-'Aṣr* (Cairo: Dār al-Fikr al-'Arabī, 1970), p. 372]. Sometime earlier, the sultan asked al-Aqṣarā'ī to recommend jurists for judiciary positions. [Ibn al-Ṣayrafī, p. 251].
This is not to say, however, that the judges in the late Mamluk sultanate lost their legal authority. As Fernandes herself has noticed, the muftīs' opinions had to be approved by a judge before being enacted by the sultan. Secondly, late Mamluk chronicles still portray the chief qāḍīs as fairly dominant figures in the late-Mamluk "legal landscape" of both Egypt and in Syria, despite occasional controversies on the authority of a particular qāḍī. [For example, Ibn al-Ṣayrafī, pp. 375-377].

is likely that not all the muftīs were considered equal by their peers. On the other hand, some of these muftīs were indeed towering figures in the jurisprudential landscape of the Mamluk period. Contemporary biographical dictionaries and chronicles clearly allude to such an informal hierarchy of muftīs. The various epithets and designations attached to jurists and scholars served, in part, to create and advertise this hierarchy. In his biographical dictionary, which draws heavily on the biographical works of Ibn Ṭūlūn and the late fifteenth-century Ibn al-Mibrad, Aḥmad b. Muḥammad al-Ḥaṣkafī (d. 1595) attaches at times titles that point to the prominence of certain muftīs in specific towns during the late Mamluk period. Muḥammad b. Muḥammad b. Muḥammad b. al-Ḥamrā' al-Dimashqī (d. 1487), for example, was known as the "muftī of the Ḥanafīs" in Damascus,[67] and the uncle of the sixteenth-century jurist and chronicler Shams al-Dīn Ibn Ṭūlūn, Yūsuf b. Muḥammad b. 'Alī b. 'Abd Allāh b. Ṭūlūn al-Ṣaliḥī al-Ḥanafī (d. 1530), served as the muftī of *Dār al-'Adl* and was known as the "shaykh of the Ḥanafīs in Damascus."[68]

It is appropriate to return at this point to al-Murādī's comment concerning the "constant dispute and strife" among the muftīs. It is true that the muftīs across the sultanate should not be perceived as a homogenous community that speaks in one voice. Jurisprudential disputes among adherents of the different jurisprudential

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[67] al-Ḥaṣkafī, Muta', vol. 2, p. 748.

[68] al-Ḥaṣkafī, Muta', vol. 2, pp. 843-844. See also: al-Ḥaṣkafī, Mut'a, vol. 1, pp. 392-393.

schools as well as within a particular school were not unheard of. Consider, for instance, the following dispute that occurred in 1471 in Cairo between the descendants of the Mamluk Amir Īnāl and the office holders in the madrasah endowed by Īnāl over the right of the former to benefit from the revenues of the endowment. Each of the parties involved solicited the opinion of one of the leading Ḥanafī muftīs in Cairo at the time – Amīn al-Dīn al-Aqṣarā'ī, al-shaykh Muḥyī al-Dīn al-Kāfiyajī, and Qāsim b. Quṭlūbughā – and brought their opinion to the Mamluk sultan Qāyitbāy. The sultan decided to summon all the chief qāḍīs and the three muftīs to a session. Ibn al-Ṣayrafī records a heated debate in the session. While al-Kāfiyajī and al-Aqsarā'ī approved the inclusion of Īnāl's descendants, Ibn Quṭlūbughā contended that only the position holders should enjoy the endowment's revenues. Al-Kāfiyajī, in response to Ibn Qutlūbughā's opinion, approached the sultan, the chief Ḥanafī qāḍī, and the dāwādār and said: "This man – that is, Qāsim [b. Quṭlūbughā] the Ḥanafī – does not know syntax, grammar, the fundamentals [of law], and fiqh; but he knows the legal devices (*ḥiyal*), and he is not allowed to issue fatāwá (*maḥjūr 'alayhi fī al-fatwá*), because he accepted a bribe…" [69] These are serious accusations. Nevertheless, it should be stressed that most fourteenth- and fifteenth-century Mamluk chroniclers and jurists did not consider these disputes to be a major systemic problem that called for an institutional reform, as al-Murādī clearly did. To be sure, as we have already

[69] al-Ṣayrafī, *Inbā' al-Haṣr bi-Abnā' al-'Aṣr*, pp. 352-354.

seen, jurists voiced and wrote their complaints about the multiplicity of muftīs. But, it is worth reiterating, with some significant exceptions, there was not a concerted effort to institutionally curb the activity of the muftīs.

Finally, the chronological framework of the "Mamluk" model as presented by al-Murādī remains to be addressed. Al-Murādī marks the year 1516 as a turning point in the organization of the muftīship in Damascus and perhaps in the Arab lands in general. Mamluk chroniclers who witnessed the Ottoman conquest of the Arab lands, such as the Damascene Ibn Ṭūlūn or the Egyptian Ibn Iyās, do not mention any reform in the muftīship. At the same time, these authors provide elaborate accounts on administrative and legal reforms introduced by the new rulers. Furthermore, Ibn Ṭūlūn's description suggests that the activity of Damascene non-appointed muftīs, such as Quṭb al-Dīn Muḥammad b. Muḥammad b. 'Umar b. Sulṭān al-Dimashqī (d. 1543) and 'Abd al-Ṣamad al-'Akārī (d. 1558), continued unmolested in the first decades following the conquest.[70] As we shall see below, sixteenth century chronicles do mention the appointment of a Rūmī Ḥanafī muftī to Damascus who was sent from Istanbul, but they do not present the appointment as an abrupt and sweeping transformation of the office, as al-Murādī does. It is therefore necessary to pay

[70] Ibn Ṭūlūn records a dispute between these muftīs in 1538. See Shams al-Dīn Muḥammad b. 'Alī Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah Ghadāt al-Ghazw al-'Uthmānī lil-Shām, 926-951H: ṣafaḥāt mafqūdah tunsharu lil-marrah al-ūlá min Kitāb Mufākahat al-Khillān fī Ḥawādith al-Zamān li-Ibn Ṭūlūn al-Ṣāliḥī* (Damascus: Dār al-Awā'il, 2002), p. 325. On these muftīs see: al-Murādī, ***'**Urf al-Bashām,* pp. 29-32.

attention to the continuity of "Mamluk" scholarly practices between the sixteenth and the eighteenth centuries.

Biographical dictionaries of the tenth, eleventh, and the twelfth Hijri centuries (roughly the sixteenth to the eighteenth centuries AD) may assist us in this task. A brief survey of the biographical literature reveals that permits to teach and issue legal rulings were still granted well after the Ottoman conquest. Consider, for instance, the following examples. At some point in the second half of the sixteenth century, the Gaza-based Ḥanafī Muḥammad al-Tīmūrtāshī (d. 1595) left his hometown and traveled for Cairo to study with some of the most renowned authorities of his time. One of his teachers in Cairo, the muftī of Egypt, Amīn al-Dīn b. ʻAbd al-ʻĀl, granted him a permit to teach and issue fatāwá.[71] The Ḥanafī Muḥyī al-Dīn b. Khayr al-Dīn al-Ramlī (d. 1660) of the Palestinian town of Ramlah was also granted such a permit. Like his father Khayr al-Dīn al-Ramlī,[72] one of most eminent Ḥanafī jurists in the Arab lands (and beyond) in the seventeenth century, Muḥyī al-Dīn was trained as a jurist. At some point, presumably in an advanced stage of his studies, his father Khayr al-Dīn wrote him a permit to teach and issue legal rulings.[73] Roughly around the same

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[71] Taqī al-Dīn b. ʻAbd al-Qādir al-Tamīmī, *al-Ṭabaqāt al-Sanīya fī Tarājim al-Ḥanafiyyah,* Süleymaniye Library MS Aya Sofya 3295, p. 346r. See also in al-Timrutāshī's biography: Anonymous, *Tarjmat Muḥammad al-Tīmūrtāshī,* Süleymaniye Library MS Esad Efendi 2212-1, p. 4v.

[72] Khayr al-Dīn al-Ramlī's biography is discussed below in ch. 5.

[73] Muḥammad Amīn ibn Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fī Aʻyān al-Qarn al-Ḥādī ʻAshar* (Beirut: Dār al-Kutub al-ʻIlmiyyah, 2006), vol. 4, pp. 324-325.

time, the Shāfi'ī Ibn al-Naqīb al-Bayrūtī (d. 1650) obtained from his teachers in Damascus a permit to teach and issue fatāwá.[74] In other words, as these examples suggest, the certificate to teach law and issue fatāwá did not die out in 1516.

Nevertheless, a significant change did occur over the course of the sixteenth and the seventeenth centuries. This change was both quantitative and qualitative. Quantitatively, there is a drastic decline in the frequency in which the practice of granting permits to teach and issue fatāwá is mentioned in biographical dictionaries from the seventeenth and the eighteenth centuries in comparison to earlier periods. In his biographical dictionary, which focuses on the second half of the fifteenth century and the early decades of the sixteenth century, Aḥmad b. Muḥammad al-Ḥaṣkafī[75] mentions such a permit 23 times. Similar figures emerge from Najm al-Dīn al-Ghazzī's centennial biography dictionary of the tenth Hijri century (roughly the sixteenth century).[76] There the term appears 32 times, equally spread over the course of the century. In al-Ghazzī's biographical dictionary of the early decades of the seventeenth century,[77] by contrast, as well as in that by his Damascene counterpart

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[74] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, 301-302.

[75] al-Ḥaṣkafī, *Mut'at al-Adhhān.*

[76] al-Ghazzī, *al-Kawākib al-Sā'irah*.

[77] Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *Lutf al-Samar wa-Qatf al-Thamar: min Tarājim A'yān al-Ṭabaqah al-ūlā min al-Qarn al-Ḥādi 'Ashar* (Damascus: Wizārat al-Thaqāfah wa-al-Irshād al-Qawmī, 1981-1982).

and rival al-Būrīnī,[78] the term appears 4 and 7 times respectively. Al-Ghazzī is of particular importance for our purpose, since he documents both the sixteenth century and the early decades of the following century. The decline in the number of permits recorded is indicative of the change this scholarly practice underwent around the turn of the century. This tendency was to continue well into the eighteenth century. In his centennial biographical dictionary of the seventeenth century, Muḥammad al-Muḥibbī[79] records only 6 instances in which such a permit was granted. For the eighteenth century, al-Murādī mentions only 4 jurists who were granted an *ijāzah fī tadrīs wa-iftā'*.[80] To be sure, it is problematic to deduce exact statistical data from the information provided in the biographical dictionaries. It is possible that permits to teach and issue legal rulings were granted more frequently than what these sources suggest. Nevertheless, the tendency is clear and points to a steady decline in the popularity of this practice among scholars and jurists. Although the decline in granting permits to teach and issue legal opinions was a phenomenon that cut across legal schools, there were clear differences in the frequency with which permits were granted among the adherents of the different schools. Out of all the cases recorded, the vast majority of receivers (and respective granters) were followers of the Shāfi'ī

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[78] al-Ḥasan ibn Muḥammad al-Būrīnī, *Tarājim al-A'yān min Abnā' al-Zamān* (Damascus: al-Majma' al-'Ilmī al-'Arabī bi-Dimashq, 1959-1963).

[79] al-Muḥibbī, *Khulāṣat al-Athar.*

[80] Muḥammad Khalīl ibn 'Alī ibn Muḥammad ibn Muḥammad al-Murādī*, Kitāb Silk al-Durar fī A'yān al-Qarn al-Thānī 'Ashar* (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 1988).

school. Only 5 Ḥanafīs are reported to have been granted such a permit in the sixteenth- and the seventeenth-century biographical dictionaries. Two questions ought to be addressed: first, how are we to explain the decline in the frequency of the practice? And secondly, why did certain jurists preserve this practice more than others (or, to be more precise, why did biographical dictionaries record these specific cases and not others?)

The first question will be answered more fully in the third section of this chapter. At this point, suffice it to say that the decline in the frequency with which permits to teach law and issue legal opinions were granted corresponds to the emergence of the state-appointed muftīs in the Ottoman province of Damascus. These two trends suggest that the appointment of the muftī by the state rendered the permit superfluous.

The answer to the second question is related to the first, but it also seems to be related to the prominence of the Ḥanafī school in the Ottoman Empire, as the Ottoman state adopted this school as its state school (or, as we shall see, a specific branch within the schoo). Non-Ḥanafī jurists, while not utterly renouncing the authority of the sultan or the chief muftī, still relied on their affiliation with certain authoritative genealogies more than their Ḥanafī counterparts did. This may also explain why in these particular circles the permit to teach and issue legal rulings

preserved some of its pre-conquest prestige, a fact that is also reflected in the "communal archives" of the scholarly circles, the biographical dictionaries.

The same can be said about Ḥanafīs who did not hold any state-appointed position in the late sixteenth and the seventeenth century. As the cases of al-Tīmūrtashī and Khayr al-Dīn al-Ramlī's son indicate, these muftīs based their authority on their teachers and their affiliation to a specific scholarly tradition rather than on an official appointment by the state. This last point is exemplified in al-Muḥibbī's account of the Ḥanafī muftīship of the Palestinian town of Gaza. When the Ḥanafī muftī of Gaza 'Umar b. 'Alā' al-Dīn died in 1648,[81] there was not any Ḥanafī jurist in Gaza who could man the vacant muftīship that had previously been held by Muḥammad al-Tīmūrtashī, his son Ṣaliḥ, and 'Umar b. 'Alā' al-Dīn. The governor of Gaza and the city's notables forced a Shāfi'ī jurist, 'Umar b. al-Mashriqī, to switch to the Ḥanafī legal school. Subsequently, he was sent to study with Khayr al-Dīn al-Ramlī, who granted him a permit to teach and issue legal opinions. Since he apparently did not hold any appointment from Istanbul, the permit he obtained from the eminent muftī was crucial for his jurisprudential authority.[82]

But the change was not merely a quantitative decline in the frequency with which the permits to teach and issue fatāwá were granted. The change had a

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[81] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 3, 209.

[82] Ibid., vol. 3, 203-205.

qualitative dimension as well. The sixteenth century in the Greater Syria, for example, witnessed the weakening of the link between the permit and the training career in the madrasahs, a link that, as Makdisi and Stewart have demonstrated, was fairly prominent in the Mamluk period and particularly in the fourteenth and the fifteenth century. In the late Mamluk period, as we have already seen, the permit to teach and issue fatāwá was granted to the student at a specific point in his training course in the madrasah. Moreover, if in the late Mamluk period the permit was a document that followed specific conventions, by the late sixteenth century this was not always the case. Although Khayr al-Dīn al-Ramlī wrote a license for his son, the following anecdote related by the Shāfi'ī al-Ghazzī about how he obtained the permit to issue fatāwá deserves attention for it captures some of these qualitative transformations. 'Abd al-Qādir b. Muḥammad al-Ṭarābulusī (d. 1592) was a Damascene Shāfi'ī jurist. One night al-Ṭarābulusī saw al-Ghazzī's deceased father, Badr al-Dīn, in a dream. Al-Ṭarābulusī wanted to ask the esteemed jurist a question, but the latter sent him to ask his son, Najm al-Dīn. The leading Shāfi'ī jurist and al-Ghazzī's teacher, Shihāb al-Dīn Aḥmad al-'Aythāwī (d. 1616),[83] interpreted this dream as a license to teach and issue fatāwá granted to Najm al-Dīn by his father. Here clearly the permit was not granted as an integral part of the training career of the jurist, nor was there a document similar to the one described by al-Qalqashandī

[83] al-Ghazzī, *Luṭf*, 1, pp. 308-324.

involved. It is difficult to estimate how sweeping this change was, but the qualitative change this anecdote reflects is noteworthy.

To conclude, the decline in the popularity of the permit to teach law and issue legal rulings among jurists and scholars; the possible change its institutional nature underwent; and the jurisprudential affiliation of the recipients of such a permit might reflect a twofold change that occurred over the first three centuries of Ottoman rule in the Arab lands. First, it seems that the practices of transmitting jurisprudential knowledge, or at least some of them, changed. In the new reality, the certificate carried significantly less weight. This change dovetails with the transformation in the appointment patterns of muftīs, Ḥanafīs and non-Ḥanafīs alike. In this respect al-Murādī's observation seems quite accurate. But, as has already been argued, the process was not as sweeping and abrupt as al-Murādī envisioned it. The institution of the permit to teach and issue legal rulings (*ijāzat al-tadrīs wa-l-iftā'*), albeit perhaps in a modified form, and the "Mamluk" perception of the muftīship were preserved in certain circles throughout the Arab provinces of the Ottoman Empire (and, perhaps, in other provinces as well).

There is still an unresolved question: why was al-Murādī so anxious about the constant dispute and strife among the jurists? For understanding al-Murādī's anxiety we have to look at a different set of concerns, one that echoes, I would argue, the perception held by members of the Ottoman religious-judicial and ruling elites with

regard to the Mamluk institution of the muftī. For this purpose, one has to explain the Ottoman understanding of the muftīship.

The Ottoman Perception of the Institution of the Muftī

> Cling to the opinion of Meḥmet [Efendi] and according to this [opinion, you] should rule [*Amsikū qawl Meḥmet wa-'alayhi al-fatwá*].[84]

When the early eighteenth-century Ottoman historian Na'îmâ commemorated the appointment date (the year 1024AH/1615) of Meḥmet Efendi as the imperial chief muftī instead of his predecessor, Ṣun'ullah Efendi, he decided to do so by composing the above-cited chronogram. The chronogram, however, is not merely a rhetorical device or a decorative word-game. It captures Na'îmâ's understanding of the nature of the office of the chief imperial muftī (the *şeyḫülislâm*) and of the importance of his legal opinion. This section sets out to clarify Na'îmâ's chronogram and the assumptions on which it rests.

From around the mid-fifteenth century, roughly around the conquest of the new imperial capital, the still evolving Ottoman ruling and religious elites gradually developed a hierarchy of judiciary positions and *madrasah*s. An integral dimension of

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[84] Mustafa Na'îmâ, *Târih-i Na'îmâ: Ravzatü'l-Hüseyin fî Hulâsati Ahbâri'l-Hâfikayn* (Ankara: Türk Tarih Kurumu, 2007), vol. 2, p. 424.

this process was the emergence of the chief muftī, the şeyḫülislâm, "to become, by the mid-sixteenth [century], the supreme office in the Ottoman judicial hierarchy."[85] Although many jurists and chief muftīs took part in the articulation and the development of the office in this period, it is hard to overstate the importance of the eminent sixteenth-century chief imperial muftī Ebû's-Su'ûd Efendi in this process, a fact that did not escape contemporary observers as well as modern scholars. Towards the mid-sixteenth century the chief muftī became, as Colin Imber has put it, "the chief source of juristic authority in the empire."

For understanding the implications of the emergence of the chief muftī as the "chief source of juristic authority" it is necessary to examine the doctrinal definition of this office in tandem with the evolution of this institution. As will be suggested below, the establishment of a hierarchy was accompanied by the emergence of a doctrinal reconfiguration of the institution of the chief muftī and of its role within the burgeoning religious-judicial establishment. This section looks at how the office was defined from the early sixteenth century onwards by members of the Ottoman religious-judicial elite. Special attention will be paid to the relations between the chief imperial muftī (the şeyḫülislâm) and the provincial muftīs, his subordinates.

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[85]Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997), p. 7. See also: Richard Repp, *The Müfti of Istanbul*; Abdurrahman Atcil, *The Formation of the Ottoman Learned Class and Legal Scholarship (1300-1600)*.

The evolution of the Ottoman hierarchy of muftīs is a convenient starting point for our discussion. Understanding this hierarchy is crucial for understanding the nature of the institution of the muftī in general – not only the chief muftī – in the Ottoman domains. In his *Telḥîsü'l-Beyân fî Ḳevânîn-i Âl-i Osmân,* the seventeenth-century, the historian and encyclopedist Hezârfen Ḥüseyin Efendi dedicates a section to the taxonomy of muftīs in the Ottoman empire: "A muftī might be the şeyḫülislâm, or he might not. Those who are not the şeyḫülislâm are the provincial muftīs (*kenâr müftileri*)."[86] Hezârfen does not specify who the *kenâr müftileri* were, what their position in the learned hierarchy was, why they were appointed, or in what manner. He merely explains that their rank is lower than the chief muftī's. Their lower rank is reflected in the requirement to mention the authoritative text (*nuḳûl*) they consulted for their ruling, whereas the chief muftī was not expected to do so.[87]

The anonymous author of *Ḥırzü'l-Müluk,* a treatise written several decades earlier and dedicated to the structure of the Ottoman state, provides additional details concerning the history of the office of the provincial muftī. According to this treatise, the main reason for the appointment of jurists as muftīs in specific localities was to

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[86] Although writing in the second half of the seventeenth century (the work was completed in 1675-1676), Hezârfen relied on older documents, such as "*ḳânûnnâme*s, histories, old and new registers," as well as on other documents and registers from the court and the Imperial Divan. Hezârfen Hüseyin Efendi, *Telhîsü'l-Beyân fî Ḳavânîn-i Âl-i Osmân* (Ankara: Türk Tarih Kurumu Basımevi, 1998), p. 38, 197.

[87] Ibid., p. 200. See also: Uriel Heyd, "Some Aspects of the Ottoman Fetva", *Bulletin of the School of Oriental and African Studies* 32 (1) (1969), pp. 45-46.

increase the access of provincial subjects to a muftī who could provide them with authoritatve rulings. Presumably, before the appointment of provincial muftī provincial subjects had to send their questions to Istanbul or to travel to the capital to this end. Moreover, this comment may suggest that before this development took place there had been only a single official muftī, who had resided in the Ottoman capital. Later, in the author's time, the main purpose of the provincial muftī was to check on oppressive officials and ignorant judges (*ẓaleme-i vulât ve cehele-i ḳuḍât*), who do not follow the rules of the *şerî'at*. In addition, the anonymous author explicitly states that those who were to serve as provincial muftīs (*eṭrâf ve cevânibde fetvâ ḫidmetine*) could have been chosen from among the professors)*müderrisinden*) or from among the pious (*du'âci*), who were capable of issuing legal opinions (*fetvâ virmeğe iktidâri olan*).[88]

The fact that the provincial muftī could have been chosen from among the madrasah teachers should be clarified. As Richard Repp has pointed out, although it does not seem that there was a formal career for muftīs, as was the case for judges (*ṭarîḳ-i ḳaẓâ*) or teachers (*ṭarîḳ-i tedrîs*), it appears that from the reign of Bâyezîd II onwards the teacher in the most important madrasah built by the Sultan (but at times by other members of the royal household or the Ottoman ruling elite) in major cities across the empire served as the local muftī as well. The professors in prominent

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[88] Anonymous, *Ḥırzu'l-Mülûk* in Yaşar Yücel, *Osmanlı Devlet Teşkilâtına dair Kaynaklar* (Ankara: Türk Tarih Kurumu, 1988), p. 191-192.

madrasah – such as the ones built by Bâyezîd II in Amasya, by Süleymân's mother in Menisa, by Süleymân himself in Rhodes and Damascus, by Selîm II in Cyprus, and by Hüsrev Bey in Sarajevo – all served as the state-appointed provincial muftīs in these localities. Nevertheless, not all of these professors/muftīs were at the same rank in the madrasah hierarchy, a fact that was reflected in the difference in their salaries, ranging from 30 to 80 akçes a day.[89] An important qualification is in order here. The attachment of the office of the muftī to a prominent provincial madrasahs characterizes mostly large urban centers. As we shall see below, in lesser urban centers, such as the Palestinian town of Ramlah, there were jurists who held a state appointment to serve as muftīs, but were not appointed to a teaching positions in an imperial madrasah.

Turning to the şeyḫülislâm, much more is known about this office than about his provincial subordinates. As already mentioned, by the mid-sixteenth century the şeyḫülislâm had emerged as the head of the hierarchy. As the head of the hierarchy, the chief muftī had the authority to appoint jurists to various positions within the evolving hierarchy of the religious-judicial establishment (perhaps in consultation with the vezir and the sultan). In addition, serving as the head of the religious-judicial establishment allowed the chief muftī to resolve disputes among members of the

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[89] Repp, *The Müfti of Istanbul,* pp. 62-68. Repp argues that the range was between 30 and 60 akçe. But as we shall see below, the salary of at least one muftī in Damascus was 80 akçe.

establishment.[90] Another aspect of the chief jurisconsult's position, as will be seen in chapter 3, was the authority of the şeyḫülislâm to canonize jurisprudential texts.

The legal opinions issued by the chief muftīs offer an important insight to the way in which the heads of the religious-judicial establishment perceived their position in relation to its other members. Especially, these legal rulings reveal the doctrinal articulation of the office, as the chief muftīs understood it. Even before the chief muftī assumed all the authorities he would by the mid-sixteenth century, an attempt was made to advance the authority of the legal opinion issued by state-appointed muftīs, and particularly by the chief muftī.[91] As part of this attempt, as early as the first decades of the sixteenth century, Ottoman muftīs ruled that a scornful treatment of a legal ruling presumably issued by a state-appointed muftī was blasphemy (on this issue see also chapter 5). Kemâlpaşazâde, for instance, was asked about a person who disparaged a ruling by questioning its relevance to an unspecified case. The chief muftī replied that this person should renew his faith and be severely punished (*ta'zîr balîğ*).[92] Perceiving disobedience to a legal ruling as blasphemy, however, was not an Ottoman innovation. In one of the debates that took place in 1359, the Ḥanafī Sirāj al-

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[90] The author of *Ḥırzu'l-Mülûk*, for instance, explains that the chief muftī is to resolve all the jurisprudential disputes among the jurists (*her kelâmi beyne'l-'ulemâ naşş-i ḳaṭi' okup*). The muftī, in turn, should provide the soundest reply to those who address their question to him. Anonymous, *Ḥırzu'l-Mülûk*, p. 192.

[91] The term used is *fetvâ-ı şerîfe*. The term usually denotes in sixteenth and seventeenth-century Ottoman sources legal opinions issued by state appointed muftīs, often by the şeyḫülislâms themselves.

[92] Kemâlpaşazâde, *Fetâvâ,* Süleymaniye Library MS Darulmesnevi 118, 19v.

Dīn al-Hindī and others declared that the school of Abū Ḥanīfah held that whoever disdained fatāwá and muftīs was an apostate.[93] But it seems that in the Ottoman context, this argument was employed particularly in cases involving the rulings of the chief muftī and his state-appointed subordinates. As Ömer Lütfi Barkan pointed out, questioning the validity of the chief muftī's ruling was considered "a major transgression against the religious and social order."[94]

Moreover, in the years and decades to come, chief muftīs increasingly underscored the binding and enforceable nature of their legal opinions, insisting that all members of the Ottoman religious-judicial establishment, muftīs and judges alike, were to follow their rulings. Consider, for example, the following ruling by şeyḫülislâm Ṣun'ullah Efendi (d. 1612). When asked about a judge who does not follow in his rulings the *şerî'at,* the imperial edicts, and the "*şer'î* fatwá," Ṣun'ullah Efendi replied that this judge should be removed from office, punished and denounced as a heretic (*kâfir olur*) for abasing the sacred law.[95] In this case, it is clearer that the ruling was issued by an official jurisconsult, perhaps even by the chief muftī himself. In the same vain, at some point in the first half of the seventeenth century, şeyḫülislâm Yaḥyâ Efendi (d. 1643) was asked about a provincial muftī who

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[93] Fernandes, "Between Qadis," p. 104.

[94] Ömer Lütfi Barkan, "Caractère Religieux et Caractère Séculier des Institutions Ottomanes," in Jean-Louis Bacqué-Grammont et Paul Dumont (eds.), *Contributions à l'histoire économique et sociale de l'Empire ottoman* (Leuven: Peeters, 1983), p. 36.

[95] Ṣun'ullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, 43r.

permitted the remarriage of a couple after the wife had been triple-divorced but had not married another husband in between (*ḥillah*). This permission was against the ruling of the chief muftī.[96] Accordingly, the chief muftī ruled that the provincial muftī should be punished (*ta'zîr*) and banned from issuing legal opinions (*iftâ'dan men' lâzimdir*). The same chief muftī also ordered the removal from office of a judge who ruled against the chief muftī's, perhaps his own, fatwá.[97]

Recent studies of provincial courts across Anatolia suggest that legal opinions issued by a state-appointed muftī carried significant weight and were indeed respected as binding and enforceable, presumably as long as they corresponded to the case at hand.[98] In seventeenth-century Bursa, for example, every fatwá bearer won his case in court.[99] Such was also the case in seventeenth- and eighteenth-century Kastamonu and Çankırı. There, as Boğaç Ergene has shown, fatāwá were frequently brought to court by the litigant and "carried significant weight in the proceedings, winning legal cases for their bearers almost every time."[100] The identity of the muftī

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[96] Yaḥyâ Efendi, *Fetâvâ,* Süleymaniye Library MS Ayasofya 1569, p. 88v.

[97] Ibid., p. 85r. A similar ruling is recorded 'Abdurraḥim Efendi's *fatāwá* collection. Haim Gerber, *State, society, and law in Islam: Ottoman law in comparative perspective* (Albany: State University of New York Press, 1994), p. 81 (and p. 201, f.n. 3).

[98] Ibid., p. 82-83.; R. C. Jennings's findings for Kayseri, however, qualify Gerber's conclusions. In Kaysari fetva bearers did not necessarily win the case. R. C. Jennings, "Kadi, Court, and Legal Procedure in 17th c. Ottoman Kayseri," *Studia Islamica* 48 (1978), pp. 133-172.

[99] Gerber, p. 81.

[100] Boğaç Ergene, *Local court, provincial society, and justice in the Ottoman Empire: legal practice and dispute resolution in Çankırı and Kastamonu (1652-1744)* (Leiden: Brill, 2003), p. 31.

in these cases is not always clear. In some cases the rulings were issued by the şeyḫülislâm, while in others it was the provincial muftī's ruling that was brought to court. But even if the legal opinion was issued by the appointed provincial muftī, Yaḥyâ Efendi's ruling may explain the weight attributed to his opinion by the local judge, for the provincial muftī was, at least theoretically, following the ruling of the chief muftī.

As opposed to Anatolia, much less is known about the manner in which litigants made use of fatāwá across the Arab lands of the empire. Judith Tucker has argued that the reality in seventeenth and eighteenth-century Syria and Palestine was different from the one in Anatolia, as "there is little evidence to suggest that the muftī and qāḍī [in Greater Syria] worked glove-in-hands," due to what she has termed "pivotal differences in the background, training, and official standing of the muftīs." Nevertheless, she has drawn attention to the congruence between the muftīs' rulings and the judges' resolutions.[101] On the other hand, as we shall see in chapter 4, cases from sixteenth- and seventeenth-century Jerusalem, for example, suggest that litigants sought to obtain a fatwá from the chief muftī or from the provincial state-appointed muftī. These cases also indicate that, like in Anatolia, the Jerusalemite state-appointed muftī's opinion carried particular weight in court.

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[101] Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), p.20-22.

A fatwá issued by a state-appointed provincial muftī in Jerusalem toward the end of the seventeenth century casts light on how the chief muftī's rulings were perceived from a provincial perspective. The state-appointed muftī of Jerusalem, ʻAbd al-Raḥīm b. Abī al-Luṭf was asked about two appointment deeds (*berât*) for the same position. The solicitior wanted to know which appointment deed should be put into effect. In his reply the chief muftī states that the "Shaykh al-Islām, the current muftī of the Sublime Sultanate Yaḥyá [Efendi] [...], has ruled" that the earlier appointment deed should be implemented.[102] Nevertheless, as we shall see in chapter 5, ʻAbd al-Raḥīm b. Abī al-Luṭf himself (and probably other provincial muftīs) at times diverged from the rulings of the chief muftī, or at least avoided following some of his rulings.

The hierarchical picture that emerges from these legal rulings is also mirrored in contemporary chronicles. When the accomplished jurist Meḥmet b. Meḥmet, known as ʻArab-zâde (d. 1561), refused to admit one of Ebû's-Suʻûd's student as his reciter (*muʻīd*), Ebu's-Suʻûd issued a fatwá, which was accompanied by a sultanic

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[102] Based on Ibn Abī Luṭf's comment, it is plausible that Ibn Abī Luṭf learned about the chief muftī's ruling after he had seen this ruling in an edict (*bi-khaṭṭihi al-sharīf al-maʻhūd*), though it is not clear if it was an imperial/sultanic one that included the chief muftī's ruling or simply a fatwá issued by the chief muftī. [102] ʻAbd al-Raḥīm b. Abī Luṭf al-Maqdisī, *al-Fatāwā al-Raḥīmiyyah fi Waqiʻāt al-Sadāh al-Ḥanafiyyah,* Firestone Library (Princeton) MS Mach Yehuda 4154, p. 74r.

edict, stating that no one was to oppose the şeyḫülislâm. Subsequently, ‘Arab-zâde was removed form office and exiled to Bursa for several years.[103]

Now that we have examined the relations between the chief muftī and other members of the Ottoman religious-judicial establishment, it seems appropriate to dedicate a few words to his relations with members of the Ottoman ruling elite, including the sultan himself, who appointed him to his exalted office. The anonymous author of *Ḥırzü'l-Müluk* states that "a pious, scholar, and jurist should be appointed and ordered to the position of the muftī (*Mesned-i fetvâ bir ehl-i taḳvâ ‘âlim ve faḳîhe ta‘yîn ve tevcîh buyurulmak vech-i vecîhdir*)."[104] The use of the verb *buyurulmak* indicates that he was appointed by a sultanic order. Contemporary chronicles also confirm that the şeyḫülislâm was appointed by an imperial edict.[105] Hezârfen does not specify how the chief muftī is appointed but it is clear that he is

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[103] ‘Alī ibn Bālī Manq, *al-‘Iqd al-Manẓūm fī Dhikr Afāḍil al-Rūm* (Beirut: Dār al-Kitāb al-‘Arabī, 1975), p. 349-353.

[104] Anonymous, *Ḥırzu'l-Mülûk*, p. 192. The personality of a chief muftī was occasionally the reason for his removal. When the news on the appointment of Memekzâde to the şeyḫülislâmlik reached the army (‘*asker*), the troops objected the appointment, claiming that they "do not want a drunkard muftī." Three hours later, so ‘Îsâ-zâde relates, the newly appointed chief muftī was removed from office. ‘Îsâ-zâde, ‘Îsâ-zâde Târîhi: Metin ve Tahlîl (İstanbul: İstanbul Fetih Cemiyeti, 1996), p. 26.

[105] Silâḥdar Fındıklılı Meḥmet Ağa, *Silâḥdar Târîḫi* (Istanbul: Devlet Maṭba‘ası, 1928), vol. 1, p. 221.

subordinate to the sultan.[106] Upon the appointment, in the seventeenth-century (and possibly earlier) the newly appointed chief muftī was summoned to the palace, where the sultan would bestow upon him the şeyḫülislâm's white cloak.[107] Occasionally, however, this understanding of the power relations between the sultan and the muftī was contested. During the reign of sultan Meḥmet IV, he reportedly reminded his chief muftī, Kara Çelebizâde, that he had appointed him to the muftīship, implying that Kara Çelebizâde owned his position to the sultan. Kara Çelebizâde, by contrast, replied that it was God who appointed him and not the sultan.[108] This is an interesting anecdote, for it reveals that even within the scholarly and judicial circles in the core lands of the empire the practice of appointing jurisconsults was debated, and that jurists who were affiliated with the imperial learned hierarchy, including the chief imperial muftī, were not oblivious to the problems that a sultanic appointment posed.

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[106] Hezârfen, however, holds the şeyḫülislâm responsible for the sultan's administrative deeds. In a passage entitled "advice" (*naṣîḥat*), he recommends that the sultans would have a conversation (*müṣâḥebet*) from time to time with the şeyḫülislâm. Interestingly enough, Hezârfen includes in this passage hypothetical sentences from these recommended conversations, in which the sultan subtly reproaches his chief muftī for not drawing his attention to the oppression taking place in his domains. For instance, the sultan is to say to the şeyḫülislâm: "there is oppression and transgression in the provinces, why haven't you woken me up?... You will be responsible [lit. on your neck] for the consequence of this evil action on the Day of Judgment" (*Taşrada ẓülm u teʿaddî olurmuş, niçün beni îkâẓ eylemezsin... Rûz-ı cezâde vebâli senin boynuna*).

[107] İsmaʿil Hakki Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâti* (Ankara: Türk Tarih Yurumu Basimevi, 1965), pp. 189-192. See also: Defterdâr Sarı Mehmed Paşa, *Zübde-i Vekiʿât (1066-1116)* (Ankara: Türk Tarih Kurumu Basımevi, 1995), p. 219; ʿAbdülazîz Kara Çelebizâde, *Târîh-i Ravzatü'l-Ebrâr* (Cairo: Maṭbaʿat Bulāq, 1248 [1832]), p. 473.

[108] Naʿîmâ, *Târîh-i Naʿîmâ,* vol. 3, p. 1165.

The sultanic appointment (or the state appointment) also implied that sultans could and did remove chief muftīs from office. In fact, by the early decades of the sixteenth century the office was not considered life tenure as it had been until then.[109] Moreover, as the anecdote about Kara Çelebizâde and al-Murādī's passage suggest, the notion that the sultan is the source, or at least one of the main sources, of the chief muftī's authority to issue legal opinions was fairly common. Late-sixteenth and seventeenth-century Ottoman chronicles are replete with instances in which chief muftīs were removed (*'azl*),[110] exiled (*nefy*),[111] and, in some rare cases, executed (usually after their removal from office).[112] Ma'lûlzâde, for example, was removed from the muftīship for issuing the "wrong fatāwá."[113] In another instance, Boluvî Muṣṭafâ Efendi (served as şeyḫülislâm from 1657 to1659)[114] refused to issue a legal ruling permitting the execution of Gâzî Deli Ḥüseyin Paşa, the *serdar* of Crete.

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[109] Madeline C. Zilfi, "The Ottoman Ulema," in Suraiya N. Faroqhi, *Cambridge History of Turkey III: The Later Ottoman Empire, 1603–1839* (Cambridge: Cambridge University Press, 2006), p. 214.

[110] e.g.: Defterdar Sarı Meḥmed Paşa, *Zübde-i Vekiat (1066-1116)* (Ankara: Türk Tarih Kurumu Basımevi, 1995), pp. 256-258; Aḥmad ibn Luṭf Allāh Munajjim Bāshī, *Kitāb Jāmi' al-Duwal: Qism Salāṭīn Āl 'Uthmān ilá Sanat 1083 H.* (Mecca: s.n., 2009), vol. 2, p. 1193; Silâḥdâr Fındıklılı Meḥmet Ağa, *Silâḥdâr Târîhi,* vol. 1, p. 31,363; vol. 2, p. 245. Some, such as Koçi Bey (d. 1650), lamented the removal of muftīs and other jurists from their office without reason. Koçi Bey also deplored, however, the quality of many of the jurists of his time. Koçi Bey, *Risale-i Koçi Bey* (Istanbul: Ahmet Vefik Paşa, 1863), pp. 9-12.

[111] Munajjim Bāshī, *Kitāb Jāmi'*, vol. 2, p. 1248; Silâḥdâr Fındıklılı Meḥmet Ağa, *Silâḥdâr Târîhi,* vol. 1, pp. 11-12.

[112] Uzunçarşılı, *İlmiye,* p. 223-226.

[113] Ahmet Hasan Beyzade, *Hasan Bey-zâde Târîhi* (Ankara: Türk Tarih Kurumu Basımevi, 2004), vol. I, p. 408.

[114] On Boluvî Muṣṭafâ Efendi see: Defterdâr Sarı Meḥmed Paşa, *Zübde-i Veki'ât*, p. 257.

Consequently, he was exiled to Cairo, with the qāḍīship of Giza as his *arpalık.*[115] Interestingly enough, while in Egypt, he was also appointed as the muftī of Egypt, although, as Evliyâ Çelebi notes, no one asked for his rulings there (*Hanefî şeyḫülislâmı idi. Amma fetvâsına kimse muḥtâc değil idi*).[116]

Less careful, or at least less fortunate, chief muftīs lost not only their appointments, but also their lives. Ahî-Zâde Ḥüseyin Efendi (d. 1633) was the first chief muftī in Ottoman history to be executed, for conspiring against the Sultan Murâd IV. Twenty-two years later, Sultan Meḥmet IV executed another chief muftī, Hoca-zâde Mes'ûd Efendi (d. 1656), for what some in Meḥmet IV's court perceived as the chief muftī's propensity for intervening in political affairs.[117] Despite the rarity of these cases, these executions reveal that the chief muftīs were not immune from the severest punishment, their religious and juridical status notwithstanding.

This is not to suggest, however, that the chief muftī necessarily tailored his rulings to suit the sultan's need or will. Contemporary chronicles mention disagreements between chief muftīs and sultans. In some cases, the muftī's opinion

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[115] Arpalık was a source of revenue, often a judgeship, which was assigned to a member of the Ottoman religious-judicial establishment between postings. Madeline C. Zilfi, "Elite Circulation in the Ottoman Empire: Great Mollas of the Eighteenth Century," *Journal of the Economic and Social History of the Orient* 26 (3) (1983), pp. 353-354.

[116] Evliya Çelebi, *Evliya Çelebi Seyahatnâmesi: Topkapı Sarayı Bağdat 304 Yazmasının transkripsiyonu, dizini* (İstanbul: Yapı Kredi Yayınları, 1996-2007), vol. 10, p. 86. The reason for the lack of interest in Muṣṭafâ Efendi's rulings, Evliya Çelebi explains, was the prominence of the jurists of al-Azhar: "He who is in need of [a ruling] heads to al-Azhar Mosque, he pays two or three *mankır,* according to his will and intention, and he gets a noble fatwá."

[117] Uzunçarşılı, pp. 223-226.

prevailed. Es‘ad Efendi, for instance, denied sultan Osmân II’s request to execute his younger brothers before leaving the imperial capital for an expedition against the Polish-Lithuanian commonwealth, a denial that had long effect on the eventual abolition of the Ottoman practice of fratricide.[118] Moreover, the legitimacy of some sultanic rulings rested, to a large degree, on the approval of the chief muftī. The importance of obtaining the şeyḫülislâm’s support is reflected in occasional attempts made by members of the Ottoman ruling elite to obtain a ruling supporting their cause. In 1588, for instance, before meeting the Grand Vezir, several cavalrymen (*sipâhî*s) solicited the chief muftī’s opinion in support of their claims.[119] Furthermore, appointing a sympathetic chief muftī was one of the demands political factions in the capital posed, suggesting that such an appointment could be an effective means to promote their interests. In 1648, for example, the *sipâhî*s wanted to appoint Ebû Sa‘îd Efendi, who supported their cause, as chief muftī. Ebû Sa‘îd, however, turned down the offer.[120]

The demand posed by different parties within the Ottoman ruling elite to remove some chief muftīs from office and their eventual removal of others shed light

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[118] See, for example, Baki Tezcan, “The Ottoman Mevali as ‘Lords of the Law’,” *Jounral of Islamic Studies* 20(3) (2009), pp. 404-406. See also: Ibid., “Some Thoughts on the Politics of Early Modern Ottoman Science,” in Donald Quataert and Baki Tezcan (eds.), *Beyond Dominant Paradigms in Ottoman and Middle Eastern/North African Studies* (Istanbul: Center for Islamic Studies (İSAM), 2010), pp. 135-156.

[119] Muṣṭafâ Selaniki, *Târîh-i Selânikî* (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi, 1989), vol. 1, p. 210.

[120] Na‘îmâ, *Târîh-i Na‘îmâ*, vol. 3, p. 1188.

on the Ottoman understanding of the nature of the muftīship. Some sources, both prescriptive and descriptive, describe the office as a service (*ḫidmet*), to which the eligible candidate is appointed.[121] In other cases, the muftī is said to have a permit to issue legal rulings (*iftâ'ya me'ẕūn olan*).[122] Nevertheless, the permit seems to refer to the sultanic appointment and not to the muftī's competence. The definition of the chief muftīship as "service" bears important implications for the jurisprudential authority of the muftī, both the chief muftī and his provincial counterpart, to issue legal opinions once he is removed from office. It is clear that according to the Ottoman understanding of this office only the muftī who holds an appointment has the right to issue enforceable legal rulings within the imperial legal system. Unlike their Mamluk counterparts', the Ottoman muftī's authority to issue legal rulings was

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[121] For example: İbrâhîm Peçevî, *Târîh-i Peçevî* (Istanbul: Matbaa-i Âmire, 1283 [1866]), vol. 1, p. 49; Cengiz Orhonlu, *Osmanlı Tarihine Âid Belgeler* (Istanbul: Edebiyat Fakültesi Basımevi, 1970), p. 132. In addition to the definition of the muftīship as service, other sources consider it to be a rank (*rütbe* or *paye*) as well. See: Uzunçarşılı, *İlmiye,* pp. 209-211; Mehmet Zeki Pakalın, *Osmanlı Tarih Deyimleri veTerimleri Sözlüğü* (Istanbul: Milli Eğitim Basımevi, 1993), vol. 2, p. 764.

[122] It is worth paying attention to Repp's discussion concerning this term in the context of Müstakimzade's (d. 1787) treatment of the muftīship of Molla 'Abdülkerîm (served as muftī during the reign of Beyazîd II):

> So vague, indeed, is Müsktakimzade that one is led to suspect that he doubts the validity of Abdülkerim's claim to the Müftilik... Strengthening the impression of Müstakimzade's uncertainty is his use of the term *ma'dhūn bi-l-iftā'* (or the variant *ma'dhūn bi-l-fatwā*) in regard to Abdülkerim, he uses it on only three other occasions, at least in his articles concerned with the Müftis under consideration: first, in the general statement which forms the basis for his rejection of the Müftilik of Molla Yegan to the efect that all the ulema are empowered to give fetvas; second, in connection with Molla Yegan himself; and third, twice in regard to Molla Shaykh 'Abd al-Karīm al-Ḳādīrī (Şeyh Abdülkerim), who seems to have held an *ad hominem* müftilik, not connected with Müftilik of Istanbil, in the time of Süleyman.

Repp's comment, following Müstakîmzâde, points to the vagueness of the term even among Ottoman scholars. Repp, *The Müfti of Istanbul,* p. 126.

revocable. In other words, if in the Mamluk sultanate the muftīship was first and foremost a status, the Ottomans perceived the muftīship as an office. Accordingly, those who were not appointed could not have issued enforceable legal opinions.

The Emergence of the Provincial Muftī and the Reorganization of the Muftīship in the Ottoman Province of Damascus

> […] The honorable Ottoman kings employed this manner of assigning the muftīship of each school to a single person from the jurists of the school, and prevented all the other [jurists] from answering questions.

When the Ottoman troops conquered the city of Damascus in 1516, the Ottoman religious-judicial hierarchy was still undergoing significant developments. Although at that time the chief muftī had not yet assumed the responsibilities he would in the decades to come, the practice of state-appointed muftīs and a discernable hierarchy presided over by a chief imperial jurisconsults were already in place in what was now the core lands of the empire. Over the course of the next two centuries, as the Arab provinces in general and the Ottoman province of Damascus in particular were incorporated into the empire, the Ottoman practice of state-appointed muftīs became increasingly dominant in this and other Arab provinces. But despite its clear tendency, it was not a sweeping process. In what follows, I aim to explore how the Ottoman

notion of state-appointed muftīs was implemented in the newly conquered province and how local jurists adapted to this notion.

A survey of the biographies of those who served as the muftīs of Damascus in the first two centuries following the Ottoman conquest of the city may assist us in reconstructing this process. Al-Murādī's biographical dictionary of the Ḥanafī muftīs of city of Damascus is a useful source for this purpose. Al-Murādī includes twenty-six biographies of jurists who served as muftīs in the city from the Ottoman conquest of Damascus to the early eighteenth century. Perhaps the most striking feature of this cluster of 26 muftīs is that it challenges al-Murādī's own description of the process, which has been discussed in the previous sections. The first muftī to be appointed by Istanbul was Ibrāhīm al-Rūmī (d. 1566). As the epithet "Rūmī" – literally, from the core lands of the empire – suggests, he was a graduate of the Ottoman madrasah system and a member of the imperial religious-judicial establishment. But along with Ibrāhīm al-Rūmī and his Rūmī successors, al-Murādī records the activity of other Ḥanafī muftīs who were not appointed by the new rulers of the province well into the sixteenth century. In other words, al-Murādī describes in his biographical dictionary a reality that is quite different from the one he outlines in the introduction. Instead of a single state-appointed muftī, who was the sole Ḥanafī jurisprudential authority in the city, in the first decades following the conquest there were Damascene muftīs who

did not hold a state appointment and yet operated in the city along with the state-appointed muftī.

His description of the seventeenth century, on the other hand, resembles more closely the description he offers in his introduction and is corroborated by other sources as well. For the seventeenth century only state-appointed muftīs are mentioned in his dictionary. This change may suggest that towards the end of the sixteenth century the Ottoman religious-judicial establishment insisted more adamantly on a single state-appointed Ḥanafī muftī in the city. Al-Muḥibbī's centennial biographical dictionary, which al-Murādī had possibly consulted,[123] corroborates this impression. It appears that by the second half of the seventeenth century the appointment of a sole Ḥanafī muftī to Damascus had become the norm. Al-Muḥibbī even specifically mentions a sultanic edict that had been issued by that time ordering "that there should be only a single Ḥanafī muftī" in the city, that is, a single state-appointed muftī. The issuance of this edict also meant that at least occasionally the state authorities had to prevent other jurists from issuing their rulings. Al-Muḥibbī recounts that while 'Alā' al-Dīn al-Ḥaṣkafī served as the state-appointed muftī of Damascus, the Damascene Ḥanafī 'Abd al-Ḥalīm b. al-Dīn b.

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[123] In his centennial biographical dictionary of the twelfth century AH, al-Murādī cites another biographical work by al-Muḥibbī, *Dhayl Nafḥat al-Rayḥānah wa-Rashḥat Ṭilā' al-Ḥānah.* Muḥammad Amīn ibn Faḍl Allāh b. Muḥibb al-Dīn al-Muḥibbī, *Dhayl Nafḥat al-Rayḥānah wa-Rashḥat Ṭilā' al-Ḥānah* (Cairo: 'Īsá al-Bābī al-Ḥalabī, 1971). Therefore, it is possible that he was familiar with his *Khulāṣat al-Athar* as well.

Muḥammad al-Bahnasī (d. ca. 1679) issued his legal opinions in Damascus without obtaining an official appointment. As a result, the chief judge of the city intervened by implementing the imperial edict preventing al-Bahnasī from issuing his legal opinions.[124] The late seventeenth-century chronicler Ismā'īl al-Maḥāshinī confirms this practice. Muftīs who do not hold an official appointment at the moment appear in al-Maḥāshinī's chronicle as "the former (*sābiqan*) muftī."[125]

The picture that emerges from al-Muḥibbī and al-Maḥāsinī's descriptions warrants attention, for it points to the existence of two seemingly contradictory trends. On the one hand, as Al-Bahnasī's incident demonstrates, the Ottoman authorities did attempt to prevent non-appointed muftīs from issuing legal opinions. On the other hand, as the experience of several prominent non-appointed muftīs, such as Khayr al-Dīn al-Ramlī and al-Nābulusī, indicates, the activity of certain muftīs who did not hold a state appointment continued unmolested. It is possible that at certain times Ottoman state authorities were more insistent on the exclusivity of the appointed muftīs than at others. Alternatively, the eminence of these particular non-appointed muftīs could explain their undisturbed activity.

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[124] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 2, 310.

[125] Ismā'īl Al-Maḥāsinī (Anonymous Chronicle), edited under the title "*Ṣafaḥāt fī Ta'rīkh Dimashq fī'l-Qarn al-Ḥādī 'Ashar al-Hijrī," Revue de l'Institut des manuscits Arabes* VI (May-Nov. 1960), p. 104.

Not coincidently, the rise of the state-appointed muftī in the early decades of the seventeenth century corresponds to the decline in the importance of the permit to teach and issue fatāwá outlined above. Since the appointment of muftīs was not the exclusive prerogative of the jurists any longer, and as the Ottoman state (and its religious-judicial establishment) became increasingly dominant in the appointment procedure, the license lost much of its significance. As has been suggested above, in the eyes of many jurists, the imperial appointment deed rendered the permit to teach law and issue legal opinions superfluous.

But how was this imperial appointment deed obtained? The procedure is not always fully clear. The following letter from 1607 from the Grand Vezir Dervîş Paşa to Sultan Aḥmet I, in which the former reports the appointment decision, sheds some light on who was involved in the appointment of the muftī of Damascus:

> [... the office of] the muftī of Damascus is now vacant. The muftīship of Damascus has been assigned to your servant the judge of Kütahya, because he is capable of serving as muftī . In his place, [the office of the judge of Kütahya will be assigned] to the professor of the s̲emânî [*madrasah*s in Istanbul] Mevlânâ Emîr Hâibî [a list of appointments to various positions]. My illustrious Sultan, these issues have been [settled in] consult[ation] with your servant the Şeyḫülislâm. He has considered the chain [of appointments]

appropriate and he has promulgated it. [The authority to issue] this fermân [belongs to] my illustrious Sultan.[126]

The appointment, it seems, never materialized, as the sources do not provide any information concerning a muftī in Damascus who previously served as the judge of Kütahya. But the letter reveals interesting aspects of the appointment procedures. It clearly points to the three most important actors in this procedure – the sultan, the vezir, and the chief muftī. Moreover, as Dervîş Paşa mentions, all the three should agree on the candidate. Therefore, gaining the support of at least one of the three could have considerably increased the chances of a candidate to obtain the appointment. Both al-Muḥibbī and al-Murādī confirm the need to gain the support of at least one of the three. From the biographies of the appointed muftīs it is clear that traveling to Istanbul increased the jurists' chances to be appointed as muftī. There they could have obtained a sultanic appointment deed (*amr sulṭānī*), either directly or through the intervention of a senior official. 'Abd al-Wahhāb b. Aḥmad b. Muḥammad b. Farfūr (d. 1662), for example, was appointed as the muftī of Damascus when Meḥmet Köprülü, who previously served as the governor of Damascus, was promoted to the Grand Vezirate, presumably due to the latter's support of Ibn Farfūr's

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[126] "[…] Şâm-ı şerif fetvâsı hâlâ mahlûldür. Kütahya kadısı dâ'îleri fetvâ hıdmetine ḳâdir olmağın Şâm fetvâsı tevcîh buyurulup anun yerine s̲emânîye müderrislerinden Mevlânâ Emîr Hâibî dâ'ilerine [...] Devletlü pâdişâhum be h̲uşûşlar Şeyḫülislâmeyḫülislâm du'âcıları ile müşâvere olunup vech-i meşrûḥ üzere silsile olmak münâşib görüp i'lâm eylemüşlerdür. Fermân devletlü pâdişâhumundur."
Cengiz Orhonlu, *Osmanlı Tarihine Âid Belgeler,* p. 132.

candidacy. Other jurists tried to procure the appointment to this office from the chief muftī. When Khayr al-Dīn al-Ramlī's nephew, Muḥammad b. Tāj al-Dīn b. al-Muḥammad al-Ramlī (d. 1685), returned from Egypt, after he had studied there for a while, his uncle wrote to the chief muftī and asked for his nephew's appointment to the Ḥanafī muftīship of his hometown Ramlah.[127] Occasionally local officials, such as the governor or the chief judge, also appointed muftīs. Some of these appointments, however, led to internal disputes within the Ottoman administration. Shihāb al-Dīn b. ʻAbd al-Raḥman b. Muḥammad b. Muḥammad al-ʻImādī (d. 1667), for instance, was appointed to the Ḥanafī muftīship of Damascus by the chief qāḍī of the city, while the sultan (*ṭaraf al-salṭanah*) wanted to appoint Khalīl al-Saʻsaʻānī.[128]

Jurists, then, made use of the different channels at their disposal to promote either their own appointment to the coveted position or the appointment of a member of their closer circle. At times a competing faction asked to remove from office an appointed muftī. ʻAbd al-Ghanī al-Nābulusī, for example, was removed by the chief muftī from the muftīship of Damascus, after a rival Damascene fraction apparently solicited his removal. In other cases, however, petitioners were less successful. When, following the death of ʻAbd al-Raḥman al-ʻImādī, Muḥammad b. Qubād (known as al-Sukūtī al-Būdīnī) was appointed to the muftīship of Damascus, members of the

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[127] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 3, 396-397.

[128] Ibid., vol. 2, 223-226.

al-‘Imadī family petitioned the chief muftī and asked for the muftīship. Yet, despite al-‘Imadīs’ petition, al-Būdīnī remained in office.[129]

As we have seen, lesser urban centers also had a state-appointed muftī. Like their colleagues from the major urban centers, jurists from these towns traveled to Istanbul or at least sent their requests to the imperial capital in order to obtain the appointment to the state-appointed muftīship of their hometown. In Jerusalem, for instance, the late seventeenth-century Muḥammad b. ‘Abd al-Raḥīm Ibn Abī Luṭf states in the introduction to his father’s fatāwá collection that he was appointed by the chief muftī Feyżullah Efendi “to the service (*khidmah*) of the muftīship.”[130] al-Muḥibbī provides information about the Ḥanafī muftīs of smaller towns, such as the towns of Tripoli, Safed and Ramlah.[131] It is not clear, however, how and by whom these muftīs were appointed. The aforementioned episode concerning Muḥammad b. Tāj al-Dīn b. al-Muḥammad al-Ramlī indicates that the chief imperial muftī appointed muftīs to smaller towns. In the case of Gaza, as we have seen, local governors appointed the muftī, but it is not clear whether this was the case in other towns as well. Whatever the case may have been, it is clear that towards the end of the

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[129] Ibid., vol. 4, p. 125.

[130] ‘Abd al-Rahīm b. Abī Luṭf al-Maqdisī, *al-Fatāwā al-Raḥīmiyyah fi Waqi‘āt al-Sādah al-Ḥanafiyyah,* Firestone Library (Princeton) MS Mach Yehuda 4154, p. 3v. On Muḥammad b. ‘Abd al-Raḥīm b. Abī Luṭf: al-Murādī, *Kitāb Silk al-Durar,* vol. 4, p. 59.

[131] e.g.: al-Muḥibbī, *Khulaṣat al-Athar,* vol. 1, pp. 333-334; Ibid., vol. 2, p. 230; Ibid., vol. 3, pp. 396-397; ibid., pp. 192-193. As to Nablus – al-Murādī reports that Ḥāfiẓ al-Dīn al-Nābulusī, “the muftī of the Ḥanafīs in Nablus,” was in contact with ‘Abd al-Raḥim b. Abī Luṭf al-Maqdisī, the appointed muftī of Jerusalem. See: al-Murādī, *Kitāb Silk al-Durar,* vol. 2, pp. 10-11.

sixteenth century at least in the major cities there were state-appointed Greater Syrian Ḥanafī muftīs.

A state appointment, nonetheless, had its price. Since the practice of appointing muftīs followed the Ottoman understanding of the office, the state-appointed muftī could issue legal opinions only as long as he held the appointment. When another jurist was appointed to the muftīship he held, he was forced to leave the office. Moreover, falling from the chief muftī's grace may have led to the removal of the state-appointed muftī from his office. Consider, for instance, the career of ʻAbd al-Raḥīm Ibn Abī Luṭf. He was removed from the muftīship of Jerusalem by şeyḫülislâm Esîrî Meḥmet Efendi (served as chief muftī from 1659 to 1662) in 1659, a year after he had been appointed to this office. Eventually, the next chief muftī, Ṣunʻîzâde Seyit Meḥmet Emîn Efendi (served as chief muftī in 1662) reappointed him to the office.[132]

So far the phrase "the state-appointed muftīship of Damascus," or of any other city for that matter, has been used without elaborating on the geographical dimension of this phrase. It is worth, however, delving into the implications of the phrase. As we have already seen, al-Murādī dedicates most of his biographical dictionaries to the state-appointed muftīs of Damascus and not, for instance, to the muftīs who were

[132] The chief muftī also granted him the rank of a *dākhil* madrasah. Later he was granted a rank equivalent to the Süleymâniyye madrasah with the qāḍīship of Safed as Arpalık (*ʻalā wujh al-maʻishah*).

considered influential in the city (although some of the muftīs he mentions probably were). As has been already suggested and will be further discussed in chapter 5, there were muftīs who operated simultaneously throughout Greater Syria (and beyond), such as the seventeenth-century Palestinian al-Ramlī or al-Shurunbulālī of al-Azhar, and were highly influential in the city. But since al-Murādī's dictionary concentrates on state-appointed muftīs, he follows the Ottoman definition of the provincial muftī.[133] According to this definition, a jurist was appointed to the muftīship of Damascus, Jerusalem, Amasya or any other city across the empire. Moreover, the "locality" of the state-appointed muftī stemmed precisely from his being part of the imperial religious-judicial hierarchy (even if the muftī was not, as was the case in seventeenth-century Damascus, a graduate of the imperial madrasah system). In other words, he was one of the representatives of this hierarchy in a given place. Even the attachment to the muftīship of important urban centers to teaching position in prestigious learning institutions that were endowed by the Ottoman ruling elite – such as the teaching at the Sulimāniyyah *madrasah* in Damascus, at the *madrasah* of Bâyezîd II in Amasya, or at the *al-'Uthmāniyyah madrasah* in Jerusalem –

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[133]See, for example, the orders from the capital to the muftī of Jerusalem and Damascus. Respectively: Uriel Heyd, *Ottoman Documents on Palestine 1552-1615* (Oxford: Clarendon Press, 1960), p. 180; and ibid., p. 177. On the journey of the Damascene muftī to Jerusalem, see: al-Murādī, *'Urf al-Bashām,* pp. 33-34; al-Ghazzi, *al-Kawākib,* vol. 3, pp. 117-118.
It is interesting to note that the muftī emerges from these sources as an administrative official. It seems that this dimension of the provincial muftīship in the province of Damascus became less significant over the seventeenth-century.

emphasized the connection between the appointed muftī and the Ottoman state, even at the provincial level.[134]

The "locality" of the state-appointed muftīs throughout Greater Syria also meant that many of them were raised and trained in Damascus, Cairo, and other learning centers throughout the province. Moreover, many of them were members of notable families that produced many jurists and scholars. Oftentimes the office of the muftī was seized by individual families, such as the al-'Imādīs (and later the Murādīs) in Damascus or the Banū Abī Luṭf family in Jerusalem.[135] In the case of Damascus, as Abdul Karim Rafeq has noted, around the turn of the seventeenth century most muftīs were no longer sent from Istanbul. Increasingly, leading Damascene jurists were appointed instead of their Rūmī counterparts.[136] In other towns across Bilād al-Shām,

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[134] The şeyḫülislam himself held (at least nominally) the teaching position at the medrese of Bâyezîd II in Istanbul. See: Uzunçarşılı, *İlmiye,* p. 205. On *al-Madrasah al-'Uthmāniyyah* in Jerusalem see: Guy Burak, "Dynasty, Law and the Imperial Provincial Madrasah: The Case of *al-Madrasah al-'Uthmāniyyah* in Ottoman Jerusalem," *International Journal of Middle East Studies* (forthcoming).

[135] John Voll, "Old 'Ulama Families and Ottoman Influence in Eighteenth Century Damascus", *American Journal of Arabic Studies* III (1975), pp. 48-59.

[136] Abdul Karim Rafeq, *The Province of Damasucs, 1723-1783* (Beirut: Khayats, 1966), p. 49. There were exceptions: The Bosnian-born Faḍl Allāh b. 'Īsā al-Būsnāwī (d. 1629) served as the muftī of Damascus in the early decades of the seventeenth century. Although he studied in Bosnia, probably in one of the madrasahs there, he settled in Damascus on his way back from the pilgrimage to the Holy Cities. He served in several teaching positions in Damascus before he was appointed as muftī. Several decades later, Muḥammad b. Qubād (also known as al-Sukūtī) (d. 1643), who entered the city with the chief qāḍī Meḥmet b. Yûsuf al-Nihâlî in 1605, served as muftī. He was originally from the town of Vidin, but resided in Damascus and was appointed to several positions in the city before his appointment to the muftīship. It is not even clear whether he was a graduate of the imperial madrasah system. In other words, it seems that these muftīs were not graduates of the imperial medrese systems and did not hold a position in the imperial religious-judicial establishment prior to their appointment to the muftīship. See: al-Muḥibbī, *Khulāṣat al-Athar,* 4, 124-125; al-Murādī, *'Urf al-Bashām*, pp. 65-66, 72-73.

such as Jerusalem, the position of the state-appointed muftī was manned by local jurists from the outset.

It is somewhat unclear what the exact reasons for this change in Damascus were. It is possible that the Ottoman religious-judicial establishment's intention was to gain the support of the relatively newly conquered subjects by appointing local jurists.[137] When one considers the fact that the chief judges were sent from Istanbul throughout the period under study the implication of the change in the "ethnic" origin of the muftīs is even more apparent. While the Ottoman religious-judicial establishment was not willing to compromise on the juridical cohesiveness of its courts system, it perhaps intended to increase its legitimacy through the local state-appointed muftīs.

For this reason, the "ethnic" distinction between the state-appointed muftīs in the province in Damascus and their colleagues who were sent from Istanbul during the sixteenth century should not be overstated. Clearly, the fact that they were members of prominent families and were well-respected by the scholarly community

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[137] Sixteenth-century sources document some tensions between members of the Ottoman religious-judicial establishment and Damascene jurists. The sixteenth-century Ibn Ayyūb criticized some of the appointed Anatolian muftīs for their lack of jurisprudential knowledge. He also argued that their Arabic was not sufficient. Therefore, he argues they had to rely on Damascene jurists when answering questions. This, however, might be somewhat overstated. [Muhammad Adnan Bakhit, *The Ottoman Province of Damascus in the Sixteenth Century* (Beirut: Librarie du Liban, 1982), p. 133.] See also: Abdul Karim Rafeq, "The Syrian 'Ulamā', Ottoman Law, and Islamic Shari'a," *Turcica* 26 (1994), pp. 9-32; For the opposition of the Egyptian jurists: Ibid., "The Opposition of the Azhar 'Ulamā' to Ottoman Laws and its Significance in the History of Ottoman Egypt," in *Études sur les Villes du Proche-Orient XVIe-XIXe Siècle: Homage à André Raymond* (Damascus: Institut français d'études arabes de Damas, 2001), pp. 43-54.

in their hometown played an important role in the decision to appoint muftīs of local origin. But, as will be further explored in the following chapters, over the course of the sixteenth and the seventeenth centuries, Damascene and Greater Syrian muftīs gradually adopted and defended legal arguments promoted by the Ottoman religious-judicial establishment. Moreover, some of the Greater Syrian state-appointed muftīs were trained in the learning centers across the Arab lands, mostly in Egypt, as well as in Istanbul. The seventeenth-century state-appointed muftī of Damascus al-Saʻsaʻānī, for instance, was a graduate of the Ottoman madrasah system and served as the judge in Kayseri and Tripoli.[138] The Jerusalemite ʻAbd al-Raḥīm b. Abī Luṭf, too, traveled to Istanbul in 1648 and entered the Ottoman madrasah system.[139] The madrasah training of some jurists or the visits to the imperial capital by others contributed to the adoption of legal concepts and jurisprudential texts that other jurists, mostly those who were not appointed to an official post, did not readily accept and at times even openly rejected.

The last issue that remains to be addressed is the rank of the Greater Syrian provincial muftī within the Ottoman religious-judicial establishment. The sixteenth-century biographer ʻÂṣiḳ Çelebi mentions that the salary of Ibrāhīm al-Rūmī, who served as the appointed muftī of Damascus and the professor at the Sulīmāniyyah

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[138] al-Murādī, *ʻUrf al-Bashām,* p. 80.

[139] ʻAbd al-Raḥīm b. Abī Luṭf studied in Egypt as well. Among his teachers in Egypt was the eminent Ḥanafī jurist Ḥasan al-Shurunbulālī. al-Murādī, *Kitāb Silk al-Durar,* vol. 3, p. 2-5.

madrasah in the city, was 80 akçe. In comparison to other positions in the imperial learned hierarchy in the sixteenth century, this was a fairly high rank.[140] Nevertheless, the appointed muftī's rank was somewhat lower than that of the chief judge of the province. Writing almost a century later, Evliyâ Çelebi claims in his description of Damascus that the Ḥanafī muftī in the city was a *mola* – that is, a full member of the Ottoman religious-judicial establishment – whose salary was 500 akçe, as was the salary of the chief qāḍī.[141] When Evliyâ visited the city around 1670,[142] the Ḥanafī muftī was not as a rule a full member of the Ottoman religious-judicial establishment. The salary, however, seems to be correct. The late eighteenth-century al-Murādī reports that the rank (*rutbah*) of the late seventeenth-century muftī al-Sa'sa'āni was the equivalent to the judgeship of Jerusalem,[143] whose salary at the time was 500 akçe.[144] It is important to note, however, that al-Murādī's statement implies that the rank of the chief qāḍī of Damascus was higher. Moreover, since the local muftīs of Damascus, or of any other town in Greater Syria for that matter, were not full members of the imperial establishment. This fact accounts for the absence of these

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[140] Muḥammad b. 'Alī Zayn al-'Ābidīn b. Muḥammad b. Jalāl al-Dīn b. Ḥusayn b. Ḥasan b. 'Alī b. Muḥammad al-Raḍawī, known as 'Âşîḳ Çelebi, *Dhayl al-Shaqā'iq al-Nu'māniyyah* (Cairo: Dār al-Hidāyah, 2007), p. 87.

[141] Evliya Çelebi, *Evliya Çelebi Seyahatnâmesi*, vol. 9, p. 267.

[142] Ibid., vol. 9, p. 286.

[143] al-Murādī, *'Urf al-Bashām,* p. 80. Nevertheless, the rank was not always fixed. As the example of 'Abd al-Raḥīm Ibn Abī Luṭf suggests, certain muftīs obtained higher ranks than others.

[144] See Evliya Çelebi, *Evliya Çelebi Seyahatnâmesi*, vol. 9, p. 231.

muftīs from the numerous biographical dictionaries dedicated to the jurists who were affiliated with it, such as Nev'îzâde Atâî's, Şeyḫî Meḥmed Efendi's and Uşşakîzâde's.[145]

The muftīs' position raises important questions about the dynamics between the judges and the appointed muftīs: Did the judge always respect the ruling of the Damascene muftī? If so, was it because the muftī followed the ruling of şeyḫülislâm? Or was the appointed muftī a mediator of local, Damascene or Greater Syrian legal practices for the Ottoman judiciary elite? Much more research into the court records remains to be done in order to answer these questions satisfactorily. While Judith Tucker's study suggests that the relationship between the muftī and the court in Ottoman Syria and Palestine was not as close as the one in Anatolia, there is evidence, as I have already argued, that the appointed muftī's opinion was respected in court and, if the fatwá corresponded to the cases at hand, increased the chances of the solicitor to win the case.

To sum up, sixteenth- and seventeenth-century Greater Syria witnessed the encounter between two perceptions of the institution of the muftī. While the Ottoman state and its religious-judicial establishment were fairly successful in disseminating

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[145] Nev'îzâde Atâî, Hadâiku'l-Hakâik fî Tekmileti'ş-Şakâik, in *Şakaik-i Nu'maniye ve zeyilleri* (İstanbul: Çağri Yayinlari, 1989); Şeyḫî Meḥmed Efendi, Vekâyi'ü'l-Fudalâ, in *Şakaik-i Nu'maniye ve zeyilleri* (İstanbul: Çağri Yayinlari, 1989); Uşşâkîzâde es-Seyyid İbrâhîm Hasîb Efendi, *Uşşâkîzâde tarihi* (Istanbul: Çamlıca, 2005). On the other hand, graduates of the Ottoman madrasah system who served as muftīs in Damascus are mentioned. See: 'Alī ibn Bālī Manq, *al-'Iqd al-manẓūm*, p. 383.

the practice of state-appointed muftīs throughout the province, other jurists held to "pre-Ottoman" practices and to a different understanding of the muftīship. As will become clear in chapters 4 and 5, over the course of the first two centuries following the Ottoman conquest is seems that an equilibrium between these perceptions was achieved. This equilibrium, however, should not obscure an ongoing debate that took place amongst Greater Syrian jurists concerning the Ottoman practice of state-appointed muftī. It is to this debate that we now turn.

al-Nābulusī Responds to al-Ḥaṣkafī (and an Imaginary Dialogue with al-Murādī)

Late in the seventeenth century or early in the following century,[146] 'Abd al-Ghanī al-Nābulusī penned an epistle in which he responded to a treatise composed by al-Ḥaṣkafī, most likely 'Alā' al-Dīn al-Ḥaṣkafī. Although al-Ḥaṣkafī's treatise is not known to have survived, it is clear that the debate was centered on the nature of the muftīship in the seventeenth century.[147] Like al-Murādī, al-Ḥaṣkafī was a state-appointed muftī in Damascus. Despite the absence of al-Ḥaṣkafī's own voice in this

[146] The epistle was copied by Muḥammad b. Muṣṭafá, most likely Muhammad al-Dakdakjī, a close disciple of al-Nābulusī, who was also acclaimed for his copyist skills. He is known to have written several works for al-Nābulusī. al-Dakdakjī died in 1718, so the treatise must have been completed earlier. On al-Dakdakjī, see: Barbara von Schlegell, *Sufism in the Ottoman Arab World*, pp. 55-60.

[147] Martha Mundy and Richard Samuarez-Smith have noticed this treatise, see Martha Mundy and Richard Samuarez Smith, *Governing Property, Making the Modern State: Law, Administration, and Production in Ottoman Syria* (London and New York: I.B. Tauris, 2007), p. 22

debate,[148] it seems that al-Murādī's introduction echoes some issues that al-Ḥaṣkafī presumably touched upon in his absent treatise. To be sure, none of the three participants in this debate was a contemporary of the others. Nevertheless, it appears fruitful to engage al-Nābulusī and al-Murādī in a conjectural dialogue with each other, for through such a dialogue it is possible to reconstruct more fully a range of opinions and arguments that circulated in Damascene scholarly circles. The biography of ʻAbd al-Ghanī al-Nābulusī should not detain us here. Suffice is to say at this point that he held the muftīship of Damascus for a brief period of time, but for most of his career he did not hold any state-appointed office.[149] As such, he represents a group of non-appointed muftīs who were active across Bilād al-Shām. These muftīs, such as Muḥammad al-Tīmūrtāshī and Khayr al-Dīn al-Ramlī, were not officially appointed to serve as muftīs, yet they issued legal rulings. Moreover, as we shall see in chapter 5, some of these muftīs were among the most prominent jurisprudential authorities in Bilād al-Shām and, to a large degree, in the empire at large. It should be emphasized that despite their disapproval of certain legal practices endorsed by members of the Ottoman religious-judicial establishment, the non-appointed muftīs were by and large loyal subjects of the empire. As discussed above, these muftīs and their activity serve

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[148] al-Ḥaṣkafī discusses some of these issues in his commentary on *Multaqá al-Abḥur*, entitled *al-Durr al-Muntaqā fī Sharḥ al-Multaqā*, but he does not address the sultanic appointment of muftīs. Muḥammad ibn ʻAlī ibn Muḥammad al-Ḥiṣnī al-maʻrūf bi-al-ʻAlā' al-Ḥaṣkafī, *al-Durr al-Muntaqá fī Sharḥ al-Multaqá* (Beirut: Dār al-Kutub al-ʻIlmiyyah, 1998), vol. 3, pp. 214-216.

[149] Von Schlegell, *Sufism in the Ottoman Arab World*, pp. 1-112. See also chapter 5.

as a good reminder that the Ottomans did not always attempt to prevent non-appointed muftīs from issuing legal opinions. This stands in remarkable contrast to the Ottoman adamant approach to non-official courts.[150] Instead of banning the activity of these muftīs, the Ottoman state provided an appointed muftī, whose opinion, at least theoretically, was to be followed in court.

al-Nābulusī opens his treatise with a discussion concerning who should be considered a muftī . He explicitly states that "the muftīship is not like judgeship which is assigned by the sultan to a single person exclusively, as [opposed to what] the people of this time do [i.e. the Ottoman practice of appointing muftīs]."[151] al-Nābulusī bases this statement on his understanding of the state of the Ḥanafī school in his time. Following Ibn Nujaym's *al-Baḥr al-Rā'iq*[152] and Ibn al-Humām's *Fatḥ al-Qadīr,*[153] al-Nābulusī claims that a muftī should be a *mujtahid*,[154] a jurist who is

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[150] See, for instance, MD 7, 2040/15/RA/976. There the judge of Bursa is asked to close the illicit court the former professor of the Dâvûd Pâşâ madrasah opened in his home. In the second half of the seventeenth century, the Ḥanafī Yāsīn b. Muṣṭafā al-Biqā'i (d. 1693) held an unofficial court in al-Maḥallah al-Jadīdah neighborhood in Damascus. The chief qāḍī of Damascus ordered this court closed down. al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, p. 480.

[151] 'Abd al-Ghanī al-Nābulusī, *al-Radd al-Wafī 'alá Jawāb al-Ḥaṣkafī 'ala Mas'alat al-Khiff al-Ḥanafī,* Süleymaniye Library MS Esad Efendi 1762, 154r.

[152] al-Nābulusī, *al-Radd,* p. 154r-154v. al-Ḥaṣkafī, in his commentary on *Multaqá al-Abḥur*, shares this observation. al-Ḥaṣkafī, *al-Durr al-Muntaqá*, vol. 3, p. 215. Zayn al-Dīn b. Ibrāhīm b. Muḥammad Ibn Nujam, *al-Baḥr al-Rā'iq* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), pp. 446-449.

[153] al-Nābulusī, *al-Radd,* p. 154v.

[154] Ibid.

allowed to exert his own juristic effort (*ijtihād*) to reach a rule or an opinion.[155] But the problem, according to al-Nābulusī, is that at his time no jurist can be considered *mujtahid* as the eighth-century eponymous founder of the Ḥanafī school, Abū Ḥanīfah (d. 767), was. Instead, there are only jurists who preserve and transmit the opinions of previous *mujtahid*s. Thus the muftīs of his time, al-Nābulusī concludes, are not truly muftīs but the transmitters of the sayings of the real muftī, such as Abū Ḥanīfah, to the solicitor. The opinion of the "real muftī" can be transmitted either through a reliable chain of transmission or through well-known, widely-accepted, and reliable texts, such as al-Marghīnānī's *al-Hidāyah* or al-Sarakhsī's *al-Mabsūṭ*. If there are multiple opinions, issued by different "real muftīs," the follower (*muqallid*) is free to choose any of these opinions.[156] In other words, al-Nābulusī argues that the community of Ḥanafī jurists should not rule out any opinion that was issued by a "real muftī" and was reliably transmitted.

Returning to the sultan's appointment of muftīs, the opinion of the Egyptian jurist Zayn al-Dīn Ibn Nujaym (d. 1562) was central in the debate between al-Ḥaṣkafī and al-Nābulusī. Writing in Egypt in the first decades following the Ottoman conquest, Ibn Nujaym argued that the imām, in this case the sultan, should examine

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[155] On *mujtahid* and *ijtihād*: Wael B. Hallq, *The Origin and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), pp. 128-132; Ibid., *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), pp. 1-24.

[156] al-Nābulusī, *al-Radd,* p. 154v.

who is eligible to issue legal rulings from amongst the jurists and should prevent incompetent jurists from obtaining this position. In other words, Ibn Nujaym advocated an institutional solution to the plurality of muftīs that some in the late Mamluk sultanate found disturbing. Nevertheless, it should be emphasized that his solution is substantially different from the Ottoman understanding of the office. As in many other cases, his opinion is somewhere in between the Mamluk and the Ottoman opinion.

In his treatise, al-Nābulusī accepts Ibn Nujaym's solution that the imām, the leader of the Muslim community (most often understood as the sultan), should examine who is eligible to issue legal rulings from amongst the jurists and should prevent incompetent jurists from obtaining this position. But, as opposed to al-Ḥaṣkafī's alleged opinion, al-Nābulusī insists that Ibn Nujaym's statement should not be understood as a justification for appointing a sole muftī whenever there are several eligible jurists. Therefore, al-Nābulusī concludes, every person who fulfills the requirements in terms of knowledge and competence could issue legal rulings.[157]

As far as al-Nābulusī and his non-appointed colleagues were concerned, the plurality of muftīs was crucial and not simply a theoretical discussion. Threatened by the Ottoman appointment policy, al-Nābulusī wrote a defense of a scholarly practice

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[157] al-Nābulusī, *al-Radd,* p. 155r-155v. For Ibn Nujaym's opinion: Zayn al-Dīn b. Ibrāhīm b. Nujam, *al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq* (Beirut: D*ār al-Kutub al-'Ilmiyyah, 1997*), vol. 6, pp. 446-449.

that permitted his (and others') activity as muftīs. More broadly, al-Nābulusī's treatise brings to the surface a different understanding of jurisprudential authority and its transmission. Furthermore, he poses a serious challenge to the state-appointed muftīs in particular, and to the soundness of the Ottoman appointment policy of muftīs in general.

Given al-Nābulusī's immense popularity, al-Murādī must have been familiar with at least some of the arguments raised in al-Nābulusī's treatise, and perhaps even with the treatise itself. Specifically, he must have been aware of the tension between the understanding and practice of the muftīship as it appears in pre-Ottoman, namely Mamluk jurisprudential texts, as well as in later compilations from the Arab lands, and the manner in which it was practiced within the Ottoman learned hierarchy. Aware of the novelty in the Ottoman practice of the state-appointed muftīship, al-Murādī's introduction might be read as a response to the arguments advanced by his colleagues who did not hold a state appointment and as a justification of the Ottoman practice. It is perhaps for this reason that al-Murādī resorts to several arguments that are not the arguments made in Mamluk jurisprudential texts, such as the need to prevent disputes among the jurists. Instead, al-Murādī is compelled to admit that the practice of appointing muftīs is rooted in the Ottoman *ḳânûn*, which in turn is "compatible with the *sharī'ah*."

The imaginary dialogue between al-Nābulusī and al-Murādī is relevant, then, for understanding the relationship between "*ḳânûn*" and "*sharī'ah*," the focus of the next and concluding section.

Conclusion: The Ottoman Muftī, Ḳânûn and Şerî'at

> […] when he entered Damascus, he renewed its affairs, implemented his edicts in it, and organized it according to his exalted *qānūn*, which is in accordance to the honorable *sharī'ah*. [He also] arranged its [the city's] offices of knowledge and *siyāsah* according to his ability and his noble opinion.

The definition of *ḳânûn* and *sharī'ah* (or *şerî'at*) in the Ottoman context and the relationship between these concepts have drawn considerable scholarly attention over the past decades.[158] One of the approaches to these questions perceives *ḳânûn* and *şerî'at* first and foremost as two supplementary, often "kneaded together" components of the Ottoman legal discourse. Other scholars, however, have

[158] Several studies have dealt with different aspect of these issues. Here are some relevant examples: Halil Inalcik, s.v. "Kanun," *EI²;* Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973); Colin Imber, *Ebu's-Su'ud*; F. Babinger, s.v."Nishandji," *EI²*; Molly Greene, *A Shared World: Christians and Muslims in the Early Modern Mediterranean* (Princeton: Princeton University Press, 2000), pp. 27-32; Dror Ze'evi, *Producing Desire: Changing Sexual Discourse in the Ottoman Middle East, 1500-1900* (Berkeley: University of California Press, 2006), p. 50; Snjezana Buzov, *The Lawgiver and His Lawmakers: The Role of Legal Discourse in the Change of Ottoman Imperial Culture* (University of Chicago: Unpublished Ph.D. dissertation, 2005); Timothy J. Fitzgerald, *Ottoman Methods of Conquest,* pp. 188-195.

approached this question somewhat differently. While not disregarding its discursive dimension, these scholars have pointed to the fact that *ḳânûn* also denotes various administrative and institutional practices prevalent across the empire. Although the institutional practices were not always codified and were constantly negotiated and reconfigured,[159] the *ḳânûn* as a legal discourse served to legitimize these practices. Whether codified or not, the task is to define what *ḳânûn* means in a specific historical context and to examine the bearings of this definition on the definition of *şerî'at* and on the understanding of the relation between the two concepts.

The development of the Ottoman religious-judicial establishment in general and the practice of appointing jurisconsults in particular are good examples of these dynamics. As Richard Repp has demonstrated,[160] the consolidation of the Ottoman religious-judicial establishment was a direct outcome of a series of imperial edicts and legal codes (*ḳânûnnâme*s). The emergence of the office of the şeyḫülislâm and that of his subordinates (including the provincial state-appointed muftīs) was also part of the development of an imperial learned hierarchy. To be sure, the fact that the hierarchy was established through these edicts does not necessarily preclude the participation of jurists in this process. Moreover, one should be careful not to assume

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[159] Başak Tuğ, *Politics of Honor: The Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia* (New York University: Unpublished Ph.d. dissertation, 2009), pp. 40-96; Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âli (1541-1600)* (Princeton: Princeton University Press, 1986), pp. 191-200.

[160] Repp, *The Müfti of Istanbul.*

that the jurists' involvement was instrumental. Instead, it is possible that the jurists in the core lands of the empire genuinely tried to articulate a religious-political vision that would be compatible with their understanding of *şerî'at.* Yet, this does not alter the fact, as al-Murādī observes in his introduction, that it was the imperial edicts that legitimized these institutional and administrative developments and specifically the emergence of the chief muftī as the chief jurisprudential authority within the Ottoman establishment.

By appointing jurisconsults, the Ottoman dynasty, either directly or, from the mid-sixteenth century, through the chief imperial muftī (and the learned hierarchy in general), sought to determine the content of *şerî'at*, that is, a particular version of the Ḥanafī school out of a wider range of possible opinions. From an institutional perspective, then, *ḳânûn* and *şerî'at* were not exactly equal in the Ottoman context, for the content of the imperial learned hierarchy's *şerî'at* was defined by office holders, the chief muftī and his subordinates, whose authority to define which opinion within the Ḥanafī school should be followed rested on the *ḳânûn*. An anecdote recorded in Maḥmud Kefevî's biography of Ebû's-Su'ûd Efendi illustrates these dynamics: "In certain cases he [Ebû's-Su'ûd] followed the path of [independent] judgment (*ra'y*). Then he took counsel with Sultan Süleymân…on whether he could give fatwas according to what he saw fit, and to whichever he preferred of the

solutions which occurred to him. A decree was issued accordingly."[161] Put differently, the chief muftī needed the sultan's edict (and approval) to rule according to a minority opinion within the school. Nevertheless, as al-Murādī argues, many members of the Ottoman religious-judicial establishment claimed in what seems to be a cyclical argument that this practice was compatible with the *şerî'at.*

To conclude, the encounter between two perceptions of the muftīship – the pre-Ottoman and the Ottoman ones – in the Ottoman province of Damascus may serve as a laboratory of sorts to examine the relationship between different perceptions of *sharī'ah* (or *şerî'at*) that coexisted both within the Ḥanafī school and across the Ottoman domains and of the assumptions that underlied the different perceptions of the institution of the muftī. The debate outlined above makes clear that both parties understood that what was at stake was not merely a procedural issue. Beyond the procedural aspects of the appointment, the debate was about defining the range of acceptable opinions within the Ḥanafī school. While the Ottoman religious-establishment sought to limit the range of views within the school that its members were to apply, muftīs who were not appointed by the state, such as al-Nābulusī, envisioned a wider range. From the latter's perspective, this view was intended to defend the legitimacy of other Ḥanafī scholarly traditions, not necessarily those

[161] Ibid., p. 279; Imber, *Ebu's-Su'ud*, pp. 106-110.

endorsed by the Ottoman religious-judicial establishment, as well as their activity as muftīs within the Ottoman imperial framework.

Chapter II

Contending Traditions: The *Ṭabaqāt* Literature of the Ḥanafī School in the Ottoman Domains

In the entries dedicated to members of the Ottoman religious-judicial establishment in sixteenth- and seventeenth-century biographical dictionaries from the Arab provinces of the empire, the biographers often describe a certain biographee as "Rūmī" and "Ḥanafī."[162] At first glance, there is nothing remarkable in the juxtaposition of these epithets, as the Ottoman state's adoption of the Sunnī Ḥanafī legal school as its state school is well known among students of Islamic societies. Accordingly, the combination "Rūmī Ḥanafī" may be read in a narrow geographical sense, denoting that the origin of a certain follower of the Ḥanafī school is from the core lands of the

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[162] For example: Najm al-Dīn al-Ghazzī, *al-Kawākib al-Sā'irah bi-A'yān al-Mi'ah al-'Āshirah* (Beirut: Jāmi'at Bayrūt al-Amīrikiyyah, 1945-1958), vol. 1, pp. 20-21; ibid., vol. 1, pp. 22-23; ibid., vol. 2, p. 58; Muḥammad Amīn ibn Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fi A'yān al-Qarn al-Ḥādī 'Ashar* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2006), vol.1, p. 553; ibid., vol. 3, p. 386;
Each of these terms has a long history and its meaning changed over the centuries. For the change the meaning of the term "Ḥanafī" underwent during the first century and a half of the school's existence see: Nurit Tsafrir, *The History of an Islamic School of Law* (Cambridge: Harvard University Press, 2004). For the different meanings of the term "Rūmī" see: C.E. Bosworth, "Rum", *EI²;* Halil Inaclik, "Rumi," *EI²*; Salih Özbaran, *Bir Osmanlı Kimliği: 14.-17. Yüzyıllarda Rûm/Rûmi Aidiyet ve Imgeleri* (Istanbul: Kitab, 2004); Benjamin Lellouch, *Les Ottomans en Égypte: Historiens et Conquerants au XVIe siècle* (Louvain: Paris, 2006), pp. 184-199; Cemal Kafadar, "A Rome of One's Won: Reflections on Cultural Geography and Identity in the Lands of Rum," *Muqarnas* 24 (2007), pp. 7-25; Michael Winter, "Ottoman Qāḍīs in Damascus in 16th-18th Centuries," in Ron Shaham (ed.), *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish* (Leiden: Brill, 2007), pp. 87-109; Tijana Krstić, *Contested Conversion to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire* (Stanford: Stanford University Press, 2011), pp. 1-7, 51-74.

empire (central and western Anatolia and the Balkans). Nevertheless, as this chapter suggests, "Rūmī" is not merely a geographical epithet, but one that has doctrinal implications as well.

In the previous chapter, I have argued that the Ottoman dynasty attempted to regulate the content of the *sharī'ah* (*şerî'at* in Turkish) by developing a religious-judicial establishment and, particularly, by endorsing a perception of the institution of the muftī according to which the jurisconsult was to be appointed by the state in order to issue his rulings. This chapter intends to look at other aspects of the Ottoman attempt to regulate the content of Ḥanafī jurisprudence. In so doing, this chapter (as well as the following one) joins several studies, such as those by Baber Johansen, Colin Imber, and Rudolph Peters,[163] that have drawn attention to the "Rūmī-Ḥanafī connection." To this end, this chapter explores a hitherto understudied body of several intellectual genealogies of the Ḥanafī school. Known as *ṭabaqāt* (*tabaḳât*, in Turkish), these genealogies, which were produced by jurists who were affiliated with the imperial establishment, offer a better understanding of the way in which these jurists, and most likely other members of the establishment, perceived their position, and the

[163] Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Ḥanafite Legal Literature of the Mamluk and Ottoman Periods* (London and New York: Croom Helm, 1988); Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997); Rudolph Peters, "What Does It Mean to Be an Official Madhhab?," in Peri J. Bearman, Rudolph Peters, Frank E. Vogel (eds.), *The Islamic School of Law: Evolution, Devolution, and Progress* (Cambridge: Harvard University Press, 2006), pp. 147-158.

position of the imperial establishment as a whole, within the Ḥanafī jurisprudential tradition.

The first original genealogy by a member of the imperial establishment was apparently produced in the early decades of the sixteenth century. Following this genealogy, over the course of the sixteenth and seventeenth centuries at least three members of the imperial learned hierarchies compiled their own versions of the establishment's genealogy within the Ḥanafī school. Authored by the eminent chief imperial muftī Kemâlpaşazâde, the first genealogy was nonetheless different from the later genealogies in terms of its chronological scope, its structure and the goals it sought to achieve. Its main goal was to classify the authorities of the school according to their authority to exert independent reasoning in relation to the eponymous founder of the school, Abū Ḥanīfah, in declining order. Yet, despite the difference between Kemâlpaşazâde's treatise and the works of his successors, the former marks the first attempt by a senior member of the evolving imperial establishment to offer a systematic account of the history and the structure of the Ḥanafī school. The fact that all his successors who undertook similar projects included in their works a classification of the authorities of the school (some differences notwithstanding) and the large number of copies of the work found in various libraries throughout Istanbul and beyond point to its importance.

The authors of the other three genealogies from the second half of the sixteenth century onwards that constitute the focus of the first part of this chapter had a somewhat different set of concerns. These concerns shaped to a considerable extent the structure and the content of their genealogies. Mostly concerned with establishing the position of the imperial religious-judicial establishment within the Ḥanafī tradition, all these *ṭabaqāt* works adhere by and large to a similar view of the Ḥanafī school. According to this view, from around the mid-fifteenth century, around the conquest of Istanbul, the religious-judicial establishment became an independent branch with a particular genealogy within the Ḥanafī school. This branch, or sub-school, within the Ḥanafī school differed from other branches whose followers operated throughout the Mamluk sultanate (and elsewhere). Moreover, through these intellectual genealogies, their authors were interested in documenting the genealogy and cementing the authority of specific legal arguments and texts within the Ḥanafī tradition that were endorsed by members of the imperial establishment. [164]

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[164] Bibliographical works mention three additional *ṭabaqāt* works that were compiled in the Ottoman lands in that period. The first is a *ṭabaqāt* work by Ak Şems Çelebi that will be mentioned briefly in this chapter and further discussed in appendix III. In the second half of the sixteenth century, the Meccan historian Qutb al-Dīn Muḥammad b. Aḥmad b. Muḥammad b. Qāḍīkhān al-Nahrawānī al-Makkī (d. 1583) wrote a now lost *ṭabaqāt* work. In the seventeenth century Khalīl al-Rūmī, known as Solâkzâde (d. 1683) wrote another *ṭabaqāt* work, entitled *Tuḥfat al-Tarājim.* Despite some slight variations, the work draws heavily on Ibn Quṭlūbughā's *Tāj al-Tarājim* (even the title of the work makes clear reference to Ibn Quṭlūbughā's title). Ṣolâk-zâde, *Tuḥfat al-Tarājim,* Baeyzit Library MS Velyüddin 1606.
See also: Kâtip Çelebi, Kashf al-*Ẓunūn* 'an Asāmī al-Kutub wa-l-Funūn (Istanbul: Milli Eğitim Basımevi, 1972), vol. 2, pp. 1097-1099; Ismā'īl Bāshā al-Bābānī, *Īżāḥ al-Maknūn fī al-Ẓayli 'alā Kashf al-Ẓunūn 'an Asāmī al-Kutub wa-l-Funūn* (Istanbul: Milli Eğitim Basımevi, 1945-1947), vol. 2, p. 78.

This is not to say that there were no significant differences in the way each of these authors perceived the history of the Ḥanafī school. Much attention will be paid in the following pages to these differences. These differences surely reflect the sensibilities of the different authors, but they also suggest that the perception of members of the imperial establishment of the school and its history changed over time. Of particular importance is their selective incorporation of sixteenth-century Ḥanafī jurists from the Arab lands into these genealogies, while still preserving the aforementioned divergence of the mid-fifteenth century.

The fact that these genealogies were compiled in the sixteenth century (and later) does not mean, however, that they were invented in the sixteenth century. It is likely that at least some of the elements that the sixteenth-century authors utilized in their texts had been already circulating in the fourteenth and fifteenth centuries. But only in the sixteenth century the need to compile systematic accounts of the genealogies of the imperial learned establishment within the Ḥanafī school emerged. Furthermore, the difference among the genealogies raises the possibility that several, at times contradicting, accounts of the history of the school coexisted, although they may also be the product of narrative layers that were added in later stages.

Members of the imperial religious-judicial establishment were not the only ones to compile genealogies of the school. Throughout the sixteenth century at least two jurist from the Arab provinces of the empire, one from Damascus and the other

from Egypt, penned their own *ṭabaqāt* works. Although their views of the school were substantially different, the genealogies compiled across the Arab lands clearly point to an attempt by Ḥanafī jurists from the Arab lands to establish their position within the school in general and their individual authority in particular. Much like their establishment-affiliated counterparts, the authors from the Arab lands intended to document the authority of particular texts, arguments, and luminary jurists. Furthermore, the compilation of these genealogies may be also interpreted as an attempt to preserve their authority among their followers and peers, both across the Arab lands and in the core lands of the empire, within the expanding imperial framework. In addition, the genealogies from the Arab lands of the empire reveal the different strategies employed by different jurists from the Arab lands to cope with the challenges the incorporation of the Arab lands entailed. While some, like the author of the Damascene genealogy, emphasized the distinction between themselves and their colleagues who were affiliated with the imperial establishment, others, like our Egyptian author, sought to carve out space for themselves within the imperial setting by endorsing, albeit partially, the imperial establishment's perception of the Ḥanafī school.

This chapter intends to weave all these genealogies – both those produced by members of the imperial establishment and those penned by Ḥanafī jurists from the Arab lands – into a single narrative, and to draw attention to the ongoing conversation

between the different perceptions of the school. Moreover, it situates the rise in the production of these intellectual genealogies of the school in the context of the conquest and subsequent incorporation of the Arab lands into the empire. In fact, the chapter contends that the conquest was the main impetus for the rise of this genre in the second half of the sixteenth century, as different Ḥanafī jurists throughout the empire felt the need to stress the distinction between themselves and other followers of the school and to defend their position within the empire.

The dialogues between the various authors of these genealogies are also reflected in, and at the same time enabled by, the fact that they all chose to compile these works in Arabic. Although the language choice may be interpreted as a generic convention, since most of the genealogies compiled from the eighth century onward were written in Arabic, it seems that the choice of Arabic (and not of Ottoman Turkish) suggests that the members of the establishment wanted their peers and colleagues from the Arab lands, who did not read Ottoman Turkish, to have access to these works.

Ultimately, the surge in the production of *ṭabaqāt* works in the sixteenth century (and particularly in the second half of this century) illumines interesting dynamics that are also relevant for understanding the rise of another genre around the mid-sixteenth century – the biographical dictionaries dedicated to members of the imperial religious-judicial establishment, and particularly for understanding the

compilation of Aḥmad b. Muṣṭafā Taşköprüzâde's (d. 1560) *al-Shaqā'iq al-Nu'māniyyah.* Both the genealogies authored by members of the establishment and *al-Shaqā'iq al-Nu'māniyyah* were instrumental in inculcating a sense of "establishment consciousness" among the members of the imperial learned hierarchy, as they demarcate both synchronically and diachronically the boundaries of the establishment. Moreover, the development of an "establishment consciousness" dovetailed with the consolidation of particular training and career tracks, which, in turn, were recorded both in the genealogies of the school and in the biographical dictionaries. These exclusive training and career tracks guaranteed the monopoly of members of the learned hierarchy over a particular branch (or genealogy) within the Ḥanafī school and preserved, by extension, the hierarchy's unique position within the imperial framework.

Much of what will be said in this chapter is pertinent to most Ḥanafī jurists across the empire, and not exclusively to muftīs. But an examination of these genealogies is crucial for understanding the traditions in which the muftīs studied in this dissertation operated. Furthermore, these genealogies shaped to a considerable degree their rulings and writings, as they determined the arguments, texts, and authorities they were to consult. In addition, as sixteenth- and seventeenth-century jurists were fully aware, the affiliation to a specific genealogy within the school bore

institutional implications, for it determined the position of a said jurisconsult within the imperial jurisprudential landscape.

Ṭabaqāt: A Very Short Introduction

While *ṭabaqāt* works produced before the sixteenth century have received a considerable deal of scholarly attention, students of Ottoman history have not by and large studied systematically the *ṭabaqāt* produced throughout the empire over the course of the sixteenth and the seventeenth centuries. This does not mean that Ottomanists have not consulted some of these works, especially for the information they preserve concerning the imperial learned hierarchy. But most studies have failed to examine the logic that lies at the basis of these works, and have not read these texts in the context of the long histroigraphical-epistemological tradition of the *ṭabaqāt* genre. What follows, then, is a brief survey of some of the main features of the genre and its history up to the sixteenth century.

The word *ṭabaqah* (pl. *ṭabaqāt*) has several interrelated meanings. Most generally, the word denotes a group or a layer of things of the same sort. In the Islamic historiographical-bibliographical tradition the word is often used to refer to a "rank, attributed to a group of characters that have played a role in history in one capacity or another, classed according to criteria determined by the religious, cultural, scientific, or artistic order." Moreover, the word often connotes a chronological

dimension, and many of the works in this genre are organized chronologically according to "generations."[165]

By the early decades of the sixteenth century, when the first Ottoman *ṭabaqāt* works were produced, the *ṭabaqāt* genre had already had a history of approximately eight centuries. Moreover, by that time, the genre had become fairly diverse in terms of structure, the groups of people classified in the different *ṭabaqāt* works, and the assumptions that lie at their base. The diversity makes it difficult to offer a generalization that will do justice to all the works that were considered *ṭabaqāt* by their authors or their readers. Our focus, therefore, will be on a particular, and arguably the most dominant, group of works within the *ṭabaqāt* genre – the works dealing with the transmission of religious and jurisprudential knowledge and authority.

Over the course of eight centuries up to the sixteenth century the genre had become increasingly specialized according to the different disciplines of knowledge. Thus, for example, there are *ṭabaqāt* works dedicated to transmitters of prophetic traditions (*ḥadīth*), sufis, theological schools, physicians, and lexicographers, as well as to the followers of the legal schools. Despite some differences between the specialized "sub-genres," all these texts share the notion that scholars and pundits are

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[165] Cl. Gilliot, "Ṭabaḳāt," *EI²*.

metaphorically descendants of the Prophet Muḥammad, the source of Knowledge.[166] The *ṭabaqāt* works' main purpose was to meticulously document these intellectual lineages through which the Prophet's knowledge was transmitted to different specialized groups, each of which inherited a particular type of knowledge. From the individual scholar's perspective, his (and in some cases her) authority rested precisely on his/her affiliation to a specific chain of transmission that linked him to the Prophet.

The genealogical/generational nature of the *ṭabaqāt* works implies, of course, a relationship between one generation and the other. The relationship between the generations, however, varies from one *ṭabaqāt* work to the other. Some works perceive the relation between the generations as one of decline in intellectual capacity, piety, or morals. Other works stress the transmission of knowledge and authority over time. The different perceptions, however, are not mutually exclusive, and, as we shall see in the following sections, a single work can accommodate both.

The *ṭabaqāt* works served other goals beyond documenting intellectual-spiritual genealogies. Over the centuries, *ṭabaqāt* works were used by different groups within a certain discipline as a means to outline the "orthodoxy" within each religious

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[166] Over the past decades, several studies have been dedicated to the *ṭabaqāt* genre. For example: Ibrahim Hafsi, "Recherches sur le genre *Ṭabaqāt* dans la litterature Arabe," *Studia Arabica* 23 (1976), pp. 227-65; 24 (Feb. 1977), pp. 1-41; 24 (Jun. 1977), pp. 150-186; Michael Cooperson, *Classical Arabic Biography: The Heirs of the Prohpets in the Age of al-Ma'mun* (Cambridge: Cambridge University Press, 2000), pp. 8-13; George Makdisi, "*Ṭabaqāt*-Biography: Law and Orthodoxy in Classical Islam," *Islamic Studies* 32, 4 (1993), pp. 371-396; R. Kevin Jaques, *Autority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden: Brill, 2006); Felicitas Opwis, "The Role of the Biographer in Constructing Identity and School: al-'Abbādi and his *Kitāb Ṭabaqāt al-Fuqahā' al-Shāfi'īyya*," *The Journal of Arabic and Islamic Studies* 11/1 (2011), 1–35.

profession. Moreover, as Kevin Jaques following George Makdisi has pointed out, since there is no "orthodoxy" without "heterodoxy," the *ṭabaqāt* works offer a glimpse into the internal debates within the community of scholars. In the context of the legal schools, the *ṭabaqāt* works demarcate the boundaries of the permissible opinion and establish the authority of specific legal arguments within a particular school.[167] Furthermore, since different *ṭabaqāt* works record different chains of transmission, the variations between the different works point to concurrent, at times contradicting, visions of the history of the history of specific disciplines or legal schools. For historians, the difference among the works permits the reconstruction, albeit a partial one, of the process through which the "orthodoxy" was negotiated and determined.

A survey of the *ṭabaqāt* genre cannot be complete without addressing the relationship between this genre and the broader historiographical tradition of the Islamic biographical dictionary. Most notably, both the *ṭabaqāt* works and the biographical dictionaries utilize the same building block for constructing their narrative. As its name indicates, the biographical dictionary is a collection of independently standing biographies (*tarjamah* pl. *tarājim*), comparable to modern "Who's Who" works. The individual biographies, however, form a mosaic from

[167] Jaques, *Authority,* p. 17.

which a larger narrative emerges.[168] Furthermore, both genres are enmeshed in a shared discourse of authority. As far as the biographies of jurists and religious scholars are concerned, each biography preserves and reiterates the logic that lies at the basis of the *ṭabaqāt* works, that is, the idea that knowledge is transmitted through chains of transmission, and that the jurist's authority is constituted through his teachers. This logic underlies almost every biography, regardless of the organizing principle of the entire work.[169]

Finally, it is worth commenting briefly on the manner in which these works were used and read, and, equally important, for what purposes. As the introductions to some of the *ṭabaqāt* works discussed in this chapter state, these works were intended to be consulted by jurists and muftīs as reference works. In addition, it appears that the works were also taught as part of a jurist's training. One of the manuscripts of the *ṭabaqāt* by the sixteenth-century graduate of the Ottoman madrasah system, Şems Çelebi, contains in its margins comments written upside down, probably by the copyist, if one is to judge by the hand. The fact that the comments were written upside down may suggest that the text was placed between the copyist and a student

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[168] Extensive work has been done on the biographical literature in Islamic historiography. For a comprehensive list see Jaques, *Authority,* p. 11 f.n. 56.

[169] The "*ṭabaqāt*-logic" is also reflected in the discursive continuity. The seventeenth- and eighteenth-century biographical dictionaries (as well as dictionaries from earlier periods) follow the same discursive patterns of the *ṭabaqāt* works. For an analysis of the function of these discursive patterns in a fifteenth-century Shāfiʿī *ṭabaqāt* work see Jaques, *Authority.* There might be of course some variations between the dictionaries and the *ṭabaqāt* works, although this issue requires further research.

(or perhaps a colleague). It is possible that while the latter was reading aloud the text in the presence of his master/colleague, the former occasionally added comments.[170] Through the teaching of these texts the genealogy of the jurist, and namely of his teacher, was propagated. Moreover, by choosing and teaching specific *ṭabaqāt* works, the teacher demarcated specific legal arguments that should be preferred to others.

It should be noted that these supplementary comments on the margins of the text also point to the fact that "the *ṭabaqāt* project" was a living tradition, which was continuously updated and supplemented. Moreover, it seems that at least in some cases these marginal comments were consulted as well. Taqī al-Dīn al-Tamīmī, for instance, explicitly says that the Egyptian scholar Zayn al-Dīn b. Nujaym cited comments he read in the margins of several copies of al-Qurashī's fourteenth-century *ṭabaqāt, al-Jawāhir al-Muḍīyah.*[171] al-Tamīmī himself, in turn, points to pieces of information he could find only in the comments added to *al-Jawāhir.*[172]

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[170] Kevin Jaques has found comments written in a similar manner in one of the copies of Ibn Qāḍī Shuhbah's *Ṭabaqāt*. The copious comments were written by the famous scholar Ibn Ḥajar al-'Asqalānī in the margins of the text. Here, too, the comments appear upside down in the original manuscript. It seems that Ibn Ḥajar sat across the student and made comments and corrections. Jaques, *Authority,* p. 41.

[171] Taqī al-Dīn b. 'Abd al-Qādir al-Tamīmī, *al-Ṭabaqāt al-Sanīya fī Tarājim al-Ḥanafiyyah,* Süleymaniye Library MS Aya Sofya 3295, pp. 473r-473v. Moreover, Ibn Nujaym mentions al-Qurashī's *ṭabaqāt* among the lists consulted while compiling his *al-Ashbāh wa-l-Naẓā'ir.* Zayn al-Dīn b. Ibrāhīm Ibn Nujaym, *al-Ashbāh wa-l-Nazā'ir 'alá Madhhab Abī Ḥanīfah al-Nu'man* (Cairo: Mu'assasat al-Ḥalabī, 1968), p. 18.

[172] Taqī al-Dīn b. 'Abd al-Qādir al-Tamīmī, *al-Ṭabaqāt al-Sanīyah fī Tarājim al-Ḥanafiyyah* (Riyad: Dār al-Rifā'ī, 1983), vol. 4, pp. 429-430; al-Tamīmī, *al-Ṭabaqāt,* Süleymaniye Library MS Aya Sofya 3295, p. 259r.

Ṭabaqāt Works by Members of the Ottoman Religious-Judicial Establishment

Early Stages: Kemâlpaşazâde's Risālah fī Ṭabaqāt al-Mujtahidīn

It is not fully clear when members of the Ottoman religious-judicial establishment got interested in the *ṭabaqāt* genre. It is likely that in the fifteenth century many were familiar with important medieval *ṭabaqāt* works, such as 'Abd al-Qādir al-Qurashī's (d. 1373) *al-Jawāhir al-Muḍīyah*.[173] Moreover, the issue of authority and transmission of knowledge must have concerned many Anatolian jurists during the fifteenth century, as they invested considerable efforts in obtaining permits (*ijāzah*s) from leading jurists in prominent learning centers across Central Asia and the Arab lands.[174] Nevertheless, it seems that fifteenth-century Anatolian Ḥanafī jurists were not particularly interested in committing their credentials and chains of transmission to paper. One may only speculate why these jurists did not record their intellectual

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[173] In the first half of the sixteenth century the eminent jurist Ibrāhīm al-Ḥalabī (d. 1549) compiled an abbreviated version (*mukhtaṣar*) of 'Abd al-Qādir b. Muḥammad al-Qurashī's *ṭabaqāt* of the Ḥanafī school, *al-Jawāhir al-Muḍīyah fi Ṭabaqāt al-Ḥanafiyyah.* See Ibrāhīm b. Muḥammad b. Ibrāhīm al-Ḥalabī, *Mukhtaṣar al-Jawāhir al-Muḍīyah fi Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Esad Efendi 605-001.
The *Jawāhir* was copied several times over the course of the late fifteenth and the sixteenth centuries. Out of the fourteen copies of the work located in different libraries in Istanbul, at least 5 were copied during the sixteenth centuries (Süleymaniye Library MS Yozgat 170, copied in 957AH/1550AD); Süleymaniye Library MS Murad Buhari 252, copied in 947AH/1540AH; MS Esad Efendi 405, copied in 929AH/1522AD; Süleymaniye Library MS Süleymaniye 823, was copied in 964AH/1556AD; Süleymaniye Library MS Fatih 4311, copied in 980AH/1572AD). In addition, another copy (Süleymaniye Library MS Damad Ibrahim Paşa 508) was copied late in the fifteenth century (890AH/ 1485AD).

[174] Taşköprüzâde mentions several jurists who traveled to the Arab lands to study with prominent authorities: Molla Khuḍur Shāh (d. 1449) left Anatolia for Cairo, where he spent 15 years. [Aḥmad b. Muṣṭafá Ṭaşköprüzâde, *al-Shaqā'iq al-Nu'māniyyah fī 'Ulamā' al-Dawla al-'Uthmāniyyah* (Beirut: Dār al-Kitāb al-'Arabī, 1975), pp. 59-60]. Another example is Ḥasan Çelebi b. Muḥammad Shāh al-Fenārī, who was granted permission by Meḥmet II to travel to Cairo to study with a well-known Maghribī scholar. [Ibid., pp. 114-115]. For additional examples see: Ibid. p. 130; p. 288.

genealogies systematically. It is possible, however, that only when the imperial learned hierarchy reached a certain degree of consolidation and assumed a distinct character this concern became more and more urgent. After all, during the second half of the fifteenth century jurists from learning centers in the Mamluk sultanate and Central Asia still entered the service of the Ottoman state.

Things, however, changed during the early decades of the sixteenth century, and members of the imperial establishment were increasingly concerned with producing a systematic narrative of the history of the school and its authorities. Kemâlpaşazâde's (d. 1534) short treatise is one of the earliest treatises, perhaps the earliest one, on the history and structure of the Ḥanafī school compiled by a member, let alone a senior member, of the Ottoman religious-judicial establishment. Moreover, Kemâlpaşazâde's treatise became an important reference for later jurists who undertook similar projects.[175] The authors of the works discussed in the following three sections were clearly familiar with, and to a large extent followed, Kemâlpaşazâde's treatise. In this sense, Kemâlpaşazâde may be perceived as the

[175] Ibn Kamāl Pāshā (Kemâlpaşazâde), *Risālat Ṭabaqāt al-Mujtahidīn,* New York Public Library MS M&A 51891A, pp. 195v-196v. Modern scholars, such as Ibrahim Hafsi and Wael Hallaq, have thoroughly discussed this treatise. See: Ibrahim Hafsi, "Recherches sur le genre "*Ṭabaqāt*" dans la litterature Arabe (II)," *Studia Arabica* 24(1) (1977), pp. 14-15; Wael B. Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2004), pp. 14-17.

harbinger of the genre among members of the Ottoman religious-judicial establishment.[176]

In his treatise, Kemâlpaşazâde divides the jurists of the Ḥanafī school into seven ranks (*ṭabaqāt*). Each rank is unique as far as the jurisprudential authority of its jurists is concerned. More precisely, the jurists of each rank from the second rank onward are increasingly limited in their ability to employ independent reasoning in relation to previous ranks. Therefore, Kemâlpaşazâde's general narrative is one of decline in the authority of jurists to employ independent reasoning according to the chronological distance of the jurist from the eponymous founder of the school. The decline, according to the treatise, apparently reaches a steady level by the fourteenth century, as the latest jurist explicitly mentioned lived in that century. It is plausible that Kemâlpaşazâde considered himself and his peers to be members of the seventh rank, perhaps suggesting that they were the most limited in terms of the authority to employ independent reasoning. Be the case as it may, Kemâlpaşazâde's narrative does not elaborate on the history of the school from the fourteenth century onward.

As we shall presently see, although the later authors referred to Kemâlpaşazâde's treatise (either explicitly or implicitly), and offered their own interpretation to the hierarchy of authorities of the school, they also sought to address

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[176]The treatise was so popular that the eighteenth-century dragoman of the Swedish embassy in Istanbul, Ignatius Mouradega d'Ohsson, translated it into French and included it in his *Tableau General de l'Empire Othman.* Ignatius Mouradega d'Ohsson, *Tableau General de L'Empire Othman* (Paris: L'imprimerie de Monsieur, 1788), vol. 1, pp. 10-21.

other issues. In particular, they strove to establish the authority of the imperial establishment within the school and not only the relationship between the authorities up to the fourteenth century. Despite the interesting differences in the different authors' understanding of the classification and the hierarchy of the authorities of the school (for a more detailed discussion of the different articulations of the hierarchy see appendix II), it is their view of the fifteenth and the sixteenth centuries, the period Kemâlpaşazâde's treatise does not cover, on which we will focus in the following sections.

Kınalızâde's *Ṭabaqāt al-Ḥanafiyyah*

As argued above, the later three *ṭabaqāt* works compiled by members of the imperial learned hierarchy built on Kemâlpaşazâde's treatise, but at the same time considerably diverged from it. The earliest of the three *ṭabaqāt* works was penned by Kınalızâde 'Alî Çelebi (d. 1572).[177]

The grandson of the tutor of Meḥmed II and a relative of senior members of the Ottoman religious-judicial establishment, Kınalızâde held several teaching

[177]Kınalızâde 'Alā' al-Dīn 'Alī Çelebī Amr Allāh b. 'Abd al-Qādir al-Ḥumaydī al-Rūmī al-Ḥanafī, *Ṭabaqāt al-Ḥanafiyyah* (Amman: Dār Ibn al-Jawzī, 2003-2004). The work has been wrongly attributed to Taşköprüzâde and has been published as such: Aḥmad b. Muṣṭafá Taşköprüzâde, *Ṭabaqāt al-Fuqahā',* 2nd ed. (Mosul: Ma ṭba'at al-Zahrā' al- Ḥadīthah, 1961).
It appears that Kınalızâde's work is the earliest to outline this particular narrative concerning the history of the school and imperial establishment. Nevertheless, it is possible that some of these ideas were also articulated a decade or two earlier by Şems Çelebi. For a more detailed discussion of the relationship between Kınalızâde's and Şems Çelebi's works see appendix III.

positions as well as senior judgeships throughout the empire. Prior to his appointment as the military justice of Anatolia, the most senior office he held, Kınalızâde was appointed to the judgeship of Damascus, Cairo, Aleppo, Bursa, Edirne, and Istanbul. In addition to the senior offices Kınalızâde held, he was also famous for several works he authored, perhaps the most important of which is the moralistic advice work *Aḫlâk-i 'Alâ'î*.[178] According to the Ottoman historian Peçevî, Kınalızâde was so esteemed that it was only his death at the age of 62 that prevented him from becoming the imperial chief muftī.[179] For this reason, Kınalızâde's view of the school may be considered the view of a very senior member of the Ottoman establishment.

The work consists of 275 biographies organized in 21 generations/ranks (*ṭabaqāt*). Most biographies include information concerning the biographee's teachers, students, and texts he compiled, although in some biographies this information is missing. The number of biographies in each *ṭabaqah* varies greatly. While earlier *ṭabaqah*s include tens of biographies, each of the latest (17-21) comprises less than ten entries. Interestingly enough, only a single biography, that of Kemâlpaşazâde, occupies the last *ṭabaqah.*

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[178] Hasan Aksoy, "Kınalızâde Ali Efendi," *TDVIA,* vol. 25, pp. 415-417. See also: Şefaattın Severcan, Kınalı-zade 'Ali Efendi, in Ahmet Hulusi Koker (ed.), *Kinali-Zade Ali Efendi (1510-1572)* (Kayseri: Erciyes Üniversitesi Matbaası, 1999), pp.1-11; Baki Tezcan, *The Definition of Sultanic Legitimacy in the Sixteenth Century Ottoman Empire: The Ahlak-I Ala'i of Kınalızâde Ali Çelebi (1510-1572)* (Princeton: Princeton University, Unpublished M.A. thesis, 1996).

[179] Tezcan, ibid., p. 20.

The decision to dedicate the last generation/rank to the eminent jurist bears important implications. But in order to gain a better understanding of these implications one has to pay attention to the manner in which Kınalızâde perceives the project as a whole. Kınalızâde describes his work as an abridged book (*mukhtaṣar*), thus implying that he had to choose between different accounts on the history of the school and multiple pieces of information. Therefore, it is worth paying attention to his explanation as to how he decided which Ḥanafī jurists to include in his work:

> This is an abridged book in which the generations (*ṭabaqāt*) of the Ḥanafī school are mentioned. I have mentioned in it the [most] famous among the imams, who transmitted the knowledge of the *Sharī'ah* in every generation and spread it throughout the [Muslim] community [*ummah*], with their chains of transmission [and recorded them] according to their generations […] So that the jurist's ignorance will not increase [lit. expand his ignorance, and when] he [is in] need, he will know whose opinion should be relied upon when there is a consensus [among the jurists in times of agreement and consensus]; whose [opinion should be] considered when there is a controversy [in times of] disagreement and controversy; and who[se opinion] is needed when [he has to determine which opinion] should be preferred and followed (*al-tarjīḥ wa-l-i'māl*) when opinions contradict [each other], by [choosing] the [opinion of] the most knowledgeable and most pious jurist at the time…[180]

[180] Kınalızâde, *Ṭabaqāt al-Ḥanafiyyah,* p. 91.

Kınalızâde's work is organized along two axes, a diachronic and a synchronic one. Diachronically, the notion of dividing the jurists into generations indicates that he was interested in reconstructing a continuous chain of transmission. The phrase Kınalızâde employs to point to the transition of knowledge over the generations, "Then the jurisprudential [knowledge] was transmitted to *ṭabaqah* X" (*thumma intaqala al-fiqh*),[181] suggests that Kınalızâde aims at producing a chain of transmission leading from Abū Ḥanīfah to Kemâlpaşazâde.

On the other hand, Kınalızâde intends to point out the leading jurisprudential authorities in every generation. Fittingly, Kınalızâde urges the muftī to "know the positions [of the jurists] and [their] ranks, so he would be able to prefer one of them in cases of controversy and dispute [among the opinions of the school.]" Although in most cases Kınalızâde does not explicitly state which opinion is preferable, this comment offers a glimpse into how Kınalızâde envisioned this compilation. The work, according to this vision, is not merely a history of the Ḥanafī school, but rather a jurisprudential tool intended for resolving jurisprudential disputes within the school. In other words, the work aims at determining "orthodoxy," at least for the members of the Ottoman religious-judicial establishment. Kınalızâde, however, does not address in this work concrete debatable jurisprudential issues. Instead, he offers general

[181] For example: Ibid., p. 103, 190, 216, 252.

guidelines for choosing between different contradicting opinions within the school, and namely in cases of disagreement between the eponym and his disciples.

Kınalızâde's attempt to define "orthodoxy" is also reflected in the importance he places on jurisprudential texts. In Kınalızâde's view, the lore of the Ḥanafī school was transmitted from one leading jurist to the other until it was "preserved among the pages of the books." "These books," he explains, "widely circulate among the pious and they are consulted during adjudication (*qaḍā'*) and issuance of legal opinions (*fatwá*)."[182] This statement reflects a tendency discernable during the period under discussion here. As we shall see in the next chapter, authoritative texts became increasingly important in the Ottoman understanding of the Ḥanafī school over the course of the sixteenth and the seventeenth century.

The importance of the jurisprudential texts and manuals is evident in the sources Kınalızâde uses. Beside other *ṭabaqāt* works, such as the fourteenth-century comprehensive *ṭabaqāt* work *al-Jawāhir al-Muḍīya*,[183] when the source of the information is mentioned, the source is often an important jurisprudential text, such as

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[182] Kınalızâde, *Ṭabaqāt al-Ḥanafiyyah,* pp. 92-93. It is worth noting that Kınalızâde's view is slightly different from Kemâlpaşazâde's. While in the latter's treatise texts operate as a mechanism to determine which opinion is preferable, in the former's view the jurisprudential texts encompass *all* the relevant teachings of the school.

[183] Kınalızâde also draws on Ibn Khallikān's and al-Khaṭīb al-Baghdādī's works. In addition, he cites Abū Isḥāq al-Shirāzī's *ṭabaqāt* and Muḥammad b. Iṣḥāq's *Fihris al-'Ulamā'*.

al-Marghīnānī's *al-Hidāyah* or al-Sarakhsī's *al-Mabsūṭ.*[184] In other words, it seems that one of Kınalızâde's guiding principles was to document the genealogy of particular legal arguments.

As I have already suggested, an important goal Kınalızâde sets in his *Ṭabaqāt al-Ḥanafiyyah* is to establish the authority of the Ottoman religious-judicial establishment within the Ḥanafī tradition.[185] Of particular relevance are the last seven *ṭabaqāt* that cover the time period from the late fourteenth to the early sixteenth century, that is, the period during which the Ottoman state in general and its religious-judicial establishment in particular emerged.

Let us examine these *ṭabaqāt* chronologically. In the *ṭabaqāt* that cover the fourteenth century, jurists who operated in the Ottoman domains or were affiliated with the evolving Ottoman state are totally absent. Moreover, prominent religious and judicial figures that operated in the early days of the Ottoman polity, such as the famous Ede Bâlî, a leading religious-spiritual figure and the father-in-law of the first Ottoman sultan, are excluded from Kınalızâde's account. Most of the jurists in the

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[184] Here is, for example, the entry of Abū Jaʿfar al-Hindūwānī:
Abū Jaʿfar al-Hindūwānī, Muḥammad b. ʿAbd Allāh b. Muḥammad. Studied with al-Aʿmash. The author of *al-Hidāyah* [al-Marghīnānī] mentioned him in the chapter on the description of prayer (*bāb ṣifat al-ṣalāt*). [He was] a great imam from Balkh. al-Samʿānī said: He was called the minor Abū Ḥanīfah due to his [knowledge] of jurisprudence. He studied fiqh (*tafaqqaha*) with his master Abū Bakr Muḥammad b. Abī Saʿīd, known as al-Aʿmash; al-Aʿmash was the student of Abū Bakr al-Iskāf; al-Iskāf was the student of Muḥammad b. Salamah; [Muḥammad] was the student of Abu Sulimān al-Jūzjānī; al-Jūzjānī was the student of Muḥammad b. al-Ḥasan, the student of Abū Ḥanīfah [...]
Kınalızâde, *Ṭabaqāt al-Ḥanafiyyah,* pp. 180-181.

[185] Ibid., pp. 321-322.

ṭabaqah that covers the early decades of the fifteenth century (*ṭabaqah* #17)[186] are Ḥanafīs who were not affiliated with the Ottoman state. Nevertheless, the seventeenth *ṭabaqah* includes the biography of the renowned early fifteenth-century jurist Ibn al-Bazzāz, who entered the Ottoman domains and met Shams al-Dīn al-Fanārī (or Fenârî), who was the first jurist to serve as an a chief imperial muftī.[187]

The mid-fifteenth century evidently marks a turning point in Kınalızâde's account. The last *ṭabaqāt* (*ṭabaqāt #18-21*), which cover roughly the second half of the fifteenth century and the early decades of the sixteenth, include almost exclusively Ḥanafīs who were affiliated with the Ottoman religious-judicial establishment. The only important exception is the Cairene Ḥanafī Ibn al-Humām, who appears in the eighteenth *ṭabaqah* as well.[188] On the other hand, Kınalızâde does not mention any of Ibn al-Humām's students, either those who operated in the Mamluk sultanate or in the Ottoman domains. Moreover, Kınalızâde excludes luminary Ḥanafī jurists who operated in the Mamluk sultanate, such as Muḥyī al-Dīn

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[186] Ibid., pp. 306-310

[187] Ibid., p. 308.

[188] Kınalızâde, *Ṭabaqāt,* pp. 310-311.

al-Kāfiyajī, Qāsim b. Quṭlūbughā, and Amīn al-Dīn al-Aqsarā'ī,[189] of whom he must have heard.[190] In addition, Kınalızâde excludes many other Ḥanafīs of lesser importance throughout Anatolia (and even the Ottoman domains), the Mamluk sultanate and elsewhere. In short, the exclusion of Ḥanafīs from the other parts of the Islamic world and particularly from the Mamluk sultanate is intended to stress the rise of an independent authoritative genealogy in the Ottoman domains.

The problem, however, was that different jurists who joined the burgeoning Ottoman religious-judicial establishment in the fifteenth and sixteenth centuries were affiliated to various chains of transmission within the Ḥanafī school, as they came from different places in Anatolia, Central Asia, and the Arab lands. Kınalızâde was

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[189] On al-Kāfiyajī see below. On Ibn Quṭlūbughā see: Ibrāhīm b. Ḥasan al-Biqā'ī, *'Inwān al-Zamān bi-Tarājim al-Shuyūkh wa-l-Aqrān* (Cairo: Matbaʿat Dār al-Kutub wa-l-Wathā'iq al-Qawmiyyah, 2006), vol. 4, pp. 144-145; al-Biqāʿī, *'Unwān al-'Unwān bi-Tajrīd Asmā' al-Shuyūkh wa-Ba'ḍ al-Talāmidhah wa-l-Aqrān* (Beirut: Dār al-Kitāb al-'Arabī, 2002), pp. 139-140; Shams al-Dīn Muḥammad b. 'Abd al-Raḥman al-Shakhāwī, *al-Ḍaw' al-Lāmi' li-Ahl al-Qarn al-Tāsi'* (Cairo: Maktabat al-Qudsī, 1934), vol. 6, pp. 184-190; Jalāl al-Dīn 'Abd al-Raḥman b. Abī Bakr al-Suyūṭī, *al-Munjam fi al-Mu'jam* (Beirut: Dār Ibn Ḥazm, 1995), pp. 166-167; Shams al-Dīn Muḥammad b. Ṭūlūn, *al-Ghuraf al-'Âliyah fi Muta'akhkhirī al-Ḥanafiyyah,* Süleymaniye Library MS Şehid Ali Paşa 1924, pp. 188r-189r. On Amīn al-Dīn al-Aqsarā'ī see: al-Biqāʿī, *'Unwān al-'Unwān,* p. 227; al-Sakhāwī, *al-Ḍaw',* vol. 10, p. 240-243; al-Suyūṭī, *al-Munjam,* pp. 238-239; Ibn Ṭūlūn, *al-Ghuraf,* pp. 330r-330v.

[190] In his supplement to Ṭaşköprüzâde's *al-Shaqā'iq al-Nu'māniyyah*, the sixteenth-century biographer 'Âşîḳ Çelebi, for example, records an *ijāzah* he obtained from 'Abd al-Raḥman al-'Abbāsī (d. 1555 or 6). Al-'Abbāsī was a scholar who entered the Ottoman lands for the first time as an envoy of the Mamluk sultan. After the conquest of Egypt he migrated again to Istanbul, where he taught mostly *ḥadīth.* In the *ijāzah,* al-'Abbāsī permits 'Âşîḳ Çelebi to transmit what he learned from his teachers. Among the teachers he lists are Muḥyī al-Dīn al-Kāfiyajī, Amīn al-Dīn al-Aqsarā'ī, and Muḥibb al-Dīn b. al-Shiḥnah. Muḥammad b. 'Alī Zayn al-'Ābidīn b. Muḥammad b. Jalāl al-Dīn b. Ḥusayn b. Ḥasan b. 'Alī b. Muḥammad al-Raḍawī, known as 'Âşîḳ Çelebi, *Dhayl al-Shaqā'iq al-Nu'māniyyah* (Cairo: Dār al-Hidāyah, 2007), pp. 107-109. On al-'Abbāsī see: Ṭaşköprüzâde, *al-Shaqā'iq,* pp. 246-247; Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawakib al-Sā'irah bi-A'yān al-Mi'ah al-'Āshirah* (Beirut: Jāmi'at Bayrūt al-Amīrikiyyah, 1945-1958), vol. 2, pp. 161-165; Wolfhart P. Heinrichs, "'Abd al-Raḥman al-'Abbāsī (al-Sayyid 'Abd al-Raḥīm) (12 June 1463-1555 or 1556)," in Joseph E. Lowry and Devin J. Stewart (eds.), *Essays in Arabic Literary Biography 1350-1850* (Wiesbaden: Harrassowitz Verlag, 2009), pp. 12-20. Interestingly enough, al-'Abbāsī is not mentioned in Ibn Ṭūlūn's *al-Ghuraf*. In addition, al-'Abbāsī is absent from Kınâlızâde's and Kefevî's *ṭabaqāt.*

most certainly aware of this fact, yet he often overlooks it in his text and does not always specify the different genealogies to which these jurists were affiliated. Furthermore, since he does not always mention the teachers of his biographees, it is somewhat difficult to reconstruct on the basis of Kınalızâde's *ṭabaqāt* a continuous chain of transmission. On the other hand, it seems that Kınalızâde is interested in a more meticulous recording of specific genealogies. For instance, out of the three establishment-affiliated jurists mentioned in the eighteenth *ṭabaqah*[191] – the first *ṭabaqah* most of whose jurists are affiliated with the Ottoman state and its evolving religious-judicial establishment – Kınalızâde only mentions Sharaf b. Kamāl al-Qarīmī's teachers.[192]

Now that we have surveyed the general structure of the work, we may turn to the concluding, twenty-first *ṭabaqah,* and to Kınalızâde's treatment of Kemâlpaşazâde, whom he dubs "the peerless of his time, and the unique of his era." Kınalızâde's decision to situate Kemâlpaşazâde as the last link of the genealogy has important implications, for Kemâlpaşazâde emerges as the sole channel of this branch of the Ḥanafī school and, according to Kınalızâde's explanation in his introduction, the sole authoritative figure to resolve disputes among Ḥanafīs. Moreover, the role Kemâlpaşazâde plays in Kınalızâde's genealogy seems to reflect the latter's

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[191] Kınalızâde, *Ṭabaqāt*, pp. 310-312.

[192] Ibid., p. 311. Qarīmī's teacher was Ibn al-Bazzāz.

understanding of the role of the Ottoman chief muftī from the early decades of the sixteenth century. Put differently, according to this view, the chief muftī (and the establishment he presided over) served as the channel of a particular genealogy within the Ḥanafī school. Moreover, the chief muftī appears as the ultimate authority when jurisprudential disputes emerge among Ḥanafī jurists who were affiliated with the imperial learned hierarchy.

It is worth dwelling on this view of the history of the school, for Kınalızâde's narrative – and particularly the divergence of the Rūmī branch of the school around the mid-fifteenth century as well as the role he ascribes to the chief imperial muftī (and the establishment as a whole) in monopolizing the access to this branch – recurred in accounts by contemporary members of the imperial learned hierarchy and became, as we shall see in the next sections, a trope in histories of the school by members of the establishment in the centuries to come, some significant differences notwithstanding. A graduate of the Ottoman madrasah system and roughly a contemporary of Kınalızâde, the sixteenth century chronicler Gelibolulu Muṣṭafâ ʻÂlî (d. 1600), for example, poignantly articulates this view in his writings. In his chronicle *Kühnü'l-Aḫbâr*, ʻÂlî praises Meḥmet II for supporting the jurists who arrived in the Ottoman domains from the Arab and the Persian lands and for founding in the recently conquered imperial capital the famous eight madrasahs (the *Saḥn-ı Semân* madrasahs). Due to these projects, the central lands of the empire (*Rûm*)

became a "fountain of wisdoms and sciences" (*menbaʿ-i ḥikem ve-ʿulûm*), and therefore Rūmī students were no longer required to travel to foreign lands.[193] Furthermore, in his biographical dictionary dedicated to the members of the Ottoman religious-judicial establishment (and other religious scholars who operated in the Ottoman domains, such as Sufi sheikhs), which will be further discussed below, Aḥmad b. Muṣṭafá Taşköprüzâde (d. 1560) also describes a rupture during the reign of Meḥmet II. From the latter's reign onwards, relates Taşköprüzâde, seekers of knowledge were attracted to Istanbul, instead of visiting Herat, Bukhara, and Samarkand, as their predecessors did.[194]

Maḥmûd b. Süleymân Kefevî's Katā'ib Aʿlām Al-Akhyār min Fuqahāʿ Madhhab al-Nuʿmān al-Mukhtār

The author of the second *ṭabaqāt* work that will concern us here, Maḥmûd b. Süleymân Kefevî (d. 1582), was born, as the epithet indicated, in Kefe in Crimea, where he began his studies. In 1542 Kefevî left his hometown for Istanbul, where he attended the classes of Ḳâdîzâde Aḥmad Şemseddîn Efendi and Abdurraḥman Efendi. When the latter was appointed as the judge of Aleppo in 1546, Kefevî became the

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[193] Muṣṭafâ b. Aḥmed ʿÂlî, *Künh ül-Aḫbâr* (Istanbul: Darü't-Tibaʿâti'l-ʿÂmîre, 1860-1861), vol. 1, p. 37. According to Muṣṭafâ ʿÂlî, this trend continued under Meḥmet II's successors, Beyazîd II and Selîm I. The latter, following the conquest of Greater Syria and Egypt brought to the capital scholars, poets, and jurists from these lands. Ibid.

[194] Ali Anooshahr, "Writing, Speech, and History for an Ottoman Biographer," *Journal of Near Eastern History* 69[1] (2010), p. 50.

protégé (*mülâzim*) of Ma'lûlzâde Emîr Efendi. In 1554 Kefevî began his teaching career at the madrasah of Molla Gürânî in Istanbul. Later he was appointed as the judge of his hometown Kefe. The next station in Kefevî's judgeship career was Gelibolu, where he served until 1579, when he was removed from office and returned to Istanbul. Three years later, in 1582, Kefevî died in the capital. Although Kefevî was not a senior member of the Ottoman religious-judicial establishment, his work gained popularity among members of the imperial establishment (as well as modern scholars) and became known as one of the most comprehensive Ḥanafī *ṭabaqāt* works.[195]

Written slightly after Kınalızâde's *Ṭabaqāt*, Kefevî's *Katā'ib A'lām Al-Akhyār min Fuqahā' Madhhab al-Nu'mān al-Mukhtār* shares some of the goals of the former work. Like his predecessor, Kefevî also wanted to compile a *ṭabaqāt* work that would comprise the biographies of

> our earlier and the later jurists [of the Ḥanafī school], those who are followers and those who are *mujtahid*s [that is, those who have the right to employ independently

[195] Ahmet Özel, "Kefevî, Mahmûd b. Süleyman," *TDVIA,* vol. 25, pp. 185-186. The work has also attracted the attention of several modern scholars as an important source for the history of the Ottoman religious-judicial establishment. See, for instance: Ekmeleddin İhsanoğlu, "The Initial Stage of the Historiography of Ottoman Medreses (1916-1965): The Era of Discovery and Construction," in Ekmeleddin İhsanoğlu (ed.), *Science, Thechnology and Learning in the Ottoman Empire: Western Influence, Local Institutions, and the Transfer of Knowledge* (Burlington: Ashgate/Variorum, 2004), pp. 46-47; Ârif Bey, "Devlet-i Osmaniyye'nin Teessüs ve Takarrürü Devrinde İlim ve Ulema," *Darülfünün Edebiyat Fakültesi Mecmuası,* 2 (May 1332AH/1916), pp. 137-144; Imber, *Ebu's-Su'ud,* p. 22; Repp, *The Müfti,* p. 139.

> their jurisprudential skills to develop new rulings] from among the jurists of the times and the judges of the towns and the district, with their chains of transmissions (*asānīd wa-'an'anātihim*), [and I have organized this work] according to their time and generations (*ṭabaqātihim*), including the rare issues (*al-masā'il al-gharībah*) transmitted from them in the famous collections of fatāwá. [I have also] appended the incredible stories which are heard about numerous scholars from the jurists of our time [back] to Abū Ḥanīfah, the imam of the imams of our school, [and through him] to our Prophet, the lord of our *sharī'ah*.[196]

Furthermore, he decided to compile the work, Kefevî explains, due to the absence of satisfactory compilations. The problem with the previous works, he continues, is that they "did not distinguish the student from the teacher, and they did not differentiate between the follower (*dhū al-taqlīd*) and [jurists] who are allowed to employ independently their jurisprudential skills to develop new rulings (*ahl al-ijtihād*)."[197] As we have already seen, by the time Kefevî wrote his *ṭabaqāt* there was at least one compilation, that of Kınalızâde, that was organized chronologically. Nevertheless, it is true that Kefevî's work is much more extensive. While Kınalızâde's *ṭabaqāt* includes 275 biographies of Ḥanafī jurists, the section in Kefevî's work that is devoted to the Ḥanafī school consists of 674 entries organized in twenty-two

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[196] Maḥmûd b. Süleymân Kefevî, *Katā'ib A'lām al-Akhyār min Fuqahā' Madhab al-Nu'mān al-Mukhtār,* Süleymaniye Library MS Esad Efendi 548, p. 1r.

[197] Ibid.

chronological clusters or groups, termed *katā'ib* (sing. *katībah*), which function in a fashion similar to the *ṭabaqāt* in Kınalızâde's work.[198]

Kefevî's work, however, is not merely a history of the Ḥanafī school. Unlike his counterparts, he decided to frame his account of the history of the Ḥanafī school within the larger framework of the Islamic understanding of the history of the world. Therefore Kefevî opens with the biography of Adam, the first Qur'ānic prophet. Only after listing the Qur'ānic prophets, the Prophet Muḥammad, his companions, and the eponymous founders of the Sunnī legal schools,[199] he turns to discuss the history of the Ḥanafī school and of the Ottoman religious-judicial establishment within it.

After a discussion of the taxonomy of the Ḥanafī jurists, which refers indirectly to Kemâlpaşazâde's, Kefevî charts a fairly coherent narrative of the history of the school from the thirteenth century onward. Specifically, he seeks to describe what he considers a major development in Ḥanafī history – the emergence of new Ḥanafī centers, and particularly the emergence of the Ottoman realms as a dominant Ḥanafī center, in the centuries following the disastrous Mongol invasions. It is precisely at this point that Kefevî links his taxonomy of the Ḥanafī jurists (see appendix IV) to more general historical developments. Since the jurists of the last rank in his hierarchy of authorities were mostly active across Central Asia and Iraq,

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[198] Kefevî's work is also more extensive than Ibn Quṭlūbughā's *Tāj al-Tarājim*, on which he relies. On the other hand, *al-Katā'ib* is more limited in scope than al-Qurashī's *al-Jawāhir al-Muḍīyah*.

[199] Ibid., pp. 4v-21r.

the Mongol invasions were catastrophic for these jurists and, more broadly, for the Ḥanafī school. Following the destruction of these Ḥanafī scholarly centers, according to Kefevî, many of the jurists who had operated in these centers fled to the Mamluk sultanate, which emerged as a dominant Ḥanafī center. But the upheavals in the history of the school were not over yet. According to Kefevî's narrative, during the reign of the Circassian Mamluks, as the state of affairs in the Mamluk sultanate grew increasingly chaotic, "knowledge and competence traveled to Rūm" and a new Ḥanafī center emerged under the aegis of the Ottoman sultans. Kefevî concludes his survey of the history of the Ḥanafī school by praising the Ottoman sultan at the time, Murâd III. This is an important gesture, which serves Kefevî for emphasizing the pivotal role states in general and the Ottoman state in particular played in protecting and preserving the Ḥanafī tradition.[200]

Kefevî, nevertheless, is not only interested in compiling a general account on the emergence of the Ottoman domains as a major Ḥanafī center. He also aims at documenting particular chains of transmission that lead from Abū Ḥanīfah to jurists who were affiliated with the Ottoman religious-judicial establishment, and specifically, to Kefevî himself. In the brief introduction to the section of the *Katā'ib*

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[200] Ibid., pp. 2v-3r.
The practice of pledging allegiance to the sultan is evident in other genres as well. Tijana Krstić, in her study of sixteenth- and seventeenth- century self-narrative of conversion to Islam, has pointed out that the Ottoman sultanate plays a significant role in these narratives. In comparison to earlier Islamic conversion narratives, this "feature [of the Ottoman self-narratives of conversion] is entirely new and points to the politicization of religious discourse characteristic of the age of confessionalization."
Tijana Krstić, *Contested Conversion to Islam*, p. 103.

that deals with the Ḥanafī jurists, Kefevî records three of his chains of transmission that lead from the eponym to him. All these chains pass through important members of the Ottoman religious-judicial establishment, such as Kemâlpaşazâde, Molla Yegân, and Shams al-Dīn (Şemsuddîn) al-Fanārī (Fenârî) (see appendix IV). In addition to these chains, Kefevî claims to have several other chains of transmission within the Ḥanafī school.[201] This, it should be stressed, is not unique to Kefevî. As he explicitly explains in the introduction, many jurists are affiliated to multiple chains of transmission. At this point, however, Kefevî breaks from his predecessor's account. While the latter opted for a more institutional perspective, thus concluding his account with the chief imperial muftī, the former also emphasized his own intellectual genealogies and his individual authority as a jurist, even if this authority was transmitted to him through members of the imperial learned hierarchy.

Let us now turn to the *katā'ib* themselves. My discussion will focus on the time period from the fourteenth to the sixteenth century, the period during which, according to Kefevî's account, the Ottoman realms emerged as an important Ḥanafī center. This is also the period, as we have seen in the previous section, that Kınalızâde identified as the formative period of the imperial learned hierarchy. Despite clear similarities, there are also significant differences between the accounts. Therefore, the comparison of Kefevî's and Kınalızâde's treatment of this time period illustrates the

[201] Ibid.

similarities and the nuances in the manner in which different members of the imperial establishment narrated the history of the school. Admittedly, it is at times difficult to explain the difference between the works. Kefevî's work may reflect the change the perception of the history of the school and the establishment underwent over time, although it is possible that some of these ideas had already circulated in Kınalızâde's time (and perhaps even earlier).

Unlike the *ṭabaqāt* in Kınalızâde's work, which are more or less coherent clusters, Kefevî breaks most of the *katā'ib* into three sub-clusters. The first sub-cluster consists of Ḥanafī jurists who were affiliated to the main genealogy (or genealogies) within the Ḥanafī school that Kefevî was interested in documenting. The second sub-cluster, termed the "miscellanea part" (*mutafarriqāt*) includes prominent Ḥanafī jurists who were not part of the main intellectual genealogy documented in the general section. The third sub-cluster, which will not concern us here, is devoted to Sufi shaykhs and is labeled "the heart of the *katībah*" (*qalb al-katībah*). This internal division merits attention, for it fulfills an important function in Kefevî's grand narrative of the history of the Ḥanafī school in general and the history of the Ottoman establishment in particular.

Echoing his treatment of his own intellectual/authoritative genealogy, Kefevî's *Katā'ib* places emphasis on the meticulous recording of the links of chain of transmission leading to the biographees who were affiliated with the Ottoman

establishment. Consider, for example, Kefevî's biography of Ede Bâlî, the father-in-law of the first Ottoman sultan Osmân and an important spiritual-juridical figure in the nascent Ottoman state, with which he begins his account of the history of the Ottoman establishment. Kefevî bases this entry on Taşköprüzâde's biographical dictionary of the Ottoman imperial religious-judicial establishment, *al-Shaqā'iq al-Nu'māniyyah*. Nevertheless, Kefevî modifies Taşköprüzâde's biography:

> The shaykh, the imām, the pious (?) Ede Bâlî. The pious jurists, [who served as] muftī in Rūm (*al-diyār al-Rūmiyya*) during the time of 'Uthmān the holy warrior, the ancestor of the Ottoman sultans […]. He was a prominent shaykh. He met exalted (?) jurists in the lands of Qarāmān and in the Shām. He was born in the lands of Qarāmān, where he studied (*akhadha al-'ilm*) with the jurists of this land [Qarāmān]. He studied (*istaghala*) in the town of Larende in Qarāmān. He read (*qara'a*) furūʿ in Larende with the shaykh Najm al-Dīn al-Zāhidī, the author of *Qunyat al-Fatāwá* and of *al-Ḥāwī*. He studied (*akhadha*) [al-Zāhidī's teachings] with the author of *al-Baḥr al-Muḥīṭ*, the pride of the community [of Islam] and the [Muslim] religion Badīʿ al-Qarīnī,[202] and with Sirāj al-Dīn al-Qarīnī [d. 1258].[203] Then he traveled to the Shām

[202] Ibid., pp. 148r-148v.

[203] Ibid., pp. 163v-164r.

> and he studied (*akhadha al-'ilm*) with Ṣad[r] al-Dīn Sulīmān [b.] Abī al-'Izz,[204] [who transmitted from] the imam [Jamāl al-Dīn Maḥmūd] al-Ḥaṣīrī[205], [who transmitted] from the qāḍī, the imām, Fakhr al-Dīn Qāḍīkhān. He collected various sciences, both in the [discipline of] fundamentals of law and in substantive law. He met many of the jurists of the Shām. He reached the level of excellence. He taught [law] and issued legal opinions.[206]

In this entry, Kefevî adds many details to the account that appears in Taşköprüzâde's biographical dictionary, *al-Shaqā'iq al-Nu'māniyyah.* Although both accounts agree on the outline—the fact that the Ede Bâlî was born in Qarāmān, where he also studied; that he traveled to Greater Syria and studied there; and that he eventually entered the service of the Ottoman sultan Osmân—Taşköprüzâde does not mention any of Ede Bâlî's teachers. Kefevî, by contrast, is concerned with recording Ede Bâlî's authoritative lineage. Therefore he links the biographee to two important Ḥanafī authorities—al-Zāhidī and Sulimān [b.] Abī al-'Izz (and through the latter, he links Ede Bâlî to the prominent Ḥanafī jurist Qāḍīkhān.) In other words, Ede Bâlî

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[204] Sulimān b. Wuhayb, Abū al-Rabī' b. Abī al-'Izz (595- 677AH/1197-1278AD) studied fiqh with al-Ḥaṣīrī. He served as judge in Egypt and Syria. On Ibn Abī al-'Izz see: 'Abd al-Qādir b. Muḥammad al-Qurashī, *al-Jawāhir al-Muḍīyah fī Ṭabaqāt al-Ḥanafiyyah* (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyyah, 1978-), vol. 2, p. 237 (and the references therein). Kınalızâde also mentions Ibn Abī al-'Izz in his *Ṭabaqāt* but he does not mention Ede Bâlî among the former's students. Kınalızâde, *al-Ṭabaqāt,* p. 261.

[205] On Jamāl al-Dīn Maḥmūd al-Ḥaṣīrī, see: al-Qurashī, *al-Jawāhir,* pp. 431-433; Kınalızâde, *al-Ṭabaqāt,* p. 252.

[206] Kefevî, *al-Katā'ib,* pp. 184r-184v.

emerges in Kefevî's *Katā'ib* as an integral part of the Ḥanafī tradition and the transmitter of the teachings of the authors of important jurisprudential texts.

As we have already seen in the previous section, many members of the Ottoman religious-judicial establishment shared a specific perception of the history of the school from the mid-fifteenth century onwards, which excluded jurists who were not affiliated with the Ottoman enterprise. In his *Ṭabaqāt,* it should be recalled, Kınalızâde excludes leading late-fifteenth-century jurists who were not affiliated with the evolving Ottoman religious-judicial establishment. Kefevî by and large follows this perception. An examination of the *katā'ib* that cover the fourteenth and early fifteenth centuries reveals that a considerable number of entries are dedicated to jurists who were affiliated, or at least had some relations, with the emerging Ottoman religious-judicial establishment. In the *katā'ib* of the second half of the fifteenth century and the sixteenth century (*katā'ib* #18-22), Ḥanafīs who were not associated with the Ottoman religious-judicial establishment are virtually absent.

Kefevî's decision to include a biography of Muḥyī al-Dīn al-Kāfiyajī (d. 1474) may assist us in gaining a better understanding of his narrative strategies.[207] al-Kāfiyajī was one of the most prominent Ḥanafī jurists who operated in the Mamluk sultanate during the fifteenth century. Nevertheless, before his arrival in Cairo, he had studied with prominent Ḥanafīs who operated in the Ottoman lands, such as Shams

[207] Ibid., pp. 230r-230v.

al-Dīn al-Fanārī (or Fenârî), Ibn al-Bazzāz, and Burhān al-Dīn Ḥaydar al-ʻAjamī al-Harawī. Moreover, Taşköprüzâde dedicates an entry to al-Kāfiyajī in his *Shaqā'iq*. In other words, the reason for including al-Kāfiyajī's biography, while excluding those of other senior Ḥanafīs from the Mamluk lands, is his relations with early fifteenth-century jurists who operated in the Ottoman realms. It is also noteworthy that al-Kāfiyajī's student and an eminent jurist in his own right, Ibn al-Humām, has an entry in the *Katā'ib* as well.[208]

On the other hand, the prominent fifteenth-century jurist Qāsim b. Quṭlūbughā is absent from the *Katā'ib.* Supposedly, Kefevî could have included Ibn Quṭlūbughā, a student of Ibn al-Humām, who, in turn, was a student of al-Kāfiyajī.[209] Moreover, it is clear from the *Katā'ib* that Kefevî was familiar with Ibn Quṭlūbughā, since he draws on the latter's *ṭabaqāt* work, *Tāj al-Tarājim.* It is clear, then, that the exclusion of Ibn Quṭlūbughā was intentional. Although it is difficult to assess the degree to which Kefevî was familiar with other late-fifteenth century Ḥanafīs who lived and worked in the Mamluk sultanate, it seems quite likely that he at least knew of some of them.

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[208]It is worth mentioning that the contacts between al-Kāfiyajī and the Ottoman lands were not severed upon his migration to Cairo. An Ottoman soldier, who was captured by the Mamluks and spent several years in captivity, mentions in his report to the Ottoman sultan Bâyezîd II that he had studied with al-Kāfiyajī in Cairo several years before he was captured. The friends he made in al-Kāfiyajī's classes intervened on his behalf and led to his release. Emire Cihan Muslu discusses this episode in length, see: Emire Cihan Muslu, *Ottoman-Mamluk Relations: Diplomacy and Perceptions* (Harvard University: Unpublished Ph.D. dissertation, 2007), pp. 1-5.
On Ibn al-Humām, see: Kefevî, *al-Katā'ib,* pp. 228r-228v.

[209] Ibid.

In his account of the sixteenth century (*katā'ib* #19-22), Kefevī slightly differs from Kınalızâde, as he expends the chronological scope into the second half of the sixteenth century. Kefevî's account, nonetheless, is consistant with Kınalızâde's view of the history of the Ḥanafī school in the sixteenth century and does not include Ḥanafī jurists who were not affiliated with the Ottoman religious-judicial establishment. Moreover, he ascribes a similar role to the imperial establishment in channeling the authority of the school.

To further clarify this point, it is necessary to turn to the miscellanea sections in Kefevī's *Katā'ib* and to dedicate a few words to their function in the work. Despite Kefevî's interest in recording the chains of transmission that lead to the imperial establishment, Kefevî records in his work many jurists who were not affiliated with the main chains of transmission he sets out to reconstruct and document. Nevertheless, despite the fact that they are not affiliated to these particular chains, Kefevî considers these jurists important enough to be mentioned in the *Katā'ib*. In some cases, such as that of the prominent early fifteenth-century Egyptian Ḥanafīs Badr al-Dīn al-'Aynī (d. 1451) and Taqī al-Dīn al-Shummunī (d. 1468), Kefevî includes the biographies of these jurists because they were the authors of important jurisprudential works.[210] Other jurists whose biographies are recorded in the miscellanea section are fourteenth- and fifteenth-century members of the emerging

[210] Ibid., p. 232r; pp. 232r-232v.

Ottoman establishment who entered the Ottoman domains from different parts of the Islamic world (mostly Central Asia) and were attached to other genealogies within the Ḥanafī school.[211] The miscellanea section, to put it differently, enabled Kefevî to incorporate these relatively prominent jurists in the broader narrative of the Ḥanafī school, while emphasizing the importance of a particular chain (or chains) of transmission within the school, which were recorded meticulously and continuously.

Not coincidentally, the miscellanea section is absent from the last two *katā'ib*, that is, the *katā'ib* that cover the second half of the sixteenth century.[212] The absence of this section reflects the consolidation of the Ottoman religious-judicial establishment and the growing reluctance to accept Ḥanafī jurists who were affiliated to other chains of transmission within the school. Like Kınalızâde, Kefevî perceives the Ottoman establishment as the only channel through which one could attach himself to this specific genealogy, or branch, within the Ḥanafī school in his days.[213]

Finally, much like his predecessor, Kefevî intends in his *Katā'ib* to establish the authority of specific jurisprudential texts. Although Kefevî relies on other *ṭabaqāt* works, such as al-Qurashī's *al-Jawāhir al-Muḍīya,* Jalāl al-Dīn al-Suyūṭī's *al-Ṭabaqāt*

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[211] See, for example, Aḥmad al-Kurānī's (Gürânî's) biography in the eighteenth *katībah:* Ibid., pp. 232v-233v.

[212] Ibid., pp. 264v-272r, 273v-284v.

[213] It is interesting to compare the emergence of a clearly defined Ottoman genealogy in the last two *katība*s to the developments in other cultural fields, such as the arts. For the consolidation of an Ottoman style in the arts see: Gülru Necipoğlu, "A kânûn for the state, a canon for the arts: conceptualizing the classical synthesis of Ottoman art and architecture," in Gilles Veinstein (ed.), *Soliman le Magnifique et son temps* (Paris: La Documentation Français, 1992), pp. 195-213.

al-Ḥanafiyyah al-Miṣriyyah,[214] Ibn Quṭlūbughā's *Tāj al-Tarājim,* and Taşköprüzâde's *al-Shaqā'iq*,[215] the vast majority of the sources are Ḥanafī jurisprudential manuals and other works by prominent jurists. Like his colleague, Kefevî wanted to document the genealogies of relevant jurisprudential arguments. It is important to stress that almost all the jurisprudential texts Kefevî cites are texts that members of the Ottoman

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[214] Ibid., p. 231v.

[215] Kefevî also consulted al-Subkī's *Ṭabaqāt al-Shāfi'iyyah* (pp. 64r-64v, 74v-75r, 192v-193v, 197r-198r, 204v-206r).

religious-judicial establishment, including the state-appointed muftīs, considered reliable and were expected to consult in their rulings (see chapter 3).[216]

In addition, Kefevî appears to be interested in compiling a collective bibliography of works authored by jurists who were affiliated to a particular genealogy within the Ḥanafī school. By listing the works—not only jurisprudential works –[217] his biographees compiled in their biographies, Kefevî offers his readers a reference work with which they can situate specific texts within the history of the

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[216] Among the jurisprudential texts Kefevî cites are: Fakhr al-Dīn Ḥasan b. Manṣūr b. Maḥmūd al-Ūzcandī's *Fatāwá Qāḍīkhān* (p. 46v); Ḥāfiẓ al-Dīn Muḥammad b. Muḥammad al-Kardarī b. al-Bazzāz's *al-Fatāwā al-Bazzāziyyah* (p. 47r, 47v-48r,); an unspecified work by al-Taḥāwī (p. 48v, 61r); Muḥammad b. Aḥmad b. 'Umar Ẓahīr al-Dīn al-Bukhārī's *al-Fatāwá al-Ẓahīriyyah* (pp. 48r-48v); Ṭāhir b. Aḥmad b. 'Abd al-Rashīd al-Bukhārī's *Khulāṣat al-Fatāwā* (pp. 51v-52r, 108v); Raḍī al-Dīn Muḥammad b. Muḥammad al-Ḥanafī al-Sarakhsī's *al-Muḥīṭ al-Raḍāwī fī al-Fiqh al-Ḥanafī* (pp. 52r-52v, 144v-145r); 'Alī b. Abī Bakr al-Marghīnānī's *al-Hidāyah* (pp. 54v-56v); Maḥmūd b. Aḥmad b. 'Abd al-'Azīz b. 'Umar b. Māzah al-Marghīnānī's *Dhakhīrat al-Fatāwá* (*al-Dhakhīrah al-Burhāniyyah*) (pp. 54v-56v); an unspecified work by Kemâlpaşazâde (pp. 54v-56v); an unspecified work by Ebû's-Suʿûd Efendi (pp. 54v-56v); Mukhtār b. Maḥmūd b. Muḥammad Abū al-Rajā' Najm al-Dīn al-Zāhidī's *Qunyat al-Munyah* (p. 56v); an unspecified work by Aḥmad b. Muḥammad b. 'Umar al-Ḥanafī al-Nāṭifī, most likely *Jumlat al-Aḥkām* (pp. 56v-57r); 'Abd al-Barr b. Muḥammad b. Muḥammad al-Ḥalabī Ibn al-Shiḥna's *Sharḥ al-Manẓumah* (p. 58v-59v, 115r); Ḥusām al-Dīn 'Umar b. 'Abd al-'Azīz al-Ṣadr al-Shahīd's *Kitāb al-Wāqiʿāt min al-Fatāwā* (p. 59r, 62r-63r); Akmal al-Dīn Muḥammad b. Maḥmūd al-Bābartī's *'Ināyat al-Hidāyah* (p. 61r); Ḥammād al-Dīn b. 'Imād al-Dīn al-Marghīnānī's *al-Fuṣūl al-'Imādiyyah* (p. 61v, 115r); 'Uthmān b. 'Alī al-Zaylaʿī's *Sharḥ al-Kanz* (pp. 63v-64r); an unspecified work by 'Alī b. Muḥammad al-Pazdawī (pp. 66r-66v); *al-Tuḥfah,* possibly *Tuḥfat al-Mulūk fī al-Furū'* by Zayn al-Dīn Muaḥmmad b. Abū Bakr Ḥasan al-Ḥanafī al-Razī (pp. 66v-67r); 'Alim b. 'Alā' al-Ḥanafī's *al-Fatāwā al-Tatārkhāniyyah* (p. 89r); Aḥmad b. Muḥammad al-Qudūrī's *Sharḥ al-Qudūrī* (p. 100v); Maḥmūd b. Muḥammad b. Dawūd al-Lū'lū'ī al-Ifsinjī's *Haqā'iq al-Manẓūmah fī al-Khilāfīyāt* (p. 100v, 106r-106v, 144v-145r); Najm al-Dīn 'Umar b. Muḥammad b. Aḥmad al-Ḥanafī al-Nasafī's *Fatāwá al-Nasafī* (p. 101r); Rukn al-Dīn Muḥammad b. 'Abd al-Rashīd al-Ḥanafī al-Kirmānī's *Jawāhir al-Fatāwá* (pp. 104v-105r, 139v-140r); Qiwām al-Dīn Amīr Kātib b. Amīr 'Umar al-Fārābī al-Itqānī's *Sharḥ al-Hidāyah* (pp. 109v-110r); Alī b. Abī Bakr al-Marghīnānī's *Mashyakhah* (p. 128v); Maḥmūd b. Ayyūb al-Ṣūfī's *al-Fatāwā al-Ṣūfiyyah* (pp. 123r-123v, 141v-142v); Najm al-Dīn Mukhtār b. Maḥmūd al-Zāhidī's *al-Ḥawī* (p. 132v); Muḥammad b. Maḥmūd b. al-Ḥusayn al-Ustrūshanī's *Fuṣūl al-Ustrūshanī* (p. 134r-134v, 145v-146r); Badr al-Dīn Maḥmūd b. Aḥmad al-'Aynī's *Sharḥ al-Kanz* (p. 136v-137v); Ḥasan b. Ibrāhīm b. Ḥasan al-Zaylaʿī's *Tabyīn* (p. 136v-137v); Kemâlpaşazâde's *al-Iṣlāḥ wa-l-Īdāḥ* (pp. 136v-137v); Rashīd al-Dīn Muḥammad b. 'Umar b. 'Abd Allāh al-Sanjī al-Wattār's *Fatāwá Rashīd al-Dīn* (*al-Fatāwā al-Rashīdiyyah*) (pp. 137v-138r).

[217] See for example: pp. 62r-63r, 66r, 112v-113v, 182r-182v, 207r, 225r.

school. Furthermore, the connection made in the *Katā'ib,* but definitely not only there, between the biographies, the chain of transmission of authority, and the bibliographies is fundamental in the emergence of the Ḥanafī school as an authoritative textual corpus. As we shall see below, this aspect of the school will become even more central over the course of the seventeenth century.

To conclude, in his *Katā'ib,* Kefevî attempts to achieve several interrelated goals. First, he intends to situate himself as an accomplished jurist within the Ḥanafī tradition. Concurrently, he tries to define particular chains of transmission within the Ḥanafī school that eventually lead to the Ottoman religious-judicial establishment. By doing so, he excludes other chains of transmission and jurists who were not affiliated to the particular genealogy Kefevî is interested in recording, most notably jurists who operated in the Mamluk sultanate. Lastly, Kefevî joins Kınalızâde's view of the role of the imperial learned hierarchy and stresses its monopoly over a particular chain of transmission of knowledge and authority. Many of these points still concerned other members of the Ottoman religious-judicial establishment in the decades and centuries to come, even when they organized their *ṭabaqāt* works in a radically different manner, as Edirnelî Meḥmed Kâmî did.

Edirnelî Meḥmed Kâmî's *Mahāmm al-Fuqahā'*

To the best of my knowledge, no *ṭabaqāt* works were produced during the seventeenth century. It is somewhat difficult to account for this fairly sudden silence, but it is possible that the consolidation of the establishment in the second half of the sixteenth century rendered the compilation of new *ṭabaqāt* works unnecessary. Nevertheless, the fact that new works were not compiled does not mean that the view promoted by Kınalızâde and Kefevî lost its value. And indeed, early in the eighteenth century, a third *ṭabaqāt* work was penned. Authored by Edirnelî Meḥmed Kâmî (d. 1724), this *ṭabaqāt* work shows remarkable continuity with the works of his predecessors, and serves as an indicator that the latters' view of the history of the school retained its relevance, at least in certain circles within the imperial religious-judicial establishment.[218] At the same time, the work also introduces interesting and meaningful changes to the earlier accounts.

Kâmî was born in 1649 in Edirne, where he also started his training path. In 1674, at the age of twenty-five, Kâmî moved to the imperial capital to continue his studies. A year later, he became the protégé (*mülâzim*) of Ankaravî Meḥmed Emîn Efendi. Between the years 1690 and 1704, Kâmî taught in different madrasahs. Then he was appointed as the judge of Baghdad for two years. Kâmî's next appointment was to the secretariat of the chief muftī, an office he occupied for the next three years.

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[218] The biographical dictionaries devoted to members of the imperial religious-judicial establishment also preserved, albeit implicitly, this view, some differences notwithstanding (see below).

After three years as secretary, Kâmî remained without an appointment for a while, until he was appointed as the judge of Galata for year. During his unemployment period, Kâmî wrote two poems (*ḳasîde*) and a mes̲nevî, which he submitted to the Grand Vezir Damâd ʿAlî Paşa, who in return appointed him as the inspector of the endowments in 1716. In 1718, Kâmî was sent to Cairo to serve as judge there, an office he held for a year. At the age of 75, Kâmî was offered the judgeship of Mecca, but he turned this offer down due to his advanced age. Kâmî died shortly after his return to Istanbul.[219]

As his career path shows, Kâmî was a fairly senior member of the Ottoman religious-judicial establishment at the time. Kâmî was also known as an accomplished poet and writer. His literary skills, as we have seen, enabled him to gain the favor of the Grand Vezir and to convince him to appoint him to a fairly senior office. Therefore, although it is difficult to assess the popularity of his *ṭabaqāt* work, *Mahāmm al-Fuqahā',* it still reflects the view of a relatively senior and quite prolific late seventeenth-early eighteenth-century member of the imperial establishment.

Written during his stay in Cairo in 1718,[220] Kâmî's *Mahāmm al-Fuqahā'* is structured differently from the earlier two *ṭabaqāt* works we have examined so far.

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[219] Gülgün Yazıcı, "Kâmî", *TDVIA,* vol. 25, pp. 279-280. Gürkan mentions *Mahāmm al-Fuqahā'* in his article: Menderes Gürkan, "Müctehidlerin Tasnifinde Kemalpaşazade ile Kınalızade arasında bir Mukayese," in Ahmed Hulusi Köker (ed.), *Kınalı-zade Ali Efendi (1510-1572)* (Kayseri: Erciyes Üniversitesi Matbbası, 1999), pp. 87-88.

[220] Edirneli Meḥmet Kâmî, *Mahāmm al-Fuqahā' fī Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Aşir Efendi 422, pp. 41r.

While Kınalızâde and Kefevî organize their works chronologically, Kâmî organizes his work alphabetically. In addition, along with the biographical sections, Kâmî includes bibliographical ones in which he lists alphabetically Ḥanafī jurisprudential texts. Nevertheless, it seems that Kâmî shares Kınalızâde and Kefevî's narrative concerning the emergence of the Ottoman domains as an important Ḥanafī center from the mid-fifteenth century onwards. Indeed, most of the jurists he mentions from the second half of the fifteenth century are affiliated with the Ottoman religious-judicial establishment. This similarity might be attributed to the fact that, as Kâmî admits, he relies on Kefevî's *Katā'ib.*[221]

There are, at the same time, noteworthy differences between Kâmî's work and those of his earlier counterparts. First, Kâmî does not include many jurists that appear in Kefevî's *Katā'ib* either as part of the continuous chains of transmission or in the miscellanea sub-cluster. Ede Bâlî, just to mention one example, does not appear in Kâmî's *Mahāmm al-Fuqahā'*. Furthermore, fifteenth-century Ḥanafīs who operated in the Mamluk sultanate and were included in Kefevî's work, such as Badr al-Dīn al-'Aynī and Taqī al-Dīn al-Shummunī, are excluded as well. On the other hand, an examination of the list of jurists Kâmî decided to include in his work, a list of approximately 500 jurists, reveals that Kâmî includes jurists who do not appear in

[221] Ibid., pp. 41r-41v.

Kınalızâde's *Ṭabaqāt* or in Kefevî's *Katā'ib.* As opposed to his predecessors, Kâmî, for example, does include in his work an entry to Qāsim b. Quṭlūbughā.

Kâmî's biography of Qāsim b. Quṭlūbughā merits attention, for it provides important clues regarding the guidelines that shaped the author's narrative choices.

> Qāsim b. Quṭlūbughā is the shaykh and the imām. [He is the author of] *Tāj al-Tarājim*, *Taṣḥīḥ al-Qudūrī,* and a gloss (*ḥāshiyah*) on *Sharḥ al-Majma'* [*al-Baḥrayn*] by [ʻAbd al-Laṭīf b. ʻAbd al-ʻAzīz] Ibn Malak. He died in 879[AH] and was born in 802[AH]. His father was Quṭlūbughā, one of the manumitted slaves of the Amir Sūdūn al-Shijwānī, the deputy. [He] studied fiqh (*tafaqqaha*) with Ibn al-Humām, studied hadith with Ibn Ḥajar (al-ʻAsqalānī). He also compiled several works [a list of several of works]. [He] died in 879[AH/1474].[222]

It is worth paying attention to the information Kâmî includes in this biography. The biography begins by mentioning two works by Ibn Quṭlūbughā. Although Ibn Quṭlūbughā produced a fairly large corpus of jurisprudential texts, the entry suggests that the reason for his inclusion of the late fifteenth-century jurist was precisely the attention that these particular texts drew. By the late seventeenth century, members of the Ottoman religious-judicial establishment had started citing Ibn Quṭlūbughā's *Taṣḥīḥ al-Qudūrī,* after more than a century during which the work had been

[222] Ibid., pp. 120v-121r

ignored.[223] By contrast, other prominent fifteenth-century Ḥanafīs from the Mamluk sultanate, such as Amīn al-Dīn al-Aqsarā'ī, do not appear in the biographical sections.[224]

This tendency is even clearer in the biography of the sixteenth century Muḥammad al-Timūrtāshī. Al-Timūrtāshī was a scholar and muftī from the Palestinian city of Gaza who did not hold an official state appointment. Nevertheless, as we will see in chapter 5, al-Timūrtāshī was known and well respected for his scholarly excellence in Greater Syria and beyond. Two of the texts he compiled—*Tanwīr al-Abṣār* and *Minaḥ al-Ghaffār* (a commentary on the *Tanwīr*)—were adopted by the Ottoman religious-judicial establishment. His brief biography in one of the copies of Kâmî's *Mahāmm al-Fuqahā'* reads:

> Shams al-Dīn Muḥammad b. al-Timūrtāshī, one of the Ḥanafī jurists. [He is the author of] *Tanwīr al-Abṣār* and [of] its commentary, which he entitled *Minaḥ al-Ghaffār*. The text (*matn*) and the commentary are both accepted among the jurists.[225]

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[223] The şeyḫülislam Çatacalı 'Alî Efendi (served as şeyḫülislam between 1674-1682 and in 1692) and Meḥmet 'Ataullah Efendi (served as şeyḫülislam in 1713), for example, cite this work in some of their rulings. Çatalcalı 'Alî Efendi, *Fetâvâ-ı Çatalcalı,* Süleymaniye Library MS Aya Sofya 1572, p. 299v. Meḥmet 'Ataullah Efendi, *Fetâvâ-ı 'Atâiyye,* Süleymaniye Library MS H. Hüsnü Paşa 427, p. 323v.

[224] Muḥyī al-Dīn al-Kāfiyajī is included in Kâmî's work and in Kefevî's *Katā'ib*. Ibid., p. 126r. Another interesting example is 'Abd al-Barr Ibn al-Shiḥna (d. 1515), who appears in the biographical section, probably due to the popularity of his commentary on Ibn Wahbān's *Manẓūmah.* The entry, however, does not mention the commentary. Ibid., p. 55r. On Ibn al-Shiḥna see also: al-Ghazzī, *al-Kawākib,* vol. 1, pp. 219-221; Ibn Ṭūlūn, *al-Ghuraf,* pp. 265r-266r.

[225] Kâmî, *Mahāmm al-Fuqahā'*, Süleymaniye Library MS Aşir Efendi 422, pp. 65r-66v.

Except for the titles he authored, very little information is provided on al-Timūrtāshī. Kâmî's emphasis on the popularity of al-Timūrtāshī's works suggests that in this case too the texts paved the way for the inclusion of their author in the biographical sections. On the other hand, the fact that this entry appears in some manuscripts of the work while being absent from others suggests that there was uncertainty among the copyists of the work or, alternatively, that Kâmî himself produced two versions of his *Mahāmm al-Fuqahā'*.[226] At any rate, it is clear that the inclusion of al-Timūrtāshī was not trivial and required explanation. It is thus possible that Kâmî's concluding comment concerning the popularity of al-Timūrtāshī's works among establishment-affiliated jurists as serving this purpose.

The pivotal role that jurisprudential texts played in Ibn Quṭlūbughā's and al-Timūrtāshī's biographies characterizes Kâmî's *Mahāmm al-Fuqahā'* in general. As I have already pointed out, in addition to the biographical sections dedicated to the jurists, Kâmî includes bibliographical sections dedicated to Ḥanafī jurisprudential texts. The bibliographical sections, like the biographical ones, are organized alphabetically according to the titles of the works. Each entry consists of the title of the work and a list of commentaries on the work, not unlike the structure of the entries in Kâtip Çelebi's comprehensive bibliographical work, *Kashf al-Ẓunūn.*

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[226] The entry appears in Süleymaniye Library MS Aşir Efendi 422; Süleymaniye Library MS Pertev Paşa 495, pp. 21v-22r; Süleymaniye Library MS Carullah 896, p. 26v.

An examination of the lists of the texts in *Mahāmm al-Fuqahā'* reveals some inconsistencies between the biographical sections and the bibliographical ones. Following the logic presented in al-Timūrtāshī's biography, Kâmî should have included in the biographical sections every jurist whose works were well received by members of the Ottoman religious-judicial establishment.[227] This, however, is not the case. Instead, Kâmî includes in the biographical sections many jurisprudential texts and commentaries by authors who do not appear in the biographical sections. Zayn al-Dīn Ibn Nujaym's (d. 1563) work *al-Ashbāh wa-l-Naẓā'ir,* just to mention one salient example, appears in the bibliographical section,[228] but does not appear in the biographical sections. Moreover, Kâmî mentions several commentaries on this work, including one by the eminent sixteenth-century Egyptian Ḥanafī Ibn Ghānim al-Maqdisī (d. 1596), who is also not included in the biographical section.

It is difficult to reconcile these discrepancies between the bibliographical and the biographical sections of Kâmî's work. On the other hand, the absence of Ibn Nujaym from the biographical section is compatible with the version of the work that excludes al-Timūrtāshī from the biographical section.[229] In that case, Kâmî does not include any sixteenth-century jurist who is not affiliated with the Ottoman religious-

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[227] Another example, as we have seen, is Ibn al-Shiḥnah.

[228] Kâmî, *Mahāmm al-Fuqahā',* Süleymaniye Library MS Aşir Efendi 422, p. 57v.

[229] Edirneli Meḥmet Kâmî, *Mahāmm al-Fuqahā' fî Ṭabaqāt al-Ḥanafîyyah,* Süleymaniye Library MS H. Hüsnü Paşa 844, pp. 2r-71v.

judicial establishment. Yet, as the difference between the manuscripts indicates, there were two contending approaches to the inclusion of sixteenth-century jurists. At any rate, it seems that Kâmî intended to compile a fairly comprehensive bibliography of Ḥanafī texts and commentaries on these texts, not only those consulted by establishment-affiliated jurists. It is evident from the concluding comment of al-Timūrtāshī's bibliography concerning the popularity of his work that Kâmî knew that not all the texts were equally accepted among the members of the imperial learned hierarchy. Moreover, both the biographical sections and Kâmî's comment at the end of al-Timūrtāshī's biography demonstrate that texts were incorporated and referred to by members of the Ottoman religious-judicial establishment regardless of the genealogy of their authors within the Ḥanafī school.

To sum up, despite noticeable differences, the three *ṭabaqāt* works—by Kınalızâde, Kefevî, and Kâmî—shed light on how members of the Ottoman religious-judicial establishment perceived the history of Ḥanafī school in general and the position of the Ottoman religious-judicial establishment within the Ḥanafī tradition in particular. As we have seen, the differences notwithstanding, all three jurists share the view that from the mid-fifteenth century the Ottoman realms—and specifically the core lands of the empire—emerge as an important, perhaps even the most prominent, Ḥanafī center. Kâmî's work illustrates the longevity of the view of the establishment that emerged, or at least was documented, in the mid-sixteenth century. By the time

Kâmî authored his *Mahāmm al-Fuqahā'* the imperial learned hierarchy was well established. Nevertheless, as the differences between the copies and the inconsistencies within the work suggest, the debates about the history of the Ḥanafī school and the boundaries of the branch endorsed by the imperial establishment were still being redefined. While the *Mahāmm* reveals that specific jurists from the Arab lands and their works entered the establishment's view of the school, it also shows that members of the establishment still insisted on delineating the boundaries of their branch of the school and prevented, albeit selectively, a full assimilation of other followers of the school into the imperial learned hierarchy.

For appreciating what was at stake it is necessary to expand the lens of inquiry and turn to alternative views of the Ḥanafī school that were in direct or indirect dialogue with the aforementioned *ṭabaqāt* works. We shall concentrate on two *ṭabaqāt* works compiled by jurists from the Arab provinces of the empire—*al-Ghuraf al-'Âliyah fi Tarājim Muta'akhkhirī al-Ḥanafiyyah* by Shams al-Dīn Ibn Ṭūlūn and *al-Tarājim al-Sanīyah fi Ṭabaqāt al-Ḥanafiyyah* by Taqī al-Dīn al-Tamīmī—and compare them to the works by their establishment-affiliated counterparts. The comparison also offers a glimpse into the concerns of different Ḥanafī jurists in the Arab provinces of the empire and reveals the strategies employed by different jurists within the imperial framework into which they were quite recently incorporated.

The Ṭabaqāt Works from the Arab Provinces

Ibn Ṭūlūn's *al-Ghuraf al-'Āliyah fi Tarājim Muta'akhkhiri al-Ḥanafiyyah*

Shams al-Dīn Muḥammad b. 'Alī b. Aḥmad b. Ṭūlūn al-Ṣāliḥī al-Dimashqī al-Ḥanafī (d. 1546) was a prolific Damascene traditionist, historian and jurist. Beyond his eminence during his lifetime, Ibn Ṭūlūn was an important link in the intellectual genealogy of many Damascene Ḥanafī jurists, such as the seventeenth-century state-appointed muftī 'Alā' al-Dīn al-Ḥaṣkafī[230] and the non-appointed muftī 'Abd al-Ghanī al-Nābulusī.[231] The importance attributed to Ibn Ṭūlūn in these genealogies renders Ibn Ṭūlūn's own perception of the Ḥanafī school and of his position within this tradition into an important text for understanding the self-perception of many other Damascene Ḥanafīs (as well as of other followers of the school from the Arab lands of the empire).

Ibn Ṭūlūn was born in 1485 in the Damascene suburb of al-Ṣāliḥiyyah. His father's family was well connected to scholarly circles of Damascus and beyond. For

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[230] In the introduction to his commentary on *Multaqá al-Abḥur,* al-Ḥaṣkafī records one of the chains of transmissions that stretch back to Abū Ḥanīfah through Ibrāhīm al-Ḥalabī, the author of *Multaqá al-Abḥur.* Ibn Ṭūlūn and his paternal uncle, Jamāl al-Dīn, appear in this chain as direct transmitters from Ibrāhīm al-Ḥalabī. Muḥammad ibn 'Alī ibn Muḥammad al-Hiṣnī, also known as 'Alā' al-Dīn al-Haṣḳafī, *al-Durr al-Muntaqá fī Sharḥ al-Multaqá* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), vol. 1, pp. 9-13.

[231] 'Abd al-Ghanī al-Nābulusī, *Sharḥ al-Ashbāh wa-l-Naẓā'ir,* Süleymaniye Library MS Hamidiye 502, p. 3v. Moreover, as late as the early nineteenth century, jurists, such as the famous Muḥammad Amīn b. 'Umar b. al-'Ābidīn (d. 1836), mentioned Ibn Ṭūlūn as an important link in their genealogy within the school. See: Muḥammad Amīn b. 'Umar b. al-'Ābidīn, *Thabat Ibn al-'Ābidīn al-musammá 'Uqūd al-Lālī fī Asānīd al-'Awālī (takhrīj li- asānīd shaykhihi Muḥammad Shākir al-'Aqqād* (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 2010), pp. 442-446.

example, his paternal uncle, Jamāl al-Dīn Yūsuf Ibn Ṭūlūn (d. 1530-1531), who played a decisive role in the upbringing of Ibn Ṭūlūn after his mother's death, was the muftī and the judge of the Hall of Justice (*Dār al-'Adl*) during the last decades of Mamluk rule in Damascus. Another family member who had great influence on the young Ibn Ṭūlūn was Burhān al-Dīn b. Qindīl, the half-brother of Ibn Ṭūlūn's paternal grandfather, who was known in Damascus for a large endowment he had founded there before leaving for Mecca (where he died in 1482-1483).

Ibn Ṭūlūn started his studies at a very young age in an elementary school (*maktab*) in Damascus and in other educational institutions in the city. In the following years Ibn Ṭūlūn attended the classes of several prominent Damascene jurists, such as Nāṣir al-Dīn ibn Zurayq (d. 1486), Sirāj al-Dīn al-Ṣayrafī (d. 1511-1512), and Abū al-Fatḥ al-Mizzī (d. 1500-1501). Another important teacher was the eminent scholar and traditionist Jalāl al-Dīn al-Suyūṭī (d. 1505), who granted Ibn Ṭūlūn a permit to transmit his teachings (*ijāzah*). After the completion of his studies, Ibn Ṭūlūn held several teaching and administrative positions in Damascus. He also served as imām in various institutions. Following the Ottoman conquest of the city, Ibn Ṭūlūn was appointed imām and reciter of the Qur'ān in the mosque the Ottoman sultan Selîm I built in al-Ṣāliḥiyyah suburb in the vicinity of Ibn al-'Arabī's mausoleum. In addition to this office, Ibn Ṭūlūn served in other teaching and administrative positions.

The multiple positions he held did not prevent Ibn Ṭūlūn from compiling an enormous number of works in various disciplines. In his autobiography he mentions 750 works, out of which approximately 100 have survived. The surviving works reflect their author's wide range of interests in jurisprudence, prophetic traditions, Sufism, and history.[232] Moreover, Ibn Ṭūlūn was an avid collector of prophetic traditions. For that purpose he even met the caliph, who entered Damascus as part of the Mamluk sultan's retinue during his campaign against the Ottomans.[233]

Let us turn to Ibn Ṭūlūn's *al-Ghuraf al-'Āliyah*. As Ibn Ṭūlūn explains in the introduction to this work and as its title suggests, the work is dedicated to the late Ḥanafīs (*muta'akhkhirī al-Ḥanafiyyah*). The term *muta'akhkhirūn*, however, is a fairly loose chronological definition. Kemâlpaşazâde, for example, identifies the "late scholars" as scholars from the thirteenth and the fourteenth century. Ibn Ṭūlūn seems to agree with Kemâlpaşazâde's definition, although he does not explicitly specify the exact time period. On the other hand, he does explain that this work is a supplement (*dhayl*) to 'Abd al-Qādir al-Qurashī's fourteenth-century *al-Jawāhir al-Muḍīyah,* which includes Ḥanafīs from the early days of the school up to the mid-fourteenth century.[234]

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[232] Stephan Conermann, "Ibn Ṭūlūn (d. 955/1548): Life and Works," *Mamluk Studies Review VIII* (1) (2004), pp. 115-121.

[233] Ibn Ṭūlūn, *al-Ghuraf,* pp. 8v-9v.

[234] Ibid., p. 2r.

Ibn Ṭūlūn contextualizes this work within the genre of the *ṭabaqāt* by listing several *ṭabaqāt* works as his model in the introduction. Among those works Ibn Ṭūlūn mentions are Ḥanafī *ṭabaqāt* works such as al-Qurashī's *al-Jawāhir* and a *ṭabaqāt* work in five volumes by Muḥibb al-Dīn Abū al-Faḍl Muḥammad b. Abī al-Walīd Muḥammad, known as Ibn al-Shiḥnah (d. 1485).[235] In addition, he mentions several *ṭabaqāt* works that focus on a specific discipline, such as the *ṭabaqāt* dedicated to reciters of the Qur'ān or to transmitters of prophetic traditions.[236]

It is worth drawing attention to another possible context of the work. In Ibn Ṭūlūn's relatively close circle, two *ṭabaqāt* works devoted to the later (*muta'akhkhirūn*) Ḥanbalī and Shāfi'ī jurists were compiled. The first work, entitled *al-Jawhar al-Munaḍḍad fī Ṭabaqāt Muta'akhkhirī Aṣḥāb Aḥmad [b. Ḥanbal],* was penned by the Ḥanbalī Yūsuf b. 'Abd al-Hādī (d. 1501), also known as Ibn al-Mibrad.[237] Ibn al-Mibrad had a noticeable impact on the young Ibn Ṭūlūn. The second work, entitled *Kitāb Bahjat al-Nāẓirīn ilá Tarājim al-Muta'akhkhirīn min al-Shāfi'iyyah al-Bāri'īn,* was authored by Raḍī al-Dīn Abū al-Barakāt Muḥammad ibn

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[235] Ibid., p. 8v. On this *ṭabaqāt* work see: Kâtip Çelebi, *Kashf al-Ẓunūn,* vol. 2, pp. 1098-1099; and al-Bābānī, *Īḍāḥ al-Maknūn,* vol. 2, pp. 78.

[236] Ibid., p. 8v-9v.

[237] Yūsuf b. Ḥasan b. al-Mibrad, *al-Jawhar al-Munaḍḍad fi Ṭabaqāt Muta'akhkhirī Aṣḥāb Aḥmad* (Cairo: Maktabat al-Kanjī, 1987). Ibn Ṭūlūn mentions this work in his autobiography as well. See: Shams al-Dīn Muḥammad b. 'Alī b. Ṭūlūn al-Ṣāliḥī, *al-Fulk al-Mashḥūn fi Aḥwāl Muḥammad b. Ṭūlūn* (Beirut: Dār Ibn Ḥazm, 1996), p. 24.

Aḥmad b. ʻAbd Allāh al-Ghazzī (d. 1459-1460).[238] Although Raḍī al-Dīn al-Ghazzī was not Ibn Ṭūlūn's contemporary, he was a central figure in Damascene intellectual life during the first half of the fifteenth century and the ancestor of the al-Ghazzī family, many of whose members were dominant Shāfiʿī jurisits in Damascus in the fifteenth and the sixteenth centuries. It is therefore possible that Ibn Ṭūlūn knew about al-Ghazzī's work. Be that as it may, it is clear that Ibn Ṭūlūn's *al-Ghuraf* is part of larger historiographical trend that started in the fifteenth century. Yet, since Ibn Ṭūlūn concluded this work towards the end of his life, that is, almost three decades after the Ottoman conquest of the city, he was addressing other issues as well.

In his introduction, Ibn Ṭūlūn elaborates on the reasons that led him to compile *al-Ghuraf*:

> The subject matter [of this book] is the history of the jurists and the lineages, the length of their lives, the time of their death, the mention of who studied (*akhadhū al-ʻilm*) with a [certain jurist] and who studied with [other jurists], so that the jurist will not be ignorant [concerning the issues he is] required to know as to whose opinion should be relied upon according to the consensus (*ijmāʻ*) and who should be consulted in [cases of] dispute...[239]

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[238] Raḍī al-Dīn Muḥammad b. Aḥmad al-Ghazzī, *Kitāb Bahjat al-Nāẓirīn ilá Tarājim al-Muta'akhkhirīn min al-Shāfi'iyyah al-Bāri'īn* (Beirut: Dār Ibn Ḥazm, 2000).

[239] Ibn Ṭūlūn, *al-Ghuraf al-ʻÂliyah fi Muta'akhkhirī al-Ḥanafiyyah*, p. 2r.

In other words, *al-Ghuraf* is intended to be used by jurists to resolve disputes and controversies, by establishing the school's consensus. Moreover, the work's main objective is to recover a continuous and reliable chain or chains of transmission through which jurisprudential knowledge and authority were transmitted from Abū Ḥanīfah to a specific jurist. Hence, Ibn Ṭūlūn stresses the importance of the dates of the jurists' deaths, their ages, and the identity of their teachers and their students.

Ibn Ṭūlūn's focus on reconstructing continuous chains of transmission and his insistence on these biographical details may account for the sources he uses. Unlike Kınalızâde and Kefevî, for instance, who draw heavily on jurisprudential manuals and texts, Ibn Ṭūlūn's sources are mostly biographical dictionaries written during the Mamluk period, such as Ibn al-Mibrad's now lost *al-Riyāḍ al-Yāni'ah,* al-Sakhāwī's *al-Ḍaw' al-Lāmi',* and Ibn Taghrībirdī's *al-Manhal.* The only jurisprudential text he mentions is Ibn al-Shiḥnah's commentary on al-Marghīnānī's *al-Hidāyah* (entitled *Nihāyat al-Nihāyah*).

Ibn Ṭūlūn's frequent use of fifteenth-century Mamluk biographical dictionaries is also reflected in the result. It appears that he sought to demarcate a specific community within the Ḥanafī school, with its own authoritative genealogies, and, in some cases, particular jurisprudential arguments. To further illumine this point, it is necessary to examine the identity of the approximately 900 Ḥanafīs that Ibn Ṭūlūn chose to include in *al-Ghuraf.* As already said, since *al-Ghuraf* is a

supplement to *al-Jawāhir al-Muḍīyah*, the chronological focus of the work is from the fourteenth to the first half of the sixteenth century. This time period, as should be clear by now, is the period during which the Ottoman domains gradually emerged as a significant Ḥanafī center. Nevertheless, Ibn Ṭūlūn ignores this development. Accordingly, jurists who were affiliated with the Ottoman state and with its evolving religious-judicial establishment are by and large excluded from *al-Ghuraf*.

Let us examine Ibn Ṭūlūn's treatment of Ibn al-Bazzāz, whom we have already met, in order to demonstrate his general historiographical approach. Ḥāfiẓ al-Dīn b. Muḥammad b. Muḥammad al-Kardarī (d. 1423), known as Ibn al-Bazzāz, was a prominent Ḥanafī jurist who traveled quite extensively. After residing in Damascus for a while, he traveled to the Ottoman realms and eventually settled in Bursa, where he even endowed a mosque.[240] Ibn al-Bazzāz's residence in Anatolia is totally absent from the entry dedicated to him in *al-Ghuraf*.[241] It is possible that Ibn Ṭūlūn's knowledge about the jurists of early fifteenth-century Anatolia was limited. His claim that he could not find any biographical data on Ibn al-Bazzāz in previous *ṭabaqāt* works or in chronicles may support that assumption.

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[240] Ekerm Hakkı Ayverdi, Osmanlı Mi'marisinde Çelebi ve II Sultan Murad Devri 806-855 (1403-1451), 2. cilt. (Istanbul: İstanbul Fethi Derneği Yayınları, 1989), pp. 41-43.

[241] Ibid., pp. 280r-280v. It is noteworthy that al-Sakhāwī, in his *al-Ḍaw' al-Lāmi',* does not provide any information on Ibn al-Bazzāz's career in the Ottoman realms as well. See: al-Sakhāwī, *al-Ḍaw',* vol. 10, p. 37.

On the other hand, these omissions still raise some doubts. First, given the popularity of Ibn al-Bazzāz's *al-Fatāwā al-Bazzāziyyah,* including in Ibn Ṭūlūn's immediate circles,[242] it seems somewhat unlikely that such an important piece of information concerning this author's life could have escaped Ibn Ṭūlūn. Secondly, the fact that so many other jurists who were connected to the Ottoman religious-judicial establishment, including jurists whose works were consulted by Ḥanafīs in the Mamluk sultanate, are excluded from *al-Ghuraf* may corroborate the impression that the omission was intentional. For instance, Mollâ Hüsrev (d. 1480), the author of the famous *Durar al- Ḥukkām fī Sharḥ al-Aḥkām* and of the equally famous commentary on this work, does not have an entry in *al-Ghuraf.*

There are, however, some important exceptions. For instance, Ibn Ṭūlūn dedicates entries to Ibn 'Arabshāh,[243] Muḥyī al-Dīn al-Kāfiyajī,[244] Aḥmad b. 'Abd Allāh al-Kurānī (Gürânî),[245] and Shams al-Dīn al-Fanārī (Fenârî). In all these entries, he provides the reader with some information regarding the biographees' training and career in Anatolia. Shams al-Dīn Muḥammad b. Ḥamza b. Muḥammad al-Fanārī's (or

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[242] Ibn Ṭūlūn says that his paternal uncle, Jamāl al-Dīn, who was a dominant figure in Ibn Ṭūlūn's life, studied *al-Fatāwá al-Bazzāziyyah.* Ibn Ṭūlūn, *al-Ghuraf,* pp. 344v-345v.

[243] Ibid., pp.64r-67r. On Ibn 'Arabshāh see: R.D. McChesney, "A Note on the Life and Works of Ibn 'Arabshāh," in Judith Pfeiffer and Sholeh A. Quinn (eds.), *History and Historiography of Post-Mongol Central Asia and the Middle East: Studies in Honor of John E. Woods* (Wiesbaden: Harrassowitz Verlag, 2006), pp. 205-249.

[244] Ibid., pp. 217v-218r. The entry is very similar to the al-Kāfiyajī's biography in Ibn Taghrībirdī's *al-Manhal* and al-Sakhāwī's *al-Ḍaw'.*

[245] Ibid., pp. 48r-49r. On al-Kurānī's (or Gürânî's) career under the Ottomans see: Taşköprüzâde, *al-Shaqa'iq*, pp. 51-55.

Fenârî) biography is an interesting example. In this entry, which draws on the entry in Ibn Ḥajar al-‘Asqalānī’s (d. 1442) *Inbā’ al-Ghumr fi Anbā’ al-‘Umr* and on Ibn Taghrībirdī’s (d. 1470) *al-Manhal al-Ṣāfī wa-l-Mustawfá ba'da al-Wāfī*,[246] Ibn Ṭūlūn lists al-Fanārī’s teachers both in Anatolia and in Cairo. Moreover, the entry relates the history of al-Fanārī in the years following his return to Anatolia.[247] Nevertheless, despite some differences, it is evident that the main reason for the inclusion of the abovementioned jurists in *al-Ghuraf* is the time they spent in the Mamluk lands. By emphasizing this aspect of their biographies, Ibn Ṭūlūn creates a hierarchy according to which the Mamluk lands were superior to other parts of the Islamic world in terms of scholarly activity.[248]

Furthermore, almost all the jurists who are included in *al-Ghuraf* and had some connections with the emerging Ottoman establishment lived in the first half of the fifteenth century. From the mid-fifteenth century onward the focus of the work is on jurists who operated in the Mamluk sultanate, and even more so in Damascus.

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[246] Aḥmad b. ‘Alī Ibn Ḥajar al-‘Asqalānī, *Inbā’ al-Ghumr fī Anbā’ al-‘Umr* (Cairo: al-Majlis al-Aʿlá li-l-Shu’ūn al-Islāmiyyah, 1972), vol. 3, pp. 464-465; Abū al-Maḥāsin Yūsuf Ibn Taghrībirdī, *al-Manhal al-Ṣāfī wa-l-Mustawfá ba‘da al-Wāfī* Cairo: Maṭba‘at Dār al-Kutub al-Miṣriyyah, 1956-), vol. 10, pp. 40-41.

[247] Ibn Ṭūlūn, *al-Ghuraf,* pp. 212r-212v. Ibn Ṭūlūn also devotes an entry to al-Fenārī’s son, who also visited Cairo. Ibid., pp. 219v-220r.

[248] In this sense, Ibn Ṭūlūn follows the conventions set by earlier Damascene biographer-chroniclers. In his biographical dictionary dedicated to his teachers, students, and peers, which Ibn Ṭūlūn consults extensively, Burhān al-Dīn Ibrāhīm b. ‘Umar b. Ḥasan al-Biqāʿī (d. 1480) does not include members of the nascent Ottoman establishment. He does, however, mention Aḥmad al-Kurānī, who entered the service of Meḥmet II, and Ibn ‘Arabshāh, who spent several years in the Ottoman domains before his arrival in Cairo. See: al-Biqāʿī, *‘Unwān al-‘Unwān*, pp. 13-14; Ibid., pp. 33-34.

Moreover, almost all the biographies of jurists who died during the three decades following the Ottoman conquest were either Damascene or jurists from other parts of the Muslim world (but not from the core lands of the empire) who passed through Damascus. Amongst the latter are several Ḥanafīs from Central Asia who passed through Damascus on their way to the Hijaz and studied during their stay in the city with Ibn Ṭūlūn.[249]

The omission of Ḥanafī jurists who were affiliated with the Ottoman learned hierarchy is particularly striking given the numerous encounters Ibn Ṭūlūn had with such jurists. For example, soon after the conquest, Ibn Ṭūlūn went to the Ottoman encampment to search for thirty-six madrasah professors who sojourned in Damascus with the sultan and his troops.[250] In the following weeks, he had the opportunity to meet and talk with several establishment members. Several days after his visit to the encampment, for instance, he met Mollâ Idrîs, possibly the renowned chronicler Idrîs-i Bidlîsî, who spent some time in Damascus.[251] Furthermore, in his chronicles, Ibn Ṭūlūn provides information about chief muftīs, such as Kemâlpaşazâde and Sa'dî

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[249] Among these are: Ḥusayn b. Muḥammad b. al-Khāwājāh Ḥusayn al-Sarānī al-Ḥanafī [ibid., p. 105v]; Muḥammad b. Ghiyāth b. Khāwājākī al-Samarqandī [ibid., pp. 242r-242v]; Muḥammad b. Mīr b. Muḥammad b. Muḥammad b. Ṭāhir al-Bukhārī [ibid., pp. 285r-286v].

[250] Shams al-Dīn Muḥammad Ibn Ṭūlūn, *Mufākahat al-Khillān Ḥawādith al-Zamān: Tārīkh Miṣr wa-al-Shām* (Cairo: al-Mu'assasah al-Miṣriyyah al-'Āmmah lil-Ta'līf wa-al-Tarjamah wa-al-Ṭibā'ah wa-al-Nashr, 1962-1964), vol. 2, p. 31.

[251] Ibid., vol. 2, p. 59. Ibn Ṭūlūn mentions that Idrîs compiled a work entitled *The Conquest of the Islamic Lands* (*Fatḥ al-Mamālik al-Islāmiyyah*). On Idrîs-i Bidlîsî see: Abdülkadir Özcan, "Idrîs-i Bitlisî," *TDVIA* 21, pp. 485-488.

Çelebi, and other jurists who were affiliated with the Ottoman establishment, such as the chief judges of Damascus. [252]

The *ṭabaqāt* works by members of the Ottoman learned hierarchy, as we have observed, made a clear connection in their works between the state (through its learned hierarchy) and the school (or, more accurately, the particular branch within the school). Ibn Ṭūlūn radically differs in this respect from these authors. Ibn Ṭūlūn dedicates several entries in *al-Ghuraf* to Ḥanafī rulers. Among the rulers he lists are the Timurids Shāhrukh (d. 1447) and Ulugh Beg (d. 1449)[253] and several sultans from the Indian subcontinent, such the sultans of Bengal Ghiyāth al-Dīn Aʿẓam (d. 1410) and the fourteenth-century sultan of Delhi Muḥammad b. Tughluk (or Tughluq) Shāh (d. 1388).[254] Ibn Ṭūlūn also includes the biographies of three Ottoman sultans—Bâyezîd I, Meḥmed Çelebi, and Murâd II –[255] although he also mentions Selîm I in two entries.[256] The focus on these particular sultans is interesting and not fully clear, but in one of his chronicles of the Ottoman conquest of Damascus, Ibn Ṭūlūn criticizes Selîm I for not meeting the Damascene scholars and jurists during his stay

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[252] For example: Shams al-Dīn Muḥammad b. ʻAlī Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah Ghadāt al-Ghazw al-ʻUthmānī lil-Shām, 926-951H: ṣafaḥāt mafqūdah tunsharu lil-marrah al-ūlá min Kitāb Mufākahat al-Khillān fī Ḥawādith al-Zamān li-Ibn Ṭūlūn al-Ṣāliḥī* (Damascus: Dār al-Awā'il, 2002), p. 187, 192, 283, 313, 324, 325.

[253]Ibid., pp. 121r-121v; Ibid., pp. 90v-92r.

[254] Ibid., pp. 88v-89r; pp. 220v-221r

[255]Ibid., pp. 357r-358v; pp. 318r-319r; pp. 318r-319r.

[256] Ibid., pp. 162v-163r; pp. 307v-308r.

in the city. He explicitly contrasts Selîm I's comportment to that of his forefather Bâyezîd I.[257] In a similar vein, in his biographies of Bâyezîd I and of Murâd II in *al-Ghuraf,* Ibn Ṭūlūn emphasizes the piety of these sultans, their campaigns against Christian polities and their support of religious scholars and jurists.

Beyond the image of the ideal Ḥanafī ruler that Ibn Ṭūlūn promotes, it is important to stress that, as opposed to the *ṭabaqāt* works authored by members of the Ottoman religious-judicial establishment, *al-Ghuraf* does not make any connection between the state (or a learned hierarchy, for that matter) and the school. The main reason for this separation is that during most of the Mamluk period the state did not adopt a single school.[258] On the other hand, since Ibn Ṭūlūn finished this work slightly after 1546, he must have been aware of the fact that he was promoting a different vision of the relationship between the school (or, more accurately, specific traditions within the schools) and the state. This was clearly a very different vision from the one that his counterparts in the core lands of the empire sought to advance in the decades and centuries to come.

Another important goal Ibn Ṭūlūn sought to achieve through his *al-Ghuraf* was to establish his own authority and that of other Ḥanafīs in Bilād al-Shām (as well

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[257] Shams al-Dīn Muḥammad ibn ʻAlī Ibn Ṭūlūn, *al-Qalā'id al-Jawhariyyah fi Ta'rīkh al-Ṣāliḥiyyah* (Damascus: Majmaʻ al-Lughah al-ʻArabiyyah, 1949-1956), vol.1, pp. 118-120.

[258] Yossef Rapoport, "Legal Diversity in the Age of *Taqlīd*: The Four Chief Qadis under the Mamluks," *Islamic Law and Society* 10/2 (2003), pp. 210-228.

as in other Arab provinces of the empire). As we have already seen in our discussion of other *ṭabaqāt* works, the *ṭabaqāt* often serve as a means of establishing the authority of the author and his peers, or at least of the generation of his/their teachers. Fittingly, Ibn Ṭūlūn plays a central role in his own *ṭabaqāt* work, as many of his Ḥanafī teachers and students (in various disciplines, not only in jurisprudence) are included therein.[259] It is noteworthy that consolidating and cementing his scholarly and jurisprudential authority was a major concern of Ibn Ṭūlūn in other works as well. In his autobiography, for instance, Ibn Ṭūlūn says that one of the reasons for the compilation of this text is the loss of all his scholarly credentials during the rebellion of Jānbirdī al-Ghazzālī against the Ottomans.[260] Ibn Ṭūlūn's insistence on the preservation (and when needed restoration) of his scholarly credentials is an interesting indication of the social value of these documents for establishing the authority of a jurist. *al-Ghuraf,* it seems, serves the same purpose, since the work, as the introduction states, was to reach a wide readership.

Lastly, it is necessary to consider Ibn Ṭūlūn's *al-Ghuraf* against the background of the Ottoman conquest of the Arab lands in general and of Greater Syria in particular. As I have already suggested above, the rediscovery of the genre

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[259] For example: Ibn Ṭūlūn, *al-Ghuraf,* pp. 215v-216r; pp. 290r-290v.

[260] Ibn Ṭūlūn, *al-Fulk,* p. 53. Ibn Ṭūlūn says that he recorded many of the permits he received in a notebook. In addition, he relates that he wrote the *ijāzah* to teach the content of a specific book in the book itself.

around the mid-sixteenth century by members of the Ottoman religious-judicial establishment may be explained as a response to the incorporation of other Ḥanafī jurists and jurisprudential traditions into the empire. Ibn Ṭūlūn's *al-Ghuraf* responds to the same issues from a different standpoint. Following the incorporation of Greater Syria into the empire, Greater Syrian Ḥanafī jurists had to respond to an increasing competition with their establishment-affiliated counterparts, as they were all followers of the Ḥanafī school. Ibn Ṭūlūn perhaps felt that his authority was challenged, since his followers had alternative jurists to consult, namely those who were affiliated with the Ottoman religious-judicial establishment. For this reason, Ibn Ṭūlūn decided to record and to propagate his genealogy within the school. Through *al-Ghuraf* he wanted to point at the jurists that should be consulted for resolving disputes and disagreement.

Seen in this light, *al-Ghuraf* is a significant chapter in Ibn Ṭūlūn's intellectual biography. In his study of Ibn Ṭūlūn's biography, Stephan Conermann argues on the basis of his examination of Ibn Ṭūlūn's chronicles that "the occupation of his hometown by the Ottoman Sultan Selîm (r. 918-926/1512-1520) in 922/1516 does not seem to have represented a break for our author. In his writings he only mentioned this event in passing and did not attach much importance to it."[261] *al-Ghuraf*, on the other hand, offers a glimpse into some of the author's anxieties and concerns in the

[261] Conermann, "Ibn Ṭūlūn," p. 119.

wake of the Ottoman conquest of Damascus. These concerns, admittedly, are not addressed directly in *al-Ghuraf*. Still, the work, as I have suggested, challenges the view that Ibn Ṭūlūn did not attach much importance to the Ottoman conquest and subsequent incorporation of Bilād al-Shām into the Ottoman imperial framework. Other Ḥanafī jurists from the Arab lands, however, opted for a different strategy and developed a different perception of the history and structure of the Ḥanafī school, as al-Tamīmī's *ṭabaqāt* will demonstrate.

Taqī al-Dīn al-Tamīmī's al-Ṭabaqāt al-Sanīyah fī Tarājim al-Ḥanafiyyah

Writing in Egypt a few decades after Ibn Ṭūlūn, Taqī al-Dīn b. 'Abd al-Qādir al-Tamīmī al-Ghazzī produced his own *ṭabaqāt* work of the Ḥanafī school, *al-Ṭabaqāt al-Sanīyah fī Tarājim al-Ḥanafiyyah*. The compilation includes more than 2700 entries and it is thus one of the most, if not the most, extensive Ḥanafī *ṭabaqāt* work to have survived. al-Tamīmī's contemporaries clearly appreciated the achievement. In his supplement to *al-Shaqā'iq al-Nu'māniyyah,* the chronicler Nevʿîzâde, for instance, claims that he examined the work and that it does not fall short of any of the *ṭabaqāt* works of the ancients (*salaf*).[262] Nevʿîzâde even included al-Tamīmī's biography in his supplement to *al-Shaqā'iq al-Nu'māniyyah*, presumably due to his *ṭabaqāt* work. Another feature of al-Tamīmī's work that drew his contemporaries' (as

[262] Nevʿîzâde Atâyî, *Hadâ'iku'l-Hakâ'ik fi Tekmîleti'ş-Şakâik* (Istanbul: Çağrı Yayınları, 1985), p. 408.

well as modern scholars') attention is the number of entries he dedicated to members of the Ottoman religious-judicial establishment. In the entry dedicated to al-Tamīmī in his centennial biographical dictionary, the seventeenth- early eighteenth-century chronicler al-Muḥibbī says that he saw parts of the work and explicitly states that al-Tamīmī gathered in his work biographies of many Rūmī jurists and notables.[263] It seems, however, that this characteristic of the work attracted the attention of its readers mostly due to al-Tamīmī's Arab origin. After all, al-Muḥibbī does not find it remarkable that Nevʿîzâde, for instance, focuses in his biographical dictionary on members of the Ottoman religious-judicial establishment. The inclusion of establishment-affiliated jurists has also drawn the attention of modern scholars.[264] In fact, most studies that make use of al-Tamīmī's work concentrate precisely on the information he provides on establishment-affiliated jurists. The focus on this aspect of the work, nonetheless, overlooks its complexity. It is this complexity that I am interested in exploring in this section.

al-Tamīmī, as the epithet "al-Ghazzī" suggests, was born in the Palestinian city of Gaza around 1543.[265] Originally Shāfiʿī, al-Tamīmī switched at some point to the Ḥanafī school. At a young age he moved to Cairo, where he studied with some of

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[263] al-Muḥibbī, *Khulāṣat al-'Athar,* vol. 1, p. 527.

[264] See f.n. 195 above.

[265] al-Ṭalūwī attaches the epithet "al-Maqdisī" to al-Tamīmī, indicating that the family originated from Jerusalem or its environs. See Darwīsh Muḥammad b. Aḥmad al-Ṭalūwī, *Sāniḥāt Dumá al-Qasr fī Muṭāraḥāt Banī al-'Asr* (Beirut: 'Ālam al-Kutub, 1983), vol. 1, pp. 136-139.

the city's most prominent Ḥanafīs, such as Zayn al-Dīn b. Nujaym and Ibn Ghānim al-Maqdisī. After he completed his studies, he was appointed to several teaching positions in the city, including to the prestigious professorship at the *Shaykhūniyyah* madrasah. Apparently at some point prior to his departure to Istanbul for the first time, al-Tamīmī traveled to Bilād al-Shām.[266] During his visit to his native town Gaza he met the famous jurist Muḥammad al-Timūrtāshī. In Damascus he befriended other scholars, such as the future muftī of the city Darwīsh Muḥammad b. Aḥmad al-Ṭalūwī (d. 1606), and the city's chief judge, Nâẓirzâde Ramażân Efendi (d. 1574 or 5), whom he later met again in Cairo.[267] In 1574, soon after Murâd III's (r. 1574-1595) ascension to the throne, al-Tamīmī traveled for the first time to the imperial capital, where he met the famous teacher of the sultan, Saʿd al-Dīn, whose scholarly merits and excellence al-Tamīmī praises in length. During the meeting al-Tamīmī introduced some of his works to Saʿd al-Dīn.[268]

Following his return to Egypt, al-Tamīmī was appointed to the judgeship of several Egyptian towns with a salary of 150 akçe, apparently as a reward for his scholarly excellence. Then, in 1588, al-Tamīmī was removed from office and was demoted to the judgeship of the Egyptian town of Ibrīm due to an obscure conflict

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[266] Nevʿîzâde, *Hadâ'ik,* p. 408.

[267] al-Tamīmī, *al-Ṭabaqāt,* vol. 3, p. 250; on Nâẓirzâde Ramazân Efendi see: Nevʿîzâde, *Hadâ'ik,* p. 240-241.

[268] Nevʿîzâde, *Hadâ'ik,* p. 408. See also al-Tamīmī's account in al-Tamīmī, *al-Ṭabaqāt al-Sanīyah fi Tarājim al-Ḥanafiyyah,* Süleymaniye Library MS Aya Sofya 3295, p. 330r.

between al-Tamīmī and some senior authorities in Egypt. Then al-Tamīmī decided to travel again to Istanbul with the hope of improving his lot by gaining the support of senior officials. Eventually he was appointed in 1596 as a judge in a small town in Lower Egypt.[269] During his stay there, he compiled his *ṭabaqāt* work, a project that he may have planned for several years, at least since his first visit to Istanbul.[270]

In addition to his encounter with Saʿd al-Dīn, during his visits to the core lands of the empire he was apparently granted permission to consult some of the capital's libraries, and even had the opportunity to meet other senior members of the Ottoman religious-judicial establishment. One of them was Bahâeddînzâde Efendi, a senior member of the Ottoman establishment who eventually was appointed as the justice of Anatolia and Rumeli.[271] Another jurist was Çivizâde ʻAlî Efendi, whom al-Tamīmī met in Rhodes, while the former was the Island's muftī and the professor of the Süleymânîye madrasah there. Çivizâde ʻAlî Efendi was the paternal cousin of the chief muftī Çivizâde Meḥmed Efendi and eventually was appointed to several prestigious positions, including to the judgeship of Istanbul.[272]

It is important to pay attention to the differences between al-Tamīmī's biography and Ibn Ṭūlūn's. While the latter remained in Damascus until his death, the

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[269] Nevʻîzâde, *Hadâ'ik,* p. 408.

[270] al-Tamīmī, *al-Ṭabaqāt,* Süleymaniye Library MS Aya Sofya 3295, p. 330r.

[271] al-Tamīmī, vol. 4, pp. 180-181. On Bahâeddîn Efendi see also: Nevʻîzâde, *Hadâ'ik,* pp. 305-306.

[272]al-Tamīmī, *al-Ṭabaqāt,* Süleymaniye Library MS Aya Sofya 3295, 276r.

former was interested in gaining the support of leading jurists in Istanbul in order to obtain a position. Al-Tamīmī's case is not unique, however. Toward the end of the sixteenth century, with the growing integration of the Arab lands into the empire and the emergence of the imperial capital as an important political and scholarly focal point in the eyes of many Arab subjects of the empire in general and religious scholars in particular, more and more jurists from the Arab lands traveled to Istanbul and contacted members, at times senior ones, of the Ottoman religious-judicial establishment.[273] al-Tamīmī's *Ṭabaqāt* mirrors this social and political shift as well as the integration of some, definitely not few, Arab scholars and jurists into the Ottoman imperial framework. For the purpose of this dissertation, one may list the state-appointed muftīs from the Arab lands among these jurists. This integration, however, also implied a new understanding of the history and the structure of the Ḥanafī school.

It seems appropriate to turn at this point to a closer reading of al-Tamīmī's *Ṭabaqāt.* As opposed to the other *ṭabaqāt* works examined so far, al-Tamīmī's goal is not to defend the authority of a single lineage within the Ḥanafī school. In the introduction to this work, al-Tamīmī explains that his main intention is to record the

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[273] In the seventeenth century, more and more jurists from the Arab lands entered the Ottoman madrasah system and subsequently entered the establishment's career tracks as judges and teachers. ʻAwḍ b. Yūsuf b. Muḥyī al-Dīn b. al-Ṭabbākh, for example, was born in Damascus but was also educated in medreses of Istanbul. Then he was appointed to several judgeships, including some fairly senior ones, such as the judgeship of Medina. al-Muḥibbī, *Khulāṣat al-Athar,* vol. 3, p. 224.

history of the school, in light of the destruction of numerous works dealing with the Ḥanafī school from different parts of the Islamic world (mostly in Iraq and Transoxania). Al-Tamīmī makes an interesting connection between the destruction and loss of this knowledge and the spread of disputes and discords. Therefore, he continues, he decided to compile "a single comprehensive (*jāmi'*) volume that would comprise the biographies of the Ḥanafī masters and would include all the information [about them], their virtues, and merits." [274]

At the same time, unlike Ibn Ṭūlūn, al-Tamīmī praises at length the Ottoman sultan at the time, Murâd III. Moreover, he states that he compiled the work following the sultan's order *('amiltu bi-rasmihi*).[275] By doing so, al-Tamīmī declares his loyalty to the Ottoman state, but also links the dynasty and specifically Murâd III to the Ḥanafī school. Furthermore, al-Tamīmī seems to appreciate the notion of a religious-judicial establishment. In his biography of Ḳara Çelebizâde Hüsâm Efendi, who served as the military justice (ḳâḍîasker) of Anatolia and Ruemli, al-Tamīmī criticizes him for attempting (albeit unsuccsessfully) to renew an obsolete practice, "an Ottoman *ḳânûn*." According to this practice, the appointment of jurists who were not members of the religious-judicial establishment was permissible. This is an intriguing

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[274] al-Tamīmī, *al-Ṭabaqāt,* vol. 1, p. 4-5.

[275] Ibid., vol. 1, pp. 8-10. This fact attracted the attention of later jurists and scholars. In one of the copies of Kâmî's *Mahāmm al-Fuqahā'* the copyist included a list of several important *ṭabaqāt* works. Next to the entry of al-Tamīmī's *ṭabaqāt,* the author added that the work was compiled on behalf of Sultan Murâd III. Edirneli Meḥmet Kâmî, *Mahāmm al-Fuqahā' fī Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Pertev Paşa 495, p. 83v.

comment, for al-Tamīmī seems like an obvious beneficiary of Kara Çelebizâde's proposed reform. But al-Tamīmī, perhaps echoing the opinions of jurists he met on his journey to Istanbul, defends the boundaries of the Ottoman imperial establishment.[276]

It is important to stress that al-Tamīmī, who apparently did not know Turkish, contextualizes his own work within the tradition of Arabic historiography, as his long discourse in the introduction on the history of the craft among the Arabs suggests. Al-Tamīmī's own understanding of this work as a historical work, that is, as a history of the Ḥanafī school, may also account for the composition of his bibliography. An examination of this list reveals that al-Tamīmī consulted exclusively *ṭabaqāt* works (of different disciplines), biographical dictionaries, and chronicles, as jurisprudential manuals and texts are absent from the list. In other words, it seems that al-Tamīmī's chief concern is not to establish the authority of particular legal arguments within the Ḥanafī school. It is worth dwelling on this point. As we have already seen above, the authors of all the other *ṭabaqāt* works declare that their work is intended to assist jurists in resolving jurisprudential disputes, regardless of the historiographical focus of their work. Al-Tamīmī, by contrast, downplays this aspect, and seeks to produce a comprehensive history of the school.

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[276] Ibid., vol. 3, pp. 158-159.

On the other hand, it is unlikely that he was unaware of the fact that this is one of the main objectives of the *ṭabaqāt* as a genre. Moreover, many of the works al-Tamīmī consulted while writing his work do attempt to establish the authority of specific jurists and arguments. It is therefore interesting to examine the Ḥanafī *ṭabaqāt* works he includes in his bibliography. Neither Kınalızâde's nor (at the time recently completed) Kefevî's *ṭabaqāt* work is included in his bibliography. It is possible that al-Tamīmī did not know about Kınalızâde's *ṭabaqāt,* as he does not mention the work in his biography of Kınalızâde.[277] al-Tamīmī does, on the other hand, draw on Ibn Quṭlūbughā's *Tāj al-Tarājim,* Ibn Ṭūlūn's *al-Ghuraf,* and Taşköprüzâde's *Shaqā'iq*.

Despite the absence of the *ṭabaqāt* by members of the Ottoman religious-judicial establishment, al-Tamīmī must have been aware of the differences and tensions between the works he consulted and between the different genealogies of the Ḥanafī school across the Ottoman domains. For this reason, his decision to compile "a comprehensive study of all the Ḥanafī masters" was novel and challenged the approach of the establishment-affiliated jurists as well as that of Ibn Ṭūlūn.

Nevertheless, despite his claim to inclusivity, al-Tamīmī is highly selective in his treatment of sixteenth-century jurists. Al-Tamīmī does not include all the Ḥanafīs he is familiar with their work. Although al-Tamīmī cites Ibn Ṭūlūn's *al-Ghuraf* quite

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[277] al-Tamīmī, *al-Ṭabaqāt,* Süleymaniye Library MS Aya Sofya 3295, pp. 258r-261v.

frequently, Ibn Ṭūlūn does not have his own entry in al-Tamīmī's *ṭabaqāt.* Moreover, almost all the sixteenth-century scholars who appear in the work were affiliated to the Ottoman religious-judicial establishment. In addition, most of the Ḥanafīs from the Arab lands that appear in the centennial biographical dictionaries of the sixteenth century are excluded. The few sixteenth-century Ḥanafīs from the Arab lands are, not coincidentally, Ibn Nujaym and Ibn Ghānim al-Maqdisī, al-Tamīmī's most prominent teachers.[278] Another important Arab Ḥanafī is Muḥammad al-Timūrtāshī, a student of Ibn Nujaym and an eminent jurist in his own right.[279] It is noteworthy, however, that both Ibn Nujaym and al-Timūrtāshī were acknowledged as eminent scholars by members of the Ottoman religious-judicial establishment and some of their works entered the Ottoman imperial canon, as we shall see in the next chapter.[280]

al-Tamīmī's treatment of the second half of the fifteenth century, however, differs from that of Kınalızâde's and Kefevî's. As noted above, both Kınalızâde and Kefevî excluded late fifteenth-century scholars from the Mamluk lands. Al-Tamīmī, by contrast, does include a biography of leading Ḥanafīs who operated in the Mamluk domains in the second half of the fifteenth century, namely Qāsim b. Quṭlūbughā and Amīn al-Dīn al-Aqsarā'ī. Al-Tamīmī's inclusion of these scholars has important

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[278] Nev'îzâde, *Hadâ'ik,* p. 408.

[279] al-Tamīmī, *al-Ṭabaqāt,* Süleymaniye Library MS Aya Sofya 3295, p. 349r. al-Timūrtāshī's other teacher, 'Abd al-'Āl, on the other hand, does not have an entry.

[280] In addition, Nev'îzâde includes in his *Hadâ'ik* Ibn Nujaym's biography. Nev'îzâde, *Hadâ'ik,* pp. 34-35.

implications, for it reintroduces many Ḥanafīs from across the Arab provinces who studied with these jurists (or whose authority relied on these jurists) into the "Ḥanafī ecumene."

To conclude, al-Tamīmī's attempt to include the late fifteenth-century jurists reflects the tension that jurists from the Arab lands who wanted to integrate into the Ottoman imperial framework experienced. Entering the Ottoman religious-judicial establishment meant that they were required to practically denounce jurists whose authority they respected. In his *Ṭabaqāt,* al-Tamīmī intended to ease this tension and to offer a more comprehensive view of the school, one that would bridge the gaps between the establishment-affiliated jurists' vision of their position within the Ḥanafī school and that of many of their counterparts from the Arab provinces. This attempt, however, confirms the existence of different views within the school.

al-Tamīmī's project had limited success. As we shall see in the following chapters, Ḥanafī jurists, and particularly muftīs, from the Arab lands who obtained a state appointment tended to follow al-Tamīmī's vision (or some variation of it). The imperial establishment, in turn, permitted its appointees throughout the Arab provinces to follow al-Tamīmī's vision. Kâmî's *Mahāmm al-Fuqahā'*, on the other hand, suggests that members of the imperial religious-establishment rejected by and large this perception of the school and preserved a fairly clear distinction between the branches within the school (although they did consult sixteenth and seventeenth-

century texts and authorities from the Arab lands of the empire) well into the eighteenth century.

Language Choice

Despite the substantial differences between the genealogies of the school, they were all written in Arabic. This language choice may be attributed to generic conventions, as the overwhelming majority, if not all, of the works in the *ṭabaqāt* genre were compiled in Arabic. Nevertheless, in the Ottoman context of the sixteenth and the seventeenth centuries, it seems that the authors, and particularly those who were affiliated with the imperial learned hierarchy, chose to write in Arabic because they wanted Ḥanafīs throughout the empire, and specifically throughout its Arab provinces, to have unmediated access to these texts. Even Kâmî, who compiled his work early in the eighteenth century, followed the generic conventions and composed his work in Arabic instead of Ottoman Turkish.

An examination of the imperial linguistic landscape supports the argument that the decision to write these texts in Arabic was not incidental. To be sure, scholars and jurists across the empire used, at times interchangeably, Arabic, Persian, and Ottoman Turkish. Nevertheless, not every jurist or scholar was equally proficient in all three languages. Many jurists and scholars from the Arab lands, for example, did not speak or read Ottoman Turkish. The author's language preference, therefore,

determined to a large extent his audience. In addition, it is worth keeping in mind that the sixteenth and seventeenth centuries witnessed the production of a growing number of translations from Arabic and Persian into Ottoman Turkish in various disciplines, including medicine, political thought, and jurisprudence.[281] This "translation movement" suggests that scholarly circles in the core lands of the empire as well as members of the Ottoman ruling elite often had a clear preference for Ottoman Turkish. Against this outpouring of translations into Turkish, the language choice of the authors of the *ṭabaqāt* works to write in Arabic points to the authors' intended audience.

An adaptation by Muṣṭafâ 'Âlî of the fifteenth-century jurist Monlâ Hüsrev's biography from Taşköprüzâde's *al-Shaqā'iq al-Nu'māniyyah* sheds additional light on the importance of Arabic for consolidating and propagating the authority of the Ottoman religious-judicial establishment within the imperial framework. Here is the passage from Taşköprüzâde's *Shaqā'iq*:

> [When] he [Monlâ Hüsrev] entered the Aya Sofya Mosque on Friday, whoever was in the mosque stood up [as a sign of respect] to him and let him approach the *miḥrāb.*

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[281] Hüseyin Yılmaz, *The Sultan and the Sultanate: Envisioning Rulership in the Age of Süleyman the Lawgiver (1520-1566)* (Harvard University: Unpublished Ph.D. dissertation, 2004), pp. 121-125; Gottfried Hagen, "Translation and Translators in a Multilingual Society: A Case Study of Persian-Ottoman Translations, Late 15th to Early 17th Century," *Eurasian Studies II/1* (2003), pp. 95-134; Miri Shefer-Mossensohn, *Ottoman Medicine: Healing and Medical Institutions, 1500-1700* (Albany: SUNY Press, 2009), pp. 185-187.

> He prayed at the *miḥrāb.* Sultan Meḥmed [II] observed [this] from his place and was proud of him. [He] said to his vezirs: "Behold, this is the Abū Ḥanīfah of his time!"[282]

This passage, it should be stressed, was written entirely in Arabic. Muṣṭafâ ʻÂlî's translation/adaptation of this passage into Ottoman Turkish reads:

> [When] he entered the Aya Sofya mosque for prayer, as he entered the door [of the mosque] all the people [in the mosque], adults and children (*kibâr ü ṣiğâr*), stood up and opened the way to the *miḥrāb* for him. Mevlânâ [Molâ Ḫüsrev] also greeted [the people] on both his sides as he was proceeding to the front row. Several times Sultan Meḥmed Khân watched this situation [occurring] from his upper prayer place and said to his vezirs: **[in Arabic]** "Behold, this is the Abū Ḥanīfah of his time!" [**Returning to Ottoman Turkish]** That is, he was proud [of Monlâ Ḫüsrev], saying "This is the Grand Imam [i.e. Abū Ḥanīfah] of our era."[283]

Interestingly enough, Muṣṭafâ ʻÂlî chose to preserve Meḥmed II's exclamation in Arabic. Moreover, from the translation that follows the Arabic phrase it is evident that he assumed that many of his readers would not understand the citation in Arabic. It is noteworthy that a nearly contemporary of Muṣṭafâ ʻÂlî, the sixteenth-century

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[282] Taşköprüzâde, *al-Shaqā'iq,* p. 81.

[283] Gelibolulu Muṣṭafâ ʻÂlî, *Künhü'l-Aḫbâr, c. II: Fatih Sultan Mehmed Devri 1451-1481* (Ankara: Türk Tarih Kurumu, 2003), pp. 187-188.

translator of the *Shaqā'iq* into Ottoman Turkish, Mecdî Meḥmet Efendî, opted for translating Mehmet's exclamation into Ottoman Turkish for his readers without preserving the original in Arabic.[284] It seems, however, that Muṣṭafâ ʻÂlî believed that Meḥmed II intended to praise Monlâ Hüsrev in Arabic and that Meḥmed's language choice was significant. The content of the phrase, the claim that Monlâ Hüsrev is the chief Ḥanafī authority of his time, may suggest that, according to Muṣṭafâ ʻÂlî, the intended audience of this exclamation was not the vezirs, but Ḥanafīs both within and without the Ottoman domains. Muṣṭafâ ʻÂlî then appears to attribute to Meḥmed II concerns similar to those of the authors of the *ṭabaqāt* works, namely the propagation of the authority, and perhaps to some extent of the prominence, of the Ottoman religious-judicial establishment and its affiliated jurists. This sense of competition among the Ḥanafīs within the empire also contributed to the development of a shared narrative among members of the imperial learned hierarchy regarding the history of the Ḥanafī school in the fifteenth century. As we have already seen, both Muṣṭafâ ʻÂlî and the authors of the *ṭabaqāt* believed that during the reign of Meḥmet II the Ottoman realms emerged as an important Ḥanafī center.

The decision to compile all the genealogies of the school in Arabic, however, reflects the dialogic nature of the production of *ṭabaqāt* works over the course of the sixteenth and the seventeenth centuries. But beyond unmediated access to these texts,

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[284] Mecdî Meḥmet Edendî, *Hadâiku'ş-Şakâik*, in Dr. Abdülkadir Özcan (ed.), *Şakâik-I Nu'mâniye ve Zeyilleri* (Istanbul*:* Çağrı Yayınları, 1985), p. 137.

to which the authors of these works aspired, the language choice also facilitated the participation of various jurists in this debate and contributed to the production of the synthesis between the different views concerning the history and the structure of the school.

Recontextualizing Taşköprüzâde's al-Shaqā'iq al-Nu'māniyyah

The production over the course of the second half of the sixteenth century of *ṭabaqāt* works by members of the imperial establishment that were intended to establish its authority corresponds to the emergence of another Ottoman genre—the biographical dictionaries devoted to the members of the Ottoman religious-judicial establishment, and most notably, the compilation of Aḥmad b. Muṣṭafā Taşköprüzâde (d. 1560), *al-Shaqā'iq al-Nu'māniyyah.*[285] Since both the aforementioned *ṭabaqāt* and the *Shaqā'iq* were compiled around the same time and focus on, or at least pay considerable attention to, the imperial establishment, it is worth considering the interconnections between the genres. Moreover, the dynamics between the different *ṭabaqāt* works authored throughout the empire over the course of the sixteenth and the seventeenth centuries offer a new context in which one may place Taşköprüzâde's project.

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[285] Several studies have studied different aspects of this genre. Among these: Aslı Niyazioğlu, *Ottoman Sufi Sheikhs Between this World and the Hereafter: A Study of Nev'īzāde 'Atā'ī's (1583-1635) Biographical Dictionary* (Harvard University: Unpublished Ph.D. dissertation, 2003); Abdurrahman Atcil, *The Formation of the Ottoman Learned Class and Legal Scholarship (1300-1600)* (University of Chicago: Unpublished Ph.D. dissertation, 2010); Ali Uğur, *The Ottoman 'Ulema in the mid-17th Century: An Analysis of the Vaḳā'i 'ü'l-fużalā of Meḥmed Şeyḫī Efendi* (Berlin: K. Schwarz, 1986).

Taşköprüzâde's *Shaqā'iq* consists of biographies of leading jurists and Sufi masters who operated in the Ottoman domains and/or, for the most part, maintained connections with the Ottoman dynasty or the Ottoman lands (at least in the author's and probably his peers' perception of the scholarly history of the Ottoman enterprise). The biographies are organized in eleven *ṭabaqāt*. Nevertheless, his use of the concept is somewhat different from the meaning of the term in the genealogies of the Ḥanafī school. In the latter, as we have seen, the word denotes either "rank" or "generation." Taşköprüzâde, on the other hand, devotes each *ṭabaqah* in the work to the reign of an Ottoman sultan, starting with the founder of the Ottoman dynasty Osmân up to Süleymân in chronological order. In so doing, Taşköprüzâde stresses the relationship between a particular group of jurists and the Ottoman dynasty.

An interesting introductory paragraph, in which Taşköprüzâde explains the reasons for the compilation of the *Shaqā'iq,* may assist us in gaining a better understanding of the way he envisioned his project:

> Since I [learned to] distinguish between right and left, between the straight [path] and trickery, I sought passionately the merits (*manāqib*) of the 'ulamā' and their histories (*akhbār*), and I was obsessed with memorizing their important deeds and their works, until I would accumulate a large [body of knowledge] in my weak memory until it would fill the books and the notebooks. Historians have recorded the merits of the 'ulama' and the

> notables according to what has been established through transmission or was confirmed by eyewitnesses, [but] no one has paid attention to the ‘ulamā’ of these lands, and [consequently] their names and practices almost vanished from the tongues of every present [i.e. living person] and [their memory] perished. When the people of excellence and perfection noticed this situation, they asked me to gather all the merits of the ‘ulamā’ of Rūm […][286]

The passage is perhaps somewhat exaggerated. Yet, Taşköprüzâde claims that the main impetus for composing this work was a need to fill a historiographical lacuna. In other words, Taşköprüzâde situates this work in the Arabic historiographical tradition in general and within the genre of the biographical dictionaries dedicated to jurists and notables in particular.[287]

It is noteworthy that Taşköprüzâde identifies the lacuna as a geographical-political one. He emphasizes therefore that the work is intended to introduce the

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[286] Taşköprüzâde, *al-Shaqā’iq,* p. 5.

[287] Taşköprüzâde’s encyclopedic work *Miftāḥ al-Sa‘ādah wa-Miṣbāḥ al-Siyādah fī Mawḍū‘āt al-‘Ulūm* also points in this direction. In the section on historiography (*‘ilm al-tawārīkh*), all the works listed were compiled in Arabic, mostly in the central Islamic lands. Although, by Taşköprüzâde’s time, Arabic historiography had already had a long history, it is possible that Taşköprüzâde (or those who asked him to compile this work) was particularly interested in the biographical dictionaries produced in the Mamluk lands, such as the biographical dictionaries by Ibn Khallikān and al-Suyūṭī. Moreover, in the introduction to his supplement to Taşköprüzâde’s *Shaqā’iq,* ‘Âşîḳ Çelebi makes a similar comment concerning the importance of focus on the activity of Rūmī jurists and scholars. [‘Âşîḳ Çelebi, *Dhayl,* pp. 36-38.]
Aḥmad b. Muṣṭafā Taşköprüzâde, *Miftāḥ al-Sa‘ādah wa-Miṣbāḥ al-Siyādah fī Mawḍū‘āt al-‘Ulūm* (Cairo: Dār al-Kutub al-Ḥadīthah, 1968), vol. 1, pp. 251-270. In this section Taşköprüzâde mentions the existence of historiographical works in Persian, but he says that he decided not to include them in this work. Ibid., vol. 1, p. 270. For an English translation of this section see: Franz Rosenthal, A *History of Muslim Historiography* (Leiden: Brill, 1968), pp. 530-535.

jurists of Rūm. Rūm can be understood in the geographical sense of "these lands," that is, mostly central-western Anatolia and the Balkans. On the other hand, Rūm has also a political dimension—the affiliation with the Ottoman state. Following this meaning of the word, Taşköprüzâde decided to organize his work according to the reigns of the Ottoman sultans, for "this work was compiled under the shadow of their state."

The tension between the Arabic historiographical tradition and the Ottoman/ Rūmī political context is also reflected in the author's and his successors' language choice. Taşköprüzâde decided to compile his work in Arabic. This choice deserves attention, for it may be attributed to Taşköprüzâde's attempt to take part in a historiographical project whose center in the fifteenth century and the early sixteenth century was in the Mamluk sultanate. It appears, therefore, that Taşköprüzâde, much like his counterparts who authored the genealogies of the Ḥanafī school, wanted his work to be read beyond the confines of the imperial learned hierarchy and particularly in the fairly recently conquered Arab provinces. Most of the authors of the

supplements to the *Shaqā'iq*, however, opted for Ottoman Turkish, and even Taşköprüzâde's *Shaqā'iq* was translated a few decades after its completion. [288]

Another significant similarity between the *Shaqā'iq* and the *ṭabaqāt* works by members of the establishment was the emphasis on the Ḥanafī framework. Unlike the authors of the genealogies, Taşköprüzâde does not make special efforts to situate the scholars within a particular genealogy (or genealogies) within the Ḥanafī school. Yet, as the title of the work—a play on words on the Arabic word for Anemone (*al-Shaqā'iq al-Nu'māniyyah*) that also alludes to Abū Ḥanīfah's name (Nuʿmān b. Thābit)—suggests, he was interested in stressing the link, which overarches the entire compilation, between the Ḥanafī school and the Ottoman learned hierarchy. In this sense, Taşköprüzâde supports the claims of his colleagues who were affiliated with the imperial religious judicial establishment in the intra-school competition between the various Ḥanafī jurists.

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[288] Anooshahr argues that Taşköprüzâde chose to write the work in classical Arabic, "the sacral language of Islam, a 'dead language' [...] that was no one's native speech by the sixteenth century." By doing so, Anooshahr contends, "Taşköprüzâde asserted his membership in what Benedict Anderson [in his *Imagined Communities*] calls a community of signs and sounds." My interpretation of Taşköprüzâde's intention is somewhat different, as Arabic was not of course a 'dead language' for many of the works' intended Arab readers. Anooshahr, "Writing," p. 60.
It is worth pointing out that two of the supplements to the *Shaqā'iq* were written in Arabic: 'Alī ibn Bālī Manq, *al-ʻIqd al-Manẓūm fī Dhikr Afāḍil al-Rūm* (Beirut: Dār al-Kitāb al-'Arabī, 1975); 'Âşîḳ Çelebi, *Dhayl al-Shaqā'iq*. As the compiler of a magisterial biographical dictionary dedicated to Ottoman poets in Ottoman Turkish, it is likely the 'Âşîḳ Çelebi was fully aware of the Implication of his language choice. Therefore, during the first decades after the completion of the *Shaqā'iq,* it appears that works in this genre were supposed to be written in Arabic.
'Âşîḳ Çelebi's te*z̲kere* of poets: 'Âşîḳ Çelebi, Meşâ'irü'ş-Şu'arâ (Istanbul: İstanbul Araştırmaları Enstitüsü, 2010).

In a recent thought-provoking article, Ali Anooshahr has suggested that, in the *Shaqā'iq,* Taşköprüzâde is intent on responding to several accusations raised by members of the Ottoman elite against the jurists. Particularly, Taşköprüzâde attempts to respond to the charges of corruption and foreignness that were brought against jurists and scholars by late fifteenth-century chroniclers, who echoed the view of certain groups in the Ottoman elite ("the *gazi/derviş* milieu") and protested their marginalization within the Ottoman polity. Secondly, according to Anooshahr, Taşköprüzâde responds in his work to the challenge posed by what Anooshahr considers "a dangerously intrusive imperial court that by the middle of the sixteenth century had perhaps reached the climax of absolutism" to the jurists. To this end, Taşköprüzâde attempts to define the proper relationship between the court and the jurists, and to defy the growing absolutism of the state, especially during the reigns of Meḥmed II and Süleymân. He does so, according to Anooshahr's interpretation, by adopting the genre of the dynastic history of the House of Osman (*Tevârîh-i Âl-ı Osmân*) and the reigns of the sultans as its organizing principle. But instead of focusing on the dynasty and the deeds of the sultan, the focus is shifted to the affairs of jurists and scholars. At the same time, as Anooshahr points out, Taşköprüzâde's work mirrors the increasing consolidation of the imperial religious-judicial establishment and its hierarchy.[289]

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[289] Ali Anooshahr, "Writing," pp. 43-62. See also Niyazioğlu, *Ottoman Sufi Sheikhs,* pp. 1-145.

Parts of Anooshahr's analysis are doubtlessly correct. The *Shaqā'iq* is clearly a rejoinder to many charges raised against certain scholarly circles and to the challenges they were facing. It also describes a process of growing institutionalization of the Ottoman establishment during the second half of the fifteenth and the first decades of the sixteenth century. Moreover, Taşköprüzâde promotes the notion of interdependence between the scholarly circles (jurists and Sufi shaykhs) and the imperial court, as part of a broader process of change in the power relations between absolutists and their opponents.[290]

Nevertheless, Anooashahr's analysis fails to explain, in my view, why a work like the *Shaqā'iq* did not appear in earlier periods. Had the main concern been to respond to the accusations made by late fifteenth-century chroniclers and to the increasing involvement of the Ottoman dynasty in the affairs of the establishment, a member of the burgeoning learned hierarchy could have composed such a work several decades earlier. This is not to say that the *Shaqā'iq* does not record the view of the scholarly circles to which Taşköprüzâde belonged. But this does not seem to be the main reason for the compilation of the work.

Reading Taşköprüzâde's work in juxtaposition to the *ṭabaqāt* works by members of the establishment, however, raises the possibility that Taşköprüzâde was concerned with defining the relationship between the sultan and the emerging

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[290] See also Baki Tezcan's discussion in his *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge: Cambridge University Press, 2010), ch. 2.

Ottoman religious-judicial establishment against the background of the growing incorporation of the Arab lands into the empire. In this new reality, members of the establishment, Taşköprüzâde and the authors of the genealogies included, felt the need to defend their position within the expanding empire. Therefore, they wanted to remind members of the Ottoman ruling elite, and mostly the sultan, of the long relationship between a specific group of jurists (what would become the imperial learned hierarchy) and the Ottoman dynastic project. Moreover, they wanted to stress their unique position and genealogy within the Ḥanafī school and within the empire. This was to secure their position in their competition with other Ḥanafī jurists throughout the empire who were not affiliated with the imperial establishment.

In short, Taşköprüzâde's work and the *ṭabaqāt* works therefore document, and in turn contribute to, the process whereby the Ottoman religious-judicial establishment evolved over the course of the second half of the fifteenth and the sixteenth century. In particular, they contributed to the evolution of what Cornell Fleischer termed "bureaucratic consciousness" among members of the establishment-affiliated jurists from the second half of the fifteenth century onward.[291] Furthermore, the emergence of this "bureaucratic consciousness," as far as the establishment-affiliated jurists (as well as other members of the Ottoman ruling elites) were concerned, also included the consolidation of a learned hierarchy and the evolution of

[291] Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Âli (1541-1600)* (Princeton: Princeton University Press, 1986), pp. 214-231.

systematized training and career paths. Through this hierarchy, which was recorded and documented in the genealogies and the biographical dictionaries, the establishment in fact monopolized the access and affiliation to the particular genealogies that stretched from Abū Ḥanīfah to the establishment-affiliated jurists. To put it differently, training in the Ottoman educational system was indispensible for those who wanted to attach themselves to these particular chains of transmission of jurisprudential knowledge and authority. It is noteworthy that these developments did not escape seventeenth-century observers from the Arab provinces of the empire. These observers often mention in their writings the "Rūmī way", referring to the Ottoman training and career track.[292] What is more, the consolidation of the imperial religious-judicial establishment was to a large degree a product of a series of imperial edicts and regulations issued on behalf of the Ottoman sultan/dynasty. As I have suggested in the previous chapter, this development was in part intended to allow the sultan/dynasty to regulate the content of the *sharī'ah* (*şerî'at*). In the context of my discussion in this chapter, it is precisely this sultanic/dynastic intervention that also permitted the establishment's monopoly over a particular lineage within the school.

The picture that emerges is thus more complex than a story of jurists opposing intrusion on behalf of the state. On the one hand, the position of the jurists who were

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[292] For example: Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *Luṭf al-Samar wa-Qaṭf al-Thamar* (Damascus: Wizārat al-Thaqāfah wa-l-Irshād al-Qawmī, 1981-1982), vol. 2, pp. 511-513; al-Muḥibbī, *Khulāṣat al-Athar,* vol. 1, pp. 186-187;vol. 1, pp. 241-249; vol. 1, p. 523; vol. 2, pp. 130-131.

affiliated with the imperial establishment was relatively secure, as members of the Ottoman ruling elite respected the establishment's exclusive position within the imperial framework. This respect may account for the fact that the idea of replacing the establishment-affiliated jurists with other jurists who were not members of the learned hierarchy in order to create an alternative hierarchy was never broached.[293] On the other hand, the Ottoman sultan/dynasty created a learned hierarchy that was quite dependent on these edicts and regulations for securing its exclusive status. At the same tine, the learned hierarchy provided the Ottoman dynasty with an exclusive branch within the Ḥanafī jurisprudential tradition, and, at times, with specific solutions to certain legal problems, as will be further discussed in chapter 5.

Concluding Thoughts

Juxtaposing the *ṭabaqāt* works compiled during the sixteenth and the seventeenth centuries, both in the core lands of the empire and in its Arab provinces, reveals important dynamics that accompanied the Ottoman conquest of the Arab lands and their following incorporation. While chroniclers from the central lands and the provinces provide interesting information concerning many events that took place

[293] In the early seventeenth century, when the court wanted to curb the power of the learned hierarchy it turned to charismatic mosque preachers. They did not, however, seek to replace the religious-judicial establishment by "importing" Ḥanafī jurists from the Arab lands. By contrast, Osmân II considered recruiting a new army in the Arab lands. On these episodes see: Baki Tezcan, *The Second Ottoman Empire,* ch. 3 and 4.

during the Ottoman conquest of the Arab lands, they furnish very little information regarding how jurists in general and Ḥanafī jurists in particular perceived this process. The integration of the Arab provinces into the empire posed serious challenges for Ḥanafī jurists regardless of their affiliation, as the competition between scholarly traditions and jurists became more intense in comparison to the years that preceded the Ottoman conquest. The fact that all these Ḥanafīs, despite their affiliation with different genealogies within the school, were part of the same political entity drove different jurists to establish and propagate their authority within the Ḥanafī tradition. The *ṭabaqāt* works served exactly this purpose.

In his groundbreaking study of an early fifteenth-century Shāfiʿī *ṭabaqāt* work, Kevin Jaques has observed the relative massive production of *ṭabaqāt* works in the fourteenth and the fifteenth century. The sudden rise in the production of *ṭabaqāt* works, Jaques has convincingly argued, should be attributed to a sense of crisis of authority shared by many jurists in the centuries following the catastrophic events of the thirteenth and the fourteenth century—namely the Mongol invasions and the outburst of the Black Death. These developments wrecked havoc across the eastern Islamic lands, costing the lives of many, including many jurists. For the community of jurists, the destruction inflicted by these events had an important ramification. With the death of the jurists, many chains of transmissions were potentially cut off. Therefore, there was a need to reconstruct these chains in order to consolidate the

authority of late-fourteenth and fifteenth-century jurists. In response to that severe sense of crisis that accompanied jurists well into the fifteenth centuries, many jurists were also interested in recording their jurisprudential and scholarly genealogies in *ṭabaqāt* works, which later circulated among their followers and peers.[294]

The connection between a crisis of authority and the production of *ṭabaqāt* works may account for the Ottoman rediscovery of the *ṭabaqāt* genre as well. To be sure, the late fifteenth and the early sixteenth century were not fraught with disasters and events of apocalyptic scale.[295] Although from time to time there were outbreaks of plagues and epidemics, they did not match the Black Death of the fourteenth century. In other words, in terms of the physical wellbeing and safety of the jurists, the reality of the late fifteenth and the early sixteenth century was worlds apart from that of the late fourteenth and the early fifteenth century. Still, the *ṭabaqāt* works seem to reflect a sense of challenged authority, similar to the one experienced by fourteenth and fifteenth-century jurists.

But the *ṭabaqāt* literature does not solely tell a story of challenge and competition. The *ṭabaqāt* works of both sixteenth-century al-Tamīmī and early

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[294] Jaques, *Authority,* pp. 17-23, pp. 255-279.

[295] There were, of course, plagues and other natural disasters throughout the sixteenth and the seventeenth century, but none of them reached the scale of the Black Death of the fourteenth century. On the plague in the Ottoman Empire see: Nükhet Varlık, *Disease and Empire: A History of Plague Epidemics in the Early Modern Ottoman Empire (1453-1600)* (University of Chicago: Unpublished Ph.D. dissertation, 2008). For a list of natural disasters in seventeenth and eighteenth-century Syria see: Yaron Ayalon, *Plagues, Famines, Earthquakes: The Jews of Ottoman Syria and Natural Disasters* (Princeton University: Unpublished Ph.D. dissertation, 2009), pp. 240-245.

eighteenth-century Kâmî point to a gradual and selective cooptation and integration. Al-Tamīmī's work mirrors the attempts made by some Ḥanafī jurists from the Arab lands to combine the Ottoman genealogy of the Ḥanafī school with the one that prevailed in the former Mamluk territories. Kâmî's work, on the other hand, indicates that a similar process took place among members of the Ottoman religious-judicial establishment. It is important to stress, however, that not all the jurists from the Arab lands followed this track, and some were more reluctant to integrate the Ottoman vision of the Ḥanafī school into their own. Furthermore, despite Kâmî's inclusion of jurists from the Arab lands, he was still reluctant to abandon the particular genealogy of the establishment within the Ḥanafī school which his predecessors advanced.

The *ṭabaqāt* works compiled by members of the Ottoman religious-judicial establishment and the *Shaqā'iq* (and its supplements) also reveal how jurists who were affiliated with the Ottoman enterprise understood themselves and their literary-jurisprudential production in relation to the works of their medieval counterparts and their contemporaries from the Arab lands of the empire. The members of imperial learned hierarchy who authored these works clearly strove to link their works to medieval Islamic (Arabic) jurisprudential-historiographical traditions with the intention of establishing and propagating their authority. It is precisely in this adoption and adaptation of medieval Arabic genres, however, that the tensions between the worldview of the medieval authors and that of their colleagues who were

affiliated with the Ottoman enterprise become most evident. While accepting some of the fundamental notions underlying the genres, the works authored by members of the imperial religious-judicial establishment diverge from some of the medieval conventions of the genres in significant ways. Most notably, as opposed to the medieval works in these genres, in the *ṭabaqāt* works compiled by members of the Ottoman religious-judicial establishment and the *Shaqā'iq*, the Ottoman dynasty and its establishment serve as the main narrative axis of the works.

Ultimately, the *ṭabaqāt* works, regardless of their provenance, are important for elucidating an important dimension of the activity of jurists in general, and of muftīs in particular. These genealogies suggest that the differences between the muftīs studied in this dissertation are rooted in traditions and genealogies that evolved over centuries. At the same time, the change in the way different jurists perceived the jurisprudential tradition to which they were affiliated indicates that muftīs shaped to varying degrees the jurisprudential tradition they followed and applied in their rulings.

As we have seen throughout this chapter, the *ṭabaqāt* works were instrumental in defining a repertory of legal arguments and texts that jurists were expected to consult in the rulings and writing. For this reason, the genealogies recorded in these *ṭabaqāt* works form the basis to—and in turn document—the emergence of jurisprudential "textual communities" within the Ḥanafī school and across the empire.

As far as the muftīs are concerned, these communities played a decisive role in shaping their rulings and writings. It is to these communities that we now turn.

Chapter III

Reliable Books: The Ottoman Jurisprudential Canon and the Textualization of the *Madhhab*

On Saturday, the 13th of Dhū al-Ḥijjah, 995AH (November 14th, 1587), more than seven decades after the Ottoman conquest of the Arab lands, the sixteenth-century Damascene jurist Nūr al-Dīn Maḥmūd b. Barakāt al-Bāqānī (d. 1594) [296] completed at al-Kilāsah madrasah in Damascus his commentary on one of the most important and popular jurisprudential manual in the Ottoman domains, Ibrāhīm al-Ḥalabī's sixteenth-century *Multaqá al-Abḥur,* which he had started earlier that year.[297] al-Bāqānī, as he claims in the introduction to his commentary, decided to compile the commentary on the *Multaqá* after he had been requested by his peers to do so. The main reason for their request was that he was the only one to have read parts of the

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[296] Although he was not one of the most prominent jurists of Damascus, al-Bāqānī was significant enough to have his biography included in three of the most important centennial biographical dictionaries of the seventeenth century. The late seventeenth-century biographer Muḥammad Amīn b. Faḍl Allāh al-Muḥibbī states that al-Bāqānī taught in several madrasahs in Damascus and in a teaching niche at the Umayyad Mosque, where he also served as a preacher. Despite numerous positions, it seems that al-Bāqānī gained most of his considerable wealth from selling books. Muḥammad Amīn b. Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fī A'yān al-Qarn al-Ḥādī 'Ashar* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2006), vol. 4, p. 312. See also Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *Luṭf al-Samar wa-Qaṭf al-Thamar* (Damascus: Wizārat al-Thaqāfah wa-l-Irshād al-Qawmī, 1982), pp. 238-239; al-Ḥasan b. Muḥammad al-Būrīnī, *Tarājim al-A'yān min Abnā' al-Zamān,* Staatsbibliothek zu Berlin MS Weetzstein II 29, pp. 179r-179v.

[297] Maḥmūd b. Barakāt al-Bāqānī, *Majrá al-Anhur 'alá Multaqá al-Abḥur,* Süleymaniye Library MS Pertev Paşa 196, p. 2v.

Multaqá with Muḥammad al-Bahnasī (d. 1578 or 9), one of al-Bāqānī's most prominent teachers and a Ḥanafī muftī in Damascus (although he was not officially appointed to serve as muftī by the state).[298] al-Bahnasī, too, had started his own commentary on the *Multaqá al-Abḥur*, which he never completed due to his death eight or nine years before al-Bāqānī sat down to write his own commentary.[299]

Al-Bāqānī's commentary, entitled *Majrá al-Anhur 'alá Multaqá al-Abḥur,* was one of approximately seventy commentaries on the *Multaqá* compiled both in the core lands of the empire and in its Arab provinces over the course of the following centuries.[300] What makes al-Bāqānī's commentary particularly interesting is its history upon its completion. At first the scholars of Damascus looked at this commentary disparagingly, perhaps due to the infamous frivolity of the author. Nevertheless, the work's fate changed dramatically after, in the words of the seventeenth-century Damascene historian Najm al-Dīn al-Ghazzī, "some of the most

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[298] This was not the only commentary al-Bāqānī penned during his teaching career. In addition to his commentary on the *Multaqá,* he compiled a commentary on *al-Niqāyah* by 'Ubayd Allāh b. Mas'ūd al-Maḥbūbī, a supplement (*takmilah*) on Ibrāhīm b. Muḥammad b. al-Shiḥnah's *Lisān al-Ḥukkām fī Ma'rifat al-Aḥkām,* and another supplement on Zayn al-Dīn Ibn Nujaym's *al-Baḥr al-Rā'iq,* as well as an abridged version of the *Baḥr* in one volume. al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, p. 311-312.

[299] Najm al-Dīn Muḥammad b. Muḥammad al-Bahnasī, *Sharḥ Multaqá al-Abḥur,* New York Public Library MS M&A 51893A. The commentary is incomplete and ends with *Bāb Khiyār al-Shurūṭ.* On al-Bahnasī: Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawākib al-Sā'irah fī A'yān al-Qarn al-'Āshirah* (Beirut: Jāmi'at Bayrut al-Amrikiyyah, 1945-1958), vol. 3, pp. 13-15; Aḥmad b. Muḥammad b. al-Mullā al-Ḥaṣkafī, *Mut'at al-Adhhān min Tamattu' bi-l-Iqrān bayna Tarājim al-Shuyūkh wa-l-Aqrān* (Beirut: Dār al-Ṣādir, 1999), vol. 2, pp. 886-878.

[300] For a comprehensive list of the extant commentaries on *Multaqá al-Abḥur* see Şükrü Selim Has, *A Study of Ibrahim al-Halebi with Special Reference to the Multaqa* (University of Edinburgh: Unpublished Ph.D. dissertation, 1981), pp. 216-264. For the significance of the *Multaqá* see Ibid., "The Use of Multaqa'l-Abḥur in the Ottoman Madrasas and in Legal Scholarship," *Osmanlı Araştırmaları* 7-8 (1988), pp. 393-418.

eminent jurists in Rūm (*akābir al-mawālī bi-l-Rūm*) asked for a copy [of the work]."[301] In the following decades, al-Bāqānī's commentary was apparently quite well received in scholarly circles both in his native town of Damascus and in the imperial capital.[302] In Damascus, 'Alā' al-Dīn al-Ḥaṣkafī, whom we have already met, relies on al-Bāqānī's commentary in the commentary on the *Multaqá* he compiled late in his career.[303] In the central lands, slightly earlier, the mid-seventeenth-century eminent member of the imperial establishment 'Abdurraḥmân b. Muḥammad Şeyḫîzâde (d. 1667-1668) also cites al-Bāqānī's commentary in his acclaimed commentary on the *Multaqá*.[304]

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[301] al-Ghazzī, *Lutf al-Samar,* pp. 238-239.

[302] The work exists in 13 copies in libraries across Istanbul alone. Kefevî's *Katā'ib*, just for comparison's sake, exists in 11 copies in libraries across the city. Ebû's-Su'ûd Efendi's fatāwá collection, a widely-cited work, exists in approximatly 50 copies in libraries across Istanbul.

[303] Muḥammad b. 'Alī b. Muḥammad al-Ḥaṣanī al-'Alā' al-Ḥaṣkafī, *al-Durr al-Muntaqá fī Sharḥ al-Multaqá* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), vol. 1, p. 146, 184, 194, 322; vol. 2, p. 42, 170, 260, 265, p. 330, 337, 365, 397, 429, 436, ; vol. 3, p. 154, 162, 417, 423; vol. 4, p. 56, 96, 112, 157, 297, 406, 459, 470, 481. It is noteworthy that al-Ḥaṣkafī cites al-Bāqānī's commentary much more frequently than his colleague Şeyḫîzâde does.

[304] 'Abd al-Raḥmān b. Muḥammad b. Sulimān Shaykhīzāde (Şeyḫîzâde), *Majma' al-Anhur fī Sharḥ Multaqá al-Abḥur* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), vol. 1, p. 316, p. 336, 553; vol. 2, p. 188, p. 345. It should be noted that in some cases Şeyḫîzâde has some reservations concerning al-Bāqānī's opinions.
Şeyḫîzâde's commentary was fairly well known. He presented this commentary to the sultan in August 21st 1666. As a token of his appreciation, the sultan ordered the appointment of Şeyḫîzâde, until then the chief justice of Anatolia, to the chief judgesip of Rumeli. See: Abudrrahman Abdi Paşa, *Abdurrahman Abdi Paşa Vekâyi'-nâmesi* (Istanbul:Çamlıca, 2008), p. 246. On his appointment to *ḳâḍîaskerlik* of Rumeli: Defterdar Sarı Mehmet Paşa, *Zübde-i Vekayiât* (Ankara: Türk Tarih Kurumu Basımevi, 1995), p. 261.
The seventeenth-century chronicler and bibliographer Kâtip Çelebi also mentions al-Bāqānī's commentary and even records his introduction in his *Kashf al-Ẓunūn.* Kâtip Çelebi, *Kashf al-Ẓunūn fī Asāmī al-Kutub wa-l-Funūn* (Istanbul: Milli Eğitim Basımevi, 1971), vol. 2, pp. 1814-1815.

The story of al-Bāqānī's commentary, as this chapter hopes to demonstrate, is not unique. Over the course of the sixteenth and the seventeenth centuries, other jurisprudential texts underwent a similar review procedure. More broadly, it reflects a concerted effort on behalf of the Ottoman state, and particularly on behalf of its religious-judicial establishment, to define a corpus of jurisprudential texts—what I call throughout this chapter the imperial jurisprudential canon—that members of the imperial learned hierarchy were to consult in their teachings and rulings.

It is not fully clear when the demarcation of an imperial jurisprudential canon assumed the institutional features that the aforementioned episode reveals. Jurists who were affiliated with the Ottoman enterprise in the fourteenth and the fifteenth centuries most probably consulted texts they considered authoritative and canonical. The jurisprudential texts, however, were not canonized in an official procedure. The canonization through an official procedure apparently reached maturity around the mid-sixteenth century, as an edict issued in 1556 by the Ottoman sultan Süleymân Ḳânûnî in which he lists the texts students of the imperial madrasah system were to study attests. In the following decades and centuries, however, the authority to canonize jurisprudential texts was conferred on the leading jurists of the imperial learned hierarchy, and particularly on the chief imperial muftī.

The emergence of the chief imperial jurisconsult as the gatekeeper of the imperial canon during the second half of the sixteenth century is significant, for it

links the emergence of the imperial canon to the consolidation of the religious-judicial establishment and to the rise of the şeyhulislâm as the head of the learned hierarchy. Moreover, as we have observed in the previous chapter, the consolidation of the learned hierarchy over the course of the sixteenth century was paralleled by the articulation of the hierarchy's genealogy within the Ḥanafī tradition. This genealogy, which was recorded in the *ṭabaqāt* works we have examined in chapter 2, was intended, among other things, to document the authority of specific legal arguments and texts. Moreover, the quite successful attempt to define an imperial jurisprudential canon was inextricably linked to the growing interest of the imperial learned hierarchy (and, more generally, of the Ottoman dynasty/state) in regulating the content of the *sharī'ah* (*şerî'at*) its members were to apply. The jurisprudential canon, in short, was intended to shape the rulings and writings of jurists and scholars throughout the empire, including those of the muftīs that concern us in this dissertation.

As we have seen in the previous chapters, the consolidation of the imperial establishment, the compilation of the *ṭabaqāt* works by its members, and the rise of the imperial jurisprudential canon took place against to background of the conquest of the Arab lands and their gradual incorporation into the empire. In fact, as was the case with the *ṭabaqāt* compilations, it was precisely the incorporation of the Arab lands that spurred members of the imperial religious-judicial establishment to specify what

books were to be consulted as part of the imperial canon. From the vantage point of members of the imperial establishment, the incorporation of the Arab lands also meant that other Ḥanafī scholars, scholarly traditions, and jurisprudential texts became part of the imperial scholarly and jurisprudential landscape. In this new reality, jurists who were affiliated with the imperial learned hierarchy felt the need to defend their position and the authority of certain jurisprudential arguments and texts within the expanding imperial framework. The emergence of an imperial jurisprudential canon supplemented other textual and institutional practices and contributed to the emergence of an "establishment consciousness" among members of the learned hierarchy.

Situating the rise of an imperial jurisprudential canon against the backdrop of the incorporation of the Arab lands into the empire requires clarifying the relation between the canon endorsed by members of the imperial learned hierarchy and the canons of other scholarly, and particularly Ḥanafī, circles outside the imperial hierarchy throughout the empire. Moreover, it calls for a comparison of an entire set of textual practices, which shaped the canonization practices of the different textual

communities across the Ottoman realms.[305] As we will see below, the organization of the scholarly community and its modes of transmission of knowledge (and texts) are closely related to its canonization procedures. The hierarchical and fairly centralized nature of the imperial religious-judicial establishment and particularly of its educational system, for example, allowed the chief imperial jurisconsult to specify what texts should enter the imperial canon. Other scholarly circles throughout the Arab lands, which were considerably less hierarchical, developed their canon on the basis of a consensus among their prominent members.

The relations and "dialogues" between the canons also cast light on understudied dynamics that accompanied the incorporation of the Arab lands into the empire. Particularly, these relations uncover interesting aspects of the dynamics between various learning centers throughout the empire, such as Istanbul, Cairo, and Damscus. Moreover, the change in the composition of the different Ḥanafī jurisprudential canons enables us to explore exchange, circulation, and cooptation of texts, arguments, and authorities across the Ottoman domains. In addition, the incorporation of sixteenth- and seventeenth-century texts compiled by jurists from the

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[305] The phrase "textual communities" was coined by Brian Stock. Although the communities discussed in this study are somewhat different from those studied by Stock, in some important respects the concept is applicable here as well. In particular, Stock draws attention to the pivotal role of texts in organizing these communities and in defining the internal and external relationships of their members. It is important to stress, however, that the textual communities were not only textual, as they also involved various uses of orality. Brian Stock, *The Implications of Literacy: Written Language and Models of Interpretation in the Eleventh and Twelfth Centuries* (Princeton: Princeton University Press, 1987), pp. 90-91.

Arab lands into the imperial canon reflects the learned hierarchy's attempt to coopt, albeit selectively, the authority of eminent jurists, such as Khayr al-Dīn al-Ramlī and Muḥammad al-Timūrtāshī. On the other hand, different jurists from the Arab lands, especially those who held a state appointment, began over the course of late sixteenth and the seventeenth centuries to consult jurisprudential texts authored by members of the imperial establishment.

Finally, the study of the imperial jurisprudential canon and the canonization practices adds new dimensions to our understanding of the manuscript culture in the Ottoman world (and beyond) before the adoption of the printing press over the course of the eighteenth century. While much attention has been paid to the Muslim rejection of the printing press, remarkably little attention has been paid to the manner in which manuscripts functioned in concrete historical settings. As this chapter contends, the establishment's canonization procedures were one of the means by which an Islamic imperial state coped with the challenges that the manuscript culture posed.

This chapter is a preliminary foray into the history of the imperial jurisprudential canon. It is hoped that some of the points raised in the following pages will be further explored in other studies in the future. Most notably, the composition of the canons and the change they underwent over time still await systematic study. Furthermore, much more work remains to be done on the ways in which the different canons were used, read, and applied. Here my goal is much more modest, and I am

mostly interested in illustrating the importance of these questions in general and in particular for understanding the experience of jurists, religious scholars, and especially muftīs.

The chapter opens with a brief introduction on canonization and canons in the Sunnī Islamic tradition. Then, in the second section, I discuss the difference between the textual (including canonization) practices of different scholarly circles across the empire. Specfically, I am interested in demonstrating the difference between the canonization mechanism employed by members of the Ottoman religious-judicial establishment and that of their colleagues across Bilād al-Shām who were not affiliated with the imperial learned hierarchy. The third section focuses on the canonization procedure by tracing the canonization of a jurisprudential text, Ibn Nujaym's *al-Ashbāh wa-l-Naẓā'ir,* and one of the commentaries on this work. Of particular importance is the role the chief muftī played in this procedure. The purpose of the fourth section is twofold. First, it is intended to cast light on the composition of the imperial canon in the seventeenth century as it is reflected in the fatāwá collection of the prominent seventeenth-century şeyḫülislâm Minḳârîzâde. Secondly, by comparing the imperial canon as reflected in the collection with the bibliographies of Minḳârîzâde's colleagues, the Palestinian muftī Khayr al-Dīn al-Ramlī and the Damascene 'Alā' al-Dīn al-Ḥaṣkafī, it aims to survey different "textual communities" across Greater Syria (and across the empire at large) and to investigate the dynamics

between them. The last section examines the function of the canon and of the canonization practices in the context of the Ottoman manuscript culture.

A Note on Canon and Canonization

Drawing mainly on the insights and findings of students of literary and Biblical canons, the scholarship on canon formation and canonization in the Islamic tradition has been growing steadily in the past couple of decades.[306] My intention in this section is not to survey the historiography of canon formation in various Islamic contexts. Instead, I am interested in discussing some of the main issues and approaches that shaped the study of canonization in pre-modern Islamic societies and are relevant to our discussion here. Since there are different sorts of canons (such as scriptural, literary, artistic, and legal), I will focus here mostly on legal/jurisprudential canons. Nevertheless, despite some unique features of legal/jurisprudential canons, as social and cultural phenomena they share some important similarities with other types of canon.

Two principal concepts are central to the debate concerning legal/ jurisprudential canons—canonical texts and community of "users" (readers, scholars, and interpreters). In his seminal study of canonization in the Jewish tradition, Moshe

[306] For a comprehensive survey on the different currents in canon studies in general and particularly in the Islamic tradition see: Jonathan Brown, *The Canonization of al-Bukhārī and Muslim* (Leiden: Brill, 2007), ch. 2.

Halbertal offers an incisive definition of "canonical texts." Halbertal's observations with regards to the Jewish jurisprudential tradition are pertinent to a large extent to the Islamic jurisprudential tradition as well, as both traditions consider themselves text-centered traditions. The phrase "canonical text," Halbertal asserts, denotes the special status of a specific text. "Canonical texts," however, may function in different manners. For our purpose, I am specifically interested in what Halbertal calls *normative texts*. Texts that form a *normative* canon, such as Scriptures and legal codes, are obeyed, interpreted, and often constitute part of a curriculum. These texts establish what Halbertal terms a "formative canon, and they provide a society or a profession with a shared vocabulary." By adhering to this normative canon, a society or profession defines itself as text-centered. In other words, membership in this community is predicated on familiarity with these normative texts. It is important to stress the complex relations among various canonical texts of a certain tradition. While all the texts that constitute a canon are considered canonical, not all of them enjoy equal status. A text may be obeyed and followed, for instance, but not necessarily taught as part of a curriculum.[307]

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[307] Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge: Harvard University Press, 1997), pp. 3-4. Canonical texts may also serve as "paradigmatic examples of aesthetic value and achievement." These texts are not necessarily the best works of a specific genre but manifest its most typical conventions. Despite this distinction, a text may be both normative and exemplary (the Qur'ān, for instance, is both normative and exemplary).

In short, canons fulfill a dual function in the formation of a community. First, canons demarcate the boundaries of the community. Those who reject a particular canon (or follow another one) may be excluded from the community that galvanized around it. At the same time, the canon offers the community a shared set of texts, which are referred to by members of the community to regulate and justify their action, even when their interpretations of these texts may follow different hermeneutic principles and produce conflicting views. In this sense, canons contribute to the cohesiveness of the text-centered community.

This is not to say, however, that every member of the text-centered community enjoys equal status. As with the canonical texts, not every interpretation is equally accepted by the members of the community. Therefore, text-centered communities have to develop mechanisms to determine who has the authority to define the boundaries of the canon and to interpret canonical texts. It is for this reason that canonization is often accompanied by strong acts of censorship of different sorts that are meant to determine and regulate the range of legitimate interpretation.[308]

Turning to the particularities of canonization in the Sunnī tradition, two important studies have tackled the issue of canon and canonization of religious and jurisprudential texts in this tradition. Due to their importance to the discussion in the

[308] Halbertal, pp. 6-10.

following sections, it is worth devoting a few words to these studies, and particularly to their approach to the issue of canon and canonization.

Brannon Wheeler's study perceives the canon first and foremost as an interpretive standard. According to Wheeler, in the Ḥanafī context, the canon functions as a "device to promote the pedagogic agenda of those who use certain texts to represent the authority of the past."[309] Moreover, the canon is a set of hermeneutic principles or precedents for interpreting the Revelation (i.e. the Qur'ān).[310] Wheeler's description of how the canon was employed in the post-classical period is particularly relevant. In the post-classical period, that is, from the fifth/eleventh century on, Ḥanafī jurists were particularly concerned with reconstructing the "hermeneutical moves" of their predecessors. Their main goal was to comment on the work of previous jurists to illustrate how interpretive reasoning was epitomized in their opinions, so it could be learned and reproduced.[311] Nevertheless, Wheeler seems to disregard the possibility that jurists of the school's post-classical age actively shaped the boundaries of the canon they were consulting, and, by doing so, defined the tradition to which they claimed affiliation. This, I think, may be attributed to

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[309] Brannon M. Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Ḥanafī Scholarship* (Albany: State University of New York Press, 1996), p. 2.

[310] Ibid., pp. 9-10.

[311] Ibid., p. 169.

Wheeler's focus on canon as a criterion of interpretation, while, in Jonathan Brown's words, downplaying the importance of the canon as a set of representative texts.[312]

The second study is Brown's fascinating study of the canonization of the Ḥadīth collections of al-Bukhārī and Muslim. His study traces the gradual process through which these collections became recognized as authoritative throughout the Sunnī world. Since Brown begins his account before the compilation of al-Bukhārī's and Muslim's collections, his study pays close attention to the reasons for the canonization of these particular texts. Unlike Wheeler, who accepts the canonical status of the texts as his departure point, Brown succeeds in demonstrating several important aspects of the canonization process that are by and large absent from the former's account. First, he shows how these specific collections gained their prominent status among medieval Muslims, by focusing on the "canonical culture" that surrounded these texts. This "canonical culture" trained the readers/listeners to "interpret a canonical text in a reverential manner and with suitable awe." This historiographical approach is especially fruitful, for it emphasizes the factors that shape the canonization of a particular text in a concrete historical setting. To put it differently, Brown's analysis stresses the existence of vying alternative traditions and the role the community of "users" played in shaping its own tradition. [313]

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[312] Brown, *The Canonization,* p. 33.

[313] Ibid., pp. 42-46.

Lastly, both studies, despite their different methodological approaches, consider the canon and the canonization procedures internal concerns of the community of jurists. Members of the ruling elite or the "state" are absent from these accounts. This absence reflects a reality very different from the Ottoman context, which is the focus of this chapter. As this chapter hopes to demonstrate, in the Ottoman context, the state was much more prominent in the formation of the canon. That said, this chapter follows Brown's emphasis on the role of the community of "users," although it also, like Wheeler's study, pays attention to the hermeneutic function this community ascribed to the canon.

"The Reliable Books:" Towards a Study of Jurisprudential Canons in the Ottoman Empire

In his account of the removal of the chief imperial muftī Bostânzâde Meḥmed Efendi from office in 1592, the seventeenth-century Ottoman historian Ḥasan Beyzâde (d. 1636 or 7) argues that one of the accusations raised against Bostânzâde was that his rulings contradicted the "authoritative texts" (*mütûn*) of the Ḥanafī school. The fact that Ḥasan Beyzâde did not specify what these texts were suggests that he assumed his readers, many of whom were probably members of scholarly and judicial circles in the central lands of the empire (and possibly beyond), knew what texts constituted the "authoritative texts" of the school. Moreover, the assumption underlying Ḥasan

Beyzâde's account is that the authoritiative texts reflect the sound opinions of the Ḥanafī school at the time.[314]

The notion of "authoritative texts," however, mertis attention. More generally, it is worth exploring the implications of the emergence of a well-defined textual body for members of the Ottoman religious-judicial establishment to consult throughout the Ottoman domains over the course of the sixteenth century (or perhaps even earlier). The texts that constitute the canon will occupy us in the next sections. This section, on the other hand, is an attempt to establish the existence of a "text-centered epistemology" or "canon consciousness" among members of the imperial establishment. To put it somewhat differently, this section sketches some notions and arguments members of imperial learned hierarchy made *about* canon and canonization, whereas the next ones will examine the canonization as a concrete procedure and look to the content of the imperial canon.

A convenient point to begin the discussion is Kemâlpaşazâde's treatise on the structure the Ḥanafī school, which has been discussed in the previous chapter. According to this treatise, many of the jurists included in the sixth rank (out of seven) in his classification of the authorities of the Ḥanafī school, most of whom lived in the thirteenth and fourteenth centuries, compiled authoritative legal manuals (*al-mutūn*

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[314] Ḥasan Bey-zâde Aḥmed Paşa, *Ḥasan Bey-zâde Târîḫi* (Ankara: Türk Tarih Kurumu Basımevi, 2004), vol. 2, p. 371. The seventeenth century historian and bibliographer Kâtip Çelebi draws on Bey-zâde's account. See: Kâtip Çelebi, *Fezleke-i Tarîḫ* (Istanbul: Cerîde-i Ḥavâdiṣ Matba'ası, 1870-1871), vol. 1, p. 3.

al-mu'tabarah min al-muta'akhkhirīn). By doing so, explains Kemâlpaşazâde, they weeded out less authoritative and weaker opinions. This notion, it should be mentioned, was not an Ottoman innovation. As Brannon Wheeler points out, the notion of authoritative works that epitomized the authority of the school, or at least of specific arguments, characterizes the post-classical Ḥanafī jurisprudence in general (from the fifth/eleventh century onward). Nevertheless, it appears that in the sixteenth century (or slightly earlier), among members of the imperial religious-judicial establishment, texts became more and more central in defining the boundaries of the Ḥanafī school. Accordingly, jurists who were affiliated with the imperial learned hierarchy specified a body of "authoritative texts" or "books of high repute" (al-*kutub al-mu'tabarah/al-kutub al-mu'tamadah*) that encapsulated the school's lore. For example, in his introduction to his *ṭabaqāt* work, which I have discussed in the previous chapter, Kınâlızâde remarks that the teachings of the Ḥanafī school were transmitted until they "ended up preserved in the pages of the books [... and] these books circulate widely and are accepted among the pious, and are consulted by judge[s] and muftī[s] (*yusta'ān bi-ha*)."[315]

By the seventeenth century, references to the "reliable texts" became quite frequent in jurisprudential works compiled by members of the imperial establishment

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[315] Kınâlızâde 'Alā' al-Dīn 'Alī Çelebi b. Amr Allāh b. 'Abd al-Qādir al-Ḥumaydī, *Ṭabaqāt al-Ḥanafiyyah* (Amman: Dār Ibn al-Jawzī, 2003-2004), pp. 92-93.

as well as in collections of legal opinions issued by the chief muftīs.[316] Nevertheless, few sources provide a systematic list of the texts that fall under this title. One of the few exceptions is an imperial edict (*fermân*) issued in 1556 by sultan Ḳânûnî Süleymân. In this edict, the sultan lists the texts in various religious and judicial disciplines students in the Ottoman madrasah system were to study.[317] Kâtip Çelebi's seventeenth-century bibliographical compilation *Kashf al-Ẓunūn* also guides its readers through the jurisprudential canon, and specifies what texts should be consulted. In the entry dedicated to Badr al-Dīn Maḥmūd b. Qāḍī Simāwnah's (d. 1416?) *Jāmi' al-Fuṣulayn,* for instance, Kâtip Çelebi states that this text is "a famous book that circulates widely among the judges and muftīs."[318]

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316 State-appointed Arab muftīs also employed this concept. Abū Muḥammad b. Ghānim b. Muḥammad al-Baghdādī, for instance, lists in the introduction to his work the "reliable books" which he consulted. Abū Muḥammad b. Ghānim b. Muḥammad al-Baghdādī, *Majma' al-Ḍamānāt fī Madhhab al-Imām al-A'ẓam Abī Hanīfah al-Nu'mān* (Cairo: Dār al-Salām li-l-Tabā'ah wa-l-Nashr wa-Tawzī', 1999), pp. 43-44.
It seems that the category of "reliable books" also appears in library catalogues from that period and slightly later. İsmail E. Erünsal, *Ottoman Libraries: A Survay of the History, Development and Organization of Ottoman Foundation Libraries* (Cambridge, MA: The Department of Near Eastern Languages and Literatures, Harvard University, 2008), p. 159.

317 Shahab Ahmed and Nenad Filipovic, "The Sultan's Syllabus: A Curriculum for the Ottoman Imperial Medreses Prescribed in a Fermān of Qānūnī Süleymān, Dated 973 (1565), *Studia Islamica* 98/99 (2004), pp. 183-218.

318 Kâtip Çelebi, *Kashf al-Ẓunūn*, vol. 1, pp. 566-567. Kâtip Çelebi is also careful to draw his reader's attention to disagreements among members of the imperial establishment concerning the authoritative status of certain canonical texts. When discussing Najm al-Dīn Mukhtār b. Maḥmūd al-Ghazmīnī al-Zāhidī's (d. 1259) *Qunyat al-Munyah li-Tatmīm al-Ghunyah,* he warns his reader that Birgîvî Meḥmet Efendi (d. 1573) considered the text somewhat problematic due to al-Zāhidī's Mu'tazilī leanings, despite the fact that other establishment-affiliated jurists cosndiered the *Qunyah* reliable [Ibid. 2, p. 1357.] Kâtip Çelebi's comment should serve as a good reminder that even the canon that members of the imperial learned hierarchy were expected to consult (the imperial jurisprudential canon) was not a monolithic corpus and that it was a product of internal debates and deliberations among members of the imperial establishment.

The learned hierarchy's "reliable texts" formed a distinctive textual corpus, despite the fact that the imperial jurisprudential canon shared many texts with other Ḥanafī canons across the empire. The distinctive (and in some circles priviledged) position of the imperial jurisprudential canon is reflected in the entry the seventeenth-century biographer and Ḥanafī jurist Muḥammad al-Muḥibbī devotes to Pîr Muḥammed b. Ḥasan el-Üskübî (d. 1620). Al-Muḥibbī states that el-Üskübî's collection of legal rulings was considered important among members of the Ottoman religious-judicial establishment (*Rūmī*s), thus implying that many jurists from the Arab lands did not consult this work.[319] The distinctive status of the imperial canon also emerges from Edirnelî Meḥmed Kâmî's *Mahāmm al-Fuqahā'*. As we have seen in the previous chapter, the work consists of biographical and bibliographical sections, both organized alphabetically. The biographical section includes jurists who constitute part of the genealogy of the imperial establishment within the Ḥanafī school and those who compiled texts considered authoritative by members of the imperial establishment, or, in Kâmî's words, texts that were "accepted among the jurists," i.e. members of the imperial establishment.[320] The bibliographical section, in turn, lists many Ḥanafī works that were not part of the imperial canon. The

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[319] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 1, p. 503. A similar statement appears in el-Üskübî's biography by the Shāfi'ī Muṣṭafá b. Fatḥ Allāh al-Ḥamawī (d. 1711 or 1712). Muṣṭafá ibn Fatḥ Allāh al-Ḥamawī, *Fawa'id al-Irtiḥāl wa-Nata'ij al-Safar fi Akhbār al-Qarn al-Ḥādī 'Ashar* (Beirut: D*ār al-Nawādir,* 2011), pp. 156-157.

[320] Kâmî, *Mahāmm al-Fuqahā'*, pp. 65r-66v.

relationship between the exclusive biographical and the more inclusive bibliographical sections of Kâmî's work reproduces the status of the imperial canon against the backdrop of the much larger body of Ḥanafī texts.

The emergence of the notion of "reliable texts" was also accompanied by the evolution of surveillance mechanisms that were meant to assure that only these texts were consulted and to regulate the establishment-affiliated jurists' reading. Consider, for example, the following ruling by a late sixteenth- early seventeenth-century chief muftī:

> **Question**: In an issue on which there is a controversy between the [different] jurisprudential texts, one of the opinions is preferred and according to it one should rule (*'alayhi al-fatwá*). If it is well known (*taṣrîḥ olunsa*), and the judge knows what is the opinion according to which one should rule (*muftâ bihi*), should a resolution on the basis of another opinion [within the school] be implemented?
>
> **Answer**: No, [even if] a fatwá is issued [in contradiction to the opinions according to which one should rule] or if it is not the choice of the later jurists (*müte'ehhirîn*).[321]

Through this ruling, the chief muftī aimed to instruct his subordinates how to consult the imperial canon. Although there may be discords and inconsistencies among the canonical texts, he expected his subordinates to follow the "preferred opinion," even if it was a minority opinion within the school (i.e. not the choice of the later jurists).

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[321] Ṣun'ullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, p. 42v.

This is also a proper context for mentioning Hezârfen Ḥüseyin Efendi's comment, which we have already discussed briefly in chapter 1. Hezârfen, it should be recalled, explains that one of the main differences between the chief muftī (the *şeyḫülislâm*) and the provincial muftīs (*kenâr müftîleri*) is that the latter are required to cite the texts they consulted for their ruling (*nüḳûl*). Another example is Murâd III's (r. 1574-1595) 1594 imperial edict to the judge and the local appointed muftī of the Anatolian town of Balikesir, perhaps in response to a petition submitted by the judge himself, demanding the proper citation of the jurisprudential works on which he relied (*naḳl yazmak*). According to the submitted complaint, the muftī of Balikesir used to reply by merely stating "yes" or "no" without referring to any legal authority.[322] By explicitly mentioning the texts, the appointed muftīs demonstrated their adherence to the imperial jurisprudential canon of "texts of high repute." What is more, they enabled their superiors but also those who solicited their opinions to inspect their use of the texts. As late as the eighteenth century appointed provincial muftīs were reminded to cite their sources properly. In his appointment deed issued in 1783, the muftī of Sarajevo was urged: "when issuing fatāwá, you must take into consideration the most correct opinions of the Ḥanafī imams—may God have mercy. You must write the sources on which you base your expert-opinions, and must sign

[322] Uriel Heyd, "Some Aspects of the Ottoman Fetvā," *Bulletin of the School of Oriental and African Studies* 32(1) (1969), p. 45.

your fatāwá clearly indicating your name and your position as the Muftī of Sarajevo."[323]

On the other hand, jurists internalized the requirement to consult specific texts. An anonymous mid-seventeenth century jurist, most likely from the central lands of the empire, recorded in his notebook rulings issued by important jurisconsults and other pieces of information he deemed necessary for his daily work. After several pages in which he records legal rulings related to land tenure issues, he lists all the works that a muftī may consult to resolve these issues (see figure 1).[324] The fact that members of different ranks consulted the same books indicates that the emergence of a binding bibliography was a crucial means to instill and reinforce a sense of "establishment consciousness" among members of the imperial learned hierarchy. This is of particular importance given the fact that the Ottoman state and its religious-judicial establishment did not ban the circulation of other jurisprudential texts that were not part of the imperial canon.

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[323] Cited in Selma Zecevic, *On the Margin of Text, On the Margin of Empire: Geography, Identity, and Fatwa-Text in Ottoman Bosnia* (Columbia University: Unpublished Ph.D. dissertation, 2007), p. 87.

[324] The notebook is catalogued according to its various components. The collection is catalogued under Fazil Ahmed Paşa 1581-1. The bibliograhical list appears in p. 105r.

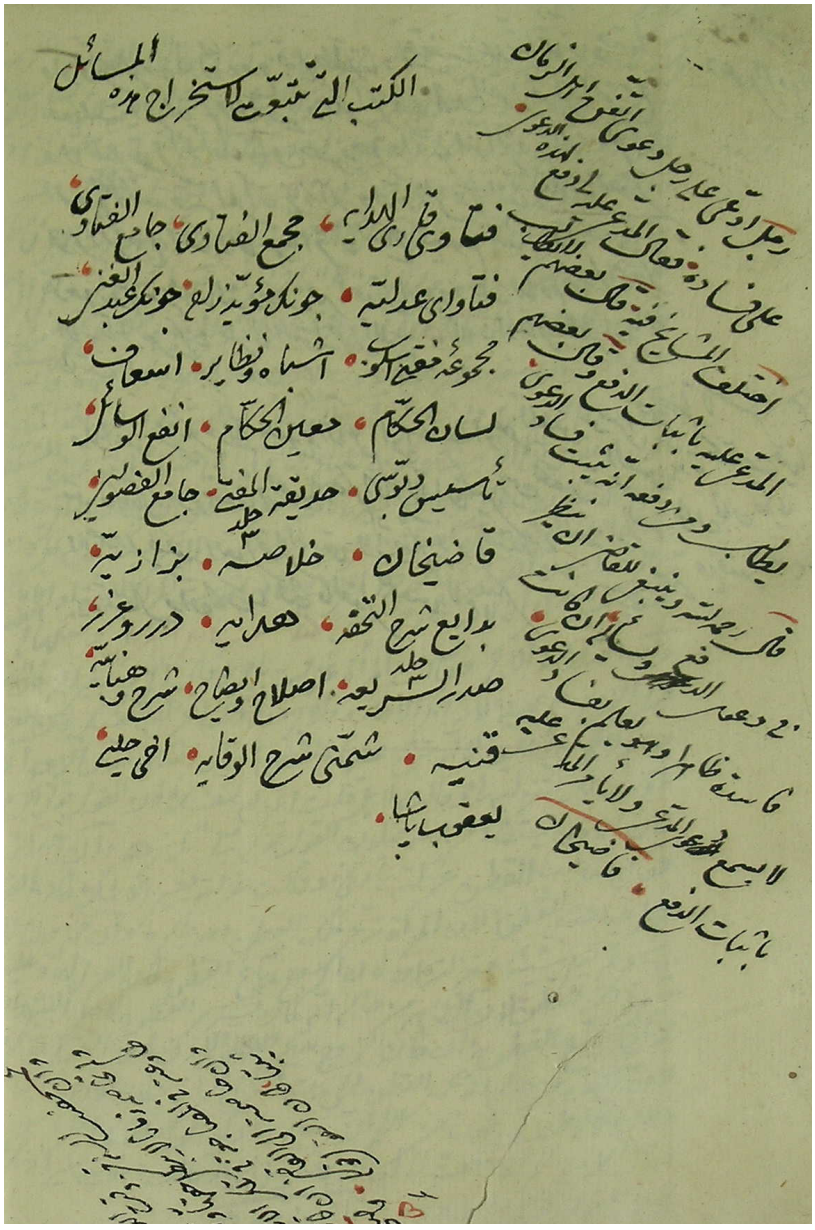

Figure 1:

The list of jurisprudential texts recorded in a notebook of a jurist (presumably a muftī from the core lands of the empire).

The cases discussed so far point to a strong correlation between these notions of canon and canonization and the evolution of a religious-judicial establishment. As we have seen, the edict issued by sultan Süleymân was intended to specify the reading list of the Ottoman madrasah students. In other words, the imperial canon and the procedures that produced it are predicated on the existence of a formally institutionalized learned hierarchy and systematic training paths. It is worth keeping in mind that, as will be explained below, other textual communities across the empire, in which transmission of knowledge was organized differently, also employed different canonization mechanisms.

Before we take a closer look at the canonization mechanism (the subject matter of the next section), it is worth pointing to another possible implication of the emergence of an imperial canon and, equally important, of certain modes of reading it. It seems safe to assume that the pedagogical ideal described by Wheeler was not always practiced. The growing reliance of members of the imperial establishment on the jurisprudential canon and, more specifically, the rendering of these texts into a reservoir for extracting positive legal solutions had their price. Concretely, it appears that it contributed to a decline in the ability of establishment-affiliated jurists to participate in the ongoing debate that took place among their colleagues from across the Arab lands concerning the history of the school and the hierarchy of its

authorities. Let us examine, for instance, a question the sharīf of Mecca sent to the late seventeenth- early eighteenth-cenutry ʻAbd al-Ghanī al-Nābulusī:

> What say you about the school of Abū Ḥanīfah—may God be pleased with him—and his companions Abu Yūsuf and Muḥammad [al-Shaybānī], if all of them are *mujtahid*s in the four fundaments of the law (*uṣūl al-sharʻ*)—the Scripture [the Qur'ān], the Sunnah, the consesus (*ijmāʻ*), and analogy (*qiyās*)—and if each one of them has an independent and different opinion on a single legal issue, how could you call these three schools a single school and how could you say that they are all the school of Abū Ḥanīfah, and say that he who follows Abū Yūsuf in his school (*madhhab*) or he who follows Muḥammad [in his school] is Ḥanafī, for Ḥanafī is he who follows only Abū Ḥanīfah?

More interesting is the remark that al-Nābulusī adds at the end of the question:

> And he [the sharīf]—may God protect him—informed us that he had asked many of the Rūmī jurists (*ʻulamāʼ al-Rūm*) [and] the verifiers (*muḥaqqiqīn*) from among them, and none of them could provide an unequivocal answer.[325]

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[325] ʻAbd al-Ghanī al-Nābulusī, *al-Jawāb al-Sharīf li-l-Haḍrah al-Sharīfah fī anna Madhhab Abī Yūsuf wa-Muḥammad huwa Madhhab Abī Ḥanīfah,* Süleymaniye Library MS Esad Efendi 1762-1, pp. 252r-v.

The question posed by the sharīf to the Rūmī jurists was a fairly basic one, and had been addressed in various treatises and works. Al-Nābulusī's comment may be therefore somewhat overstated and perhaps reflects colleagial tensions among jurists and scholars. But it may contain a grain of truth as well. If so, it elucidates the manner in which establishment-affiliated jurists read the canon. While capable of extracting positive legal solutions, members of the establishment did not know the legal foundations of these solutions. In other words, al-Nābulusī's critique may indicate that the canonization rendered the understanding of the history of specific arguments and debates within the school superfluous. Nevetheless, much more research remains to be done on this issue for understanding the full implication of al-Nābulusī's comment.

Now that we have explored some central aspects of the "canon consciousness" among members of the establishment, we may turn to examine the mechanism whereby texts entered the imperial jurisprudential canon.

A Case Study: The Integration of al-Ashbāh wa-l-Naẓā'ir and One of Its Commentaries into the Ottoman Imperial Canon

Perhaps the most important aspect of any open canon—i.e. a canon that can expand to include new texts—is the mechanisms whereby new texts enter it. These mechanisms may differ from canon to canon. In some cases, for instance, the mechanism is more

formal than in others. In order to illustrate the nature of the canonization mechanism employed by the Ottoman imperial establishment, let us focus on the history of Ibn Nujaym's *al-Ashbāh wa-l-Naẓā'ir* and one of the commentaries on this work.

The prominent Egyptian Ḥanafī Zayn al-Dīn Ibn Nujaym (d. 1563) completed his *al-Ashbāh wa-l-Naẓā'ir 'alá Madhhab Abī Ḥanīfah al-Nu'mān* in 1561. By that time, Ibn Nujaym had already established himself as an accomplished jurist in Egypt and across the empire. The recognition of the author's eminence is manifest in the number of students he taught as well as in the attention his work attracted from his peers and colleagues during his lifetime and in the following decades and centuries.

Al-Ashbāh wa-l-Naẓā'ir, among other works by Ibn Nujaym, drew the attention of senior members of the Ottoman religious-judicial establishment. In his biography of Ibn Nujaym, one of the very few biographies he dedicates to jurists who were not members of Ottoman establishment, Nevʿîzâde Atayî relates that "the deceased şeyḫülislâm Ebû's-Suʿûd approved [this work] (lit. signed it, *imẓâ' eyleyip*), and several Rûmî jurists compiled commentaries [on it] (*ba'ẕ-i 'ulemâ'-i Rûm şarḥ eylemişţir*)."[326] It is not very clear when exactly Ebû's-Suʿûd's (d. 1574) approval of the work occurred. But the procedure Nevʿîzâde's describes seems to resemble the one that al-Bāqānī's work underwent several decades later.

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[326] Nev'îzâde Atâî, *Hadaiku'l-Hakaik fî Tekmileti'ş-Şakaik* in *Şakaik-ı Nu'maniye ve Zeyilleri* (Istanbul: Çağrı Yayınları, 1985), p. 34.

It is worth dwelling on the role of Ebû's-Suʿûd in this procedure. As we have seen, it was the sultan who issued the 1556 edict. Here, however, it is the chief muftī who approves the circulation of the text. It appears therefore that at some point between 1556 and 1574 the authority to approve new canonical texts was transferred from the sultan to the chief muftī. Nevertheless, the logic of the edict was preserved, as both the edict and the new procedure manifest the understanding that the "reliability" of the canonical texts rests on their status within the Ḥanafī tradition, and, equally important, on the endorsement of the sultan or, in later decades and centuries, that of the chief imperial muftī, although apparently in both cases the canonization was the result of a consultation with other senior establishment members, such as the chief justice of Anatolia, the judge of Istanbul and others.

It is not fully clear whether *al-Ashbāh wa-l-Naẓā'ir* was canonized in its entirety. It seems, however, that several members of the Ottoman establishment remained perplexed as to the status of the work in the following decades. This explains the question posed to one of Ebû's-Suʿûd's successors, the late sixteenth- and the early seventeenth-century şeyḫülislâm Hâcî Muṣṭafâ Ṣunʿullah Efendi (served as chief muftī four times: 1599-1601, 1603, 1604-1606, and 1606-1608):

Question: [Do] the issues (*mesâ'il*) [discussed] in the book [entitled] *al-Ashbāh wa-l-Naẓā'ir* correspond (*müvâfik ve 'amal olunmağla*) to the issues [discussed] in the other jurisprudential texts?

Answer: Although [parts of the work] are accepted [as sound] (*maḳbûlu var*), there are also [parts] that are rejected (*merdûdu var*).[327]

It is worth dwelling on the dynamics revealed in this short ruling. In particular, two key issues merit attention. The first is, again, the role the chief imperial muftī played in the canonization process of texts. But the question also elucidates what the role of "canonizing authority" entailed. With the emergence of the şeyḫülislâm as the chief "canonizing authority," chief muftīs received questions concerning opaque passages excerpted from canonical texts.[328] In other words, the canonization was not an event, but rather an ongoing process whereby the canonical status of the work was defended and rearticulated. Secondly, the ruling indicates that the jurisprudential works were not necessarily canonized in their entirety, since only parts of the work are "accepted." This comment poses a serious methodological problem for students of Islamic law in the Ottoman context, for it implies that there may have been some sort of a "division of labor" between the texts within the imperial jurisprudential canon,

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[327] Ṣun'ullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, p. 42v.

[328] Ebû's-Su'ûd Efendi, *Fetâvâ,* Süleymaniye Library MS Ismihan Sultan 226, p. 29r; Ṣun'ullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, p. 53v.

and that jurists could not have used canonical texts arbitrarily.[329] The full implication of this brief statement, however, requires much more research.

Despite, or perhaps because of, Ṣunʿullah Efendi's answer, Ibn Nujaym's work kept troubling jurists in the following decades, and numerous commentaries on this work were penned.[330] At least some of the commentaries also went through a review procedure. At the end of the review by senior members of the imperial establishment they issued an endorsement or approbation. The anonymous seventeenth-century jurist, whose notebook I have already mentioned, recorded in his notebooks the chief muftī Esʿad Efendi's (d. 1624) endorsement (*taqrīẓ*) of Ḥabîb Muṣliḥ al-Dîn Efendi's commentary (see figure 2), as well as other endorsements by şeyḫülislâm Yaḥyâ Efendî (d. 1648), Kemâl Efendî (d. 1620), şeyḫülislâm Bostânzâde Meḥmed Efendi (d. 1597), ḳâḍîasker of Anadolu Ganîzâde Efendi (d. 1626), and those of the judges of Istanbul, Edirne and Mecca.[331]

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[329] The insistence on specific texts may explain an incident related by Ibn Ṭūlūn. An Ottoman official who was sent from the capital to inspect the distribution of lands in the province asked Ibn Ṭūlūn to get him a copy of the al-Zaylaʿī's *Tabyīn,* so he could solve a legal problem he encountered. Shams al-Dīn Muḥammad b. ʿAlī Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah Ghadāt al-Ghazw al-ʿUthmānī lil-Shām, 926-951H: ṣafaḥāt mafqūdah tunsharu lil-marrah al-ūlá min Kitāb Mufākahat al-Khillān fī Ḥawādith al-Zamān li-Ibn Ṭūlūn al-Ṣāliḥī* (Damascus: Dār al-Awā'il, 2002), p. 246-247. The *Tabyīn,* it should be noted, appears in the edict issued by Süleymân. Ahmed and Filipovic, "The Sultan's Syllabus," p. 204.

[330] Kâtip Çelebi, *Kashf al-Ẓunūn,* vol. 1, pp. 98-99.

[331] Fazil Ahmed Paşa 1581-1, pp. 148r-155r. Compare to the function of *taqrīẓ* in fourteenth-century Cairo: Franz Rosenthal, ""Blurbs" (*taqrīẓ*) from Fourteenth-Century Egypt," *Oriens* (27/28) (1981), pp. 177-196.
Issuing endorsements was practiced in Ottoman literary circles as well. For example, Muṣṭafa Ṣafâyî Efendi's (d. 1725) *Nuẖbetül-Âṯâr min Fevâ'idi'l-Eş'âr* (also known as *Teẕkire-i Ṣafâyî*) received the endorsements of eminent scholars, jurists, and literati. Muṣṭafa Ṣafâyî Efendi, *Nuẖbetül-Âṯâr min Fevâ'idi'l-Eş'âr* (Ankara: Atatürk Yüksek Kurumu, 2005), pp. 39-61.

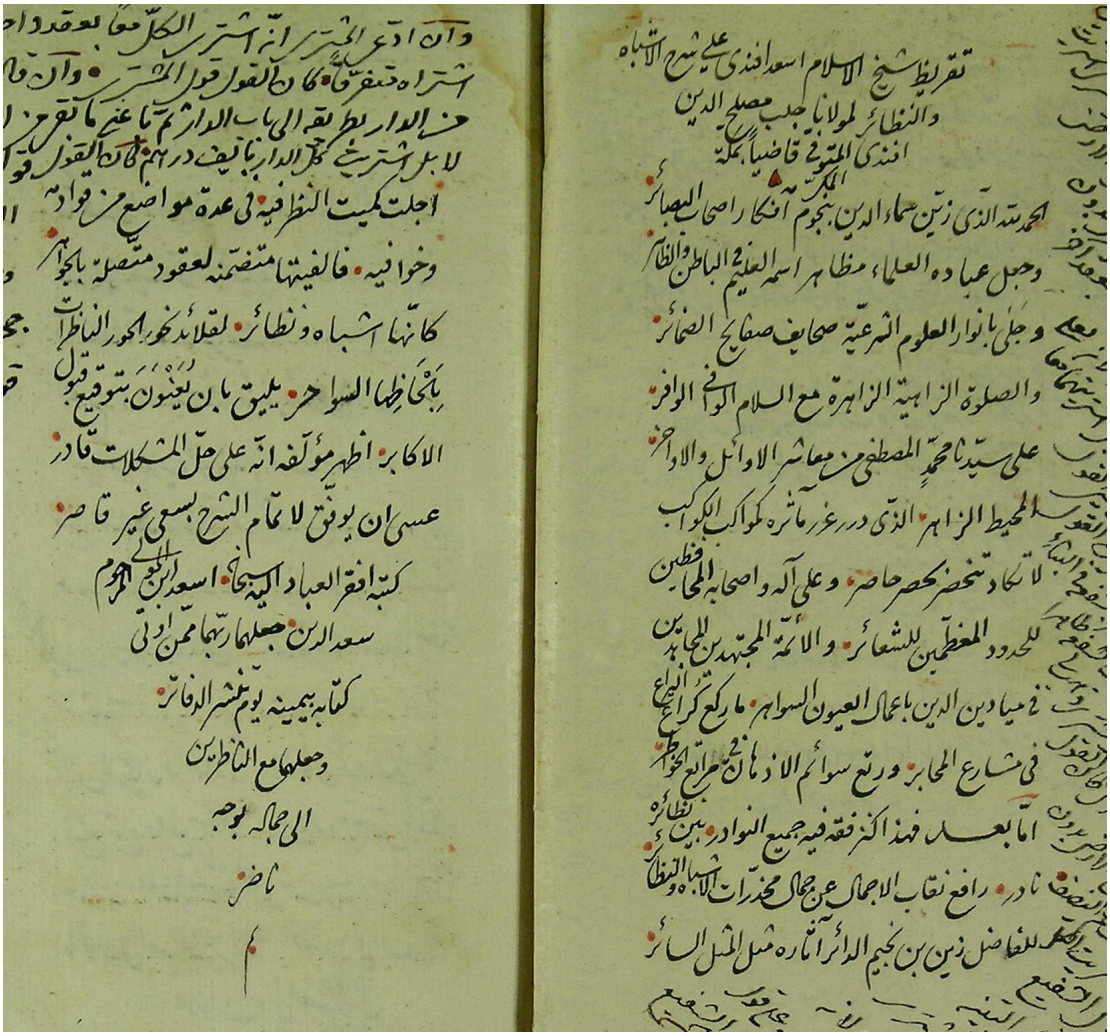

Figure 2:

The chief muftī's endorsement of a commentary on Ibn Nujaym's al-Ashbāh wa-l-Naẓā'ir

It is difficult to assess how common the practice of issuing endorsements and circulating them was. Nevertheless, the fact that our anonymous jurist decided to record them in his notebook may suggest that they were promulgated among

members of the Ottoman establishment. One may wonder if there was something particular about the commentary that spurred the anonymous jurist to keep a personal copy of these documents. It is possible that given the history of *al-Ashbāh wa-l-Naẓā'ir* he wanted to keep records of the senior members' opinion on one of the commentaries, before he started using it. Another possibility is that these documents were issued after a long debate among members of the establishment, the hyperbolic praises in the body of the endorsement notwithstanding. At any rate, these endorsements tell us something about the identity of the "eminent jurists of Rūm." They indicate that a jurisprudential text entered circulation only after several senior members, including the chief imperial muftī, had examined it and issued their approbation. At the end of the procedure, it was apparently the chief muftī who approved a new work, as Nevʿîzâde claims.

To sum up, in light of the history of *al-Ashbāh* and its commentaries, one can draw several conclusions with regard to the development of the imperial jurisprudential canon. First, unlike the canonization of texts in the pre-Ottoman and in the Arab lands, the establishment's canonization was formal and followed strict procedures. Secondly, upon its approval, the text entered circulation, which means that jurists could make use of it, or—if certain restrictions and limitations were imposed—of parts of it. The limitations may vary. As Ṣunʿullah Efendi's ruling states, sometimes the approval was partial. In other cases, as the history of al-Bāqānī's

commentary suggests, it was permissible to use the approved work only for specific purposes or in specific genres. Thus al-Bāqānī's commentary was apparently consulted in other commentaries on the *Multaqá,* but does not appear, to the best of my knowledge, in fatāwá collections.

The Transmission of Texts Outside of the Ottoman Establishment and Their Canonization

So far, we have examined the imperial establishment's perception of canon and the canonization practices it employed. To gain a better appreciation of the unique features of these practices, it would be useful to turn and compare them to those prevailing in the Arab lands of the empire. As I have already suggested, canonization and transmission of knowledge, or more precisely texts, are closely interlocking phenomena. The canonization process is shaped by the nature of the transmission practices and vice versa. It would be thus helpful to say a few words about the scholarly practices of transmission of jurisprudential texts across the Arab provinces in general, and namely in their important learning centers.

As suggested above, the idea of the authoritative texts of the school was not an Ottoman innovation. The early fifteenth-century Ḥanafī ʻAlī b. Khalīl al-Ṭarābulusī, in his *Muʻīn al-Ḥukkām,* dedicates a few passages to the notion of the "books of the school" (*kutub al-madhhab*). Moreover, he even explicitly states that

"at this time" a jurist is allowed to cite these books even if their content was not transmitted to him through a documented chain of transmission.[332] According to al-Ṭarābulusī, the jurists have the exclusive authority to determine the authoritativeness of the texts. In the Ottoman case, by contrast, it was the state (through its learned hierarchy) that determined which text should be considered authoritative. Furthermore, as opposed to the scholarly communities across the Arab lands, in which the chain of transmission still carried more significant baggage, in the Ottoman establishment it was fairly marginal.

The case of Darwīsh Muḥammad b. Aḥmad al-Ṭālūwī (d. 1605) may serve us to illustrate some of the issues at stake. Al-Ṭālūwī was on his maternal side a descendent of the Mamluk amir ʻAlī b. Ṭālū, while his father was one of the Ottoman (Rūmī) troops who conquered Damascus. Despite the military background of both his father and his maternal grandfather, al-Ṭālūwī pursued a scholarly career and studied in Damascus, Cairo and most likely Istanbul. The late sixteenth- early seventeenth-century jurist and chronicler Ḥasan al-Būrīnī says that al-Ṭālūwī was the protégé (*mülâzim*) of Bostânzâde Meḥmet Efendi, the future military justice of Anatolia and chief muftī (served 1589-1592 and 1593-1598), according to the procedures of the imperial learned hierarchy or the "qānūn of the jurists of Rūm." Apparently as the latter's protégé, al-Ṭālūwī entered the Ottoman madrasah system and taught in several

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[332] ʻAlāʼ al-Dīn Abī al-Ḥasan ʻAlī ibn Khalīl al-Ṭarābulusī, *Muʻīn al-Ḥukkām fīmā Yataraddadu Bayna al-Khaṣmayn min al-Aḥkām* (Cairo: Muṣṭafá al-Bābī al-Ḥalabī, 1973), p. 28.

madrasahs until he reached the level of a daily salary of 50 akçe a day. Throughout his career he maintained contacts, some of which close contacts, with some senior members of the Ottoman religious-judicial establishment. Al-Ṭālūwī was eventually removed from his teaching position in the Ottoman madrasah system after he composed satirical poems (*hajw*) against senior members of the imperial learned hierarchy. He succeeded, however, in securing an appointment to the Ḥanafī muftīship of his hometown Damascus.[333]

al-Ṭālūwī left a collection of letters, poems, and documents he exchanged with leading jurisprudents, scholars, and literati. This collection offers an invaluable glimpse into the wide network of contacts al-Ṭālūwī maintained both in the imperial capital and across Greater Syria and Egypt. For our purpose here, al-Ṭālūwī also recorded in the collection some of the permits (*ijāzah*) he obtained from his teachers to transmit their teachings. The *ijāzah*s he records in his collection may assist us in understanding practices of transmission of knowledge in scholarly circles outside the Ottoman religious-judicial establishment. Let us, then, examine three permits al-Ṭālūwī obtained during his long stay in Egypt late in the sixteenth century and on his way back to Damascus.

The first *ijāzah* was granted by the eminent Egyptian Ḥanafī Ibn Ghānim al-Maqdisī, who was also the teacher of Taqī al-Dīn al-Tamīmī, whom we have met in

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[333] al-Ghazzī, *Luṭf al-Samar,* vol. 2, pp. 439-462; al-Būrīnī, *Tarājim,* vol. 2, pp. 201-221; al-Murādī, *ʻUrf,* pp. 46-57.

chapter 2. Ibn Ghānim's *ijāzah* includes a long enumeration of texts he had studied with various teachers and taught al-Ṭālūwī. The list includes scientific and Ḥadīth compilations, such as al-Bukhārī's *Ṣaḥīḥ,* as well as Ḥanafī jurisprudential works, such as al-Marghīnānī's *al-Hidāyah,* Ibn al-Humām's commentary on the *Hidāyah,* and al-Nasafī's *Kanz al-Daqā'iq*. Ibn Ghānim also specifies the intellectual genealogies that linked him to al-Nasafī, al-Marghīnānī, and to Abū Ḥanīfah himself. He claims, moreover, to have studied with several establishment-affiliated jurists, with whom he studies the works of Kemâlpaşazâde.[334]

Al-Ṭālūwī also cites a permit he obtained from another eminent teacher of his, Shams al-Dīn Muḥammad al-Naḥrāwī of al-Azhar. Al-Ṭālūwī studied with al-Naḥrāwī *al-Hidāyah,* Ibn al-Humām's *Fatḥ al-Qadīr,* and apparently other texts. Among the Ḥanafī jurisprudential works al-Naḥrāwī lists in the *ijāzah* he granted al-Ṭālūwī are also *Mukhtaṣar al-Qudūrī,* al-Nasafī's *Kanz al-Daqā'iq* and its commentaries, Ibn al-Sā'ātī's *Majma' al-Baḥrayn* with its commentaries, and 'Abd al-Rashīd al-Bukhārī *Khulāṣat al-Fatāwá.*[335] On his way back from Egypt, al-Ṭālūwī sojourned in Gaza, where he studied with Muḥammad al-Timūrtāshī. Al-Ṭālūwī says that al-Timūrtāshī taught him the "reliable texts of the school" as well as his own works, such as *Tanwīr al-Abṣar.* He also claims that al-Timūrtāshī granted him a

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[334] Darwīsh Muḥammad b. Aḥmad al-Ṭālūwī, *Shāniḥāt Dumá al-Qaṣr fī Muṭarāḥāt Banī al-'Aṣr* (Beirut: 'Ālam al-Kutub, 1983), vol. 2, pp. 52-91.

[335] Ibid., pp. 80-81.

permit to teach the *Tanwīr* in its entirety.[336] The fact that al-Ṭālūwī included the permits in the collection points to the importance he attributed to these permits in his self-fashioning as an accomplished scholar.

The image that emerges from these three permits is corroborated by contemporary and later sources, such as biographical dictionaries and bibliographical autobiographies (known as *thabat* or *mashyakhah*) compiled by both Ḥanafī and non-Ḥanafī jurists. These sources often list the texts the biographee read and mention teachers with whom he read them. In terms of continuity and change, scholarly circles across the Arab lands tended to preserve the medieval practices of transmission of texts from an individual teacher to his student.[337] This aspect of the biographies is of particular relevance if one compares them to the entries in the dictionaries devoted to members of the imperial establishment, such as the *Shaqā'iq* and its supplements. The entries in the latter usually do not mention who the teachers of a certain jurist were during his training path in the imperial madrasah system. On the other hand, the entries often mention who the biographee's patron during his *mülâzemet* period (the period between the biographee's graduation and his appointment to a position within

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[336] Ibid., pp. 118-119.

[337] See Daphna Ephrat, *A Learned Society in a Period of Transition: The Sunni 'Ulama' in Eleventh-Century Baghdad* (Albany: SUNY Press, 2000); Jonathan Berkey, *Transmission of Knowledge in Medieval Cairo* (Princeton: Princeton University Press, 1992). For eighteenth-century Damascus see: Stephen E. Tamari, *Teaching and Learning in 18th-century Damascus: Localism and Ottomanism in an Early Modern Arab Society* (Washington D.C.: Georgetown University, Unpublished Ph.D. dissertation, 1998).

the establishment) was. Furthermore, while the entries of the establishment-affiliated jurists list the texts the biographee compiled and commented on, they rarely mention what texts he studied during his training path.

The differences between the biographies in the biographical literature from the Arab lands and those authored by members of the imperial establishment reflect two scholarly practices. The latter reflect a highly systematized and centralized training system, whereas the former is a product of a less hierarchical and less centralized scholarly community. In the less centralized community the transmission of knowledge and texts required, at least theoretically, individual permits for each transmission, due to the multiple centers of scholarly and jurisprudential authority. This is not to say that scholars and jurists could not read a text without the proper credentials, but their reading and interpretation became more authoritative if they held a permit from an eminent authority. It is for this reason that the permits were intended to circulate and, as contemporary biographers indicate, to remain accessible to other members of the scholarly community. The biographical dictionaries, in turn, increased the access of scholars and jurists to information concerning the credentials of their colleagues, as well as to the books that they were known to have read.

But despite the less systematized nature of transmission in many scholarly circles across the Arab lands (and possibly beyond), it is clear that there was a fairly clear idea of what texts were considered canonical. Yet, while establishment-affiliated

jurists considered "canonical" any texts that gained the approval of the sultan or, later, the chief muftī, the Ḥanafīs across the Arab lands still preserved a canonization mechanism that resembled what Jonathan Brown calls an informal "canonization network." Through such a network, consensus among leading authorities concerning the quality of a specific text was obtained.

The existence of "canon consciousness" among Ḥanafī jurists from the Arab lands is also evident in the discourse they employ regarding the jurisprudential texts. As we have seen, al-Ṭālūwī evokes the concept of the school "reliable books." The discourse of many Arab Ḥanafī jurists surrounding the jurisprudential texts, however, diverges from that of their establishment-affiliated establishment. While most members of the Ottoman establishment referred to all the texts members of the establishment were permitted to consult merely as *mütûn* (or *kütüb*), their counterparts—and more specifically their counterparts who did not hold a state appointment—advanced a different taxonomy of texts. This taxonomy assumes a hierarchy between three groups of texts—the authoritative texts (*mutūn*), the commentaries on the authoritative texts (*shurūḥ*), and collections of legal opinions (*fatāwá*).[338] The hierarchical relation between these texts meant that a jurist was

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[338] For example: Ibrāhīm b. Muḥammad al-Dimashqī al-Ḥanafī (Ibn al-Ṭabbākh), *'Ayn al-Muftī li-Ghayn al-Mustaftī,* Hüsrev Bey Library (Sarajevo) MS 3069, p. 4v; Khayr al-Dīn al-Ramlī, *al-Fatāwá al-Khayriyyah li-Naf' al-Bariyyah 'alá Madhhab al-Imām al-A'ẓam Abī Ḥanīfah al-Nu'mān* (Cairo: al-Maṭbaʿah al-Kubrā al-Miṣriyyah bi-Bulāq, 1882), vol. 2, p. 81. According to al-Ramlī, following al-Ṭarasūsī's *Anfa' al-Wasā'il ilá Taḥrīr al-Masā'il,* the authoritative texts should be given preference over the commentaries and the *fatāwá*.

required to consult the authoritative texts first, then the commentaries, and lastly the legal opinions. As Baber Johansen suggests in his discussion of general and local customs in Ḥanafī jurisprudence, the authoritative texts are used for teaching the "classical" doctrine of the school and preserving its general framework, whereas the commentaries and the fatāwá are intended to apply the general rules of the school to a concrete setting.[339] One should note, however, that the terms should not be taken too literally, as certain fatāwá collections and commentaries were considered "authoritative texts."[340]

At the same time, it is possible that the "canon consciousness" promoted by members of the imperial establishment led Arab Ḥanafīs to more clearly demarcate their canon. As al-Muḥibbī's comment regarding el-Üskübî's collection of legal rulings indicates, Arab Ḥanafīs, especially those who had a fairly good familiarity with the imperial establishment, were aware of the differences between the canons of the various scholarly communities across the empire. Moreover, it appears that there were indirect responses to the "canonization thrust" of the imperial establishment. In his conclusion of the introduction to his *al-Ashbāh wa-l-Naẓā'ir,* Ibn Nujaym states: "I hereby mention the texts I refer to in my jurisprudential compilations (*naqalat*

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[339] Baber Johansen, "Coutumes Locales et Coutumes Universelles aux Sources des Règles Juridiques en Droit Musulman Hanéfite," *Annales Islamologiques* 27 (1993), p. 31.

[340] See Wael B. Hallaq, "From Fatwās to Furū': Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1 (1) (1994), pp. 39-45.

minha mu'allafātī al-fiqhiyyah) that I have collected [by] the end of 968AH (1561)."[341] This statement is followed by a detailed bibliography. Several decades later, al-Bāqānī also includes a comprehensive bibliography of the works he consulted while authoring his commentary.[342] Such comprehensive bibliographical lists were quite rare in jurisprudential texts prior to the sixteenth century.[343] The chronological proximity of Ibn Nujaym's statement (1561) and the imperial edict issued by Süleymân (1565) raises the possibility that these events are related. In other words, it seems likely that Ḥanafī jurists from the Arab lands responded to the establishment's "canonization thrust" by providing their readers with a comprehensive bibliography.

But what is the relationship between these bibliographies and those of the members of the learned hierarchy? This is the focus of the next section.

Jurisprudential Canons throughout the Ottoman Domains

A. A Note on Reconstructing and Comparing Canons

The emergence of a canon is a contingent process and the canon is the outcome of selection, for "other texts knock on the doors of the canon."[344] The inclusion of texts

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[341] Zayn al-Dīn b. Ibrāhīm Ibn Nujaym, *al-Ashbāh wa-l-Naẓā'ir 'alá Madhhab Abī Ḥanīfah al-Nu'mān* (Cairo: Mu'assasat al-Ḥalabī, 1978), p. 17

[342] al-Bāqānī, *Majrá,* p. 2r.

[343] On the issue of bibliographical lists in medieval Islamic works see: Shahab Ahmed, "Mapping the World of a Scholar in Sixth/Twelfth Century Bukhāra: Regional Tradition in Medieval Islamic Scholarship as Reflected in a Bibliography," *Journal of the American Oriental Society* 120 (1) (2000), p. 24.

[344] Halbertal, *People of the Book,* p. 20.

in a canon or their exclusion may be determined by various factors: the compatibility of new texts with other canonical texts (or lack thereof), the eminence of the author, the importance attributed to the text by members of other text-centered communities, etc. The crucial point is that canons often—though not always—emerge through interplay between different communities and groups that seek to mutually differentiate themselves. In short, canons as a phenomenon are often relational and any study of canons must take into account the interdependence between the canons as an influential factor in their formation. For this reason, it would be fruitful to look at multiple contemporary canons comapratively.

But how are we to determine what text is considered canonical? In some rare cases that canon is articulated in a treatise or in an edict, but usually this is not the case. Moreover, in many cases canonical texts coexist with many other texts that are not considered canonical. To this end, one has to identify the texts that enjoy special status in a specific community or in the view of a particular scholar. In recent years, several studies have attempted to reconstruct the bibliographical (and intellectual) worlds of Muslim jurists and scholars during the medieval and the early modern

periods.[345] What distinguishes these studies from other works that focus on libraries and book collections is that they reconstruct a scholar's intellectual world on the basis of a text (or texts) he produced.[346] In other words, these studies privilege the texts scholars used over the works they happened to possess in their library. This is not to say, of course, that jurists and scholars did not read other texts. But it is clear that the texts they cite in their works carried, in their view, particular symbolic meaning for them and for the scholarly circle to which they belonged.

Shahab Ahmed's study of an annotated bibliography compiled by a medieval Central Asian scholar merits special mention here, since it offers a promising methodological approach for reconstructing and analyzing the bibliography scholars consulted. Ahmed pays special attention to the chronological and geographical dimensions of the bibliography. By doing so, he is able to demarcate a specific scholarly tradition that prevailed in twelfth-century Central Asia. On the other hand,

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[345] Ahmed, "Mapping the World of a Scholar in Sixteenth/Twelfth Century Bukhārā," pp. 24-43; Etan Kohlberg, *A Medieval Muslim Scholar at Work: Ibn Ṭāwūs and his Library* (Leiden: Brill, 1992); Stephen E. Tamari, *Teaching and Learning in 18th-Century Damascus,* ch. 5. In addition to these studies are works that focus on curricula, mostly in early modern Islamic societies: Ahmed and Filipovic, "The Sultan's Curriculum;" Maria Eva Subtelny and Anas B. Khalidov, "The Curriculum of Islamic Higher Learning in Timurid Iran in the Light of the Sunni Revival under Shah-Rukh," *Journal of the American Oriental Society* 115 (2) (1995), pp. 210-236; Francis Robinson, "Ottoman-Safawids-Mughals: Shared Knowledge and Connective Systems," *Journal of Islamic Studies* 8(2) (1997), pp. 151-184; Selma Zecevic, *On the Margin of Text,* pp. 246-257.

[346] On Medieval and Ottoman libraries: Ulrich Haarman, "The Library of a Fourteenth Century Jerusalem Scholar," *Der Islam: Zeitschrift für Geschichte und Kultur des islamischen Orients* 61 (1984), pp. 327-333; Daniel Crecelius, "The Waqf of Muhammad Bey Abu al-Dhahab in Historical Perspective, *International Journal of Middle East Studies* 23 (1) (1991), pp. 57-81; Orlin Sabev, "Private Book Collections in Ottoman Sofia, 1671-1833," *Etudes Balkaniques* 1 (2003), pp. 34-82.

precisely because the study concentrates on a bibliography, all the texts included therein appear to have similar status.[347]

While drawing on Ahmed's and others' approach, I am interested in introducing into my analysis the "relative weight" different texts have in relation to each other. There are several ways to deduce the "weight" or "importance" of a certain work. In this study, I have decided to concentrate on the frequency with which different jurisprudential works appear in a given compilation. My assumption is that the frequency with which a work is cited is a good indicator to its importance. "Importance," however, does not necessarily imply agreement with the legal argument advanced in the cited work. A text may be frequently cited in order to repeatedly debunk its author's argument. Nevertheless, the denunciation of an argument reflects the importance of this work, albeit in a somewhat negative way, in a certain scholarly or jurisprudential tradition.

In order to calculate the relative frequency with which a certain work is cited in relation to others, it is necessary to determine the ratio between the number of times a text is cited and the total number of citations in the entire compilation. Granted, there are variations in the frequency with which a work is cited in different chapters and in different contexts throughout a compilation. In addition, at least as far as the Ottoman chief muftīs are concerned, one must keep in mind Ṣunʿullah Efendi's

[347] Ahmed, "Mapping the World."

ruling and should not assume that the texts were canonized in their entirety. Nevertheless, the large number of citations analyzed enables us to get a sense of what texts were considered more reliable and/or more significant. It certainly leaves room for further, more nuanced examination.

My reconstruction of Ḥanafī jurisprudential canons and the dynamics between them is centered on two mid seventeenth-century fatāwá collections. It would be therefore useful to dwell on the methodological challenges that these collections pose and on the implications of focusing on fatāwá collections for reconstructing jurisprudential canons in the Ottoman context.

The first major challenge concerns generic conventions. As the case of al-Bāqānī's commentary suggests, canonical works are not necessarily cited in all genres. While al-Bāqānī's commentary is cited by other commentators on *Multaqá al-Abḥur*, the work is not cited at all in fatāwá collections. To put it somewhat differently, the canon is wider than what a specific genre may suggest. But even in the realm of a specific genre—in this case, the collections of legal rulings—it is worth paying attention to differences between the collections of the imperial chief muftī (and other muftīs who were members of the imperial establishment) and muftīs who did not hold a state appointment, such as the collection of the Palestinian muftī Khayr al-Dīn al-Ramlī, which will be further examined below.

One of the main methodological problems when dealing with fatāwá collections, and especially with collections from the late sixteenth century onward, is that the fatāwá collections of state-appointed muftīs from the core lands of the empire, the chief jurisconsults' included, and the collections of their counterparts who did not hold a state appointment follow different conventions of citing references. While the seventeenth-century collections by establishment-affiliated muftīs usually mention systematically the jurisprudential texts on which they relied in their ruling at the end of their answer, muftīs such as al-Ramlī do not. Furthermore, while the establishment-affiliated muftīs usually cite a given text in support of their ruling, their Arab counterparts may attach to their answer a detailed analysis of the different available opinions within the Ḥanafī school (and at times in other schools). In my analysis of al-Ramlī's collection, I assume that regardless of the Palestinian muftī's approval or disapproval of the texts he cites, the fact that he decided to mention specific works renders them important in his view. That said, I try to qualify this statement by looking to several instances in which al-Ramlī cites the opinions of the famous chief muftī Ebû's-Suʿûd Efendi.

Beyond the differences between the collection of the chief muftīs and that of their counterparts from the Arab lands in terms of the conventions they follow, it is worth reiterating that each collection is essentially unique, as it includes specific

questions posed to the muftī in a concrete setting.[348] Therefore, the muftīs do not necessarily address the same jurisprudential issues. Nevertheless, an examination of the entire collection is intended to diminish the importance of the individual question, and point to more general trends.

The issue of change over time is central to any study of canons and canonization. The focus on roughly contemporary collections, admittedly, does not elucidate this aspect of canon formation. Nevertheless, I aim at emphasizing the fact that these collections and the jurisprudential canons they represent are rooted in a specific moment, by looking at sources (not exclusively fatāwá collections) from earlier and later periods. Although the picture for earlier and later periods is quite patchy at this stage, it still provides interesting insights about the mid seventeenth-century canons.

B. Minḳarîzâde Yaḥyâ Efendi and Khayr al-Dīn al-Ramlī

Two collections form the basis of this section - Minḳarîzâde Yaḥyâ Efendi's and Khayr al-Dīn al-Ramlī's. Minḳarîzâde Yaḥyâ Efendi (served between 1662-1674) was one of the two seventeenth-century imperial muftīs (the second was his pupil Çatalcalı ʿAlî Efendi) who had the longest term in the office. This was a remarkable achievement in a century during which most şeyḫülislâms were replaced after much

[348] See appendix I.

shorter tenures. Minḳarîzâde reached the upper echelon of the imperial establishment from its lower ranks. This fact is of particular importance given the strong hold of the Saʿdeddîn family and their clients during the first decades of the century. As Derin Terzioğlu and Baki Tezcan have suggested, Minḳarîzâde's rise and long tenure should be attributed to his close contacts with the court, and especially with the sultan's closer advisor and charismaric preacher Vânî.[349]

Some aspects of al-Ramlī's biography have already been discussed in chapter one and will be further explored in the fifth chapter. Here it suffices to remind that the Palestininan muftī represents a group of prominent muftīs who issued their legal opinions without holding a state appointment. Another signficant biographical detail is that al-Ramlī was educated and trained in his hometown of Ramlah and in Cairo. His educational background is significant for explaining some aspects of his bibliography, as we shall see below.

But whose canons do these two muftīs represent? In the case of the chief muftī's collection, answering the question is a somewhat easier task. As the head of the imperial religious-judicial establishment, he served as the "gatekeeper of the canon." As such, he set, at least theoretically, the standard for his subordinates. It is still unclear, however, whether the frequency with which a work is cited by the

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[349] Derin Terzioğlu, *Sufi and Dissident in the Ottoman Empire: Miyāzī-i Miṣrī* (Cambridge: Harvard University, Unpublished Ph.D. dissertation, 1999), p. 231; Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge: Cambridge University Press, 2010), pp. 216-217.

şeyḫülislâm matches the frequency in works by other members of the imperial religious-judicial establishment. Al-Ramlī's collection poses more serious problems. The Palestinian muftī was clearly a prominent figure in the jurisprudential landscape of Greater Syria and even across the empire, and he represents a different set of scholarly and jurisprudential traditions within the Ḥanafī school, since he was not affiliated with the Ottoman religious-judicial establishment. Therefore, it is more difficult to assess the number of jurists who followed exclusively al-Ramlī's choices. On the other hand, the emergence of a provincial, Greater Syrian "Ottomanized" canon (see below) indicates that al-Ramlī and other eminent muftīs who did not hold a state appointment were quite influential.

The institutional differences between these muftīs as well as their affiliation to different branches within the Ḥanafī school situate al-Ramlī's collection and that of his contemporary chief muftī Minḳarîzâde Efendi at two ends of a "continuum" within the Ḥanafī school in the Ottoman domains. This "continuum" is helpful for it allows us to place on it many jurists, such as the aforementioned al-Ṭālūwī, who were trained in both traditions or at least were appointed to the muftīship and other religious and scholarly positions by the Ottoman state. As we shall shortly see, their positions contributed to (or were perhaps the result of) the development of yet another canon.

The bibliographies of al-Ramlī and Minḳarîzâde Efendi include more than 100 items each and there are included in appendix V. Here, however, my intention is to offer a brief analysis and a comparison of these bibliographies.

Even a quick glance at these bibliographies reveals that they share many texts. Both jurists cite extensively post-classical texts, most of which were compiled between the eleventh and the fifteenth centuries, such as Ibn al-Bazzāz's *al-Fatāwá al-Bazzāziyyah,* ʻĀlim b. ʿAlāʾ al-Anṣārī al-Dihlawī's (d. 1351) *al-Fatāwá al-Tātārkhāniyyah,* Shams al-A'imma b. Bakr Muḥammad b. Abī Sahl Aḥmad al-Sarakhsī's (d. 1056) *al-Mabsūṭ fī al-Furūʿ*, Iftikhār Ṭāhir b. Aḥmad b. ʻAbd al-Rashīd Ṭāhir al-Bukhārī's (d. 1147) *Khulāṣat al-Fatāwá,* Burhān al-Dīn Maḥmūd b. Aḥmad b. al-Ṣadr al-Shahīd (d. 1174)'s *al-Dhakhīrah al-Burhāniyyah,* and al-Ḥasan b. Manṣūr al-Ūzjandī's (d. 1196) *Fatāwá Qāḍīkhān*.

Several texts by Ḥanafī jurists who lived and wrote in the Mamluk realms are represented in both bibliographies as well. Among these are Fakhr al-Dīn ʻUthmān b. ʻAlī al-Zaylaʿī's (d. 1342 or 3) *Tabyīn al-Ḥaqāʾiq fī Sharḥ Kanz al-Daqāʾiq* (a commentary on al-Nasafī's *Kanz al-Daqāʾiq*), Najm al-Dīn Ibrāhīm b. ʻAlī b. Aḥmad al-Ḥanafī al-Ṭarsūsī's (d. 1357) *Anfaʿ al-Waṣāʾil ilá Taḥrīr al-Masāʾil*, Akmal al-Dīn Muḥammad b. Maḥmūd al-Bābartī's (d. 786/1384) *al-ʿInāyah fī Sharḥ al-Hidāyah* (a commentary on al-Marghīnānī's *Hidāyah*), and Muḥammad b. ʻAbd al-Wāḥid b. al-Humām's (d. 1459 or 60) *Fatḥ al-Qadīr* (his famous commentary on *al-Hidāyah*).

In addition to these texts, both muftīs cite sixteenth-century texts that were penned in the Arab provinces of the empire, such as Ibn Nujaym's *al-Baḥr al-Rā'iq* (another commentary on al-Nasafī's *Kanz al-Daqā'iq*) and his al-*Ashbāh wa-l-Naẓā'ir,* and Muḥammad al-Timūrtāshī's (d. 1595) *Tanwīr al-Abṣār* and *Minaḥ al-Ghaffār* (a commentary on the *Tanwīr*). Moreover, both muftīs cite 'Alī al-Maqdisī (d. 1574), possibly his commentary on *Kanz al-Daqā'iq* by al-Nasafī.

Furthermore, there are several works that were authored by jurists from the core lands of the empire and feature in both bibliographies. Molla Hüsrev's (d. 1480) *Durar al-Ḥukkām fī Sharḥ Ghurar al-Aḥkām* is one example. Another example is *al-Īḍāḥ fī Sharḥ al-Iṣlāḥ fī al-Fiqh al-Ḥanafī,* a jurisprudential manual by the famous chief muftī Kemâlpaşazâde (d. 1534), although neither Minḳarîzâde nor al-Ramlī cite this work frequently.[350] Both muftīs also cite the the famous şeyḫülislâm Ebû's-Suʿûd Efendî, most likely his legal rulings. Nevertheless, it is important to stress that al-Ramlī does not always cite Ebû's-Suʿûd Efendî approvingly, but rather mentions the latter's opinion as one of the possible opinions within the school.[351]

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[350] Another example is the collection of legal issues (*masā'il*) authorted by Mu'ayyadzâde of Amasya (d. 1516). Müeyyedzâde 'Abd al-Raḥman al-Amâsî, *Majmū'at al-Masā'il,* Süleymaniye Library MS Nafiz Paşa 16. It is noteworthy that both *Al-Durar* and *al-Īḍāḥ* appear in Ibn Nujaym's bibliography. Ibn Nujaym, *al-Ashbāh,* p. 18.

[351] al-Ramlī, *al-Fatāwá al-Khayriyyah,* vol. 1, p. 48. For other cases in which al-Ramlī endorses the famous Grand Muftī's opinion see: Ibid., vol. 1, p. 19, 20; vol. 2, p. 24, 95-96. See also: Haim Gerber, *Islamic Law and Culture 1600-1840* (Leiden: Brill, 1999), pp. 60-64.

Surprisingly, several texts that are known to be part of the imperial canon in the mid-seventeenth century are absent from Minḳarîzâde's bibliograhpy. Perhaps the most striking example in this respect is Ibrāhīm al-Ḥalabī's *Multaqá al-Abḥur* (the work does appear in al-Ramlī's bibliography). Other examples are ʻAlī b. Khalīl al-Ṭarābulusī's (d. 1440 or 1441) *Muʿīn al-Ḥukkām fīmā Yataraddadu al-Khiṣmayn min al-Aḥkām,* ʻAbdurrahman b. ʻAlî Müeyyedzâde's (d. 1516) *Majmūʿat al-Masā'il,* Yaʿqūb Paşa's (d. 1486) *Ḥashiyat Sharḥ al-Wiqāyah* (these works are cited only by al-Ramlī), and Aḫî Çelebi's (d. 1499) gloss on *Sharḥ al-Wiqāyah.*[352]

At the same time, the bibliographies differ in two substantial points. First, there is a difference, at times great difference, with the frequency which Minḳarîzâde and al-Ramlī consult works that appear in both bibliographies (see figure 3). Minḳârîzâde cites *Fatāwá Qāḍīkhān*, just to mention one example, almost twice as frequently as al-Ramlī does. On the other hand, al-Ramlī consulted much more frequently the works by sixteenth-cenutry jurists from the Arab lands, such as Ibn Nujaym and al-Timūrtāshī.

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[352] The last two works appear in the notebook of the early-mid seventeenth-century jurist discussed above.

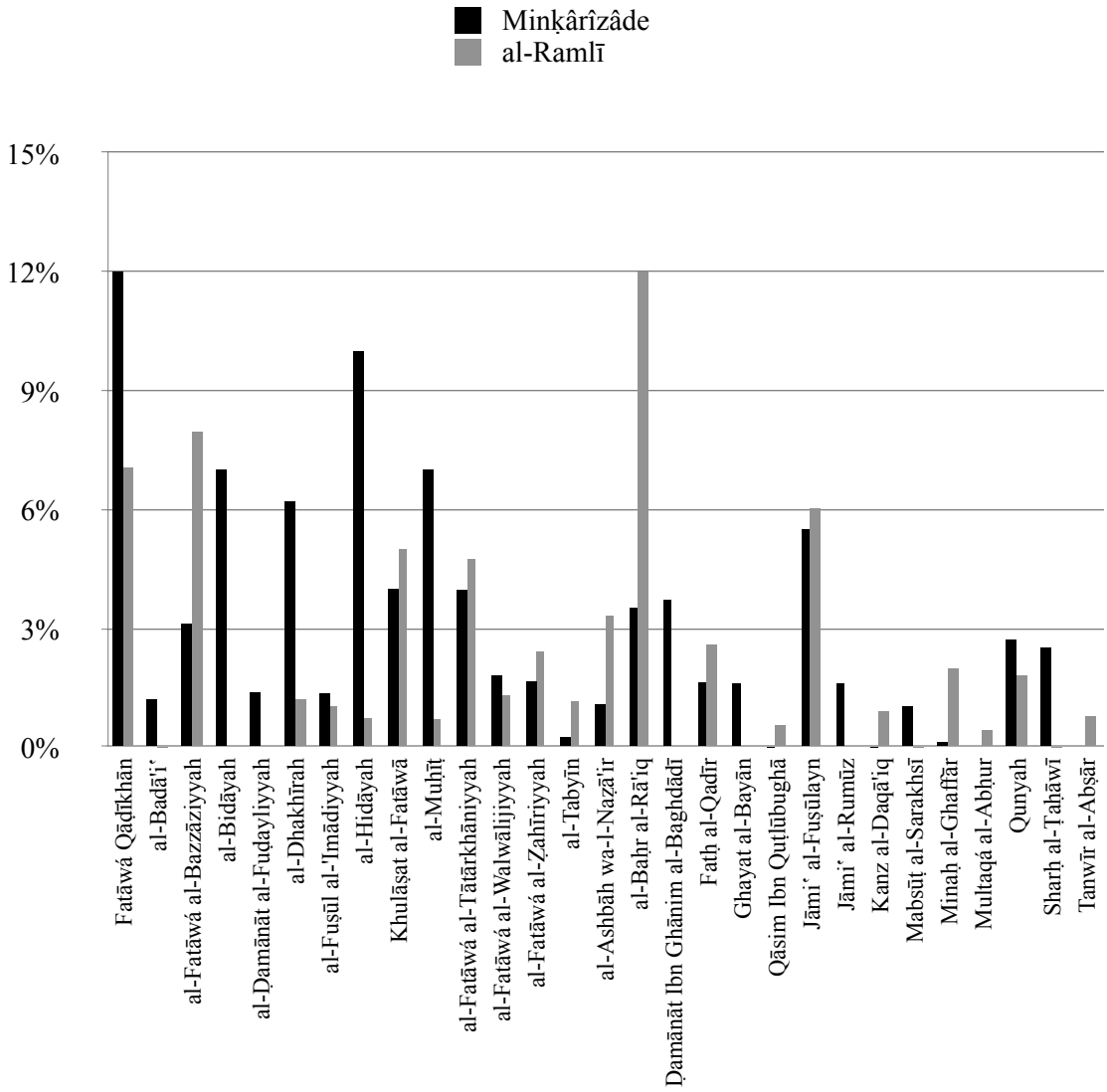

Figure 3:

The frequency in which different jurisprudential texts are cited in Minḳarîzâde Yaḥyâ Efendi's and Khayr al-Dīn al-Ramlī's collections.

The second significant difference, as figure 3 shows, concerns the composition of the bibliographies, that is, the jurisprudential texts that each muftī

consults in addition to the shared texts. This difference reflects the diverse textual, interpretative, and jurisprudential traditions within the Ḥanafī school. A good example to illustrate this difference is the works of the fifteenth-century jurist Qāsim b. Quṭlūbughā. As we have already seen in the last chapter, the *ṭabaqāt* works compiled by members of the Ottoman religious-judicial establishment throughout the sixteenth century excluded Ibn Quṭlūbughā from the intellectual genealogy of the imperial establishment. Although by the mid-seventeenth century members of the imperial establishment began consulting some of Ibn Quṭlūbughā's works (such as *Taṣḥīḥ al-Qudūrī*), other works were not included in the imperial jurisprudential canon. Miṅkarîzâde, for instance, cites the *Taṣḥīḥ* only once, while al-Ramlī refers more frequently to the work, to Ibn Quṭlūbughā's fatāwā collection,[353] and to his gloss on Muẓaffar al-Dīn Aḥmad b. ʻAlī al-Baghdādī Ibn al-Sāʿātī's (d. 1293) *Majmaʿ al-Baḥrayn*. al-Ramlī's much more frequent consultation of Ibn Quṭlūbughā's works points to the prominence of the fifteenth-century jurist in Ḥanafī scholarly circles across the Arab lands well into the seventeenth century. Another similar example is Saʿd al-Dīn al-Dayrī (d. 1462), an acclaimed Ḥanafī jurist in fifteenty-century Cairo, whose works apparently did not enter the Ottoman imperial canon.[354]

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[353] Ibn Nujaym also owned a copy of Ibn Quṭlūbughā's *fatāwā* collection.

[354] On Sa´d al-Dīn al-Dayrī see f.n. 44 above.

Al-Ramlī's bibliography also mirrors his connections with other sixteenth- and seventeenth-century Ḥanafī jurists who operated in the Arab provinces of the empire, and particularly in Cairo, such as Muḥammad b. 'Umar Shams al-Dīn b. Sirāj al-Dīn al-Ḥānūtī (d. 1601). Al-Ḥānūtī was an eminent jurist in Cairo and was described by the seventeenth-century historian and biographer al-Muḥibbī as the "head of the [Ḥanafī] school in Cairo after the death of the shaykh 'Alī b. Ghānim al-Maqdisī." Moreover, al- Ḥānūtī was famous for his legal rulings, which were collected and consulted by "jurists in our time [i.e. the seventeenth century]."[355] Other fatāwá collections consulted exclusively by al-Ramlī are Muḥammad al-Timūrtāshī's and Muḥammad Amīn al-Dīn 'Abd al-ʿĀl's. The latter was an influential jurist in the sixteenth century and al-Timūrtāshī's teacher. Moreover, it is worth mentioning that 'Abd al-ʿĀl's son, Aḥmad, was al-Ramlī's teacher.[356] Another eminent jurist that al-Ramlī cites is his contemporary Ḥasan b. 'Ammār al-Shurunbulālī (d. 1659).[357] Al-Shurunbulālī was one of—if not the most—distinguished Ḥanafī scholar in al-Azhar in the seventeenth century, the teacher of many Ḥanafī jurists from across Egypt and Greater Syria, and the author of several influential works and commentaries.[358]

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[355] al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, pp. 76-77.

[356] al-Ramlī, *al-Fatāwá al-Khayriyyah,* vol. 1, p. 3.

[357] Ibid.*,* vol. 1, p. 126,183.

[358] On al-Shurunbulālī see: Nicola Melis, "A Seventeenth-Century Ḥanafī Treatise on Rebellion and *Jihād* in the Ottoman Age," *Eurasian Studies* 11/2 (2003), pp. 217-218.

While these three jurists loomed large in the intellectual and jurisprudential landscape of the Arab lands in the seventeenth century, they do not appear in Minḳarîzâde's bibliography. Al-Ramlī, on the other hand, sought to establish the authority of some of his rulings by referring to works and rulings of eminent Arab Ḥanafīs, whose authority in turn rested on their scholarly credentials and on their affiliation with a specific chain of transmission within the Ḥanafī school. Al-Ramlī, it should be stressed, was not the only one to refer to his teachers in his jurisprudential writings. The late seventeenth-early eighteenth-century ʿAbd al-Ghanī al-Nābulusī, for example, cites his father Ismāʿīl al-Nābulusī, a renowned jurist in his own right, in one of his treatises.[359] In other words, it seems that many Ḥanafīs from the Arab lands sought to establish their authority on the basis of their studies with well-known Ḥanafīs from across the Arab lands.

On the other hand, many items that Minḳarîzâde tends to cite quite frequently are absent from al-Ramli's bibliography. Among these works one can mention *Ghāyat al-Bayān wa Nādirat al-Aqrān* by Qiwām al-Dīn Amīr Kātib b. Amīr ʿUmar al-Itqānī (d. 1356),[360] *Jāmiʿ al-Rumūz*, a popular commentary on *al-Niqāyah* by Shams al-Dīn

[359] Barbara Rosenow von Schlegell, *Sufism in the Ottoman Arab World: Shaykh ʿAbd al-Ghanī al-Nābulusī (d. 1143/1731)* (UC Berkeley: Unpublished Ph.D. dissertation, 1997), p. 42.

[360] This work also appears in the fermân issued by Süleymân. Ahmed and Filipovic, "The Sultan's Syllabus," p. 203.

Muḥammad b. Ḥusām al-Dīn al-Quhistānī (d. 1554),[361] and *Ḍamānāt al-Fużayliyyah* by Fużeyl Çelebi b. ʿAlî b. Aḥmad al-Jamâlî Zenbillizâde (d. 1583). Minḳarîzâde also consulted the works and rulings of other members of the religious-judicial establishment, such as the rulings of Çivizâde Efendi (d. 1549), who served as chief muftī; an unspecified work by Ankaralı Zekeriyâ Efendi (d. 1592); and *Lawāzim al-Quḍāt wa-l-Ḥukkām fī Iṣlāḥ Umūr al-Anām* by his contemporary Muṣṭafá b. Muḥammad b. Yardim b. Saruhān al-Sirūzī al-Dīkhī (d. 1679).

The works compiled by Ghiyāth al-Dīn Abū Muḥammad Ghānim b. Muḥammad al-Baghdādī (d. 1620) deserve particular attention in this context. Ibn Ghānim was not a graduate of the Ottoman madrasah system, but he was known for his scholarly excellence.[362] Moreover, he compiled several works that entered the imperial jurisprudential canon, the most important of which were his *Ḍamānāt* (known as *Ḍamānāt Ghānim al-Baghdādī*) and his *Tarjīḥ al-Bayānāt*. It should be noted that despite the fact that Ibn Ghānim compiled his works in one of the Arab provinces, al-Ramlī does not cite his Baghdadi colleague's work. This fact indicates that al-Ramlī should not be taken as a representative of the textual traditions of the

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[361] al-Quhistānī's is one of the very few texts that were compiled in the sixteenth century in Central Asia (in Bukhara) and entered the Ottoman jurisprudential canon. On al-Quhistānī see: Muḥammad b. ʻAbd al-Raḥmān al-Ghazzī, *Dīwān al-Islām* (Beirut: Dār al-Kutub al-ʻIlmiyyah, 1990), vol. 4, pp. 35-36; ʻAbd al-Ḥayy b. Aḥmad b. al-ʻImād, *Shadharāt al-Dhahab fi Akhbār man Dhahab* (Beirut: Dār al-Kutub al-ʻIlmiyya, 1980-), vol. 8, p. 300.

[362] Kâtip Çelebi, *Fez̲leke-i Tarîh̲,* vol. 2, pp. 4-5.

Arab lands in general. Instead, he seems to be a representative of a particular, local tradition, one of several that coexisted throughout the empire's Arab provinces.

Juxtaposing Minḳarîzâde's and al-Ramlī's collections and their respective bibliographies also sheds light on the relationship between the two muftīs. Minḳarîzâde cites al-Ramlī's opinion in several instances. Although it is difficult to date when Minḳarîzâde asked al-Ramlī for his opinion, or at least heard of it, the fact that the latter is called "Khayr al-Dīn al-Ghazzī" may suggest that al-Ramlī resided in the Palestininan city of Gaza at the time, that is, before settling down in his hometown of Ramlah. The contacts between al-Ramlī and Minḳarîzâde are corroborated by other sources as well, as we shall see in chapter 5. On the other hand, al-Ramlī does not cite the chief muftī's rulings. At any rate, the fact that the chief muftī consults and bases his ruling on those of his Palestinian counterpart is significant for appreciating the latter's position within the imperial framework. Furthermore, Minḳarîzâde's reliance on al-Ramlī questions the dichotomy between state-appointed muftīs and their colleagues who did not hold a state appointment. At

any rate, in the following decades, some of al-Ramlī's rulings entered the imperial jurisprudential canon, as the collections of later chief muftīs indicate.[363]

Finally, a major difference between the two bibliographies is al-Ramlī's familiarity with and reference to the arguments and opinions of prominent Shāfiʿī jurists and muftīs. In his rulings, al-Ramlī occasionally cites or responds to the rulings of prominent Shāfiʿī jurists and muftīs, such as Muḥyī al-Dīn Yaḥyá b. Sharf al-Nawawī (d. 1277), Taqī al-Dīn ʻAlī al-Subkī (d. 1355), Zakarīyá al-Anṣārī (d. 1520), and Aḥmad b. Aḥmad al-Ramlī (d. 1563). The reference to Shāfiʿī jurists may be attributed to the dominance of that school in the Arab lands, as opposed to the situation in the central lands of the empire. Moreover, as Kenneth Cuno and others have pointed out, al-Ramlī himself was of Shāfiʿī background, a fact that may account for his close familiarity with the arguments of specific jurists.[364]

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[363] See, for example: Feyżullah Efendi, *Fetâvâ-i Feyżiyye ma'an-Nuḳûl* (Istanbul: Dar üt-Tıbaat ül-Amire, 1266 [1850]), p. 11, 17, 199, 203-204.
This dichotomy emerges, for instance, from the biographical dictionaries dedicated to members of the imperial establishment. As Baki Tezcan notes, "[a]lthough al-Muḥibbī included a large number of Ottoman scholars, judges, and administrators in his biographical dictionary, al-Muḥibbī himself is not recorded in the biographical dictionary of seventeenth-century Ottoman scholars […]." The dictionaries also contribute to a somewhat misleading image of the relations between the jurists. Thus Tezcan concludes that while "scholars in the periphery looked up to the center, those in the imperial capital seem to have ignored the intellectual production in the provinces." While it is true that jurists from the Arab lands did not reach the higher echelon of the imperial establishment and in many ways, from the capital's vantage point, were marginalized, the analysis of the bibliographies indicates that members of the establishment did not ignore the production of their provincial colleagues.
Baki Tezcan, "Dispelling the Darkness: The Politics of 'Race' in the Early Seventeenth-Century Ottoman Empire in the Light of the Life and Work of Mullah Ali," in Baki Tezcan and Karl Barbir (eds.), *Identity and Identity Formation in the Ottoman World: A Volume of Essays in Honor of Norman Itzkowitz* (Madison: University of Wisconsin Press, 2007), p. 76.

[364] Kenneth Cuno, "Was the Land of Ottoman Syria *Miri* or Milk? An Examination of Juridical Differences within the Ḥanafī School, *Studia Islamica* 81 (1995), pp. 134-137. See also chapter 5.

C. The Emergence of the Greater Syrian "Ottomanized" Canon

So far, we have looked at the ends of the "continuum." Nevertheless, as has been already pointed out in chapter 1, there were also state-appointed provincial muftīs. Across Greater Syria, these muftīs were appointed from amongst the notable Greater Syrian jurists at least from the early seventeenth century (and in some cases possibly earlier). What follows is an attempt to outline in very broad strokes the seventeenth-century "canon" of Greater Syrian state-appointed provincial muftī. This is, to be sure, a preliminary attempt, but even this sketchy examination reveals interesting dynamics. To illustrate my point, my discussion is based on the commentary on *Multaqá al-Abḥur* compiled by the Damascene state-appointed muftī 'Alā' al-Dīn al-Ḥaṣkafī (d. 1671). As has been argued, it seems that the jurisprudential bibliography varies from genre to genre. Suffice is to mention again the example of al-Bāqānī's commentary, which is not mentioned in the fatāwá collections. Nevertheless, the patterns that emerge from an analysis of the works al-Ḥaṣkafī mention in the commentary convey a sense of his intellectual world and his position in the jurisprudential scene of the Ottoman realms.

Al-Ḥaṣkafī was an eminent and prolific jurist and his works were well recieved, as their inclusion in the imperial canon in the last decades of the seventeenth century suggests.[365] For the purpose at hand, it is worth noting that al-

[365] For example: Feyżullah Efendi, *Fetâvâ-i Feyżiyye,* p. 5, 107, 447.

Ḥaṣkafī studied with several jurists throughout Greater Syria and the Hijaz, including with Khayr al-Dīn al-Ramlī. Moreover, al-Ḥaṣkafī maintained good contacts with senior officials both in the imperial capital and in Damascus. Apparently through these contacts he was eventually appointed to serve as the muftī of Damascus.[366]

Al-Ḥaṣkafī's biography is crucial for understanding his bibliography. As we shall see in chapter 5, state-appointed provincial muftīs across Greater Syria tended to be more attentive to the arguments advanced by their colleagues who were affiliated with the imperial establishment. This is also to a large degree the case as far as al-Ḥaṣkafī's bibliography is concerned. For instance, he cites quite frequently Shams al-Dīn Muḥammad b. Ḥusām al-Dīn al-Quhistānī's *Jāmiʿ al-Rumūz.*[367] In addition, al-Ḥaṣkafī consults other works by members of the imperial religious-judicial establishment such as Yaʿḳûb Paşa's *Ḥāshiyat Sharḥ al-Wiqāyah,*[368] Pîr Muḥammed b. Ḥasan al-Üskübî's *Muʿīn al-Muftī fī al-Jawāb ʻalá al-Mustaftī*,[369] Qiwām al-Dīn Amīr Kātib b. Amīr ʿUmar al-Itqānī's *Ghāyat al-Bayān wa Nādirat al-Aqrān*,[370] and the opinions and works of other senior establishment members such as Ebû's-Suʿûd

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[366] Al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, pp. 63-65.

[367] See, for example, al-Ḥaṣkafī, *al-Durr al-Muntaqá,* vol. 1, 31, 62, 305, 326, 327, 331, 362, 363, 378, 389, 413, 433, 449, 501, 502, 532; vol. 2, p. 6, 12, 19, 28, 37, 40, 51, 65; vol. 3, p. 6, 19, 212; vol. 4, p. 198.

[368] Ibid., vol. 2, p. 365; vol. 3, p. 271.

[369] Ibid., vol 2, p. 478.

[370] Ibid., vol. 1, p. 322; vol. 2, p. 44, 59, 255.

Efendi's *Me'rûżât* and legal rulings,[371] Aḫî Çelebi's gloss on *Sharḥ al-Wiqāyah,*[372] rulings by Çivizâde Efendi,[373] and the seventeenth-century şeyḫülislâm Yaḥyâ Efendi.[374] Furthermore, al-Ḥaṣkafī also cites the commentary on the *Multaqá* completed a few years earlier, in 1666, by his contemporary Dâmâd Efendi.[375] Finally, it is important to stress that al-Ḥaṣkafī more often than not supports the opinions of his establishment-affiliated colleages.

On the other hand, al-Ḥaṣkafī was not oblivious to the jurisprudential activity that was taking place across the Arab lands, namely in Egypt and Greater Syria. Accordingly, he cites fairly frequently leading authorities from the Arab lands, such as the aforementioned Ḥasan al-Shurunbulālī,[376] his teacher Khayr al-Dīn al-Ramlī,[377] the fifteenth-century jurist Qāsim b. Quṭlūbughā,[378] and Muḥammad al-Timūrtāshī.[379] In addition, like his teacher al-Ramlī, al-Ḥaṣkafī mentions specific influential non-

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[371] Ibid., vol. 2, p. 349, 536; vol. 3, p. 79, 212.

[372] Ibid., vol. 2, p. 579, vol. 4, p. 32.

[373] Ibid., vol. 2, pp. 348-9.

[374] Ibid., vol. 4, p. 32.

[375] Ibid., vol. 2, p. 339.

[376] Ibid.,vol. 1, p. 148, 164, 351, 361, 436, 445, 447, 512; vol. 2, p. 156, 186, 187, 195, 237, 302, 347, 363, 461; vol. 3, p. 83, 86, 155, 162, 194; vol. 4, p. 198, 210, 213.

[377] Ibid., vol. 2, p. 483, 484.

[378] Ibid., vol. 1, p. 47; vol. 2, p. 175, 572.

[379] Ibid., vol. 1, p. 502, 532; vol. 2, p. 112; vol. 3, p. 4, 78, 234.

Ḥanafī jurists and scholars, such as Aḥmad al-Ramlī;[380] Badr al-Dīn al-Ghazzī,[381] the father of the famous Damascene historian and an eminent jurist in his own right; and the Ḥanbalī traditionist ʻAbd al-Bāqī al-Ḥanbalī.[382] Moreover, al-Ḥaṣkafī cites two other commentaries on the *Multaqá* by two Damascene scholars, al-Bahnasī and al-Bāqānī.

Furthermore, a juxtaposition of al-Ḥaṣkafī's bibliography with that of an eighteenth-century provincial muftī from the town of Mostar (in modern day Bosnia) elucidates the difference between the provincial muftīs of the core lands of the empire and those of Greater Syria. As Selma Zecevic, who has studied the muftīship of Mostar in the eighteenth century, has pointed out, the provincial muftīs there were graduates of the Ottoman madrasah system. Although Zecevic has surveyed the "library" of an eighteenth-century muftī, which includes some works by late seventeenth- and eighteenth-century jurists that are naturally absent from bibliographies of earlier jurists, it is still possilbe to deduce from her reconstruction some pertinent conclusions. Unlike the Greater Syrian muftī, his Bosnian colleauge did not consult works by sixteenth- and seventeenth-century Ḥanafī (let alone non-

[380] Ibid., vol. 2, p. 71.

[381] Ibid., vol. 2, p. 350.

[382] Ibid., vol. 2, p. 411.

Ḥanafī) jurists from the Arab lands, with the exception of the works that entered the imperial canon, such as some of al-Timūrtāshī's works.[383]

The examination of the different bibliographies and Zecevic's findings clearly indicate that the Ottoman establishment succeeded in achieving a remarkable coherence across great distance. It should be recalled that this coherence was obtained in the context of a manuscript culture. Therefore, beyond its significance for the legal history of the Ottoman Empire, a study of circulation and canonization of jurisprudential texts illuminates important aspects of the manuscript culture in the early modern Ottoman Empire.

Law, Empire, and the Manuscript Culture

In the past decades a great deal of attention has been paid to the prohibition on printing in Arabic script (i.e. in Arabic, Persian, and Ottoman Turkish) in the Ottoman domains, as well as to the introduction of the printing press in the early eighteenth century by the convert Ibrâhîm Müteferriḳa. The increasing number of texts printed across the empire over the course of the eighteenth and the nineteenth centuries clearly led to gradual yet radical transformation in the intellectual and cultural

[383] The bibliography of the eighteenth-century muftī of Mostar also illustrates this point. See Zecevic, *On the Margin,* pp. 246-257.

landscape of the empire.[384] My intention is not to elaborate on the implications of this new medium and the nature of the change.[385] Instead, this section endeavors to explore some important issues that the grand narrative about the introduction of the printing press has failed to address.

While the introduction of the press and its aftermath has drawn much attention, the characteristics of the manuscript culture in the Ottoman Empire have been by and large overlooked.[386] This omission may be attributed at least in part to the way in which the aforementioned grand narrative depicts the manuscript culture that print eventually replaced. At the basis of this narrative stands the dichotomy between the "manuscript" and the "printed book." The former is inaccessible, scarce, and susceptible to corruption and change, the latter widely spread, cheap, and reliable.

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[384] Orlin Sabev (Orhan Salih), "The First Ottoman Turkish Printing Enterprise: Success or Failure," in Dana Sajdi (ed.), *Ottoman Tulips, Ottoman Coffee: Leisure and Lifestyle in the Eighteenth Cenutry* (London: I.B. Tauris, 2007), pp. 63-89; Yasemin Gencer, "İbrahim Müteferrika and the Age of the Printed Manuscript," in Christiane Gruber, *The Islamic Manuscript Tradition: Ten Centuries of Book Arts in Indiana University Collections* (Bloomington: Indiana University Press, 2010), pp. 154-193; Maurits H. van den Boogert, "Ibrahim Müteferrika's Printing House in Istanbul," in Alastair Hamilton, Maurits H. van den Boogert, and Bart Westerweel (eds.), *The Republic of Letters and the Levant* (Leiden: Brill, 2005), pp. 265-291.

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[386] I use throughout my discussion "manuscript culture." Nevertheless, different genres and disciplines follow different conventions and textual practices, as well as different notions of authorship, text, and readership. For example, John Degenais shows that literary "texts" in medieval Spain were read and perceived in a very different way from the way in which modern producers of critical editions approach the same "texts." Although the study of these issues in the Islamic context is still in its embryonic stage, it is quite possible that Degenais' conclusions are applicable to this context as well. The difference between genres and disciplines, and between the respective textual and reading practices they engender, suggests that there were in fact numerous "manuscript cultures" and not a single "culture." John Degenais, *The Ethics of Reading in Manuscript Culture* (Princeton: Princeton University Press, 1994).

It is interesting to note that this depiction is already found in the treatise Müteferriḳa himself wrote in order to convince sultan Aḥmed III to support his enterprise. Müteferriḳa envisioned large numbers of affordable printed texts being distributed across the empire. In addition, "because the typeface can easily be made very clear and readable, this will be an advantage for scholars and students, who can henceforth rely on their texts, without losing valuable time collating manuscripts in order to correct the mistakes of copyists. Moreover, in the process of copying a book by hand, even the smallest amount of moisture can blur the ink and efface the text, while printed works are much less vulnerable in this respect."[387]

The advantages of the printed book notwithstanding, the "manuscript culture," according to Mütefferiḳa's treatise and modern scholars, is monolithic and almost a-historical. A study of the Ottoman religious-judicial establishment's canonization project offers new possibilities for reexamining the "manuscript culture" in a concrete historical setting, that of the early modern Ottoman Empire. More specifically, the main question that will concern us in the following pages is how the fairly centralized imperial establishment coped with the challenges posed by the "manuscript culture."

In the introduction to his biographical dictionary dedicated to the jurists who held the muftīship of Damascus from the Ottoman conquest to his own days, the late eighteenth-century state-appointed Muḥammad Khalīl b. ʻAlī al-Murādī includes a

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[387] Van den Boogert, "Ibrahim Müteferrika's Printing House in Istanbul," pp. 273-275.

treatise on the ethics of the muftī (*Ādāb al-Fatwá*). Throughout this treatise, which was written several decades after the introduction of the printing press in Arabic and Turkish, al-Murādī discusses the role books play in the work of the muftī. For example, he instructs his reader, supposedly a muftī, to own all the manuscripts of the jurisprudential texts he needs for his work and even provides him with guidelines to organize his library. If the muftī does not own a specific text, al-Murādī suggests that he borrows a copy of the work, but he also urges the borrower to return the book he borrowed to its owner as soon as possible. In addition to these bibliophilic instructions, al-Murādī devotes a fascinating paragraph to the texts and manuscripts the muftī was to consult. The muftī who issues his ruling based on the school of the imām (Abū Ḥanīfah) should not rely on texts (*kutub*) that are not reliable and are non-Ḥanafī. Moreover, if the muftī considers the texts to be originally reliable (*aṣl al-taṣnīf*), but he believes that the copy he owns is not, he should seek a reliable copy (*muttafaqah*). Al-Murādī even suggests that an expert muftī, whenever he sees a corrupt passage in a copy of a text he is familiar with, should correct the passage in the manuscript.[388] This fascinating passage captures many of the problems that readers of manuscripts, and particularly readers of jurisprudential manuscripts, were facing. The problem was twofold. There were many texts, both Ḥanafī and non-Ḥanafī, whose authority was not established, thus they were not considered "reliable."

[388] al-Murādī, *'Urf,* p. 13.

But even "reliable texts," i.e., manuscripts of "reliable texts," should not be considered *a priori* reliable, for they are not immune to the copyist's mistakes and other sorts of textual and physical "corruption."

An episode recorded by the sixteenth-century chronicler Ibn Ṭūlūn illustrates some of the challenges of this manuscript culture. In July 1521, soon after the Ottoman conquest of Damascus, the newly appointed judge, who had arrived from Istanbul, decided to teach al-sayyid al-sharīf ʻAlī ibn Muḥammad ibn ʻAlī Zayn al-Dīn Abī al-Ḥasan al-Ḥusaynī al-Jurjānī's gloss on al-Zamkhasharī's *al-Kashshāf* at the Umayyad Mosque. Some of the city's professors attended this session, as well as some jurists from the core lands of the empire (*Rūmī*s). During the session, the participants realized that their copies of the work were different from the judge's.[389] To put it differently, there were two variants of al-Jurjānī's gloss, both considered authentic by their respective readers.

Al-Murādī's concerns, on the other hand, assume the existence of a single original and authentic text that the muftī should pursue. Moreover, the muftī as a reader, according to this description, is responsible for obtaining the most reliable—that is, the closest to the original—copy. The pursuit of a reliable copy may account for the interesting comments that appears in sixteenth- and seventeenth-century

[389] Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah*, pp. 136-137.

biographies about the biographee's exceptional calligraphic skills. This may also explain the inclusion of lists of books a certain biographee copied in his biography.[390]

But the discipline that al-Murādī expects from his reader-muftī is part of a wider set of textual and reading practices at play in the early modern Ottoman world. The responsibility and discipline of the individual muftīs is supplemented by various canonization practices employed by different Ḥanafī textual communities throughout the Ottoman lands. As we have seen, these practices were intended to standardize a bibliography for muftīs throughout the empire to consult. As far as the imperial establishment is concerned, the imperial madrasah system, the learned hierarchy, and especially the chief muftī played a pivotal role in standardizing an imperial canon and its reading. This canon, in turn, formed one of the cornerstones of the establishment-affiliated jurists' "establishment consciousness." Moreover, the imperial capital emerges not only as a political center, but also as what Peter Burke calls a "capital of [jurisprudential] knowledge," a learning center that enabled the standardization of the imperial jurisprudential canon.[391] Other learning centers across the empire, such as Cairo and Damascus, it appears, fulfilled similar functions for other textual communities.

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[390] The Damascene Muḥammad b. Barakāt b. Muḥammad Kamāl al-Dīn b. al-Kayyāl (d. 1617), just to mention one example, is said to have been a renowned calligrapher who copied Ebû's-Suʿûd Efendi's *Tafsīr*.Muḥibbī, *Khulāṣat al-Athar,* 3, p. 388.

[391] Peter Burke, *A Social History of Knowledge: From Gutenberg to Diderot* (Cambridge: Polity, 2000), pp. 63-67.

Finally, it is worth reconsidering the opposition of jurists, or at least of some jurists, to Müteferriḳa's enterprise. This opposition has often been interpreted as a token of the jurists' conservatism, as opposed to the former's innovative enterprise. There is perhaps a grain of truth in this interpretation, but, at the same time, it obscures the fact that sixteenth- and seventeenth-century jurists, while not oblivious to the problems and challenges the manuscript posed, were confident in the mechanisms they had developed. Moreover, a comparison of the bibliographies of different muftīs, both members of the imperial establishment and others, suggests that the different textual communities were quite successful in standardizing the bibliographies and their use, in spite of these challenges.

Concluding Thoughts

The preliminary survey of different textual traditions and communities within the Ḥanafī school throughout the empire mirrors broader developments and processes, significant aspects of which we have examined in the previous chapters and will further investigate in the next ones. First, the analysis of the bibliographies sheds light on the dynamics that accompanied the incorporation of the Arab lands—and the scholarly and jurisprudential traditions prevalent in these lands—into the empire. As already said, over the course of the late sixteenth and seventeenth centuries some Arab Ḥanafī jurists sought to integrate themselves in different ways into the imperial

framework. As part of this attempt, these Ḥanafīs synthesized substantial elements of the "local" Ḥanafī tradition with that of the core lands of the empire. Following the concept offered by Ehud Toledano in his study of eighteenth- and nineteenth-century elites across the Arab provinces of the empire, one can interpret the synthesis promoted by al-Ḥaṣkafī and others as another aspect of the "dual process of *localization* and *Ottomanization* [that] produced [...] *Ottoman-Local* elites."[392] One may ask, however, if the "Ottomanized" canon is the outcome of this integration of Arab Ḥanafī jurists into the Ottoman judicial elite, or an important development that faciliated their incorporation. At the same time, it is quite likely that through the growing integration of jurists from the Arab lands, texts authored and consulted in these provinces (such as Ibn Quṭlūbughā's works) entered, albeit selectively, the imperial canon.

Moreover, the fact that Minḳarîzâde cites his Palestinian contemporary indicates that members of the establishment were aware of towering jurisprudential figures who were active in the Arab provinces, consulted their opinon, and included their works in the imperial canon. It is not fully clear how members of the imperial establishment learned about the activity of these jurists, though there were several possible channels through which jurists in the core lands could have learned about the

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[392] Ehud R. Toledano, "The Emergence of Ottoman-Local Elites (1700-1900): A Framework of Research," in Ilan Pappé and Moshe Ma'oz (ed.), *Middle Eastern Politics and Ideas: A History from Within* (London: Tauris Academic Studies, 1997), pp. 148-149.

jurisprudential activity in the Arab provinces. After all, graduates of the Ottoman madrasah system traveled quite frequently across the Arab lands in various capacities (on their way to the pilgrimage, to serve as judges and bureacrats etc.).[393] What is clear, however, is that senior members of the imperial establishment showed interest in the work of their counterparts. This is an important dimension of the dynamics between establishment-affiliated jurists and their colleages who did not hold an official appointment. These dynamics, it should be noted, are obscured in other sources, namely in the biographical dictionaries dedicated to members of the imperial establishment, which, as Baki Tezcan rightly notes, exclude the overwhelming majority of Ḥanafī jurists who operated in the Arab provinces. On the other hand, as far as al-Ramlī is concerned, the fact that his opinion was at times consulted by senior members of the imperial establishment qualifies the dichotomy between establishment-affiliated jurisconsults and their counterparts who did not hold a state appointment.

Secondly, the analysis of the bibliographies sheds light on the circulation of texts and, more broadly, on the relationships between the myriad intellectual centers across the empire. Specifically, the analyis clearly demonstrates the connections

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[393] Ottoman officials were interested in the literary production of the Arab lands. Ibn Ṭūlūn, for instance, recounts that in 1530 the appointed judge of Damascus "took over" the libraries of Damascus and took the books he was interested in (while disregarding the stipulation of the endower). Then he banned the access to these libraries, save for several Rūmīs and those they favored. Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah*, p. 238-239.

between the imperial center and the Arab provinces and between the different learning centers across the Arab lands. It should be stressed that the latter did not run through the imperial capital. In other words, the different "textual communities" and the interplay between them constitute another site for exploring the relations between the multiple imperial centers. Furthermore, the connections between the different textual traditions support the findings of recent studies of administrative practices, as well as of cultural and intellectual activities throughout the empire, that have pointed to the connections between the provinces, thus challenging the center-periphery dichotomy.[394]

Thirdly, since the imperial establishment was intent on specifying the texts its members should consult and on regulating the readings of these texts, the study of the imperial canon, as well as those of other scholarly circles across the empire, emphasizes the importance of jurisprudential texts in defining the various jurisprudential traditions within the Ḥanafī school that coexisted in the Well-Protected Domains (and beyond).[395] Seen from this perspective, to paraphrase Brian Richardson, the circulation of texts and their canonization were not an issue at the

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[394] Khaled El-Rouayeb, "Opening the Gate of Verification: The Forgotten Arab-Islamic Florescence of the Seventeenth Century**",** *International Journal of Middle East Studies* 38/2 (2006), pp. 263-281; Alan Mikhail, "An Irrigated Empire: The View from Ottoman Fayyum," *International Journal of Middle Eastern Studies* 42 (2010), pp. 569-590.

[395]Many of the jurisprudential texts that constitute the Ottoman imperial canon are absent from seventeenth- and eighteenth-century book endowments from the Bukharan Khanate. For a comprehensive study of these book endowments: Stacy Liechti, *Books, Book Endowments, and Communities of Knowledge in the Bukharan Khanate* (New York University: Unpublished Ph.D. dissertation, 2008).

margins of the study of legal content, but rather an integral part of law itself.[396] Moreover, the imperial canonization project indicates that the imperial establishment was interested in regulating a wide range of legal issues, including, for instance, rituals (*ʿibādāt*) and personal status, not limiting itself to issues that are considered matters of "imperial interest," such as land tenure and charitable endowments.

Ultimately, the canonization mechanisms that have been explored in this chpater are also useful for understanding some of the practices employed by the imperial religious-judicial establishment to inculcate a sense of "establishment consciousness," and, equally important, to produce a distinctive jurisprudential discourse among its members. Other textual communities employed somewhat different mechanisms, as has been argued above, but the intention was in many respects similar. Nevertheless, as al-Ḥaṣkafī's case demonstrates, some Arab Ḥanafī jurists were able to create a synthesis of the different canons. While confirming the importance of the different canons, the sythesis also suggests that jurists at times were able to shape—at least to some extent—their own jurisprudential bibliography and consequently their jurisprudential tradition.

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[396] Brian Richardson, *Manuscript Culture in Renaissance Italy* (Cambridge: Cambridge University Press, 2009), p. ix.

Chapter IV

"What is the Opinion of Mawlānā Shaykh al-Islām:" Questions from the Arab Lands to the Şeyḫülislâm and State-Appointed Muftīs

The previous chapters have discussed different notions of jurisprudential authority and the various scholarly and institutional practices into which these notions were translated. The focus, however, has been on the scholarly circles throughout the empire and on its ruling elite. This chapter and the next intend to expand the lens of inquiry and seek to weave solicitors (*mustaftī*s) who sought the different muftīs' opinions into the grand narrative.[397]

The introduction of solicitors can assist us in reaching several goals. First, the ways in which solicitors made use of the multiple muftīs at their disposal shed light on the manner multiple authorities and jurisprudential traditions were at play. Moreover, the examination of the dynamics between solicitors and the muftīs may be helpful for understanding how the former navigated the diverse "legal landscape" of the empire and used the different muftīs to promote their legal interests. Furthermore, investigating the legal knowledge of different solicitors and particularly their use of

[397] By "solicitor" I am referring to anyone who solicited a muftī's opinion, and not to a professional lawyer.

the different muftīs may guide us through the places and procedures in which the rulings of a given muftī were considered authoritative and carried special weight.

Secondly, the dynamics between the various solicitors and the different muftīs reveal additional discourses and practices through which muftīs constituted, preserved, and propagated their authority. Moreover, shifting the focus to the solicitors enables us to gain a better appreciation of the interplay between the scholarly discourse about jurisprudential authority and the practices that accompany it on the one hand and the manner in which authority was perceived by different solicitors on the other. Exploring this interplay is particularly meaningful for uncovering some of the tensions between various contemporary modes of authority.

The different muftīs' fatāwá offer a convenient venue for examining these dynamics, for every fatwá recorded in the muftīs' collections (and in other sources, such as court records), regardless of the language in which it was issued, is in fact a series of interrelated yet separate events. First there is the solicitor's decision to consult a specific jurist, then the question itself (*istiftā'*), to be followed by the muftī's answer (*jawāb/cevâp*). Then the fatwá (i.e. the question and the answer) is recorded and eventually included in the collection of the fatāwá issued by a certain muftī. After these events, there are possibly additional ones, as the solicitor could use the fatāwá in various legal procedures (in court, to petition the sultan, etc.). While most studies of Ottoman fatāwá tend to examine them in their entirety, mostly for their "legal

content," this study pays attention to the procedures, to the concrete decisions of the parties involved, and to the reasons that led a solicitor to prefer one muftī over the other.

Admittedly, a solicitor's decision is often the most obscure part of this series of events, as the sources rarely mention why a solicitor, whose identity more often than not remains unknown, decided to address a particular jurisconsult. Therefore, it is difficult to grasp the relationship between the solicitor and the muftī. Most notably, the sources provide little detail concerning the personal commitment of the solicitor to a specific muftī. One may assume that in many cases the decision to address the question to a specific muftī was premised on the solicitor's commitment to a particular muftī. Moreover, it is likely that in many cases the solicitor was simply unaware of the exact position of a muftī in the imperial "legal landscape," though some clearly were. It is also probable that some assumed that different muftīs were equal in terms of erudition, authority, and stature, regardless of their affiliation (or lack thereof) with the imperial establishment.

As far as jurisprudential authority is concerned, these possibilities raise serious methodological issues. On the one hand, since in many cases little is known about the solicitor, one should not assume that solicitors were constantly concerned with comparing the opinions of the different jurists and picked the one they deemed most convenient in their view. On the other, one has to account for the cases in which

it is evident that the solicitor(s) manipulated more or less skillfully the multiplicity of muftīs to promote his/their legal (and other) interests.

This chapter and the next seek to explore this wide range of possibilities and to look at the multiple interactions between solicitors, jurisconsults, and other legal authorities. For the sake of convenience, the division I follow in my discussion is between state-appointed muftīs and their counterparts who did not hold a state appointment. This chapter focuses on the questions solicitors from the Arab lands posed to state-appointed muftīs, whereas the next one deals with the questions they addressed to muftīs who did not hold a state appointment.

> **Question**: What is the opinion of His Honor Shaykh al-Islām—may God let us enjoy his longevity until the Day of Resurrection (*yawm al-qiyām*)—concerning a man who died and was survived by his son. [This man held] a position in an endowment (*waqf*). The endower had not stipulated who [was to] appoint to positions [in the endowment]. The judge assigned the above-mentioned position [the appointment of positions in the endowment] to the deceased's son due to his competence and his entitlement (*istiḥqāq*) [to the position]. [Then] the brother of the deceased, informed another judge that the position was vacant and that [the other] judge appointed [the brother] on the basis of the vacancy [of the position]. If it has become clear that the position has been allocated to the son of the deceased, is the appointment of the brother by the other judge valid or not?
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> [280]

The answer: It is not valid.[398]

This question (*istifitā'*) was sent to the late seventeenth-century şeyḫülislâm Feyżullah Efendi (served as chief muftī from 1695 to 1703),[399] and was recorded in the collection of his fatāwá. But unlike the vast majority of the fatāwá in the collection, which were written in Ottoman Turkish, this fatwá was written in Arabic. Moreover, its stylistic characteristics, such as the praising address, set this fatwá apart from the rest of the fatāwá in the collection.

Feyżullah Efendi's fatwá is one of a body of several dozens of fatāwá in Arabic I have gleaned mainly from collections of legal rulings issued by chief imperial jurisconsults over the course of the sixteenth and seventeenth centuries. In addition, there are several fatāwá in Arabic that bear similar characteristics and were issued by provincial state-appointed muftīs across Greater Syria. In other words, the particular conventions were not employed exclusively to address the chief imperial muftī, but were used to address various muftīs who were affiliated with the imperial establishment across Greater Syria and possibly elsewhere.

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[398] Feyżullah b. Muḥammed Efendi, *Fetâvâ-i Feyżullah Efendi,* Süleymaniye Library MS Laleli 1267, p. 79r.

[399] Before that he served as the şeyḫülislam for a period of 17 days in 1688. On Feyżullah Efendi's career see: Sabra F. Meservey, *Feyżullah Efendi: An Ottoman Şeyhülislam* (Princeton University: Unpublished Ph.D. Dissertation, 1965); Rifaat Abu el-Haj, *The 1703 Rebellion and the Structure of Ottoman Politics* (Istanbul: Nederlands Historisch-Archaeologisch Isntitut te Istanbul, 1984).

By the time Feyżulla Efendi issued the above-mentioned fatwá, the practice of sending questions and responding to them in Arabic had already had a history of at least 200 years. The earliest rulings in Arabic I have found date from the late fifteenth century, and the practice of writing and preserving fatāwá in Arabic lasted up to the very last years of the empire.[400] In this chapter, however, I will focus on the first two centuries. Further research on the fatāwá in Arabic from the eighteenth and the nineteenth centuries may qualify or support some of my conclusions.

The fatāwá discussed in this chapter are not spread equally throughout the period under consideration here, as the number of Arabic fatāwá varies from one collection to the other. In the fatāwá collection of Meteşîzâde (d. 1716)[401] there are a dozen Arabic fatāwá, whereas in Minḳârîzâde's (d. 1677)[402] collection, for example, there are only 3. In other collections, such as the fatāwá collection of Çatalcalı 'Alî Efendi (d. 1692),[403] there are no fatāwá in Arabic at all. The absence of the Arabic fatāwá from these collections might be attributed to various reasons. It is possible, though somewhat unlikely, that during the muftīship of, for example, Çatalcalı 'Alî fatāwá in Arabic were not sent to the şeyḫülislâm. It is more likely, however, that the

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[400] Uriel Heyd, "Some Aspects of the Ottoman Fetvā," *Bulletin of the School of Oriental and African Studies* 32(1) (1969), p. 40.

[401] 'Abdurraḥim Efendi Meteşîzâde, *Fetâvâ*, Süleymaniye Library MS Haci Selim Aga 440.

[402] Yaḥyâ b. Ömer b. 'Alî Minḳârîzâde, *Fetâvâ*, Süleymaniye Library MS Hekimoglu 421.

[403] Çatalcalı 'Alî Efendi b. Şeyh Meḥmed, *Fetâvâ-i 'Alî Efendi*, Süleymaniye Library MS Ayasofya 1572.

collector of the fatāwá for whatever reason decided not to include these fatāwá in the collection. Whatever the reasons for the fluctuation in the number of rulings in Arabic, it is important to keep in mind that one should not derive any statistical information from the frequency of the appearance of the Arabic fatāwá in the collections.

Several dozens of fatāwá are, to be sure, a marginal, almost negligible, amount, given the enormous amount of fatāwá from that period, mostly in Ottoman Turkish,[404] which have survived in documents, fatāwá collections, and court records across the lands that constituted the Ottoman Empire.[405] They are, nevertheless, of qualitative importance for at least two reasons. First, the fact that these fatāwá were written in Arabic enables us to situate them in a concrete geographical setting, or, more accurately, along a geographical axis, as the language choice strongly suggests that these questions were sent from the Arab provinces of the empire. Secondly, since the questions were sent from the Arab provinces and the answers, in turn, were issued by the chief muftī in the imperial capital or by the provincial appointed muftī, these Arabic fatāwá offer an opportunity for gaining a better understanding of the consolidation of the authority of the chief imperial muftī and his provincial subordinates against the backdrop of the Ottoman conquest and incorporation of the

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[404] There are also fatâwá in Persian, although they are extremely rare. Heyd, "Fetvā," p. 46.

[405] Since the conclusions here are based on my examination of eleven collections, it is likely that the number of extant fatāwá in Arabic from that period is somewhat higher.

Arab lands into the empire. Furthermore, they may assist us in identifying, to some degree at least, the legal venues and scholarly circles in which these rulings carried special weight.

A caveat is in order concerning the linguistic divide between Arabic and Ottoman Turkish. Although I emphasize this divide in this chapter for analytical purposes, it should not be overstated as far as the geographical location of the solicitor is concerned. It is very likely that many fatāwá in Turkish in the collections also originated from the Arab lands. Feyżullah Efendi, just to mention one example, was asked about an imperial appointment deed (*berât*) that was given to a Damascene Maghribi in contradiction to the stipulation in the endowment deed.[406] Although this fatwá was written in Ottoman Turkish, its content is clearly related to a specific case concerning an endowment in Damascus. Furthermore, many of the Turkish fatāwá that do not bear any marker concerning their geographical provenance might have originated in one of the Arab provinces. I have decided, however, to limit my discussion to the fatāwá in Arabic precisely because of their unique conventions.

It is also appropriate to unpack the fairly vague term "imperial subjects across the Arab lands" that is often invoked throughout this chapter. As already mentioned, unlike cases recorded in court records or petitions to the *divân-i humâyûn*, the fatāwá do not disclose the identity of the questioner. While the Arabic strongly suggests that

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[406] Feyżullah Efendi, Fetâvâ, p. 81r.

the questions were sent from the Arab lands, it is far from clear that the questioners were indeed local Arab subjects, although at times they clearly were. It is possible, for example, that state officials sent from the imperial center, such as judges and provincial muftīs, asked for the opinion of the şeyḫülislâm. In this case, compiling the question and the subsequent answer in Arabic was intended to facilitate the access of the audience, who presumably did not understand Turkish, to the content of the ruling. As Rifa'at Abou el-Haj in his study of the preambles of the Ottoman legal codes (*ḳânûnnâme*) for the Arab provinces has shown, the Ottoman ruling elite phrased the preambles in Arabic with the intention of reaching directly, or at least without the need of translators, the new subjects of the empire who did not understand Ottoman Turkish.[407] In other words, as we shall see below, the language choice suggests that even when the solicitors were not local Arab subjects, the Arabic-speaking subjects were on the chief muftī's and his subordinates' mind.

Finally, it should be noted that the unique features of the Arabic fatāwá in the collections of the chief imperial muftīs already drew the attention of Uriel Heyd.[408] Nevertheless, in the decades since the posthumous publication of his study of the Ottoman fatwá, very little attention has been paid to these rulings. While indebted to Heyd's seminal and insightful study, this chapter intends to reexamine some of his

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[407] Rifa'at A. Abou el-Haj, "Aspects of the Legitimation of Ottoman Rule as Reflected in the Preambles of Two Early *Liva Kanunnameler*," *Turcica* 21-23 (1991), pp. 372-383.

[408] Uriel Heyd, "Fetva", pp. 39-41.

conclusions concerning these fatāwá. More specifically, it seeks to situate them within concrete historical contexts, and especially within the context of the incorporation of the Arab lands into the empire.

My discussion in this chapter is organized in three sections, each of which approaches the Arabic fatāwá issued by members of the imperial establishment from a different angle. The first section deals with the particular features of the Ottoman Arabic fatwá. The second section turns to discuss the various ways in which solicitors made use of the state-appointed muftīs and their rulings. Specifically, it intends to shed light on the procedures and places in which these rulings carried special weight. Circulation and dissemination of legal knowledge throughout the empire, and especially in Greater Syria, is the focus of the third section. I am particularly interested in exploring the connection between the dissemination of legal and procedural knowledge and the constitution of the authority of state-appointed muftīs.

The Characteristics of the Ottoman Arabic Fatwá

> **Question**: What is the opinions of the Shaykh al-Islām and the magnificent master—may God glorify him in the world with the veneration of the most important master of masters —concerning an orchard whose revenues have been exploited for more than two centuries by the endower's [?] descendants and now a powerful man forcefully took over the [orchard] and uprooted its plants and destroyed its building. [Then] he planted [there] trees and built what he wanted without the permission of the guardian (*mutawallī*) [of the waqf]. Should the orchard be taken from him and left according to what it

used to be in the past? And what is the verdict concerning the plants and the buildings? Issue your opinion (*aftūnā*), may you be rewarded (*ma'jūrīn*).
The Answer: Yes, the orchard should be taken from him and should remain as it used to be in the past. Should another person who is entitled [to be a beneficiary] not appear, [the man] who took over [the orchard] should be accountable for what he uprooted and destroyed.[409]

This fatwá by Çivizâde might serve as a convenient starting point for an analysis of the special features of the Arabic fatwá. The stylistic conventions, beyond the language choice of Arabic, set this body of fatāwá apart from the rest of the Ottoman Turkish fatāwá in the collections and, in fact, from fatāwá in many contemporary (or roughly contemporary) collections produced in the Arab lands. It should be stressed that despite the fact that Çivizâde's fatāwá are not the earliest Arabic fatāwá, they are somewhat different stylistically from an earliest fatwá issued by Kemâlpaşazâde, and from another fatwá issued by Çivizâde himself, which was not included in the collection and has come down to us in the form of a document.[410] These differences are pertinent to the discussion here, for they unfold the gradual development of the conventions that would characterize the Arabic fatāwá in the next couple of centuries and perhaps even during the rest of Ottoman rule in the Arab lands.

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[409] Muḥyîddîn Muḥammed b. İyâs el-Menteşevî Çivîzâde, *Fetâvâ,* Süleymaniye Library MS Kadizade Mehmed 251, p. 20r.

[410] *İlmiye Salnamesi* (Istanbul: Matba'a-i 'Âmire, 1916), p. 363.

We shall return to the earlier versions of the formula deployed to address the chief muftī, but first it would be useful to examine the conventions employed in the collections from Çivizâde's onwards.[411] The purpose of this examination is twofold: to expand on some issues that remained somewhat underdeveloped in Heyd's work concerning these conventions, and secondly but perhaps more importantly to demonstrate how certain dynamics that accompanied the consolidation of the authority of the şeyḫülislâm in the Arab lands are reflected in the adoption of these conventions.

Let us start with the question (*istiftā'*). The question often opens with a formula addressing the şeyḫülislâm: "what is the opinion of our lord (*mawlānā*) Shaykh al-Islām" (*mā qawl mawlānā Shaykh al-Islām*). As Heyd noted, this formula appears in pre-Ottoman, and specifically Mamluk, fatāwá.[412] In his manual for the muftī and the questioner, the thirteenth-century Abū Zakarīyá Yaḥyá b. Sharaf al-Nawawī (d. 1277) mentions this formula as the proper one to address a muftī.[413] This address is usually followed by praises and hyperbolic titles. In the other four Arabic

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[411] There are some deviations from these conventions. Ebû's-Su'ûd's fatwá (*İlmiye Salnamesi,* p. 382) is one example. In the eighteenth-century collection *Behcetü'l-Fetâvâ* by Yenişerhirli, which falls beyond the chronological scope of this study, there are several fatāwá in Arabic that ask about the opinion of the Ḥanafī imams (Abū Ḥanīfah and his companions, Abū Yūsuf and Muḥammad al-Shaybānī). See: Abdullah Yenişehirli, *Behctetü'l-Fetâvâ ma'an-nüḳûl* (Istanbul: Matba'a-i Amire, 1872), p. 61, 62, 64. There are, however, in the collection other fatāwá that follow the general opening: "what is the opinion of his honor mawlānā Shaykh al-Islām." See: ibid., p. 188.

[412] Heyd, "Fetva," pp. 40-41.

[413] Abū Zakarīyá Yaḥyá b. Sharaf al-Nawawī, *Adab al-Fatwá wa-l-Muftī wa-l-Mustaftī* (Damascus: Dār al-Fikr, 1988), pp. 83-84.

fatāwá in Çivizâde's collection there are some variations: "what is the opinion of the knowledgeable (*'ālim*), active ('āmil), and distinguished (*fāḍil*) shaykh—may God increase his glory in the two instances (*ānayn*) [i.e. this world and the hereafter] with the glory of the master of the two existences (*kawnayn*)…";[414] "what is the opinion of the shaykh, the most erudite (*'allāmah*), the sea of the two seas, the most sympathetic (*fahhāmah*), may God prolong his life until the Day of Judgement…";[415] and "what is the opinion of the Shaykh of Islām and the Muslims, the pillar of the verifiers [of truth], the best of the inquirers into the nuances (*zubdat al-mudaqqiqīn*)—may God let the people enjoy his presence until the Day of Judgment[…]"[416] In later collections from the sixteenth and the seventeenth centuries the formula "what is the opinion of the Shaykh al-Islām" is still occasionally followed by a long series of epithets: "what is the opinion of our lord, our master, and our exemplary model (*qidwah*), he who clarifies our problems, he who tears open the symbols of our complex issues (*fātiq rumūz mufaṣṣalātina*), the seal of the later [jurists] (*al-muta'akhkhirīn*)[…]";[417] or "what is the opinion of Shaykh al-Islām—may God let us enjoy his longevity until the Day of Resurrection."[418]

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[414] Çivizâde, *Fetâvâ,* p. 20r.

[415] Ibid., p. 20v.

[416] Ibid., p. 20v.

[417] Ebû's-Su'ûd, *Fetâvâ,* p. 188r.

[418] Menteşîzâde, *Fetâvâ,* p. 225r.

On the other hand, although this was a conventional manner to address a muftī, it was not frequently employed in addressing muftīs throughout the Mamluk period. Moreover, this appears to be by and large the case across the Arab lands in later centuries as well. During his journey to Istanbul while in the Syrian town of Ḥims, the Shāfiʿī Badr al-Dīn al-Ghazzī was asked for his legal opinion concerning a waqf-related issue. He recorded the question as it was submitted to him and his answer in his travelogue. For the purpose at hand, it is important to note that the fatwá opens directly with the question without any address, attribute, or epithet.[419] Furthermore, the questions in the collections of provincial Greater Syrian state-appointed muftīs, such as the late seventeenth-century Ismāʿīl al-Ḥāʾik and ʿAbd al-Raḥīm b. Abī Luṭf, do not usually open with this formula.[420] Lastly, three of the Arabic questions sent to the chief muftī do not employ this formula.[421] That said, one

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[419] Badr al-Dīn Muḥammad al-Ghazzī, *al-Maṭāliʿ fī al-manāzil al-Rūmiyyah* (Beirut: al-Muʾassasah al-ʿArabiyyah lil-Dirāsāt wa-al-Nashr, 2004), p. 51 Ibn Ṭūlūn records another legal ruling issued by the Damascene Burhān al-Dīn al-Nājī in 1531. The question opens with a general address to the "lords, the jurists, the imams of the religion [Islam]." Shams al-Dīn Muḥammad b. ʿAlī Ibn Ṭūlūn, *Ḥawādith Dimashq al-Yawmiyyah Ghadāt al-Ghazw al-ʿUthmānī lil-Shām, 926-951H: ṣafaḥāt mafqūdah tunsharu lil-marrah al-ūlá min Kitāb Mufākahat al-Khillān fī Ḥawādith al-Zamān li-Ibn Ṭūlūn al-Ṣāliḥī* (Damascus: Dār al-Awāʾil, 2002), p. 223.

[420] Sharaf al-Dīn Ibn Ayyūb al-Anṣārī (d. 1590), who served as Shāfiʿī judge in Damascus, records several *fatāwá*. The address to the muftī is not employed in these questions. Sharaf al-Dīn Ibn Ayyūb al-Anṣārī, *Nuzhat al-Khāṭir wa-Bahjat al-Nāẓir* (Damascus: Manshūrāt Wizārat al-Thaqāfah, 1991), vol. 1, pp. 170-171. On the other hand, in the court record of Jerusalem a ruling issued by Khayr al-Dīn al-Ramlī is preserved. The question opens with the official address. It is possible, however, that the scribe added this address when recording the ruling in the *sijill.* See: Amnon Cohen and Elisheva Ben Shimʿon-Pikali, *Jews in the Moslem Religious Court: Society. Economy and Communal Organization in the XVIIth Century (Documents from Ottoman Jerusalem)* (Jerusalem: Yad Izhak Ben-Zvi, 2010), vol. 1, pp. 453-454.

[421] Ebû's-Suʿûd, *Fetâvâ,* p. 233r; Feyżullah Efendi, *Fetâvâ,* p. 79v.

should not downplay the importance of the evolution of a standardized formula to address the chief muftī and his provincial subordinates.

After the address comes the question. The Ottoman fatāwá, as Heyd and others have pointed out, followed several conventions, whose intention was to phrase the question in the most general terms.[422] When a question was asked concerning a specific scenario, the parties involved were represented by a set of fixed names (Zeyd, ʻAmr, Bekr, Beshîr or Bishr for men and Hind and Zeyneb for women).[423] In the Arabic fatāwá, including in the fatāwá recorded in the collections of the şeyẖülislâms, names are rarely mentioned. Instead, the question is posed in general terms. Such is the case, for instance, in the above-cited fatwá from Feyżullah Efendi's collection. During the sixteenth and the seventeenth centuries, however, the Zeyd/ʻAmr convention appears in several fatāwá in Arabic.[424] Furthermore, the question in Arabic is occasionally concluded with the phrase "issue your opinion [to

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[422] Heyd, "Fetva," pp. 39-41. It is worth mentioning Ebû's-Suʻûd Efendi's instructions as to how to draft a fatwá properly. Ebû's-Suʻûd Efendi, *Ebû's-Suʻûd Efendi Haẓretleri'nin Fetvâ Kâtiblerine Üslub Kitâbeti Taʻlîmdir*, Süleymaniye Library MS Esad Efendi 1017-1, pp. 96r-99r.

[423] Heyd, "Fetva," p, 41. Heyd lists other names as well, but they are less common. For men: Khâlid, Velîd, Saʻîd, and Mubârak. For women: Ḥadîce, Ayşe, Umm Kulsum, Rabîʻe, Saʻîde, and Meryem.

[424] For example: Feyżullah Efendi, *Fetâvâ,* p. 133v; Ṣunʻullah Efendi, *Fetâvâ,* p. 52r. It is worth noting that by the mid-seventeenth century this convention had gained some currency among muftīs from the Arab lands as well, as the collections of the *fatāwá* issued by the Palestinian muftīs Muḥammad al-Timūrtāshī (d. 1595) and Khayr al-Dīn al-Ramlī (d. 1671) attest. [Muḥammad b. ʻAbd Allāh Al-Timūrtāshī, *Fatāwá al-Timūrtāshī,* Süleymaniye Library MS Esʻad Efendi 1114, p. 145v; Khayr al-Dīn al-Ramlī, *al-Fatāwá al-Khayriyya* (Cairo: s.n., 1859), vol. 1, p. 33, 155; ibid., vol. 2, p. 11, 47, 63.] It is worth mentioning that as early as the late fifteenth-early sixteenth century, the Zeyd-ʻAmr convention was employed, albeit very infrequently, across the Arab lands. For example, in the Shāfiʻī Zakarīyā al-Anṣārī's (d. 1521) *fatāwá* collection this convention is used. Zakarīyā b. Muḥammad al-Anṣārī, *al-Iʻlām wa-l-Ihtimām bi-Jamʻ Fatāwá Shaykh al-Islām* (Damascus: Dār al-Taqwá, 2007), pp. 57-58.

us], may you be rewarded" (*aftūnā ma'jūrīn*)[425] or with the formula "may God the generous king reward you" (*athābakum Allāh al-malik al-wahhāb*),[426] rarely to be found in questions in Ottoman Turkish.

As is the case with other fatāwá in the collections, the question is usually articulated as a yes/no question. Accordingly, the answers tend to be brief. In the fatāwá in Arabic the answer is usually brief, similar to the yes/no (*olur/olmaz*) answer in the Ottoman Turkish rulings. From time to time, however, the muftī provides a somewhat longer answer, especially when he is asked for instructions on a particular matter or the case requires further clarification.[427] The important point is that the chief muftī penned his answer in Arabic, whenever the question was posed in Arabic. In other words, the chief muftī assumed that the solicitor himself, or the ultimate audience of this fatwá, did not understand Ottoman Turkish.

These conventions also appear in questions posed to Greater Syrian state-appointed provincial muftīs and in their subsequent answers. The question in Arabic posed to Muʿîdzâde (d. 1575), the state-appointed Ḥanafī muftī of Damascus, opens with "what is the opinion of the shaykh of the shaykhs of Islām" and contains most of

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[425] For example: Çivizâde, *Fetâvâ,* p. 20r-v; Ebû's-Suʻûd, *Fetâvâ,* p. 29r; Meteşîzâde, *Fetâvâ,* p. 77r, 83v.

[426] For example: Feyżullah Efendi, *Fetâvâ,* p. 65r.

[427] Heyd, "Fetva," pp. 41-42. For translated *fatāwá* see: Imber, *Ebu's-Su'ud.*

the features described above.[428] In the court records of Jerusalem from the sixteenth and the seventeenth centuries fatāwá bearing similar conventions are also preserved. These fatāwá, it should be stressed, were issued by the state-appointed muftī of Jerusalem (see below). Furthermore, since the fatāwá in the collections of the provincial muftī—at least those from the seventeenth century—do not usually open with these formulae, it appears that the scribe at the court included these formulae when he recorded the fatāwā. One possible explanation for the use of this formula when addressing state-appointed muftīs is that they were all members of the learned hierarchy, thus the provincial muftī represented the chief muftī.

The particular characteristics of the Arabic fatwá are significant precisely because they diverge from the abovementioned conventions employed in the fatāwá in Ottoman Turkish. One should bear in mind that the distinctive features of the Ottoman fatwá are the product of major efforts invested by Ottoman muftīs from the first half of the fifteenth century to standardize the Ottoman fatwá. A fatwá issued by Molla Meḥmed Şemsüddîn el-Fenârî (d. 1431), the first jurist to be appointed to the office of the chief muftī in the Ottoman realms, already displays most of the characteristics of the Ottoman fatwá.[429] Moreover, it is clear that the emergence of a

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[428] Meḥmed Mu‘îdzâde, *Fetvâ,* Süleymaniye Library MS Fazil Ahmed Paşa 1581-1, pp. 1v-7r. On Mu‘îdzâde see: al-Murādī, *Urf,* pp. 34-35.

[429] *İlmiye Salnamesi*, p. 323. On Fenâri see: Abdülkadir Altunsu, Osmanlı Şeyhülislamları (Ankara: Ayyıldız Matbaası, 1972), p. 1-3; Repp, *The Müfti,* pp. 73-98.

distinctive, identifiable Ottoman fatwá marks a clear break from linguistic, scribal, and jurisprudential conventions that had prevailed across the Arab lands prior to the Ottoman conquest as well as in later centuries. In addition, the Ottoman fatwá differed from the fatāwá written in other parts of the Islamic world at the time, such as North Africa.[430] Against this background, the fact that fatāwá in Arabic with their particular characteristics are preserved in Ottoman collections in their original language and with their particular stylistic patterns is illuminating and merits attention.

The importance the chief muftīs and other members of the Ottoman religious-judicial establishment attributed to the unique features of the Arabic fatwá is also evident from the fact that the Arabic fatāwá were recorded *in toto* in the collections of the chief muftīs. Moreover, Arabic fatāwá were often recorded in their entirety in court records as well, as we shall see below. It is worth dwelling on the decision to preserve the Arabic fatāwá with all their unique features. After all, even if the question and the answer were penned in Arabic, the scribes who included these fatāwá in the collection for their "legal content" could have translated the fatwá into Ottoman Turkish and removed the seemingly redundant formulae and phrases. Yet, these scribes decided to preserve the fatāwá in their entirety and in their original language. One thus has to explain the decision to make use of these specific patterns

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[430] On *fatāwá* in North Africa in the fifteenth century see: David S. Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002).

by both the solicitor and the muftī, as well as the decision to record the fatwá in Arabic in the collection.

This is also an appropriate point to return to Uriel Heyd's discussion of the Arabic fatāwá. In the abovementioned study of the Ottoman fatwá, Heyd noticed the specific patterns of the fatāwá in Arabic and traced some of them back to pre-Ottoman fatāwá collections, mostly to collections from the Mamluk period. He did not, however, explain the recurrence of pre-Ottoman patterns in the new, Ottoman context. While not explicitly labeling his findings in terms of persistence, endurance, or continuity, the fact that he just mentioned these stylistic patterns in passing suggests that this is how he perceived their inclusion in the Ottoman collections. Heyd's understanding of the reappearance of pre-Ottoman discursive patterns merely in terms of continuity, however, obscures the gradual process or dialogue through which these pre-Ottoman discursive patterns were standardized in the Ottoman context.

Questions sent to both Kemâlpaşazâde (d. 1533) and Çivizâde, for instance, reflect the dialogic evolution of the specific patterns to address the chief and other state-appointed muftīs in Arabic. In the questions, the solicitors do not address the şeyḫülislâm but rather address a group of jurists, the "jurists of the Prophetic religion (*al-Dīn al-Nabawī*) and the savants of the jurisprudence of Muṣṭafá (i.e. the Prophet,

ḥukamā' al-shar' al-Muṣṭafāwī)"[431] or "the Ḥanafī lords, the jurists (*al-sādāt al-'ulamā' al-Ḥanafiyyah*)."[432] The reader of the collection knows that Kemâlpaşazâde answered the question because he signed his name at the end of this answer. In Çivizâde's case, his signature appears after his answer at the bottom of the document. It is difficult, however, to determine whether the questioners had in mind a group of jurists to whom they addressed their question. What is clear, on the other hand, is that this formula soon disappeared and was replaced by a formula that would last for centuries. But since the address of the chief muftī evolved over the course of several decades, "continuity" fails to explain the conscious decision to follow specific patterns and dismiss others. The task, then, is to explain this conscious decision. Moreover, understanding this decision would be useful for revealing some important dynamics that accompanied the consolidation of the authority of the şeyḫülislâm, and, more broadly, the imperial religious-judicial establishment in the Arab lands during the first two centuries following the Ottoman conquest.

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[431] Ebû's-Su'ûd, *Fetâvâ,* p. 189r. The term "al-Shar' al-Muṣṭafāwī" is fairly rare in the Arab context. The name Mustafa was not in use in the Arab lands as the title of the Prophet. This seems like an Anatolian (perhaps Persianate) practice. This might suggest that the Arab questioner employed this term for Ottoman ears. I am thankful to Prof. Rowson for drawing my attention to this point.

[432] *İlmiye Salnamesi,* p. 363. Late fifteenth-century questions in Arabic addressed to the chief muftī Mollâ 'Arab also reflect the fluidity of the address. Mollâ 'Arab is addressed as the "master of the jurists" by one solicitor, whereas the other opens the question with "What is the opinion of the jurists of Islam and the virtuous [scholars] of the people." Mevlânâ Alâeddîn Alî al-'Arabî al-Ḥalabî (Mollâ 'Arab), *Fetâvâ-i Mevlânâ 'Arab,* Süleymaniye Library MS Bağdatlı Vehbi 585, p. 14v, 51v. Furthermore, a question in Arabic recorded in the collection of Zenbilli 'Alî Cemâlî, Mollâ 'Arab's successor, does not include any honorific title. Zenbilli 'Alî Cemâlî, *Fetâvâ-i Zenbilli 'Alî Cemâlî,* Süleymaniye Library MS Fatih 2388, p. 31r.

As has been described in the previous chapters, the Ottoman conquest created a new "legal landscape" across the Arab lands, which was partly an outcome of the introduction of a new understanding of the muftīship into the Arab provinces. On the other hand, in the "legal landscape" of the Arab lands in the sixteenth and even in the seventeenth centuries, as some prominent muftīs who did not hold a state appointment were not prevented from issuing their legal rulings, the chief muftī was one authority, albeit privileged in some circles, among many (Ḥanafī and non-Ḥanafī alike). It is in this context, I would argue, that the conventions of the Arabic fatāwá in the chief muftīs' fatāwá collections should be read and understood.

The address that opens many of the Arabic questions is of particular relevance to illustrate this point. As argued above, this address already appears in treatises from the Mamluk period, such as al-Nawawī's. But in the Mamluk context, and in later centuries throughout the empire's Arab lands, the title "Shaykh al-Islām" that was occasionally attached to jurists was one title in a fairly wide range of honorific titles that organized an informal scholarly hierarchy that was at least ideally based on the repute of the jurist and on his peers' appreciation of his scholarly excellence. Prominent jurists, such as the prominent Egyptian Shāfi'ī jurist Zakarīyá b. Muḥammad al-Anṣārī (d. 1520), received the title "Shaykh al-Islām."[433] In the

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[433] Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *al-Kawākib al-Sā'irah bi-A'yān al-Mi'ah al-'Āshirah* (Beirut: Jāmi'at Bayrūt al-Amīrikiyyah, 1945-1958), vol. 1, pp. 196-207. For a more general survey of the history of the term "Shaykh al-Islām" see: Richard W. Bulliet, "The Shaikh al-Islām and the Evolution of Islamic Society," *Studia Islamica* 35 (1972), pp. 53-67.

Ottoman context, on the other hand, the title "şeyḫülislâm" designated by the sixteenth century the head of the imperial learned hierarchy.[434] By employing extant formulae that circulated throughout the Arab lands, the Ottoman establishment tapped into an existing discourse of authority and tamed it to its needs.

Making use of various discourses prevalent across the Arab lands was not a unique practice of the imperial religious-judicial establishment. As Emire Muslu's recent study of Ottoman-Mamluk diplomacy from the fourteenth to early sixteenth century has convincingly demonstrated, the Ottoman chancellery was aware of the Mamluk honorific titles. The Ottoman diplomatic correspondence with the Mamluk sultans in the pre-conquest period clearly indicates that the Ottomans were familiar with these conventions and manipulated them skillfully.[435] It seems that similar familiarity could be attributed to the Ottoman religious-judicial establishment.[436]

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[434] The title was already in use in the first half of the fifteenth century. See, for instance, al-Fenârî's endowment deed. Note that in the deed the title is only part of a long series of epithets and titles. Mustafa Bilge, *İlk Osmanlı Medreseleri* (Istanbul: İstanbul Üniversitesi Edebiyat Fakültesi Yayınları, 1984), p. 223.

[435] Muslu, pp. 87-140.

[436] The Ottoman familiarity with the Mamluk "discourse of authority" in the first half of the fifteenth century is reflected in the question Murâd II sent to the Egyptian jurists concerning his attack on the Karamanid principality. The question opens with "what is the opinion of the lords the jurists" (mā taqūlu al-sādāt al-'ulāmā'). İsmail Hakki Uzunçarşılı, "Karamanoğulları Devri Vesikalarından İbrahim Bey'in Karaman İmareti Vakfiyesi," *Belleten* 1 (1937), pp. 129-133. Interestingly enough, he asked jurists affiliated with the other Sunnī schools as well. On this correspondence see Muslu, *Ottoman-Mamluk,* p. 15.
On the emphasis many Ottoman sources place on titulature, including on that of the şeyḫülislâm: İsmail Hakki Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilatı* (Ankara: Türk Tarih Kurumu Basımevi, 1988), pp. 204-205. In the introduction to his collection of letters, Ferîdûn Bey lists the honorifics and titulature one should employ when mentioning or addressing the chief muftī. Ferîdûn Bey, *Mecmû'a-i Münşeât-i Selâtîn* (Istanbul: Dârüttibâ'attil'âmire, 1265-1274 [1848-1857]), vol. 1, p. 11.

One may also situate the evolution of the Ottoman Arabic fatwá in another, though related, context. As we have seen in the previous chapters, from the mid-sixteenth century scholars and jurists who were affiliated with the Ottoman religious-judicial establishment produced several important works, all written in Arabic, in response to the challenges posed by the incorporation of the Arab lands into the empire and the need to cement the authority of the chief muftī in particular and more generally the authority and the position of the imperial establishment within the expanding imperial framework. This textual corpus includes several *ṭabaqāt* works of the Ḥanafī school and biographical dictionaries by members of the Ottoman religious-judicial establishment. As I have argued in chapter 2, since many of the intended readers were Arab jurists (and more specifically Arab Ḥanafī jurists) who did not read Ottoman Turkish, the intellectual genealogies were compiled in Arabic.

In the same vein, the attempt to develop specific conventions for the Arabic fatwá may be read as part of a wider effort by the imperial establishment to facilitate the access of the newly incorporated subjects who knew only Arabic to the imperial legal system. This effort is reflected in other legal venues as well. For example, the adjudication in the imperial courts across the Arab provinces was conducted in Arabic. The cases, moreover, were also recorded in Arabic in the court records (*sicill*). Even in some places in the Turkish-speaking core lands of the empire, it seems, when one of the litigants spoke Arabic or at least requested the resolution to be

written in Arabic, the case was recorded in Arabic in the *sicill.* This was the case, for instance, in late sixteenth-century Ankara, where cases were occasionally recorded in Arabic (among many other cases that were recorded in Ottoman Turkish).[437] Although this requires further research, it is possible to interpret the standardization of an imperial "legal vocabulary" in Arabic as part of a larger attempt to vernacularize law across the empire during the sixteenth and seventeenth century.[438] Moreover, despite the use of Arabic, the evolution of particular features advanced, to borrow Gülrü Necipoğlu's term, a readable and reproducible "Ottomanness."[439]

To conclude, the particular features of the Arabic fatāwá may be read as part of a concerted effort made by members of the imperial religious-judicial establishment to consolidate its authority in the context of an expanding imperial framework. In addition to the institutional developments, such as the appointment of the chief muftī to preside over the imperial learned hierarchy in the mid-sixteenth

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[437] Halit Ongan, *Ankara'nın 1 Numaralı Şer'iye Sicili: 21 Rebiülahır 991-Evahir-i Muharrem 992 14 Mayıs 1583-12 Şubat 1584)* (Ankara: Türk Tarih Kurumu Basımevi, 1958), p. 41, 45, 86, 102; Ibid., *Ankara'nın İki Numaralı Şer'iye Sicili: 1 Muharrem 997-8 Ramazan 998 (20 Kasım 1588-11 Temmuz 1590)* (Ankara: Türk Tarih Kurumu Basımevi, 1974), p. 48, 65, 82, 105, 111, 114, 116, 123, 125.

[438] I thank James Baldwin for drawing my attention to this process. Also on the vernacularization of the court records (in this case, from Arabic to Ottoman Turkish) in the core lands of the empire in the fifteenth and the sixteenth centuries see İklil Oya Selçuk's study of late fifteenth-century Bursa: İklil Oya Selçuk, *State and Society in the Marketplace: A Study of Late Fifteenth-Century Bursa* (Harvard University: Unpublished Ph.D. dissertation, 2009), pp. 45-46, 93-96.

[439] I have borrowed the notion of readability from Gülrü Necipoğlu, "A Kanun for the State, a Canon for the Arts: The Classical Synthesis in Ottoman Art and Architecture during the Age of Süleyman," in Gilles Veinstein (ed.), *Soliman le Magnifique et son temps, Actes du Colloque de Paris Galeries Nationales du Grand Palais, 7-10 Mars 1990* (Paris: Recontres de l'ecole du Louvre, 1992), pp. 195-216.

century and the development of training and career paths, members of the religious-judicial establishment employed various discursive strategies and scholarly genres to propagate the authority of the şeyḫülislâm and his subordinates. But unlike the other genres, because of its explicit dialogic nature that involves both the questioner and the muftī, the fatwá was a sort of propaganda that required the active participation of its target (i.e. the questioner), for he had to deploy the aforementioned conventions in his question (or at least was presented as if he did).

Viewed from this perspective, the fatwá is not merely a channel to transmit the opinion of the muftī to the inquirer but an instrument that serves additional ends. These ends, however, should not be perceived as external to the "legal content." As we have seen in chapter 1, the Ottoman definition of the institution of the muftī differed substantially from the perception prevalent across the Arab lands of the empire. One of the implications of the Ottoman perception of the muftī was that the muftī defined which opinion within the Ḥanafī school his subordinates should follow. Furthermore, as we have seen, in the sixteenth- and seventeenth-century "legal landscape" of the Arab provinces there were multiple jurisprudential authorities. The chief muftī and the state-appointed muftīs had to establish their authority within this context. Therefore, the discursive patterns that accompanied and supplemented the institutional development played an important role in propagating the authority of the chief muftī and the Ottoman religious-judicial establishment.

Making Use of a State-Appointed Muftī's Fatwá

Now that we have examined some of the features of the Arabic fatwá and their function, let us turn to explore the ends to which imperial subjects across the Arab lands, and particularly in Greater Syria, solicited the şeyḫülislâm's or the state-appointed provincial muftīs' opinions. My main purpose here is to offer several possible explanations for the decision to address the chief or state-appointed provincial muftī. Moreover, I intend to situate the solicitor's decision within the wider context of the sixteenth- and seventeenth-century Ottoman "legal landscape" in order to point to specific procedures and legal venues in which the state-appointed muftī's ruling was deemed authoritative.

As noted above, since the identity of the solicitor (or solicitors) or the context in which the question was initiated is rarely disclosed in the fatāwá, the attempt to explain her/their decision to solicit these muftīs' opinion poses serious methodological challenges. In particular, there are two main interlocking challenges. The first challenge is of course the reconstruction of the historical and legal context of the fatāwá. While in some cases this is practically impossible, in others the picture that emerges is patchy and leaves much room for speculation. Secondly, as I have already argued, it is difficult to determine the intentionality of the inquirer, or, to be more precise, to determine the extent to which a solicitor was aware of—and

skillfully used—the different opinions and authorities. Furthermore, it is difficult to account for the commitment of a certain solicitor to a specific muftī.

Nevertheless, since the fatāwá I am interested in were compiled in Arabic and issued by an identifiable muftī, it is possible to situate the solicitor in the Arab lands in a concrete time period (the duration of the muftī's tenure in office). Moreover, in some cases, by reading the fatāwá with and against other sources, one may locate them in the context of a specific jurisprudential debate or in a concrete historical setting. In addition, certain patterns in the use of the chief muftīs and their provincial subordinates are discernable. These patterns raise important questions—but may also provide answers—with regard to the reasons that led the solicitors to consult state-appointed jurisconsults. What is more, these patterns point to a considerable degree of familiarity with the different authorities and the advantages of each, depending on the case at hand. This approach is not exclusive to our discussion of the fatāwá issued by the chief muftī and the provincial state-appointed muftīs, but, as we shall see in the next chapter, may be applied to fatāwá dispensed by muftīs who did not hold a state appointment.

To convey a better sense of the instances and venues in which imperial subjects across the Arab lands utilized the institution of the chief or state-appointed provincial muftīs, it would be helpful to submit several representative case studies to closer scrutiny.

The Jews of Jerusalem and the Local State-Appointed Muftī

One of the most common reasons for obtaining a ruling from a state-appointed muftī or the şeyḫülislâm was to support the solicitor's claims in court. Although I have not consulted court records for this study, court records from Jerusalem, which have been published by Amnon Cohen and others, provide rich information concerning the ways imperial subjects utilized rulings issued by the local state-appointed muftīs and the şeyḫülislâm. These records corroborate and supplement the findings of other studies based on court records from across the Arab lands and Anatolia. At this point, however, it is difficult to assess how frequently the state-appointed muftīs were approached. This will require more research into the court records. It is clear, on the other hand, that fatāwá, the overwhelming majority of which were issued by state-appointed muftīs, were brought to court and recorded in its records.

The fact that many of the cases gleaned and translated by Cohen dealt with Jewish subjects should not be a problem for our purpose. Although there may be differences in the ways Muslims and non-Muslims made use of the different authorities, the fact that non-Muslims (Jews, in this case) did not have particular interests in preserving the authority of a specific tradition within the Ḥanafī school renders their use of the different muftīs illuminating. In other words, non-Muslim

solicited the opinion of the muftī they thought would promote their legal interests more efficiently.[440]

Consider, for example, the following case, which is preserved in the court records of Jerusalem. On Saturday, May 3rd, 1597, several Jerusalemite Jews who failed to pay their debts and were consequently imprisoned in the local prison appeared before the Ḥanafī judge of Jerusalem. In prison, they complained, they had to share their cells with Muslim prisoners, and therefore could not pray and observe the Sabbath day. They proposed to be transferred to an adjacent cell, known as the Room of the Well, located near the prison. The judge summoned the Muslim lenders, who rejected the proposed arrangement. The Jews, or, more likely, someone on their behalf, approached Jār Allāh b. Abī Luṭf, the Ḥanafī muftī of Jerusalem at the time, and asked for his opinion:

> [**Question**:] What is the opinion of our lord the Shaykh al-Islām concerning a case in which next to the prison of the judge there is a room suitable to serve as prison, [and given that] the Jewish community has a debt [which they have not paid], and they [the Jewish prisoners] asked to be imprisoned in the aforementioned room so the imprisoned Muslims would not suffer any harm inflicted by the Jews? Moreover, the Muslims will also harm the Jews, if they are to be imprisoned in a single place, for they [the Jews] are prevented from praying and [observing] the Sabbath among the

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[440] On non-Muslims' use of the various channels of the Ottoman legal system, see: Richard Wittmann, *Before Qadi and Grand Vizier: Intra-Communal Dispute Resolution and Legal Transactions Among Christians and Jews in the Plural Society of Seventeenth Century Istanbul* (Harvard University: Unpublished Ph.D. dissertation, 2008).

> Muslims, while they are not to be prevented according to the *Sharī'ah*. If the judge deems it right to imprison them in the aforementioned room in a manner that guarantees that they will not flee and that they [the Jews will] perform all that is required from prisoners according to the law, is he [the judge] allowed to do so [i.e. to transfer the Jews to that room]? Dispense to us your opinion.
>
> [**Answer**:] Praise be to God, may He guide me in the straight path. Yes, the judge is allowed to imprison them [the Jews] wherever he wishes, so they will not lose any of their rights. God knows best. Jār Allāh b. Abī al-Luṭf wrote this [answer].[441]

At the end of Jār Allāh's answer, the Jews also grafted on the opinion of Isḥāq b. 'Umar b. Abī al-Luṭf, the Shāfi'ī muftī of Jerusalem, who approved the opinion of his Ḥanafī colleague (and relative). After examining the legal rulings, the judge ordered the warden to transfer the Jews to the Room of the Well. All this information, including the legal rulings issued by the Jerusalemite muftīs, was recorded in the court record.

This case raises several issues that are relevant to our discussion: the Jews' decision to solicit the ruling of this particular muftī; the manner in which the question was articulated; and the circulation of the muftī's legal ruling in the context of the imperial legal system. Moreover, despite the case's local particularities, I would

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[441] Amnon Cohen and Elisheva Simon-Pikali, *Jews in the Moslem Religious Court: Society, Economy and Communal Organization in the XVIth Century (Documents from Ottoman Jerusalem)* (Jerusalem: Yad Izhak Ben-Zvi, 1993) [in Hebrew], pp. 29-30.

suggest examining it in the broader context of Greater Syria (and, to some extent, of other Arab provinces of the empire).

Let us start by dwelling on the identity of the Ḥanafī muftī the Jews approached. Jār Allāh b. Abī al-Luṭf, to whom the Jews appealed, was the state-appointed Ḥanafī muftī of Jerusalem and the professor of a madrasah known as *al-Madrasah al-'Uthmāniyyah*, a position that was stipulated to the Ḥanafī state-appointed muftīs of the city since the sixteenth century and was monopolized by the Banū Abī al-Luṭf in that period.[442] Although the Jews could have consulted jurisconsults who did not hold a state appointment, they decided to consult a state-appointed jurisconsult, assuming that his ruling would be the most effective.

In addition, this case shows how the muftī's ruling as a document functioned in the context of the legal procedure in the court. It is clear from this case that the muftī had to be informed about the case and usually did not intervene in the procedure that took place at the court before the judge. In this case, the muftī was

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[442] Jār Allāh b. Abī al-Luṭf was a member of the Banū Abī al-Luṭf. The family monopolized in the late sixteenth and the seventeenth century the Ḥanafī state-appointed muftīship. See for example: Najm al-Dīn Muḥammad b. Muḥammad al-Ghazzī, *Luṭf al-Samar wa-Qaṭf al-Thamar: min Tarājim A'yān al-Ṭabaqah al-Ūlā min al-Qarn al-Ḥādi 'Ashar* (Damascus: Wizārat al-Thaqāfah wa-al-Irshād al-Qawmī, 1981-1982), vol. 2, pp. 584-585; al-Ḥasan ibn Muḥammad al-Būrīnī, *Tarājim al-A'yān min Abnā' al-Zamān* (Damascus: al-Majma' al-'Ilmī al-'Arabī bi-Dimashq, 1959-1963), vol. 2, pp. 127-128; Muḥammad Amīn ibn Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fī A'yān al-Qarn al-Ḥādī 'Ashar* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2006), vol. 1, p. 530.
The use of the Shāfi'ī muftīs who held a state appointment deserves another study. Here suffice it to say that the practice of bringing a fatwá from both the Ḥanafī and Shafi'i state-appointed muftīs recurred in other instances. In some cases, litigants brought only the ruling of the state-appointed Shāfi'ī muftī (see, for instance: Cohen and Ben Shim'on-Pikali, *Jews in the Moslem Religious Court: Society. Economy and Communal Organization (XVIIth Century),* vol. 1, p. 216).

informed by one of the parties involved, but it seems that in other cases, such as the ones discussed in chapter 5, the judge himself consulted the muftī. After the fatwá—the question and the muftī's answer—was brought to court, the judge examined the extent to which the fatwá matched the case under consideration. In some cases, as is the case here, the muftī's ruling was recorded verbatim in the court record. In others, the fatwá is paraphrased.

This is not to say that the state-appointed muftī never intervened in the court procedure. According to the Damascene Sharaf al-Dīn Mūsá b. Yūsuf al-Anṣārī (d. after 1592), who served as Shāfi'ī deputy judge in Damascus, in 1590 the secretary of the provincial state-appointed Ḥanafī muftī in the city, Muḥammad b. Hilāl al-Ḥanafī, sent to the former's court two rulings issued presumably by the provincial muftī. These fatāwá, which followed the rulings of Ebû's-Su'ûd Efendi, reiterated the regulation that cases that are older than fifteen years should not be adjudicated in court. Nevertheless, in most cases, it was one of the litigants who brought the jurisconsult's ruling to court.

The way in which the question was posed to the muftī is intriguing, especially when compared to manner in which the litigants describe the scenario in court, or at least to the way in which the scribe who recorded the case in the court records perceived it. According to the court record, the Jews immediately complained about the cell where they were held and asked to be transferred to the Room of the Well, so

they could observe the Sabbath. They did not mention the inconvenience that is caused to their Muslim cellmates. The question they posed to the muftī presents a somewhat different scenario. According to the question the main concern of the solicitors was the inconvenience of the Muslim prisoners. The Jews' interests are secondary. Furthermore, as we have seen, the question employs the particular formulae to address the chief imperial and provincial state-appointed muftīs. This case, in other words, reflects the translation of the scenario as it is presented in the court into a question to the muftī. This translation clearly required the involvement of specialists, or at least of seasoned users who were familiar with the formulae and could assist the solicitor in drafting a question that would serve his interests.

The practice of bringing a ruling of a state-appointed muftī to court in Jerusalem corresponds to similar practices elsewhere. Studies of other courts—such as Boğaç Ergene's study of the courts of seventeenth- and eighteenth-century Çankırı and Kastamonu, Haim Gerber's study of Bursa, and Hülya Canbakal's of the court of seventeenth-century Ayntab[443]—have also drawn attention to the important role that fatāwá issued by the muftī (i.e. the chief muftī or the provincial state-appointed one)

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[443] Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Cankiri and Kastamonu (1652-1744)* (Leiden: Brill, 2003), pp. 139-140, 149-150; Haim Gerber, *State, Society, and the Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), ch. 3; Hülya Canbakal, "Birkaç Fetva Bir Soru: Bir Hukuk Haritasına Doğru," in *Şinasi Tekin'in Anısına Uygurlardan Osmanlıya* (Istanbul: Simurg, 2005), pp. 258-270; Ronald C. Jennings, "Kadi, Court, and Legal Procedure in 17th C. Ottoman Kayseri: The Kadi and the Legal System," *Studia Islamica* 48 (1978), pp. 133-136; Ibid., "Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri," *Studia Islamica* 50 (1979), pp. 156-159.

played in the legal procedure. Most of these studies have identified the same pattern: in most cases in which the judge deemed the ruling relevant to the case under adjudication the litigant who brought the fatwá to the court won the case.

To clarify this point further, the appearance of the state-appointed muftīs' rulings in the court record should be contrasted to the relative absence of those who did not hold a state appointment. Although in some cases their opinion was recorded, it seems that such cases were fairly rare. This is not to say, however, that the rulings of the non-appointed muftīs were not brought to court. But if their fatāwá were indeed brought to court, they were not recorded in the court record. Their absence from the record suggests that consulting these rulings was not considered part of the formal procedure in court. It is therefore difficult to assess the impact of the rulings issued by non-appointed jurists on the judge's resolution, but it is clear, as will be discussed in the next chapter, that the rulings of prominent non-appointed muftīs were influential, both in and outside the court.

Moreover, in places where prominent muftīs who did not hold a state appointment operated and were influential enough, imperial subjects—Jewish subjects, in this case—made use of these muftīs to promote their legal interests. While the Jews of sixteenth-century Jerusalem knew the advantages of obtaining a ruling from the provincial state-appointed muftī for promoting their legal interests in court, some of their coreligionists addressed their questions to other muftīs who did

not hold a state appointment whenever they thought the latter's ruling would promote their legal interests. Late in the sixteenth century, two Jews from Alexandria, Samuel b. Shams b. Isḥāq and Salomon b. Mūsá b. Isḥāq, appeared before the Ḥanafī judge. The case was about certain commercial affairs and debts that should not concern us here. After the case was adjudicated in court, someone, possibly one of the litigants, brought a copy of the resolution (*ṣūrah*) to the eminent sixteenth-century muftī Muḥammad b. 'Umar Shams al-Dīn al-Ḥānūtī, who was not a state-appointed muftī.[444] Furthermore, the Jewish merchants' decision to approach al-Ḥānūtī demonstrates the weight his rulings carried in court, or, alternatively, points to authoritativeness of his rulings among Muslims and non-Muslims alike.

Petitioning

So far we have focused on the state-appointed provincial muftīs. But, as I already suggested in chapter 1, the state-appointed provincial muftīs were as a rule subordinates to the chief imperial muftī, whose rulings were at least theoretically enforceable within the establishment (and to a considerable extent among its appointees, in the case of Greater Syria). It is therefore necessary to shift the focus to

[444] Muḥammad b. 'Umar b. Shams al-Dīn al-Ḥānūtī, *Fatāwá al-Ḥānūtī,* Bayezit Library MS Veliyüddin 1494, pp. 428r-429v. On Muḥammad b. 'Umar b. Shams al-Dīn al-Ḥānūtī see: al-Muḥibbī, *Khulāṣat al-Athar*, vol. 4, pp. 76-77.

the chief imperial muftī and to examine how his rulings functioned in the Arab provinces of the empire.

To this end, let us examine another example from sixteenth-century Jerusalem. In 1550 one of the tîmâr holders in the district of Jerusalem petitioned the Porte, claiming that the Jews of the city had leased parts of his tîmâr for their cemetery. Nevertheless, he argued, he had not been paid as had been agreed. Before petitioning the Porte, the tîmâr holder sought the opinion of the chief muftī at the time, Ebû's-Su'ûd Efendi. Based on the muftī's ruling and the petition, an imperial edict was issued and sent to Jerusalem. Upon the arrival of this edict, which also included the ruling of the muftī, the judge of Jerusalem summoned the parties. After examining the documents presented by the litigants and the testimonies in support of their claims, the judge ruled in favor of the tîmâr holder. It is not fully clear why the tîmâr holder decided to submit his question to the chief muftī before petitioning the Porte.[445] The important point is that the latter assumed that the chief muftī's ruling would strengthen his stance, first in the Porte and later in court. Although it is practically impossible in most cases to reconstruct the entire story behind the Arabic fatāwá in

[445] Cohen and Simon-Pikali, *Jews in the Moslem Religious Court (16th Century),* p. 92.

the collections of the chief muftīs, it stands to reason that at least in some cases the solicitors intended to petition the Porte.[446]

It should be stressed, however, that those who submitted their questions to the chief muftī were not always members of the imperial ruling elite, as the solicitor in the abovementioned case. When the Ashkenazi Jews of Jerusalem wanted to renovate their synagogue in the city in the late seventeenth century, they addressed the chief muftī Feyżullah Efendi and obtained a fatwá approving of the renovation.[447] Then they petitioned the Porte, and, as in the tîmâr holder's case, their petition resulted in an imperial edict sent to the court in Jerusalem.[448] Moreover, the content of many questions preserved in the collections of the chief imperial muftīs raise the possibility that the questions were posed by commoners, or were posed on their behalf. For instance, a question posed to Menteşîzâde Efendi (served as chief muftī from 1715 to

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[446] On the practice of obtaining a ruling before petitioning the Porte see: Abdurrahman Atçil, *Procedures in the Ottoman Court and the Duties of the Kadis* (Ankara: Bilkent University, Unpublished M.A. thesis, 2002), pp. 21-22; Başak Tuğ, *Politics of Honor: An Institutional and Social Frontiers of "Illicit" Sex in Mid-Eighteenth-Century Ottoman Anatolia* (New York University: Unpublished Ph.D. Dissertation, 2009), pp. 111-123.

[447] It is unclear, however, who submitted their question to the chief muftī. They may have sent an envoy or asked their coreligionists to solicit the chief muftī's opinion and to petition the Porte on their behalf. A scribal manual from seventeenth-century Jerusalem records epistles sent from the Jews of Jerusalem to the Jews in Istanbul. In these missives, the Jews of Jerusalem instruct their Istanbulian counterparts to obtain rulings from the muftī, i.e. the şeyḫülislâm, for various purposes. Some of the epistles reflect the close contacts between certain unidentifiable members of the Istanbulian Jewish community and the chief muftī (and other senior jurists and officials). Mina Rosen, "Influential Jews in the Sultan's Court in Istanbul in Support of Jerusalem Jewry in the 17th Century," *Michael* VII (1981), pp. 394-430 [in Hebrew]; Minna Rozen, *The Jewish Community of Jerusalem in the Seventeenth Century* (Tel Aviv: Tel Aviv University and the Ministry of Defense Publishing House, 1984), pp. 419-421 [in Hebrew].

[448] Cohen and Ben Shim'on-Pikali, *Jews in the Moslem Religious Court: Society (XVII cent.),* vol. 1, pp. 87-89.

1716) deals with a member of the ruling elite (*ahl al-ʻurf*) who "oppressively" seizes the money of a minor inheritor.[449]

Sufis and the Chief Imperial Muftī

The Jews of Jerusalem as other solicitors who addressed the state-appointed jurisconsults demonstrated remarkable familiarity with the legal procedures. Other cases indicate that solicitors were also familiar with specific legal arguments and tried to manipulate these arguments in their favor.

Two case studies, each of which consists of two fatāwá, may illustrate this point. The first case study focuses on two fatāwá, one by Kemâlpaşazâde and the other by Ebû's-Su'ûd Efendi, concerning the permissibility of certain Sufi practices. Although Kemâlpaşazâde's fatwá is cited in Ebû's-Su'ûd's collection in continuation to the latter's answer, they should be treated as two separate fatāwá issued in two distinct moments. In Ebû's-Su'ûd's collection, his answer precedes that of his predecessor. Here I will reverse the order and read the fatāwá chronologically. Yet, the connection made by Ebû's-Su'ûd is important and will be discussed as well.

Here, then, is Kemâlpaşazâde's fatwá:

[449] Menteşîzâde, *Fetâvâ,* Süleymaniye Library MS Haci Selim Ağa 440, p. 521r.

Question: What is the opinion of jurists of the Prophetic religion and the savants of the jurisprudence of Muṣṭafá—may Allāh strengthen them with the grace He has bestowed upon them from the strong [authority to render] judgment and [may He] set them straight in what He imposed on them of correct decision[s]—about a group of sufis (*ṭā'ifah mutaṣawwifah*) who are commemorating God and are sitting in circles in the manner they have always done, making utterance[s] [such as]: "There is no God" [but Allāh?], "He" or "Oh, Allāh." And they raise their voice at their preferred times. After the dhikr takes them over they utter and move, so sometimes they whirl with the *dhikr* [commemoration of God], right and left. And [in] other [times] they fall with the *fikr* [thought of God] according to [the] manner in which Allāh treats them (*'āmalahum Allāh*)—may His glory and beauty be glorified –, sometimes they are drawn by divine guidance and they strike the ground with their feet, leaping [around], and the disapprover regarded [all] this and claimed that it amounted to the dance (*raqṣ*) that the entertainers perform blatantly. [In response the Sufis] say: "We do this [leaping] in ecstasy and involuntarily losing ourselves in accordance with the correct Sunnah and good intentions of our [?] shaykhs [in a situation such that] the Sufis perform the *dhikr* in their presence and they do not prevent them [from doing so], rather, they even find delight and comfort in watching and hearing them, and the observable way they are when [attending] their *samā'* testifies to this; and we have seen that some of the jurists [permitted?] the dhikr in their sessions, so in them they perform the *dhikr* according to the abovementioned Sunnah; and we have seen many of our masters the jurists, the most excellent

of their time issued fatāwá permitting [this practice]. We have found in several books compiled by the well-guided jurists [who follow the] the Ḥanafī and Shāfi‘ī customs that they permitted this and showed how it [the *dhikr*] has great virtue and immense benefit." We have tested (?) this and witnessed in numerous times what they have shown (?) and [witnessed] that the disapproved occurs only sporadically; so is [this] permissible for them or not?

The answer: There is nothing wrong in their ecstatic being if it is sincere and there is nothing [legally] problematic in their sway if they are sincere. You have undertaken to do foot-service (??), and it is legitimate for one asked by his master to do [such] by way of permit, under the circumstances mentioned, at the *dhikr* and *samā‘* what has been mentioned are permissible during the *dhikr* and the *samā‘* for the knowledgeable/enlightened Sufis (‘*ārifīn*) who spent their times [doing] the most excellent acts of those who follow the path (*sālikīn*), who possess [the ability] to hold themselves [while they face] ignobility (*qabā’iḥ al-aḥwāl*) […] If they mention Him they lament [their distance from Him]; if they "witness" Him they find peace; if they graze in [??] the presence of His proximity they travel about [??]—when ecstasy overcomes them with His bouts of mastering [them] and they drink from the sources of His will. Some of them receive the divine night-visits and fall to the ground and lose their poise; some are struck by lightning flashes of grace and move and are content; some are approached by love from the harbingers of [divine] intimacy and follow [that path] and lose themselves; and **[verse] He whose ecstasy is true ecstasy * does not need the word of the singer ** […] [He finds in] himself eternal bliss * and**

ongoing drunkenness without a wine vat This is my answer and God know best.[450]

The question sent to Kemâlpaşazâde, assuming that it was addressed to him personally, is intriguing. It deals with several Sufi practices whose permissibility stood at the center of a heated debate in the early sixteenth century. What makes this question even more intriguing is that the Sufis had reportedly asked other Ḥanafī and Shāfi'ī jurists for their opinion concerning these practices. It is also evident from the Sufis' report that these jurists had contended that the practices were licit and in congruence with the Prophetic tradition. The address to the imperial chief muftī, therefore, may be interpreted as an invitation to participate in an ongoing debate that troubled many sixteenth-century both Ḥanafī and non-Ḥanafī jurists and scholars. In the early decades of the sixteenth century, leading jurists in the central lands of the empire, such as Kemâlpaşazâde and Ibrāhīm al-Ḥalabī, just to mention two salient examples, compiled treatises disapproving of specific practices such as the dance during *dhikr* sessions.[451] Chronicles from the Arab lands also record fatāwá issued by leading, mostly non-Ḥanafī, jurists approving of certain debated Sufi practices, such

[450] Ebû's-Su'ûd, *Fetâvâ,* pp. 189r-v.

[451] Aḥmad Shams al-Dīn Kemâlpaşazâde, *Risālah fī al-Raqṣ,* Süleymaniye Library MS Denizli 114-1, pp. 225r-228r; Ibrāhīm ibn Muḥammad al-Ḥalabī, *Risālah fī al-Raqṣ,* Süleymaniye Library MS Es'ad Efendi 1690, pp. 214v-225r

as the use of drums and music in their *dhikr*.[452] Although the jurists mentioned in the chronicles did not discuss the issue of dancing directly, as those in the question, it appears that the question posed to Kemâlpaşazâde is part of this ongoing debate concerning the legality of a host of Sufi practices, a debate that, as we have just seen, cuts across legal schools and regions.

Against this backdrop, the questioner decided to address the jurists in Istanbul. Nothing is known about his or their identity. He may have been a local Arab subject who realized that he might find strong allies for his opinion in the imperial capital. Alternatively, he might have been an Ottoman official or judge who wanted to confirm what the opinion of the chief muftī was. By addressing the şeyḫülislâm and obtaining his opinion in Arabic, the solicitor perhaps thought he could counter the argument of jurists from the Arab lands who disapproved of such practices. It is likely, however, that the questioner considered the chief muftī to be the leading authority to resolve this dispute, even if the chief muftī's response did not necessarily convince the other jurists or the Sufis themselves.

It is also interesting to pay attention to the fact that the question to Kemâlpaşazâde and his subsequent answer are included in the answer of his

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[452] Al-Ghazzī, *Kawākib,* vol. 3, pp. 16-20; al-Ghazzī, *Lutf al-Samar,* vol. 2, pp. 595-600; ibid., pp. 656-659. For Aleppo, see: Muḥammad ibn Ibrāhīm b. al-Ḥanbalī, *Durr al-Ḥabab fī Ta'rīkh A'yān Ḥalab* (Damascus: Wizārat al-Thaqāfah, 1972-1974), vol. 2 (part I), p. 416. This debate continued until the eighteenth century (and perhaps even later). 'Abd al-Ghanī al-Nābulusī defended controversial Sufi practices. In his treatise on this issue, he also invokes Khayr al-Dīn al-Ramlī's approval of the loud *dhikr*. 'Abd al-Ghanī al-Nābulusī, *Jam' al-Asrār fī Radd al-Ṭa'n 'an al-Ṣūfiyyah al-Akhyār Ahl al-Tawājud bi-l-Adhkār* (Beirut: Dār al-Muḥabbah, 2000). For al-Ramlī's response, see: Ibid., pp. 68-72.

successor, Ebû's-Su'ûd Efendi, several decades later. After the address the questioner inquires about

> [**Question**:…] a group (*qawm*) that recite "There is no God but Allāh", "He" (*Huwa*), and "Oh, Allāh," while chanting and uttering vociferously, at times they raise [their voice] and a times they lower [it] according to what suits these unlawful acts and the corrupt performance, they do not hope for God with respect, but they pursue illegal innovations (*bida'*) as their banner. Issue your opinion, may [God] reward you and may God turn you into the most exalted in the protection of the master of the messengers [the Prophet].
>
> **The answer**: What is mentioned [in your question] is a despicable invention and a loathsome illicit invented deceit. They will fall in the abysses of distraction and downfall, [as] they took delight in those who corrupt the words and turn the recitation of the Qur'ān (*al-mathānī*) into [?] singing. Alas he who attributed [this act] to the evident Truth [God], when they do not cease their forbidden acts, and those who do not reintroduce the word [idea] of oneness to their rightly-guided practice (*nahj*) shall suffer [lit. touched upon by] a severe punishment. [But] [you] who laments (?) this [act] and incite the believers against it, [there is nothing wrong in] beautifying the sounds of the beautiful Qur'ān without insertion or exchange. And God said: The Truth will lead the way and "For me [Allāh] is sufficient and the best disposer of affairs" (Qur'ān 3:173). [Cites Kemâlpaşazâde's answer]

There are interesting parallels between the question posed to Kemâlpaşazâde and that posed to Ebû's-Su'ûd Efendi, as well as significant differences. Taken together, the two fatāwá (that is, the questions and the answers) convey a sense of the dialogic nature of the process of soliciting and dispensing the muftī's opinion. As this case demonstrates, at times it was a dialogue that went on for decades. Furthermore, it seems that both the questioner and Ebû's-Su'ûd were aware of the fact that there was an ongoing exchange between solicitors from the Arab lands and chief imperial muftīs over this issue. From the solicitor's vantage point, the fact that the Sufis in his question say exactly the same phrases their counterparts are reported to have said in the question posed to Kemâlpaşazâde indicates that these phrases were employed with the intention of framing the debate. Nevertheless, unlike the earlier questioner, the latter adds adjectives that clearly point to his strong disapproval of the Sufi practices. It is possible that the questioner denounced certain Sufi practices as illegal innovations (*bid'ah*), precisely because he was familiar with Kemâlpaşazâde's ruling, and attempted to lead Ebû's-Su'ûd to diverge from his predecessor's opinion. From the muftī's perspective, the citation of his predecessor's rulings points to his awareness of the history of the exchange and to its particular geographical setting, since both Ebû's-Su'ûd's and Kemâlpaşazâde's rulings were penned in Arabic. Moreover, Ebû's-Su'ûd's reference to the fatwá issued by Kemâlpaşazâde establishes the latter as precedent.

Similar dynamics may be discerned in another two fatāwá from the second half of the seventeenth century. The first was posed to Minḳârîzâde Efendi and the second to Menteşîzâde. Minḳârîzâde's fatwá reads:

> **Question**: What is the opinion of the Shaykh al-Islām concerning a knowledgeable young [man]. Should he be given precedence over the ignorant elder or not? Dispense to us your legal opinion (*aftūnā*).
> **The answer**: Yes, he should be given precedence.[453]

Several decades later the exact same question was posed to Menteşîzâde.[454] Although the question cannot be attached to a specific event or debate, the fact that the later solicitor sent the same question points to his familiarity with previous rulings and to his assumption that he is likely to obtain the same ruling if he employs the same wording. Furthermore, both case studies offer a clue to the dissemination and circulation of legal knowledge between the imperial center and Arab provinces.

Defending Local Practices

A qualification is in order concerning the relationship between the chief imperial jurisconsults and the establishment's Greater Syrian appointees who were not

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[453] Minḳârîzâde, *Fetâvâ,* p. 53r.

[454] Menteşîzâde, *Fetâvâ,* p. 77r.

graduates of the imperial madrasah system. As we have observed in chapter 1, provincial muftīs were expected to follow the rulings of the chief imperial jurisconsult in their own rulings. Although state-appointed muftīs from the Arab lands tended to be more attentive to the legal arguments promoted by the colleagues who were affiliated with the imperial establishment than those muftīs who did not hold a state appointment, state-appointed Greater Syrian muftīs at times defended "local" practices. In his guide to ritual practices, *Hadiyyat Ibn al-'Imād li-l-'Ibād al-'Ubbād,* the state-appointed muftī 'Abd al-Raḥmān b. Muḥammad al-'Imādī (d. 1641) reports an encounter he had with Es'ad Efendi (d. 1625)[455] who passed through Damascus on his way to the Holy Cities. Es'ad Efendi was not satisfied with the quality of the water in the Damascene cisterns for ablution. The quality of the water was so bad, in Esʿad Efendi's view, that at some point he wanted to order the renovation of the cisterns. The implication of Esʿad Efendi's view of the quality of the water was that the ablution of the Damascenes was not valid. Al-'Imādī, as he recounts, defended the quality of the water, and thereby the validity of the Damascenes' ablution, by citing an approving passage from one of Ibn Nujaym's works.[456] Several decades later, another state-appointed muftī, the Damascene 'Alā' al-Dīn al-Ḥaṣkafī, also pointed to

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[455] On Es'ad Efendi, see Abdülkadir Altunsu, *Osmanlı Şeyhülislamları* (Ankara: Ayyıldız Matbaası, 1972), pp. 58-59.

[456] 'Abd al-Raḥmān b. Muḥammad al-Dimashqī al-'Imādī, *Hadiyyat Ibn al-'Imād li-'Ubbād al-'Ibād,* Süleymaniye Library MS Laleli 1185,pp. 12r-12v.

differences in certain legal issues between Greater Syria and the core lands of the empire, and implicitly approved of the Damascene practice.[457] In other words, addressing local state-appointed muftīs was at times a good solution for securing the legality of local practices within the imperial context.

Dissemination of Legal Knowledge and the Authority of State-Appointed Muftīs

Prior to the Ottoman conquest of the Arab lands in 1516-1517, the overwhelming majority of the inhabitants of the Arab lands had very little, if any, contacts with the evolving Ottoman legal system.[458] The Ottoman conquest led to the introduction of new legal institutions into the Arab lands, such as the new institution of the chief imperial muftī, and the imperial capital became an important political, scholarly, and legal center. The cases examined throughout this chapter illustrate the increasing

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[457] Muḥammad b. ʻAlī b. Muḥammad al-Ḥaṣanī al-ʻAlāʼ al-Ḥaṣkafī, *al-Durr al-Muntaqá fī Sharḥ al-Multaqá* (Beirut: Dār al-Kutub al-ʻIlmiyyah, 1998), vol. 2, p. 323.

[458] Some Mamluk subjects were familiar with at least some institutions of the Ottoman burgeoning legal system. Fifteenth- and early sixteenth-century chronicles and biographical dictionaries include biographies of leading jurists who operated in the Ottoman realms and entered the Mamluk lands. At the same time, Mamluk subjects (such as merchants and scholars) traveled to Anatolia and to the Ottoman domains in the late fifteenth century. [For instance: Ibn Ṭawq, *Yawmiyyāt Shihāb al-Dīn Aḥmad ibn Ṭawq* (Damascus: Institut Français du Damas, 2000-2007), vol. 2, pp. 947-948; Emire Cihan Muslu, *Ottoman-Mamluk Relations: Diplomacy and Perceptions* (Harvard University: Unpublished Ph.D. dissertation, 2007), pp. 1-86.]
ʻAlī b. Yūsuf al-Buṣrawī mentions in his chronicle an incident that sheds some light on the ongoing contacts between the jurists in the Ottoman realms and possibly their colleagues in the Mamluk sultanate. In 1490, during the Ottoman-Mamluk war, the Ottoman chief muftī Molla ʻArab sent his own envoy to inform the Mamluk commanders that he and other jurists in the Ottoman lands were not pleased with Bâyezîd II's decision to attack the Mamluk sultanate. Molla ʻArab was, it should be mentioned, one of those jurists who traveled between the Mamluk and the Ottoman domains. ʻAlī b. Yūsuf al-Buṣrawī, *Taʼrīkh al-Buṣrawī: ṣafaḥāt majhūlah min tārīkh Dimashq fī ʻAṣr al-Mamālīk, min sanat 871 H li-ghāyat 904 H* (Beirut: Dār al-Maʼmūn li-l-Tūrath, 1988, p. 140).

familiarity of a growing number of imperial subjects with the Ottoman legal system in general, and particularly with the institution of the chief imperial muftī and his state-appointed provincial colleagues. To be sure, some of the solicitors were members of the imperial judicial or ruling elites who resided in the Arab lands, such as the tîmâr holder we have encountered. On the other hand, it is clear that commoners, such as the Jews of Jerusalem, knew enough to address the state-appointed muftī of the city. As has been argued earlier, the consistency with which certain authorities were addressed indicates that imperial subjects had access to "legal knowledge" that informed their consumption of justice.

This is not to suggest, however, that every subject (or even member of the ruling or judicial elites) was equally familiar with the various authorities and with their respective advantages to his case. Some probably made use of the various muftīs more skillfully than others. It is also probable that at least some solicitors were loyal followers of specific muftīs, regardless of these muftīs' position in the new "legal landscape." Moreover, as Boğaç Ergene's study of the court of Kastamonu and Çankırı has shown, there were some barriers that might have impeded easy access to the imperial legal system and to its jurisconsults.[459] These included the geographical distance to the town where the state-appointed muftī operated, let alone the distance

[459] Ergene, *Local Courts.*

from the imperial capital, the costs of the procedure,[460] and access to legal experts who could assist in formulating the question and provide legal guidance.

Without underestimating the significance of these impediments, and without blurring the differences between imperial subjects in terms of their familiarity with and access to the legal procedure, one has to acknowledge that many subjects did have access to the legal system in general and to state-appointed muftīs in particular. Furthermore, although less successful attempts to obtain a muftī's ruling as well as rulings that the solicitors considered unsatisfactory remain most likely underdocumented, other cases, as the case of the sixteenth-century Jews of Jerusalem, suggest that commoners were familiar with the legal procedure or at least had access to judicial guidance. The subjects' decision to solicit the opinion of the chief muftī, given the alternatives they had at their disposal, may be interpreted as their recognition of the weight the ruling of the state-appointed muftīs carried within the Ottoman legal system, and perhaps even as a sign of their own acceptance of these muftīs' authority. In other words, the process should be described from a dual

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[460] In the earlier stages of the institution of the şeyḫülislâm, it seems that the *fatāwá* were issued gratis. However, with the growing bureaucratization of the office fees were imposed to finance the services of the scribes and secretaries. It is hard to assess to what degree these fees prevented people from obtaining a fatwá. But out of the 49 *fatāwá* in Arabic, a significant proportion deal with endowments or appointments to positions. Although it might be risky to deduce statistical data on the basis of this finding, this might suggest that, at far as the Arab subjects of the empire are concerned, propertied subjects tended to use the channel of the şeyḫülislâm more frequently. This, however, calls for further research.
According to Hezârfen (writing around mid-seventeenth century), the fee for a fatwá was 7 akçe. The fee was intended to cover the expenses of the scribes (*resm-i müsevvid, kâtiblerindir*). Heyd, "Fetvâ," pp. 52-53.

perspective—from the perspective of the imperial legal system that sought to gain recognition, and from the vantage point of its "users." It is thus necessary to dwell on how imperial subjects, and especially those who were not members of the ruling or judicial elite, acquired knowledge about the legal procedure and learned when and how to address state-appointed muftīs.

Several channels whereby potential solicitors could have learned what muftī would serve their interests better emerge from the sources. It is fairly safe to assume that there were other venues in which legal knowledge was transmitted and disseminated. The imperial legal court was one of the sites in which non-jurists were most frequently exposed to legal rulings. When fatāwá are mentioned in court records, the records describe this procedure in performative terms. In court records from the core lands of the empire, for example, litigants are reported to have presented the fatwá (the verb used is *ibrâz eylemek*).[461] Moreover, litigants are said to have declared in court they had obtained a ruling from a muftī (*fetvâm var diyü*).[462] After the presentation of the ruling, the court records often relate how the judge read the fatwá in court and deliberated its compatibility with the case under adjudication.

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[461] Canbakal, "Birkaç Fetva Bir Soru"; Bilgin Aydın and Ekrem Tak (eds.), *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 1 Numaralı (H. 919-927/M. 1513-1521)* (Istanbul: İSAM Yayınalr, 2008), p. 349; Rıfat Günalan et al (eds.), *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 2 Numaralı (H. 924-927/M. 1518-1521)* (Istanbul: İSAM Yayınalr, 2008), p. 149; Rıfat Günalan (ed.), *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 26 Numaralı (H. 970-971/M. 1562-1563)* (Istanbul: İSAM Yayınalr, 2008), p. 355, 412.

[462] Rıfat Günalan et al (eds.), *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 2 Numaralı,* p. 345; Rıfat Günalan (ed.), *İstanbul Kadı Sicilleri Üsküdar Mahkemesi 26 Numaralı,* p. 303, 304.

In addition, the scribes at times included the fatwá in the record, copies of which were often given to the litigants. Litigants may have brought to court other rulings issued by non-appointed muftīs, in which case they had the opportunity to see which rulings carried greater weight in court. Moreover, as the edict issued following the petition of the tîmâr holder from Jerusalem demonstrates, rulings of the chief muftī were also cited in imperial edicts. The edicts were sent to provincial courts, where they were read publically. In short, the imperial courts—and more broadly the imperial legal system—were instrumental in the consolidation and propagation of the authority of the rulings issued by the şeyḫülislâm and state-appointed provincial muftīs.

The growing familiarity of imperial subjects with the state-appointed muftī was facilitated by the growing bureaucracy that aided him, and by his secretaries. This bureaucracy played an instrumental role in the dissemination of legal knowledge. Important provincial centers, such as Damascus, had at least one muftī secretary (*amīn*). It is not fully clear when the first secretary was appointed but it is clear that by the end of the sixteenth century a secretary operated in Damascus.[463] As we have seen, this secretary was in charge of communicating the muftī's rulings to the court, and most likely to other solicitors as well. It is likely that the secretary was also the one to articulate the questioner's question and present it to the muftī. Thus the

[463] Another Damascene secretary was Ibrahim b. 'Abd al-Raḥmān al-Dimashqī, also known as al-Su'ālātī (d. 1683). He was appointed to compile the questions for the Ḥanafī muftī of Damascus. al-Muḥibbī, *Khulāṣat al-Athar*, vol. 1, pp. 41-42.

secretaries played a pivotal role in mediating between the solicitor and the jurisprudential discourse.[464]

The muftīs' secretaries were important for another reason. As secretaries, they preserved and recorded the muftī's rulings. They were, in a sense, the archivists of the muftī. Therefore, they could have provided the solicitor with information about past rulings, which he could have used when articulating his question to the muftī. Furthermore, they may have kept other important rulings such as the rulings of the chief muftīs. It is also worth mentioning that the court records could have occasionally served the same end, for rulings dispensed by both the provincial and the chief muftīs were recorded there.

Finally, the collection of the rulings issued by a certain muftī played an important role in disseminating legal knowledge. Since these collections circulated across the empire, they served as "public archives," at least in learned circles. Jurists and scholar (and possibly others) could, and probably did, consult these collections when drafting their questions. In these collections, jurists could find how to address the chief muftī, the opinions of the current chief muftī's predecessors, and often the

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[464] This process is similar to the process described by Brinkley Messick in his *The Calligraphic State.* Brinkley Messick *The Calligraphic State: Textual Domination and History in a Muslim Society* (Berkeley: University of California Press, 1992).
Nevertheless, in some cases it is evident that the questioner himself was a member of the learned circles, as the questions posed to the chief muftī about specific passages from jurisprudential texts indicate. Ebû's-Su'ûd Efendi, *Fetâvâ,* p. 29r; Ṣun'ullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, p. 53v.

jurisprudential texts previous muftīs consulted. In other words, the collections served as an important tool to cement the coherence of the institution of the state-appointed muftīship and its jurisprudential production.[465]

Taken together, it seems that the Ottoman religious-judicial establishment made considerable efforts to provide access to its muftīs (or, in the case of the Arab lands, its appointees). These efforts were made on both discursive and "procedural" levels. On the discursive level, the Ottoman religious-judicial establishment attempted to tap into a discourse of authority and standardize an address that would indicate to the empire's Arab subjects the prominence of the chief muftī and his appointees. Moreover, the different legal procedures—the use of legal rulings in court, the petitions, and the imperial edicts—were employed to cement the privileged positions the state-appointed jurisconsults had, at least officially, within the Ottoman legal system.

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[465] Writing late in eighteenth-century Istanbul, the dragoman of the Swedish embassy, Ignatius Mouradega d'Ohsson, states that in "every court throughout the empire" there are at least two or three *fatāwá* collections in addition to a copy of Ibrāhīm al-Ḥalabī's *Multaqá al-Abḥur.* All the collections he lists are of rulings issued by seventeenth and eighteenth-century chief jurisconsults. It is difficult to confirm this statement at this point. Still, it reflects the efforts made by the Ottoman state and its establishment to promulgate the rulings of current and former chief muftīs.
Ignatius Mouradega d'Ohsson, *Tableau General de L'Empire Othman* (Paris: L'imprimerie de Monsieur, 1788), vol. 1, pp. 52-54.

Conclusion

State-appointed muftīs played a significant role in various legal procedures in the Ottoman legal system, even if, as Judith Tucker has argued, the muftī and the judge "[did not] work hand-in-glove."[466] Moreover, as the examples above suggest, obtaining a ruling from state-appointed jurists and presenting it in the judge court or attaching it to a petition was a standard procedure as in the core lands of the empire. The rulings of muftīs who did not hold state appointment were also occasionally brought to court (possibly more frequently than what the court records indicate), but usually were not recorded as part of the formal legal procedure. One should be careful, however, not to assume that the only task of the state-appointed muftīs was to serve the court system, as it is quite probable that muftīs delivered many rulings in order to legally and ethically guide their followers, not necessarily in the context of a legal case under adjudication.[467]

The Ottoman state and its religious-judicial establishment invested considerable efforts in standardizing the state-appointed muftīship in the Arab provinces (as well as in other provinces of the empire). This standardization also meant that solicitors gained familiarity with the particular legal procedures and arguments. Through this growing familiarity, and with the consolidation of the

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[466] Judith E. Tucker, *In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine* (Berkeley: University of California Press, 1998), p. 21.

[467] Ibid.

Ottoman legal system across the Arab lands over the course of the sixteenth century, the chief and other state-appointed muftīs gained authoritativeness in certain circles, even if this authority rested, to some extent at least, on the coercion of the state and its legal system.

Now that we have examined how the Ottoman religious-judicial establishment propagated and established the authority of the chief and state-appointed muftīs it is appropriate to examine the sixteenth and seventeenth-century "legal landscape" of Greater Syria from a different angle. The next chapter moves to explore how solicitors from Greater Syria (and beyond) made use of muftīs who did not hold an official state appointment.

Chapter V

Addressing Non-appointed Greater Syrian Ḥanafī Muftīs: The Case of the Practice of "Renewal of Faith"

> O God, I take refuge in You from ever knowingly associating anything with you, and I ask Your forgiveness for what I [do that] I don't know, it is You who is the Knower of the unseen things. Know that our scholars have stated clearly in their books [their view] on this matter: that if a scholar is consulted about something like this he should not rush to declare the infidelity of the people of Islam, given [the validity of] the judgment that the Islam of one who is forced [to convert to it] is sound. [Thus] Islam prevails [whenever there is a question about someone's Islam or infidelity]. Infidelity is an enormity, and nothing expels a man from the faith except [his explicit] denial of that which brought him into it.[468]

Rarely did the seventeenth-century Palestinian muftī Khayr al-Dīn al-Ramlī respond so fiercely to a question posed to him. The question that succeeded in extracting such an answer from the Palestinian muftī dealt with one of the theological and jurisprudential disagreements between jurists from the Arab lands and their

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[468] Khayr al-Dīn al-Ramlī, *al-Fatāwá al-Khayriyyah li-Naf' al-Bariyyah 'alá Madhhab al-Imām al-A'ẓam Abī Ḥanīfah al-Nu'mān* (Cairo: al-Maṭba'ah al-Kubrā al-Miṣriyyah bi-Bulāq, 1882), vol. 1, pp. 106-107.

establishment-affiliated counterparts—the disagreement concerning the practice of renewal of faith (*tajdīd al-īmān* in Arabic, *tecdîd-i îmân* in Turkish).

The question recounts the following scene: a dispute between two co-owners of a house was brought before a judge. The judge ordered one of them to act according to the legal (*shar'*) resolution but the latter refused to accept it. The judge retorted that the legal opinion (*muftá*) was that he who opposed the *sharī'ah* was an infidel (*kāfir*) and his wife should be separated from him. Therefore, the temporary infidel was to renew his faith (*tajdīd īmānihi*) and remarry his wife (*murāja'āt zawjatihi*). Then the judge recorded this procedure in the court records. After the events at the court, the questioner (or perhaps someone on his behalf) solicited al-Ramlī's opinion as to whether the judge's resolution established the man's unbelief.[469]

Before we turn to al-Ramlī's answer, the dynamics unfolded in the question warrant attention. It is clear that as far as the anonymous judge and the Ottoman legal system he represented were concerned the case was resolved and properly recorded. From the questioner's point of view, however, the qāḍī's resolution was unacceptable and therefore he sought approval of his opinion. For this purpose, he addressed Khayr al-Dīn al-Ramlī, a Palestinian muftī who did not hold a state appointment.

This case, which dealt with the controversial practice of renewal of faith, represents many other, not necessarily controversial cases in which Ottoman subjects

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[469] Ibid.

in the Arab lands (and perhaps elsewhere) addressed local muftīs who did not hold an official state appointment in order to obtain their opinion and to resolve legal issues. Nevertheless, controversial jurisprudential issues that stood at the center of heated debates between different muftīs bring to the surface dynamics that are not clearly manifest in other cases. Specifically, the controversies offer a glimpse into the manner in which different solicitors perceived non-appointed muftīs and the relationship between state-appointed muftīs and the imperial learned hierarchy on the one hand, and their colleagues who did not hold such an appointment on the other. As far as the muftīs who did not hold a state appointment are concerned, these controversies reveal the extent to which they succeeded in preserving their authority within the complex and diverse legal landscape of the empire. What is more, controversial issues situated the solicitor's commitment to the muftī who did not hold a state appointment in opposition to his commitment to the imperial establishment and legal system. Therefore, by following the ruling of a muftī who did not hold an official state appointment the committed solicitor made a statement against the imperial legal system. It is for this reason that these eminent muftīs posed a challenge to the imperial legal system, as the attempts to coopt their authority, which we have examined in chapters 2 and 3, suggests.

The chapter consists of two parts. In the first part the controversy surrounding the practice of renewal of faith is discussed in details. Surprisingly,

despite its importance for understanding some legal and theological aspects of the history of belief, denunciation of faith, and apostasy in the Ottoman Empire (as well as in other Islamic societies), the practice of renewal of faith has attracted little scholarly attention. This part, therefore, is intended to fill this void. Its main goal, however, is to survey the opinions of members of the imperial establishment, of Greater Syrian jurisconsults who did not hold a state appointment, and of their state-appointed colleague regarding this practice. Each of the three sections in the first part deals with and analyzes the opinions of another group of jurists.

The second part of this chapter returns to the solicitor's decision to submit the question to a Greater Syrian muftī who was not formally appointed by the state after the judicial procedure in the imperial court had already been concluded and recorded. For this purpose, this section situates this decision in a wider context and examines other cases in which litigants and other solicitors submitted their cases to non-appointed Greater Syrian muftīs. My intention is to show that posing the question to a non-appointed Greater Syrian muftī was another legal option Ottoman subjects in the Arab lands had at their disposal. At the same time, this part continues the investigation of the ways through which different jurists established and preserved their authority in the imperial "legal landscape."

Part I: *Renewal of Faith*

[I] Ottoman Jurists and the Practice of Renewal of Faith

Questions about faith and apostasy accompanied the Islamic community from its early days. By the late decades of the fifteenth century, the time period that concerns us here, the jurisprudential and theological debate concerning these issues had been going on for almost eight centuries. It is beyond the scope of this study to trace the genealogy of the notion of belief in the Islamic tradition and the debates concerning its nature up to the late fifteenth century.[470] It is worth, however, pointing out some important arguments that eminent Ḥanafī jurists and theologians had made in earlier centuries regarding the question of faith and the relation between sinful acts and belief. Outlining these arguments is crucial for appreciating the establishment-affiliated jurists' contribution to this debate in the last decades of the fifteenth century and even more so in the early decades of the sixteenth century.

Medieval Ḥanafī creeds distinguish between works—and particularly sinful acts—and faith. "Those of the community of Muhammad who sin are all believers and

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[470] Several studies have been dedicated to these issues. Most relevant to my discussion here are: Toshihiko Isutsu, *The Concept of Belief in Islamic Theology* (Yokohama: Yurindo Publishing Co., LTD, 1965); Rudolph Peters & Gert J.J. De Vries, "Apostasy in Islam," *Die Welt des Islams* 17 1(4) (1976-1977), pp. 1-25; Lutz Wiederhold, "Blasphemy Against the Prophet (*Sabb al-Rasul, Sabb al-Sahabah*): The Introduction of the Topic into Shāfiʿī Legal Literature and its Relevance for Legal Practice under Mamluk Rule," *Journal of Semitic Studies* XLII/1 (1997), pp. 39-70; Frank Griffel, "Toleration and Exclusion: al-Shāfiʿī and al-Ghazālī on the Treatment of Apostates," *Bulletin of the School of Oriental and African Studies* 64 (2001), pp. 339-354; Hanaa H. Kilany Omar, *Apostasy in the Mamluk Period: The Politics of Accusations of Unbelief* (University of Pennsylvania: unpublished Ph.D. dissertation, 2001); Baber Johansen, "Apostasy as Objective and Depersonalized Fact: Two Recent Egyptian Court Judgements," *Social Research* 70(3) (2003), pp. 687-708.

not unbelievers," asserts the *Testament* (*Waṣiyya*) ascribed to Abū Ḥanīfah, the eponymous founder of the Ḥanafī school. Moreover, the eponym explicitly emphasizes the disconnection between acts and faith, for at many times the believer is exempted from acts, but he is never exempted from faith.[471] A later Ḥanafī creed reiterates Abū Ḥanīfah's argument, stating that no Muslim can be declared an unbeliever on account of sin, even a grave one, unless he declares the sin lawful. Furthermore, the creed proclaims that all believers are equal in faith and in the assertion of God's unity, but differ with respect to acts, some being higher than others.[472] The twelfth-century Najm al-Dīn Abū Ḥafṣ al-Nasafī also shares this view.[473] Nevertheless, declaration of sins as lawful and the denial of specific religious obligations are considered blasphemous, as are specific blasphemous speech acts which are codified in the Islamic literature on blasphemy (known as *alfāẓ al-kufr*) and whose utterance renders one a heretic.[474] In other words, deeds are not insignificant. Deeds render one a better Muslim, but they should not be interpreted as signs of his faith (or lack thereof) unless the deeds imply that illicit acts are lawful. It is worth

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[471] Abū Ḥanīfa (?), "The Testament of Abū Ḥanīfa," in W. Montgomery Watt (trans.), *Islamic Creeds: A Selection* (Edinburgh: Edinburgh University Press, 1994), p. 57.

[472] Anonymous, "A Later Ḥanafite Creed," in in W. Montgomery Watt (trans.), *Islamic Creeds: A Selection,* pp. 62-66.

[473] Najm al-Dīn al-Nasafī, "al-Nasafī," in in W. Montgomery Watt (trans.), *Islamic Creeds: A Selection,* pp. 82-83. See also Saʿd al-Dīn al-Taftāzānī's (d. 1390) commentary on al-Nasafī's creed: Saʿd al-Dīn Masʿūd b. ʿUmar al-Taftāzānī, *A Commentary on the Creed of Islam: Saʿd al-Dīn al-Taftāzānī on the Creed of Najm al-Dīn al-Nasafī* (New York: Columbia University Press, 1950), pp. 107-115.

[474] Devin Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City: The University of Utah Press, 1998), p. 48.

pointing out that this view of the relationship between acts and belief was mostly associated with the Ḥanafī school and the Māturīdī school of theology, as opposed to the doctrine that assumed a closer connection between deeds and belief, most common throughout the Islamic Middle Ages in Ḥanbalī and Ashʿarī circles.[475]

In the late fifteenth-early sixteenth centuries, members of the Ottoman learned hierarchy introduced three major changes to their medieval predecessors' understanding of faith, infidelity, and apostasy. First, as early as the fifteenth century, Ottoman jurists articulated a state of temporary excommunication from which the excommunicated may return to the fold of the Muslim Sunnī community. Secondly, around the turn of the sixteenth century, members of the imperial establishment reconfigured the relationship between deeds and speech acts and internal belief. According to the new understanding, deeds and speech acts reflect belief or lack thereof. And thirdly, over the course of the sixteenth and the seventeenth centuries, the list of deeds and sayings that constituted signs of unbelief in the eyes of member

[475] Wilfred Madelung, "Early Doctrine concerning Faith as Reflected in the "Kitāb al-Īmān" of Abū al-Qāsim b. Sallām (d. 224/839)," *Studia Islamica* 32 (1970), p. 233. See also: Keith Lewinstein, "Notes on Eastern Hanafite Heresiography," *Journal of the American Oriental Society* 114 (4) (1994), pp. 583-598.

of the establishment was gradually expanded.[476] The implementation of this extensive approach, however, posed serious problems to the establishment-affiliated jurists, since now many more people were considered unbelievers.

Examining the confessional landscape of the Ottoman polity in the late decades of the fifteenth century and the developments of the sixteenth century may assist us in understanding the background against which the Ottoman rearticulation of the nature of belief and the practice of renewal of faith emerged. In the two centuries of Ottoman history leading to the late fifteenth century, the Muslim population of the empire had steadily grown. Although it is difficult to assess the conversion rates to Islam during this period, it is clear that a gradual Islamization (and Turkification) of substantial parts of Anatolia and the Balkans had been taking place. As many studies of conversion in general and in the Ottoman context in particular have shown, conversion is by nature a gradual process which is far more multifaceted and complex

[476] This extensive list was based on the rulings of several Ḥanafī jurists, and particularly on the rulings of the early fifteenth-century jurist Ibn al-Bazzāz. The seventeenth-century şeyḫülislam Çatacalı ʻAlî Efendi, for instance, cites extensively *al-Fatāwá al-Bazzāziyyah* by Ibn al-Bazzāz as his reference. In addition, he also cites passages from *Khulāsat al-Fatāwá* by Iftikhār al-Dīn Ṭāhir b. Aḥmad b. ʻAbd al-Rashīd al-Bukhārī and from *Majmaʻ al-Fatāwá* by Aḥmad b. Muḥammad b. Abī Bakr al-Ḥanafī. See Çatalcalı ʻAlî Efendi, *Fetâvâ-ı Çatalcalı,* Süleymaniye Library MS Aya Sofya 1572, pp. 86r-86v. These works only establish that certain acts or sayings are signs of unbelief (*kufr*). They do not mention the concept of renewal of faith.

than the nominal transition from one denominational group to the other.[477] Converts occasionally preserved practices from their pre-Islamic past which were at odds with what their new coreligionists deemed licit or "orthodox." This is true for converts who converted individually but even more so as far as mass conversion is concerned, in which case communal structures enabled easier adherence to old practices.

Furthermore, despite the large numbers of converts, this is not simply a story of "new" versus "old" Muslims. At times, "old Muslim" practices were condemned as illicit or as signs of heresy. Since "Orthodoxy" is basically an ongoing process rather than a frozen set of rules, regulations, and dogmas, certain practices that had been condoned and even actively approved by authoritative figures were vociferously denounced as signs of heresy or apostasy in the following decades or centuries. In the Ottoman context of the fourteenth and the fifteenth centuries, as various groups within the Ottoman polity promoted different, at times contradicting, theological and religious views, examples abound. In the late fifteenth and sixteenth century, for instance, members of the Ottoman ruling and judicial elites tried to impose restrictions on certain Sufi practices that had prevailed in Anatolia and the Balkans in

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[477] The list of works dealing with conversion is extremely long. These are some of the most important studies on conversion in the Ottoman context are: Speros Vryonis, *The Decline of Medieval Hellenism in Asia Minor and the Process of Islamization from the Eleventh through the Fifteenth Century* (Berkeley: University of California Press, 1971); Anton Minkov, *Conversion to Islam in the Balkans: Kisve Bahasi Petitions and Ottoman Social Life, 1670-1730* (Leiden: Brill, 2004); Tijana Krstić, Tijana Krstić, *Contested Conversions to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire* (Stanford: Stanford University Press, 2011); Marc David Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008).

the fourteenth and the fifteenth centuries.[478]

The large numbers of converts and the fairly fluid boundary between "Orthodoxy" and "Heterodoxy" that characterized fifteenth-century Anatolia and the Balkans required the development of a legal-theological mechanism to cope with this complex confessional reality. After all, it appears that the Ottoman ruling elite was not interested in excommunicating substantial segments of the population on the basis of blasphemous sayings and acts that were performed, at least theoretically, unintentionally. For this reason, Ottoman jurists, theologians, and scholars had to develop a legal mechanism that would preserve the category of heresy and apostasy intact on the one hand, but on the other would not render apostate anyone who wittingly or unwittingly expressed "heterodox" views or acted "illicitly." The theological-legal notion of "renewal of faith" (*tecdîd-i îmân*), and the subsequent "renewal of marriage" (*tecdîd-i nikâḥ*) served precisely this duality. The renewal of marriage was required, as those who committed the offenses and were temporarily declared apostates reentered the community of believers and had to marry anew as

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[478] Ahmet T. Karamustafa, *God's Unruly Friends: Dervish Groups in the Islamic Later Middle Period, 1200-1500* (Salt Lake City: University of Utah Press, 1994); Krstić, *Contested Conversions to Islam*, pp. 42-50; Ahmed Yaşar Ocak, *Osmanlı Toplumunda Zındıklar ve Mülhidler (15.-17. Yüzyıllar)* (Istanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998).

Muslims.[479]

Fatāwá collections from the late fifteenth to the seventeenth century (as well as from later centuries) contain hundreds of fatāwá on the issue of renewal of faith and marriage. The legal rulings issued by Ottoman muftīs were therefore an extremely important means through which these categories were mutually constituted. Through these fatāwá it is possible to trace the Ottoman jurists' redefinition of "orthodoxy" and the change this concept and its application underwent over time.

The fatāwá collections are in fact indispensible, for the practice of "renewal of faith" is virtually absent from other Ottoman legal sources, such as Ḥanafī legal manuals and imperial/dynastic legal statutes (*ḳânûnnâmes*) from the fifteenth to the seventeenth centuries.[480] In addition, the concept of renewal of faith is totally absent

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[479] Surprisingly little has been written on the concept of renewal of faith: Uriel Heyd, *Studies in Old Ottoman Criminal Law* (Oxford: Clarendon Press, 1973), p. 178 f.n.; Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), p. 103; Leslie Peirce, ""The Law Shall Not Languish": Social Class and Public Conduct in Sixteenth-Century Ottoman Legal Discourse," in Asma Afasruddin (ed.), *Hermeneutics and Honor: Negotiating Female "Public" Space in Islamic/ate Societies* (Cambridge: Harvard University Press, 1999), p. 152; Sayın Dalkıran, *Ibn-i Kemâl ve Düşünce Tarihimiz* (Istanbul: Osmanlı Araştırıma Vakfı (OSAV), 1997), p. 81-86.

[480] Due to its absence from the *kânûnnâme*s, Uriel Heyd defined this legal practice as a "sharī'a penalty." Heyd, *Studies*, p. 178 f.n.

from pre-Ottoman, namely Mamluk, Ḥanafī manuals.[481] The absence of the practice from legal manuals is of particular significance, for it suggests that legal concepts and innovative arguments that appear in legal rulings do not always enter jurisprudential texts and manuals. Put differently, the case of the practice of renewal of faith is an exception to the trend that students of Islamic law, such as Wael Hallaq, Baber Johansen, and Brinkley Messick, have identified regarding the role legal opinions play in the development of Islamic substantive law (*furū' al-fiqh*).[482] Generally, as Hallaq has noted, "fatāwá were part and parcel of furūʿ works, into which they were regularly incorporated."[483] In the case of to the concept and practice of renewal of faith, by contrast, the fatāwá introduced a new jurisprudential practice that did not appear in legal manuals, including manuals compiled by the muftīs themselves, and

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[481] Muḥammad b. Muḥammad al-Kardarī, known as Ibn al-Bazzāz (d. 1426), in his *fatāwá* collection, does not mentioned that the apostate should renew his faith. Ibn al-Bazzāz, *al-Fatāwá al-Bazzāziyyah* (Pishavar: Nurani Kutubkhanah, 1970s?), vol. 6, pp. 315-318.
It is worth mentioning the Ibn al-Bazzāz worked for a while in the Ottoman domains. Taşköprüzade, in his *al-Shaqā'iq al-Nu'māniyyah,* reports that during his stay there he met al-Fanârî and discussed with him furūʿ-related issues. [Aḥmad Ibn Muṣṭafá Taşköprüzade, *al-Shaqā'iq al-Nu'māniyyah fi 'Ulamā' al-Dawla al-'Uthmāniyyah* (Beirut: Dār al-Kitāb al-ʿArabī, 1975), p. 21.] ʿÂşiḳpaşazâde also mentions this visit in his chronicle [ʿÂşiḳpaşazâde, *Tevarih-i Âl-i Osman'dan 'Âşiḳpaşazâde Tarîhî* (Istanbul: Matbaa-i Amire, 1914), p. 249.] Later jurists, such as Khayr al-Dīn al-Ramlī, single out Ibn al-Bazzāz as a key figure in the development of the concept of renewal of marriage. See: al-Ramlī, *Fatāwá,* vol. 1, pp. 106-107.

[482] Wael Hallaq, "From Fatāwā tp Furūʿ: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1 (1) (1994), pp. 29-65; Baber Johansen, "Legal Literature and the Problem of Change: The Case of the Land Rent," in Chibli Mallat (ed.), *Islam and Public Law* (London: Graham & Trotman, 1993), pp. 29-47; ibid., *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London and New York: Croom Helm, 1988); Brinkley Messick, "The mufti, the Text and the World: Legal Interpretation in Yemen," *Man* 12(1) (1986), pp. 102-119.

[483] Hallaq, "From Fatāwā," p. 40.

did not become an integral part of the Ḥanafī substantive law literature.[484] The fact, however, that the chief muftīs' rulings are the main legal venue in which the concept and practice of renewal of faith was developed and articulated point to the important role—a role that at times does not receive the attention it deserves in modern historiography—these rulings played in the Ottoman legal system.

It is not fully clear when the practice of renewal of faith was initially employed. But since the concept is absent from the rulings of the early fifteenth-century jurist who operated in the Ottoman lands, Ibn al-Bazzāz al-Kardarī (d. 1424), it appears that it gained currency at some point over the course of the fifteenth century. At any rate, by the late fifteenth century, we find the practice in the rulings of the late fifteenth-century chief muftī Mollâ 'Arab (d. 1495-6). In one of his rulings, for example, the chief jurisconsult states that he who reviles the Prophet should "renew his faith and marriage and repent (*istighfār wa-tawbah*)."[485] The practice of renewal of faith, nonetheless, is employed only twice in the late fifteenth-century muftī's collection and only in cases in which the Prophet is reviled. In the collections of his successors, by contrast, the practice of renewal of faith and marriage figures much more

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[484] The eminent early sixteenth-century chief imperial jurisconsults Kemâlpaşazâde does not mention the concept in his manual *al-Īḍâḥ fī Sharḥ al-Iṣlâḥ fī al-fiqh al-Ḥanafī,* although he employs this concept quite frequently in his rulings. Kemâlpaşazâde, *al-Īḍāḥ fī Sharḥ al-Islāḥ fī al-Fiqh al-Ḥanafī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2007).

[485] Mevlânâ Alâeddîn Alî al-Arabî al-Ḥalabî (Mollâ Arab), *Fetâvâ-i Mevlânâ Arab,* Süleymaniye Library MS Bağdatlı Vehbi 585, p. 79r. On Mollâ Arab see: Richard C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy* (London: Ithaca Press, 1986), pp. 174-187.

frequently. Moreover, in sixteenth- and seventeenth-century collections, the list of deeds that call for renewal of faith is much more extensive than reviling the Prophet, a blasphemous speech act that is, indeed, codified in the Islamic literature on blasphemy. It is thus necessary to explain this dramatic change in the manner in which later jurists employed the concept in their rulings.

The most important development around the turn of the sixteenth century was, perhaps, the emergence of the Safavid dynasty in Iran. The consolidation of their power in the subsequent decades proved to the Ottoman ruling and judicial elite that the Safavid threat was not ephemeral. Military threat aside, the new emerging power also posed an ideological and religious challenge. More specifically, both the Ottomans and the Safavids sought to secure the loyalty of the Turkmen Ḳızılbaş (Redheads) tribes of Eastern Anatolia throughout the sixteenth century.[486] The pursuit of loyalty led to numerous campaigns which were often framed in terms of an inter-imperial religious rivalry, namely as a war against heretics who supported the Safavid

[486] Ayfer Karakaya-Stump, *Subjects of the Sultan, Disciples of the Shah: Formation and Transformation of the Kizilbash/Alevi Communities in Ottoman Anatolia* (Harvard University: Unpublished Ph.D. dissertation, 2008).

Shāh.[487]

In recent years, scholars have offered several—not necessarily mutually exclusive—accounts on the ideological and theological dimensions of the Ottoman-Safavid conflict. Some scholars, such as Marcus Dressler, have emphasized the role the shared self-perception of both the Ottoman and the Safavid rulers as messianic "world conquerors" played in framing and shaping this conflict.[488] Other scholars, however, have focused on the contribution of the conflict to the emergence of two mutually exclusive, polarized religious (and legal) ideologies. These scholars have drawn attention to the fact that from the early decades of the sixteenth century both

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[487] On the rise of the Safavids: Adel Allouche, *The Origin and the Development of the Ottoman-Safavid Conflict (906-962/1500-1555)* (Berlin: Klaus Schwarz Verlag, 1983); Jean-Louis Bacque-Grammont, *Les Ottomans, Les Safavides et leurs Voisins: Contribution a l'histoire des Relations Internationals dans l'Orient Islamique de 1514 a 1524* (Istanbul: Nederlands Historich-Archaeologich Instituut te Istanbul, 1987); Kathryn Babayan, "The Safavid Synthesis: From Qizilbash Islam to Imamite Shi'ism," *Iranian Studies* 27, 1(4), 1994, pp. 135-161; Markus Dressler, "Inventing Orthodoxy: Competing Claims for Authority and Legitimacy in the Ottoman-Safavid Conflict," in Hasan T. Karateke & Maurus Reinkowski (eds.), *Legitimizing the Order: The Ottoman Rhetoric of State Power* (Leiden: Brill, 2005), pp. 151-173. On the Kızılbaş in Anatolia see also: Fariba Zarinebaf-Shahr, "Qızılbash "Heresy" and Rebellion in Ottoman Anatolia during the Sixteenth Century," *Anatolia Modrena* 7 (1997), pp. 1-15; Stefan Winter, *The Shiites of Lebanon under Ottoman Rule, 1516-1788* (Cambridge: Cambridge University Press, 2010), pp. 7-20; Karakaya-Stump, *Subjects of the Sultan*.

[488] The Ottoman-Safavid-Kızılbaş conflict has been often interpreted as a Sunnī-Shī'ī one. Nevertheless, the Sunnī-Shī'ī perspective obscures the complex dynamics of the conflict. The early Safavids, and especially Shāh Ismā'īl, officially adopted Twelver Shī'īsm as the Safavid state religion. Some scholars, such as Markus Dressler and others, however, have doubted the Safavid commitment to the newly adopted religion. As Dressler has suggested, it was "little more than mere lip service" until late in the sixteenth century. Rather than advancing Twelver Shī'īsm, the early Safavid state's "Safavid-Kızılbaş" Islam promoted the claim that the Safavid ruler is a "divine incarnation" and that the Safavid shāh, as a charismatic mahdi, would redeem his followers. Similar views of the sultan as *mahdi* proliferated in the Ottoman domains as well. Up to around the middle of the sixteenth century Ottoman sultans portrayed themselves as charismatic figures. In the sixteenth century Sultan Süleymân claimed to be the *mahdi* of the time. Therefore, as Dressler and others have pointed out, an important element of the earlier stages of the Safavid-Ottoman conflict is the shared messianic discourse about the mahdi-sultan/shāh. Seen from this perspective, both the Safavids and the Ottomans were also competing over messianic authority. See: Dressler, "Inventing," p. 159.

the Ottoman and the Safavid political and religious elites increasingly advanced a sense of religious (and legal) distinctiveness that was centered on new definitions (and constant redefinitions) of respective Sunnī and Shīʿī "orthodoxies." From the Ottoman standpoint, this distinctiveness was reflected in the legal opinions members of the Ottoman religious-judicial circles issued, in which they denounced the rival state as heretic. On the Safavid side, over the course of the sixteenth century, as Twelver Shīʿīsm became increasingly dominant, the Safavid messianic perception of the shāh—along with the millenarian expectations that accompanied it—was marginalized and the Ottomans were now considered heretics on the basis of a Twelver Shīʿī discourse. In short, the conflict, even if it started as a competition fueled by vying messianic claims, contributed to the emergence of perceptions of Sunnī-Ottoman and Shīʿī-Safavid "orthodoxies."[489]

To the west, the Ottomans and the Safavids shared with other Mediterranean (and European) dynasties a growing interest in the confessional dispositions of their respective subjects. As Tijana Krstić has recently suggested, the Ottoman-Safavid/ Sunnī-Shīʿī rivalry, and the Muslim Ottoman-Catholic Habsburg Mediterranean

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[489] Ibid.; Rula Jurdi Abisaab, *Converting Persia: Religion and Power in the Safavid Empire* (London and New York: I.B. Tauris, 2004). On the development of Ottoman religious hierarchy and Orthodoxy: Richard C. Repp, *The Müfti of Istanbul*; Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Stanford: Stanford University Press, 1997); Karamustafa, *God's Unruly Friends*; Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), pp. 251-275.
More recently, Karakaya-Stump has considerably complicated the narrative of the Ottoman-Safavid rivalry. In her study of the dynamics between the Ottomans, the Safavid, and the Kızılbaş communities in Anatolia, she has pointed to the persistence of the Sufi element in the self-identificiation of the Safavid Shāhs vis-à-vis their followers in Anatolia. Karakaya-Stump, *Subjects of the Sultan.*

rivalry, are different manifestations of a sixteenth-century trans-imperial—and, indeed, trans-religious— "age of confessionalization" that spanned all three empires as well as other Protestant polities throughout Europe. This "age of confessionalization" was characterized by an attempt on behalf of these polities "to [infuse] religious rhetoric into the processes of state and social formation." Moreover, all dynasts perceived themselves as the guardians of "Orthodoxy."[490]

It is against this backdrop that the growing concerns of members of the Ottoman religious-judicial circles with the question of belief, heresy, infidelity, and apostasy should be understood. Sometime towards the end of the first decade of the sixteenth century, the scholar-prince Korkud (d. 1513)[491] began to compile a treatise on the question of faith and infidelity. Although not completed, the text, which has been studied by Nabil al-Tikriti, engages some pivotal themes that are crucial for our discussion. Particularly, there are two statements in this treatise that deserve close attention. First, as opposed to other approaches to the relationship between faith and deeds, Korkud contends that external actions must be considered an indication of the conviction of the believer (*taṣdīq al-īmān*) "for the sake of enforcing judgment in this world." As al-Tikriti has noted, this proposition "lays the theoretical basis for treating

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[490] Krstić, *Contested Conversions to Islam,* pp. 12-16.

[491] On Şehzade Ḳorkud see al-Tikriti's dissertation: Nabil Sirri al-Tikriti, *Şehzade Ḳorkud (Ca. 1568-1513) and the Articulation of Early 16th Century Ottoman Identity* (University of Chicago: Unpublished Ph.D. dissertation, 2004).

external actions as legally material proof of internal belief—and concurrent communal loyalty."[492] Moreover, for the sake of enforcing justice in this world, Korkud argues that jurists must judge according to the external signs of belief and leave the internal thoughts to God. Secondly, also in contradiction to some Islamic perceptions of faith, Korkud states the conviction (*taṣdīq*) may be acquired through compulsion.[493] Korkud then moves on to list the major deeds that attest to abandonment of faith: questioning the prophecy of Muḥammad, scorning the Qur'ān, and wearing non-Muslims' garb. Furthermore, he rejects the requirement of an intentional denunciation of one's faith as a sign of his infidelity (*kufr*).[494] This was, as we have already seen, in contradiction to one of the key principles in the medieval Ḥanafī creeds.

The list, however, is not a finite one. As prince Korkud perfectly well understood, signs of heresy and infidelity were abundant, diverse, and historically contingent. Therefore, Korkud urges jurists to define apostasy locally and perhaps even to expand, whenever needed, the list of external indicators of apostasy.[495] He also prescribed that state officials should assist in the struggle against heresy. On the

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[492] Nabil al-Tikriti, "Kalam in the Service of State: Apostasy and the Defining of Ottoman Islamic Identity," in Hasan T. Karateke & Maurus Reinkowski (eds.), *Legitimizing the Order: The Ottoman Rhetoric of State Power* (Leiden: Brill, 2005), pp. 138.

[493] Ibid., p. 140.

[494] Ibid., pp. 141-142.

[495] Ibid., p. 143

basis of the rulings of the jurists and the theologians, state officials (*ehl-i ʻörf*) must defend the society whenever a threat "that *sharīʻah* alone is unable to address" emerges.[496] As we shall shortly see, Korkud's suggestions were indeed accepted.

Al-Tikriti has rightly contextualized Korkud's treatise in the wider context of the excommunication (*takfīr*) fatāwá issued against the Shīʿīs (*rawāfiḍ*), i.e. the Ḳızılbaş and the Safavids. Around the same time in which Korkud compiled his treatise, leading jurists such as Sarı Gürz Ḥamza Efendi and Kemâlpaşazâde issued legal rulings denouncing the Ḳızılbaş as heretics. Although it is not clear whether Korkud met and discussed these issues with his contemporary jurists, all three were somehow connected to the Ottoman court. In addition, the content of the treatise and the legal opinions suggests that all three participated in the same debate. But while Korkud's treatise deals with the theological aspects of the questions, the legal opinions concentrate on the concrete treatment of the Ḳızılbaş heresy. The Ḳızılbaş, according to Ḥamza Efendi, are accused of scorning the Qur'ān and other jurisprudential texts, abusing jurists, and denying the caliphate of the first two rightly-guided caliphs, Abū Bakr and ʻUmar, who, according to the Shīʻī view, usurped the caliphate from ʻAlī. Kemâlpaşazâde accuses the Ḳızılbaş of wearing the "red cone hat" without compulsion, a sign of their sympathy to the Safavids that clearly attests to their heresy (*ilḥād*) and infidelity. Consequently, it is a religious obligation to fight

[496] Ibid., p. 144.

this group, to execute every captured mature male follower of Shāh Ismāʿīl, enslave the women and the children, and treat their property as legitimate war booty.[497]

The main problem was that Korkud's treatise and the other legal opinions state very clearly what punishment should be meted out to those who abandoned their faith —they should be executed as apostates. But given the ubiquity of the external signs and practices, mostly blasphemous speech acts, that supposedly reflected unbelief, the Ottoman ruling and judicial elites could not have put to death every Muslim, either "new" or "old," whose actions were interpreted as a manifestation of unbelief. Jurists and scholars in earlier periods unraveled this conundrum by declaring that external actions did not reflect internal belief or lack thereof.[498] But the Ottoman jurists refused to give up on this connection between internal faith and external deeds, for this was one the most important justifications for the persecution of Shāh Ismāʿīl's followers and sympathizers in eastern Anatolia as well as for the campaigns launched against the Safavids. The already extant concept of renewal of faith and marriage, however, could and did assist the jurists in solving, or at least easing, some of these problems.

The fatāwá collection of the chief muftī during much of the reign of Ḳorkud's father, Sultan Bâyezîd II, and during the entire reign of his brother, Sultan Selîm,

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[497] Ibid., p. 147.

[498] See also: Griffel, "Toleration," pp. 339-350.

Zenbilli ‘Alî Cemâlî (served as chief imperial jurisconsult from mid-1504 to 1925-6), reflects the change the use of the practice of renewal of faith underwent in the early decades of the sixteenth century. During ‘Alî Cemâlî’s tenure of the chief muftīship, it should be recalled, the Safavid dynasty consolidated its power in Iran and the first major Ottoman-Safavid battle was fought (the battle of Çaldıran in 1514).[499] Not surprisingly, then, the number of rulings concerning the practice of renewal of faith in his collection is significantly higher than in his predecessor’s collection. Moreover, the rulings point to the chief jurisconsult’s attempt to establish his authority and that of the still evolving imperial learned hierarchy within the context of the Ottoman-Safavid rivalry. Consider, for example, the following ruling:

> **Question**: When Zeyd showed his adversary litigant ‘Amr a ruling he obtained from the şeyḫülislâm concerning a certain issue, if ‘Amr says: “What is it? I don’t know [any] fatwá,” what should be done to ‘Amr?
>
> **Answer**: Renewal of faith and marriage.[500]

According to this fatwá, treating a ruling issued by the chief imperial muftī disparagingly, and by extension challenging the authority of the religious-judicial

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[499] On Zenbilli ‘Alî Cemâlî see: Repp, *The Müfti of Istanbul,* pp. 197-224.

[500] Zenbilli ‘Alî Cemâlî, *Fetâvâ,* Süleymaniye Library MS Fatih 2390, p. 75r.

establishment as a whole, was considered a blasphemous speech act that required the renewal of faith. In the same vein, ʻAlî Cemâlî demands the renewal of faith and marriage for explicit refusal to attend an imperial court (*şerʻ*). Furthermore, it appears that he employed the temporary excommunication to strengthen the position of the learned hierarchy vis-à-vis other members of the Ottoman ruling elite by stressing that the Ottoman legal system consisted of two not mutually exclusive components, dynastic law and *şerîʻat*:

> **Question**: Zeyd [files] a lawsuit against ʻAmr concerning a certain issue. If when ʻAmr was summoned to court (*şerʻe*), he says: "I have nothing to do with the court, I resolve my issue[s by adhering to the] imperial dynastic law (*ben şerʻle işim yoktur, ben işimi ḳânûn ile görürüm*)," what should be done to ʻAmr?
>
> **Answer**: Renewal of faith and marriage.[501]

Taken together, these rulings reflect the growing importance of the Sunnī (Ḥanafī) element, vis-à-vis the Shīʻī Safavids and other factions within the Ottoman ruling elite, in the self-perception of members of the still evolving religious-judicial establishment, and possibly in the self-perception of the Ottoman sultans as well.

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[501] Ibid.
The question is also interesting for it suggests that as late as the early sixteenth century it was not self-evident that both *ḳânûn* and *şerîʻat* constituted integral elements of the Ottoman legal system, regardless of the manner in which *şerîʻat* was defined in the Ottoman domains (see chapter 1). While some segments of the Ottoman ruling elite tended to privilege (or even adhered exclusively to) *ḳânûn,* other segments of the imperial ruling and learned elites promoted a different view of the relationship between these discourses/legal systems of thought.

Nevertheless, it should be noted, the "blasphemers" are not denounced as total heretics/apostates who should be executed.

'Alî Cemâlî's successors followed in his footsteps. In what follows, I intend to offer a brief survey in order to sketch some of the main acts for which people were asked to renew their faith and marriage over the course of the sixteenth and the seventeenth century. Let us look, for example, at the following fatāwá by the eminent sixteenth-century chief muftī Kemâlpaşazâde, whom we have already met:

> [I] **Question**: [If] Zeyd says to 'Amr: "A Curse on you and on what you are reading [presumably the Qur'ān]," what is legally (*şer'an*) required?
>
> **Answer**: Renewal of faith (*tecdîd-i îmân*) and severe punishment (*ta'zîr*) are required.[502]
>
> [II] **Question**: When Zeyd says to 'Amr: "Come, Let's go to the mosque!" And 'Amr says: "Infidels (*kâfirler*) come to the mosque," what is legally (*shar'an*) required?
>
> **Answer**: Renewal of faith (*tecdîd-i îmân*) and severe punishment (*ta'zîr*) are required.[503]

These two legal rulings illustrate two of the most common offences that, in the eyes of Kemâlpaşazâde and later muftīs, constitute signs of disbelief and therefore call for

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[502] Kemâlpaşazâde, *Fetâvâ,* Süleymaniye Library MS Darulmesnevi 118, 19r.

[503] Ibid., p. 19v.

the renewal of faith: showing disrespect for the scriptures and speech acts that were now deemed blasphemous (though not acts of severe blasphemy, such as reviling the Prophet). They also echo another common offence that requires the offender's renewal of faith—scorning those who possess religious knowledge. As jurists and religious scholars were perceived, at least among the Ottoman religious and ruling elites, as the defenders of "orthodoxy" and as the guardians of the religious community, it is not surprising that an assault on their status within this community was interpreted as an attempt to blur the boundaries of the community and to undermine the definition of "orthodoxy" that served as its pillar.[504] Moreover, in many cases, the question blurs the distinction between scorning the Qur'ān and other jurisprudential texts and disparaging the jurists who read them:

> **Question**: [If when] Zeyd says to 'Amr: "I have memorized the Word of God (*Ben ḥâfiz-i kelâm-i Allahım*)," 'Amr says to Zeyd: "What is it that you write (?) and read?", what is legally required?
>
> **Answer**: Renewal of faith and a punishment (*ta'zîr*) are required.[505]

Nevertheless, when an offense was committed against jurists and religious scholars,

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[504] In other cases the query emphasizes the status of the offender and the offended. For instance, a scholar cursing another scholar may be a different case than an ignorant layman cursing a scholar. Kemâlpaşazâde, *Fetâvâ*, p. 31v.

[505] Ibid., p. 19v.

Kemâlpaşazâde usually tended to prefer taking punitive measures (*ta'zîr*) or asked for repentance (*istighfār/istiğfâr*), without requiring the renewal of faith.[506] Be the case as it may, it seems that one of the muftīs' major concerns was to defend the status of the imperial establishment, although the rulings do not always state this point explicitly.

Kemâlpaşazâde's attempt to defend the status of the jurists (and of the establishment) is a good reminder that the practice of renewal of faith was intended to produce (or perhaps reproduce) a religious and social order. This order did not disregard already existing social hierarchies. It is for this reason that the demand to renew someone's faith, in Kemâlpaşazâde's rulings, was not applied in an egalitarian manner, even among those who sinned. In one of his rulings in the collection, Kemâlpaşazâde is asked about Zeyd who has sworn that if he were to drink wine, he would no longer be a member of the Prophet's community. Since Zeyd has potentially denounced his faith, Kemâlpaşazâde replies that if Zeyd is a commoner (*'avâmmdan*), he must renew his faith. As Leslie Peirce has suggested in her study of this fatwá, underlying this ruling may be the assumption that privileged persons do not need to be subjected to the same stringency of religious conformity as commoners because they "know" the rules by virtue of their status.[507] On the other hand, it is possible that Kemâlpaşazâde's assumption is that notables should be more severely punished,

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[506] Ibid., pp. 31r-v.

[507] Peirce, ""Law Shall Not," p. 152.

precisely because they are familiar with the law.

Beyond the abovementioned offenses there were other speech acts that required the offender's renewal of faith. The late sixteenth-century şeyḫülislâm Es'ad Efendi, for example, ruled that those who voiced support for the notorious late sixteenth-century rebel Abaza Meḥmet Paşa were to renew their faith and marriage.[508] The ruling is intriguing as it points to a connection that existed in the muftī's mind between allegiance to the Ottoman dynasty and belief. This connection is also evident in the rulings concerning sympathizers of the Safavids. Interestingly enough, the religious-political conflict with the Ḳızılbaş and the Safavids was still an important concern that preoccupied the Ottoman ruling and religious elites as late as the first decades of the seventeenth century (and perhaps even later), that is, long after the consolidation of a more distinctively marked Sunnī ideology.[509] This concern resonates over the course of the sixteenth and the seventeenth centuries in several cases in which the transgressor was asked to renew his faith. The seventeenth-century chief muftī Yaḥyâ Efendi (d. 1643) demanded the renewal of faith for praising Shāh

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[508] Es'ad Efendi, *Fetâvâ-i Es'ad Efendi*, c, p. 48v. On Abaza Meḥmet Paşa and his rebellion see, for example: Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (Cambridge: Cambridge University Press, 2010), p. 173; Karen Barkey, *Bandits and Bureaucrats: The Ottoman Route to State Centralization* (Cornell: Cornell University Press, 1994), pp. 223-225.

[509] The contacts between the Safavids and their followers in Anatolia continued well into the seventeenth century. These contacts included the bestowal of *ḫilâfetnâme*s on selected followers in Anatolia and the dispatchment of religious treatises to Anatolia. In addition, members of the Kızılbaş/ Alevi community in Anatolia traveled to Iraq and Aradabil, where they confirmed their credentials and allegiance to the Safavid order. Karakaya-Stump, *Subjects of the Sultan*, esp. ch. 2-4.

ʻAbbās, the late sixteenth-early seventeenth-century Safavid dynast.[510] It is precisely in these cases that the advantage of the legal concept of renewal of faith is most manifest. Although it is not clear why in this case the muftī ruled for reconversion rather than outright denouncing the supporter of the Safavid shāh as apostate, it is possible that the circumstances—such as the social status of the sympathizer, the publicity of the statement, or the lack of rebellious intentions on his behalf—had an influence on the muftī's decision. To put is slightly differently, the circumstances in which the blasphemous statements were voiced were of major importance for the interpretation of the case at stake.[511] The key point, however, is that the concept of renewal of faith preserved the heretical nature of these statements, and at the same time enabled the muftī to maintain the social and religious order without having to

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[510] Yaḥyâ Efendi, *Fetâvâ,* Süleymaniye Library MS Ayasofya 1569, p. 95r. In another case, the late sixteenth- and early seventeenth-century şeyḫülislam Ṣunʻullah Efendi ruled punitive acts (*taʻzîr*) for reviling Muʾāwiya, the first Umayyad caliph and a target of the scorn of followers of ʻAlī, the fourth rightly-guided caliph and the first Shīʻī imām. See: Ṣunʻullah Efendi, *Fetâvâ,* Süleymaniye Library MS Reşid Efendi 269, p. 96r.
In a report from 1619 concerning the Kızılbaş communities in Anatolia and the Balkans, Çeşmi Efendi argues that these communities regarded Shāh ʻAbbās as their spiritual leader (*mürşid*). Slightly later, in 1624, an Alevi letter mentions Shāh ʻAbbās as *mürşid-i kâmil.* Karakaya-Stump, *Subjects of the sultan*, pp. 182-183; Ibid., "Kızılbaş, Bektaşi, Safevi İlişkilerine Dair 17. Yüzyildan Yeni Bir Belge (Yazı Çevirimli Metin-Günümüz Türkçesine Çeviri-Tıpkıbasım)," in *Festschrift in Honor of Orhan Okay, special issue of the Journal of Turkish Studies* 30/II (2006): 117-130.

[511] A good example to the importance of the circumstances in which the blasphemous saying was said is a fatwá by şeyḫülislâm Minḳârîzâde on cursing during tavla games. Since it is a common practice (*örf*), he argued, the curse is not blasphemous in meaning, although its literal content is. See: Yaḥyâ b. Ömer b. ʻAlî Minḳârîzâde, *Fetâvâ*, Süleymaniye Library MS Hekimoglu 421, pp. 43v.

execute every person who perhaps unwittingly voiced support of Shīʿīs or the Safavids.[512]

Given the flexibility with which the concept of renewal of faith was applied, it is worth dedicating a few words at this point to the relation between the practice of renewal of faith and other punitive measures available in the Ottoman legal toolkit. This relationship is at times convoluted and complex. As we have already seen, in certain cases the renewal of faith was required in addition to another punitive measure, most frequently *taʿzīr*, a punishment, often corporal, which was administered at the discretion of the judge.[513] Of particular relevance to the issue of blasphemous speech acts are two legal concepts, which are both glossed as repentance. For speech acts, oftentimes the transgressor is required to repent and seek forgiveness (*istighfār*).[514] The other term for repentance, *tawbah* (*tevbe*, in Turkish), is used for both believers and apostates who repented and returned to Islam. Therefore, it is not uncommon to encounter this term in rulings about apostates who renewed their faith.[515]

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[512] Heyd list additional offenses to which muftīs applied this concept, such as merry-making with non-Muslims and claiming to have knowledge of occult matters. Heyd, *Studies in Old Ottoman Criminal Law,* p. 178 f.n.

[513] On the various types of punishment, see: Heyd, *Studies,* pp. 259-309; Peirce, *Morality Tales*, pp. 311-348.

[514] For example: Saʿdî Efendi, *Fetâvâ-ı Saʿdî*, Amasya Beyazîd Kütüphanesi MS 439, p. 62r, 91r; Ṣunʿullah Efendi, *Fetâvâ,* p. 16v; ʿAtâullah Efendi, *Fetâvâ,* Süleymaniye Library MS H. Hüsnü Paşa 427, p. 44r.

[515] Such is the case in the fatwá by Ismāʿīl al-Ḥāʾik discussed below.

There are, however, two major differences between most of the other punitive measures—namely *ḥudūd* and *ta'zīr*—and the renewal of faith. The first difference is that the former appear in pre-Ottoman Ḥanafī (and non-Ḥanafī) jurisprudential texts. The second difference concerns the position of the transgressor along the believer/unbeliever divide. Despite the fact that some of these punitive measures, such as *ta'zīr*, could have been applied to non-Muslim subjects of the empire,[516] insofar as Muslims were concerned, the assumption underlying these punitive measures is that the perpetrator, even of horrendous crimes such as murder, is still a member of the Muslim community, whereas the demand for the renewal of faith, like in some cases the demand for repentance (*tevbe*),[517] assumes that the perpetrator has crossed the believer/unbeliever divide.[518] Therefore, the transgressor should reenter the "Orthodox" Sunnī community, remarry, and be punished. This point illustrates again the way in which the practice of renewal of faith preserved the believer/unbeliever

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[516] Amnon Cohen and Elisheva Simon-Pikali have found several entries in the court records of sixteenth-century Jerusalem in which Jewish transgressors were subjected to discretionary punishment (*ta'zīr*). See: Amnon Cohen and Elisheva Simon-Pikali, *Jews in the Moslem Religious Court: Society, Economy, and Communal Organization in the XVIth Century (Documents from Ottoman Jerusalem)* [in Hebrew] (Jersualem: Yad Ben-Zvi, 1993), p. 11, 107, 147, 267. Metneşîzâde, for instance, has a section in his *fatāwá* collection dedicated to issues related to the *ta'zīr* of the non-Muslim (*dhimmi*). See: 'Abdürrahîm Menteşizade, *Fetâvâ-i 'Abdürrahîm* (Istanbul: Darüttibaat ül-Ma'muret üs-Sultaniyye, 1827), vol. 1, pp. 123-126.

[517] The concept of *tawbah* and its relation to the concept of renewal of faith, however, still awaits further clarification.

[518] Ibn Nujaym, for instance, permits the repentance (*tawbah*) of the apostate (*kāfir*) in this world and the hereafter. There are four exceptions to this rule: if he reviled (*sabba*) the Prophet or other prophets, if he reviled Abū Bakr and 'Umar, if he is a heretic (*zindīq*), or if he is a sorcerer (sāḥir). Zayn al-Dīn b. Ibrāhīm b. Nujaym, *al-Fawā'id al-Zayniyyah fī Madhhab al-Ḥanafiyyah* (Riyad: Dār Ibn al-Jawzī, 1994), pp. 73-74.

divide, but also allowed heretics and apostates to return to the "Orthodox" Sunnī community.[519]

Finally, an important issue remains to be addressed: how was the procedure of renewal of faith conducted? Unfortunately, most sources remain silent on this point. Apparently, there was a formula that the transgressor was asked to recite. The question posed to Khayr al-Dīn al-Ramlī reveals some aspects of the procedure. It is clear that the renewal of faith took place in court, in the presence of the judge.[520] A question posed to Meḥmed Çivizâde Efendi (d. 1542) suggests that other Ottoman officials (*ehl-i 'örf*) could have intervened and punished blasphemers, and, possibly, could demand the renewal of faith, but it is clear from the question that after the issue was settled, presumably in court, the officials could not have harmed the repentant. [521] After the transgressor renewed his faith, the renewal was, it seems, recorded in the

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[519] In his rulings on the issue of oath on the pain of excommunication, 'Alî Cemâlî offers an interesting articulation of the distinction between the states of belief and unbelief. According to his formula, if a Muslim takes an oath on the pain of excommunication and means it (*yemîn olmak i'tiḳâdıla*), he should only expiate for the broken oath (*kefâret yemîn*). On the other hand, if he, as Muslim, is in a state of unbelief (*kâfir olmak i'tiḳâdıla*), he should renew his faith and marriage. Zenbilli 'Alî Cemâlî, *Fetâvâ-i* Zenbilli 'Alî Cemâlî, *Fetâvâ-i* Zenbilli 'Alî Cemâlî, Süleymaniye Library MS Fatih 2388, p. 49r

[520] Al-Ramlī, *al-Fatāwá al-Khayriyyah,* 1, pp. 106-107.

[521] Question: […] Zeyd repented (tevbe ve istiğfar) as a punishment (*ta'zîr*). After he has renewed his faith and marriage again, can the officials (*ehl-i örf ṭâifesi*) harm Zeyd?
The answer: They cannot harm him without a rightful [cause]. [issued by] Çivizâde Efendi.
[Ṣuret-i mezbûrede Zeyd'e tecdîd-i îmân ve-nikâḥ lâzim geldiği teʿzîrce tevbe ve istiğfâr idup tekrâr tecdîd-i îmân ve nikâḥ ittikten soñra ehl-i 'örf ṭâifesi Zeyd'i rencide etmeğe ḳâdir olur mu?
El-cevâb: bi-gayrî haḳḳ rencide ḳâdir olmaz. Çivizâde Efendi.]
Muḥyîddîn Muḥammed b. İyâs el-Menteşevî Çivîzâde*, Fetâvâ,* Süleymaniye Library MS Kadizade Mehmed 251, pp. 23r-23v.

court record (*sicill*).[522]

[II] *Non-appointed Greater Syrian Ḥanafī Jurists and the Practice of Renewal of Faith*

When Khayr al-Dīn al-Ramlī answered the question concerning the practice of renewal of faith, this judicial practice had been more than a century and a half old. Although the debate does not occupy a central place in the writings of Ḥanafī scholars from the Arab lands, despite their interest in questions of faith, apostasy, and infidelity, it is worth examining some of the scattered statements on this issue. A contemporary of Kemâlpaşazâde, the Egyptian jurist Zayn al-Dīn Ibn Nujaym, for instance, does not mentions this issue at all in his collection of legal opinions.[523] Ibn Nujaym's student, Muḥammad al-Timūrtāshī, however, does mention this concept in one of his rulings. Since this is a rare instance, it may be useful to cite this ruling in

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[522] I have not examined court records for this study. It is hoped that future studies based on court records could shed light on the procedure of renewal of faith. Heyd, who did examine some court records from Bursa, found therein some cases concerning renewal of faith. Heyd, *Studies,* p. 178 f.n. In late sixteenth-early seventeenth-century Ottoman Nicosia this was also the case. M. Akif Erdoğru, "Lefkoşa Şer'î Mahkeme Tutanaklarında Şetm," in Nurcan Abacı (ed.), *VIIIth International Congress on the Economic and Social History of Turkey* (Morrisville: Lulu Press, 2006), p. 140.
In the eighteenth century the formula that is associated in today's Turkey with the practice of renewal of faith was already in use. The eighteenth-century dragoman of the Swedish embassy in Istanbul, Ignatius Mouradega d'Ohsson, mentions the formula in his survey of the Ottoman Empire and its institutions (among other things). According to this formula, the belief is based on six principles: belief in God, in his angels, in his books, in his Prophetes, in the Day of Judgement, and in predestination. Should the believer denounce one of these principles, d'Ohsson explains, he should renew his faith and marriage. It is not clear, however, when the formula was first used.
Ignatius Mouradega d'Ohsson, *Tableau General de L'Empire Othman* (Paris: L'imprimerie de Monsieur, 1788), vol. 1, pp. 160-162.

[523] Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al*Fatāwá al-Zayniyyah,* Süleymaniye Library MS Carullah 917.

full:

> [The muftī] was asked about a man who told another person: "The muftī said so-and-so" and [the other person] told him derogatively (*mustakhiffan*): "The muftī is lying." What should be inflicted upon him? Issue your opinion.
>
> [The muftī] answered: Our shaykhs have stated that the disparagement (*istikhfāf*) of the religious scholars (*'ulamā'*) because they are scholars is the disparagement of knowledge (*'ilm*), and knowledge is an attribute of Allah ... a grace on the chosen ones among His slaves, so they could guide His creatures (*khalqihi*) in his law (*shar'*) as the deputies (*niyābatan*) of his Prophet… and by doing so he should be considered infidel [*kufr*] and the rules of apostasy (*aḥkām al-riddah*) should be applied to him, such as [the divorce ?] of [his] wife, the renewal of faith (*tajdīd al-īmān*) and others. In the same manner, scorning a fatwá calls for [declaring one's] apostasy (*riddah*), God knows best.[524]

It is not clear why al-Timūrtāshī decided to employ the concept of renewal of faith in his answer. His choice, however, reflects a familiarity with the jurisprudential discourse of the establishment-affiliated muftīs. It is possible that al-Timūrtāshī was less concerned with the theological implications of the practice of renewal of faith, while focusing on the more procedural aspects of the question. He does, however,

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[524] Muḥammad ibn 'Abd Allāh Al-Timūrtāshī, *Fatāwá al-Timūrtāshī,* Süleymaniye Library MS Es'ad Efendi 1114, pp. 39v-40r.

share his establishment-affiliated counterparts' view that an offense against the muftī and religious scholars is a sign of unbelief (or apostasy).

Al-Timūrtāshī's answer is nevertheless quite rare. As Hanna H. Kilany Omar has argued, fifteenth- and sixteenth-century Ḥanafīs in the Arab lands, including al-Timūrtāshī, tended to interpret leniently Muslims' speech, even when it might have been considered blasphemous. They argued, for instance, that judges should impute good intentions to the transgressor in order to avert the death penalty. [525] Furthermore, in his manual for muftīs *Mu'īn al-Muftī 'alá Jawāb al-Mustaftī*, al-Timūrtāshī addresses the issue of faith, this time without mentioning the concept of renewal of faith, although he does dedicate a discussion to the different theological approaches to the issue of faith and sins. He concludes that even the gravest sinners should be considered believers, thus implicitly rejecting the theological understanding of faith that undergirds the Ottoman articulation of renewal of faith.[526]

Things, nonetheless, changed over the course of the first decade of the seventeenth century. While al-Timūrtāshī was apparently indifferent to the practice of renewal of faith, the mid seventeenth-century al-Ramlī could not have let the judge's demand go unnoticed or regard it as another court procedure. At the present state of

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[525] These jurists even suggested that when necessary it is permissible to depend on weak prophetic traditions (aḥādīth), so the blasphemous speech act would not be counted as heresy or apostasy. Omar, *Apostasy,* p. 93.

[526] Muḥammad b. 'Abd Allāh al-Timūrtāshī, *Mu'īn al-Muftī 'alá Jawāb al-Mustafatī* (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 2009), pp. 40-42.

research, it is difficult to determine whether the difference between the opinions of these jurists reflects wider trends in Ḥanafī thought across the Arab lands. This may well have been al-Ramlī's personal sensibility, based on his understanding of the nature of faith. Another possibility is that the calls for renewal of faith and for the repudiation of certain practices and ideas that many Muslims across the empire deemed licit as heretical, such as the calls voiced by the seventeenth-century Ḳâḍîzâdeli movement, spurred al-Ramlī to address this issue more seriously.[527]

Whatever his reasons may have been, in his answer al-Ramlī adheres to the medieval Ḥanafī position, implicitly arguing that the list of speech acts considered blasphemous should not be expanded beyond the fairly limited list of statements that is codified in the jurisprudential manuals. By doing so, he also adopts the more lenient approach to blasphemous speech acts, the same approach supported by many fifteenth-and sixteenth-century Ḥanafīs from the Arab lands of the empire against excommunication (*takfīr*). Like al-Timūrtāshī, for instance, he urges the muftī to favor the tradition (*riwāyah*) that does not lead to the repudiation of the speaker as heretic or apostate (*fa-ʻalá al-muftī an yamīlu ilá al-wujh al-ladhī yamnaʻ al-takfīr*) assuming that the blasphemer's thoughts were innocent. Moreover, he concludes that

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[527] On the Ḳâdîzâdeli movement see: Madeline C. Zilfi, "The Kadizadelis: Discordant Revivalism in Seventeenth-Century Istanbul," *Journal of Near Eastern Studies* 45(4) (1986), pp. 251-269; Marc David Baer, *Honored by the Glory of Islam: Conversion and Conquest in Ottoman Europe* (New York: Oxford University Press, 2008). For a reassessment of the impact of the movement in the seventeenth and the eighteenth centuries: Khaled el-Rouhayeb, "The Myth of the Triumph of Fanaticism in the Seventeenth-Century Ottoman Empire", *Die Welt des Islams* 48 (2008), pp. 196-221.

the majority of blasphemous speech acts (*alfāẓ al-takfīr*) should not be interpreted by the muftīs as signs of unbelief (*la yuftá bi-l-takfīr bihā*).[528] It is important to stress, however, that al-Ramlī does maintain that certain speech acts are indeed blasphemy and call for severe punishment, including execution. In short, what al-Ramlī finds problematic in the judge's and the Ottoman chief muftīs' opinion is the temporary excommunication of the transgressor as apostate or heretic in general, and the fact that there was no reason for the excommunication according to the literature on blasphemy in particular. In another ruling, this time on debatable Sufi practices, al-Ramlī reiterates his contention that a believer cannot be expelled from faith unless he explicitly denounces it.[529]

The difference between al-Timūrtāshī and al-Ramlī's approach to the question of belief and its relations to acts and that of their colleagues who were affiliated with the imperial learned hierarchy is illuminating, for it suggests that different jurists throughout the empire had different sensibilities that shaped their responses to the historic developments of the time. These sensibilities might be the product of the jurists' affiliation to different jurisprudential traditions within the Ḥanafī school, the local reality in which the jurists operated, and, as the next section will show, their appointment by the Ottoman state.

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[528] Al-Ramlī, *al-Fatāwá al-Khayriyyah,* 1, p. 107.

[529] Ibid., vol. 2, p. 182.

[III] *The State-appointed Damascene Muftī: Ismā'īl al-Ḥā'ik on Renewal of Faith*

Given the denunciation of the practice of renewal of faith by Greater Syrian and other Arab jurists, the opinion of a state-appointed Damascene muftī on this issue merits close scrutiny. A popular teacher among Ḥanafīs and non-Ḥanafīs alike and well esteemed for his scholarly and jurisprudential skills, "the faqīh of the Shām at the time", Ismā'īl al-Ḥā'ik (d. 1701) was the state-appointed Ḥanafī muftī in Damascus from 1695 until his death in 1701.[530]

As has been already described in details in chapter 1, by the late sixteenth-century the Ottoman state had decided to appoint the chief Ḥanafī muftī in Damascus from among the ranks of the local jurists. The appointment of local Ḥanafīs to the official muftīship of Damascus raises an important question: How did the appointment shape the rulings of the appointee? It is possible, on the other hand, that the appointment is the outcome, not the cause, of the adoption of the jurisprudential concepts and arguments maintained by establishment-affiliated jurists.

Be the case as it may, Ismā'īl al-Ḥā'ik's fatāwá collection can assist us in better understanding the exchange, or disseminations, of jurisprudential concepts and arguments between members of the Ottoman religious-juridical hierarchy and the

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[530] Ismā'īl al-Ḥā'ik studied with leading Damascene jurists, such as Ismā'īl al-Nābulusī ('Abd al-Ghanī al-Nābulusī's father), Ibrāhīm al-Fattāl and Muḥammad 'Alā' al-Dīn al-Ḥaṣkafī (d. 1677), who was also appointed by the state to serve as the chief Ḥanafī muftī of Damascus. A brief glimpse at al-Murādī's biographical dictionary of eighteenth-century scholars and notables reveals that al-Ḥā'ik was quite a sought-after teacher, among Ḥanafīs and non-Ḥanafīs alike. See Muḥammad Khalīl ibn 'Alī al-Murādī, *Silk al-Durar fī A'yān al-Qarn al-Thānī 'Ashar* (Beirut: Dār al-Bashā'ir al-Islāmiyyah, 1988), vol. 1, pp. 256-258.

provincial, Damascene appointees. The dispute concerning the legal practice of renewal of faith and the absence of the concept from many sixteenth- and seventeenth-century Greater Syrian fatāwá collections render the jurisprudential concept of renewal of faith a useful case study to this end.

Here are three fatāwá from al-Ḥā'ik's collection on the issue of renewal of faith:

> [i] [The muftī] was asked about a man who said to a religious scholar (*rajul min al-'ulamā'*): "What benefit is there for me from your knowledge? I do not want the benefit of your knowledge." [He said this] disparagingly, for the men was a scholar. What is required from the [offender]?
>
> [The muftī] answered: If the [case] is indeed as mentioned, he should be punished (*ta'zīr*), he should renew his marriage, renew his faith and repent (*tajdīd al-nikāḥ wa-tajdīd īmānihi wa-l-tawbah*].[531]
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> [ii] [The muftī] was asked about a man who said to a descendant of the Prophet (*rajul min al-ashrāf*), a student (*min ṭalabat al-'ilm*) [who also] memorized the Qur'an (*ḥafaẓat kitāb Allah*): "You shameless one!", what should be [his punishment]?
>
> [The muftī] answered: If this was indeed the case, he should be severely punished (*yu'azzar al-ta'zīr al-shadīd*) and if he intended to ridicule (*al-istikhfāf wa-l-iḥtiqār*] the [descendant of the Prophet], he [should] renew his faith, his

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[531] Ismā'īl b. 'Alī b. Rajab b. Ibrāhīm al-Ḥā'ik, *al-Shifā' al-'Alīl bi-Fatāwá al-Marḥūm al-Shaykh Ismā'īl,* Dār Is'āf al-Nashashibī MS 9٠53-م, p. 21v.

marriage and be asked to repent (*yustatābu*).[532]

[iii] [The muftī] was asked about Zeyd who said to ʻAmr: "You infidel (*yā kāfir*)!," cursed his religion and faith (*sabba dīnahu wa-īmānahu*), and pulled a dagger with the intention of stabbing [ʻAmr]. What should be [his punishment]? [The muftī] answered: If this is indeed the case, he should be asked to renew his faith. Then he should be severely punished (*yuʿazzar al-taʿzīr al-shadīd*), [and then] he should be ordered to renew his marriage if he had a wife before the saying [i.e. the incident]. [533]

al-Ḥā'ik, then, fully accepted the notion and practice of renewal of faith and did not reject it, as other jurists from Greater Syria had done before him. He did not even refer to the controversy surrounding the practice. On the other hand, al-Ḥā'ik was more elaborate on the procedure of renewal of faith than his counterparts from the core lands of the empire. In the third ruling cited above, he carefully explains the stages of the procedure and their order—the renewal of marriage comes last, after the offender's renewal of his faith and after his severe punishment. The elaboration on these issues may be attributed to the lack of familiarity with the practice among his Greater Syrian peers. If this is indeed the case, then al-Ḥā'ik served as a mediator who introduced and explicated concepts and arguments that were somewhat foreign, at least in his mind, to the Damascene Ḥanafī milieu.

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[532] Ibid.

[533] Ibid.

Since I did not have the opportunity to examine collections of legal rulings issued by earlier Greater Syrian muftīs, it is difficult to determine when exactly state-appointed Damascene muftīs started employing the concept of renewal of faith. Nevertheless, the adoption of the notion of renewal of faith may be paralleled to the gradual acceptance of other legal concepts by state-appointed Damascene jurists. In their exhaustive study of Damascene muftis' rulings on land tenure issues, Martha Mundy and Richard Saumarez Smith have observed that "those who held the formal position of muftī in Damascus appeared more punctilious with regard to doctrine sanctioned in Istanbul than the three great figures, Khayr al-Dīn al-Ramlī (1585-1671), ʻAbd al-Ghanī al-Nābulusī (1641-1731), and Muḥammad Amīn Ibn ʻAbīdīn (1784-1836) whose fame rested more on their writing than on their official position."[534] This suggests that the obtaining a state appointment to the muftīship required the acceptance and support of jurisprudential arguments which the imperial learned hierarchy endorsed and advanced.

On the other hand, it is important to pay attention to other state-appointed muftīs who did not adopt the concept of renewal of faith. Roughly a contemporary of al-Hā'ik, the Jerusalemite state-appointed muftī ʻAbd al-Raḥīm b. Abī al-Luṭf, did not

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[534] Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London and New York: I.B. Tauris, 2007), p. 3.

employ this concept in his fatāwá. Instead, Ibn Abī al-Luṭf opted for *ta'zīr*[535]. Nevertheless, Ibn Abī al-Luṭf did not explicitly repudiate the notion of renewal of faith as al-Ramlī did.

Now that we have sketchily outlined the debate, it is possible to explore the question posed to al-Ramlī in a wider context.

Part II*: Addressing al-Ramlī in a Wider Context*

I wish to return at this point to the episode that opened this chapter. As we have seen, the questioner who posed the question to al-Ramlī decided to do so after the case had been concluded in court. The judge demanded the renewal of faith, which apparently took place shortly thereafter, and then recorded the procedure in the court record. With the recording of the case in the court record, the judge (and the Ottoman legal system which he represented) appears to have concluded the affair.[536] For the solicitor, however, the story was not over. As in the cases examined in the previous chapter, very little is known about the solicitor (or possibly solicitors) in this case. It is clear, however, that he wanted al-Ramlī's opinion after the case, as far as the court

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[535] 'Abd al-Rahīm b. Abī Luṭf al-Maqdisī, *al-Fatāwá al-Raḥīmiyyah fī Wāqi'āt al-Sādah al-Ḥanafiyyah,* Firestone Library (Princeton) MS Mach Yehuda 4154, pp. 48r-54v.

[536] Litigants, however, took their case for re-adjudication to another court. Boğaç Ergene argues that in the eighteenth century many cases were taken to another court for re-adjudication. Although this type of action was illegal, this seems to have occurred quite frequently. Boğaç Ergene, *Local Courts, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu* (Leiden: Brill, 2003), p. 107.

is concerned, had been resolved.

The reasons that led the questioner to seek al-Ramlī's opinion are open to speculation, but it is fairly evident that the solicitor, who might have been the same person who had been asked to renew his faith, wanted the Palestinian muftī's declaration that he had never abandoned his faith. The questioner's concern suggests that reputation for apostasy or heresy might have had serious social implications. If this was indeed the case, what the solicitor wanted from al-Ramlī was exoneration from the accusation of temporary apostasy, so he would presumably preserve his social and religious status in his community.

The important point in this episode for our discussion is the attempt to counter the judge's resolution with the opinion of a Greater Syrian, albeit an empire-wide known, muftī. It is worth dwelling on this duality. It is clear that the qāḍī's opinion and resolution had some resonance, at least in certain circles. On the other hand, if certain prominent muftīs issued a ruling that contradicted the opinion of the judge, their opinion was perceived authoritative enough to exonerate the accused and, possibly, restore his social status within his immediate community.

The question that was posed to al-Ramlī and his answer were not unique. For a fuller appreciation of this incident it is necessary to examine it in light of the complex relationship between the Ottoman judicial system and Greater Syrian prominent muftīs who did not hold a state appointment. All these incidents indicate that pre-

Ottoman jurisprudential and authoritative networks, on which the authority of these non-appointed jurists depended, had audience and following well into the centuries of Ottoman rule in these provinces.

This part concentrates on the activity of three eminent muftīs—the sixteenth-century Gaza-based Muḥammad al-Timūrtāshī, the mid seventeenth-century Khayr al-Dīn al-Ramlī and the late seventeenth- early eighteenth-century ʻAbd al-Ghanī al-Nābulusī—who were not appointed by the state, but were well-respected across Greater Syria as well as in other parts of the empire. It also intends to cast light on the conditions that enabled their unmolested activity. Although these muftīs are better known and their activity is better documented, they seem to represent a larger group of Ḥanafī jurists who were not affiliated with or appointed by the Ottoman establishment, such as al-Timūrtāshī's son, Sāliḥ b. Muḥammad al-Timūrtāshī,[537] and

[537] On Ṣālih al-Timūrtāshī, see: Anonymous, *Tarjamat Ṣāliḥ al-Timūrtāshī*, Süleymaniye Library MS Esʻad Efendi 2212-1, pp. 5r-6v; Muḥammad Amīn ibn Faḍl Allāh al-Muḥibbī, *Khulāṣat al-Athar fī Aʻyān al-Qarn al-Ḥādī ʻAshar* (Beirut: Dār al-Kutub al-ʻIlmiyyah, 2006), vol. 2, pp. 230-231.

grandson, Muḥammad b. Sāliḥ al-Timūrtāshī.[538] Granted, there were probably non-appointed muftīs who were not considered as authoritative as the three that concern us here. Future studies on less dominant muftīs may qualify some of my conclusions here and contribute to a more nuanced map of jurisprudential authority in the Ottoman lands.[539]

Establishing Authority

The jurisprudential authority of the three muftīs that concern us here, as well as that of others who did not hold a state appointment, rested on their affiliation to particular traditions within the Ḥanafī school. Admittedly, the three jurists were luminary figures in the legal landscape of Greater Syria and in the specific Ḥanafī traditions to

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[538] On Muḥammad b. Ṣāliḥ al-Timūrtāshī: al-Muḥibbī, *Khulāṣat al-Athar,* vol. 3, pp. 459-460. Another fascinating example is Ibrāhīm b. Muḥammad b. al-Ṭabbākh (d. 1597). A protégé of Ma'lûlzâde Meḥmet Efendi (who he served as the chief judge in Damascus), Ibn al-Ṭabbākh returned to Damascus (his hometown) after a relatively short teaching career in the Ottoman madrasah system (his highest rank was a 40 akçe medrese). In Damascus he worked in the service of the governor Sinân Paşa and was in charge of the distribution of salaries to the city's jurists (*'ulūfat al-'ulamā' bī-khazīnat al-Shām*) and was appointed to other teaching and preaching positions there. More significantly, his relations with many of the Damascene jurists, and possibly with other jurists as well, were tense. al-Muḥibbī, *Khulāṣat al-Athar,* 1, pp. 46-47.
In 1594, during his stay in Damascus, Ibn al-Ṭabbākh started issuing legal opinions that were subsequently collected under the title *'Ayn al-Muftī li-Ghayn al-Mustafī.* In his rulings, Ibn al-Ṭabbākh severely criticizes the judges of his time and even states that jurists should avoid serving as judges due to the incapability of judges to rule justly in his time. Ibrāhīm b. Muḥammad Ibn al-Ṭabbākh, *'Ayn al-Muftī li-Ghayn al-Mustafī,* Süleymaniye Library MS Reşid Efendi 1115, pp. 7v-8r.
Because of these views, al-Muḥibbī describes Ibn al-Ṭabbākh as bigoted. Nevertheless, copies of his work circulated across the empire. One copy of the work is located in Sarajevo (Hüsrev Bey Library (Sarajevo) MS 3069) and at least one more copy is now in Istanbul (Süleymaniye Library MS Reşid Efendi 1115). Moreover, the quality of the Istanbulian copy (a neat and decorated copy) suggests that at least in some circles Ibn al-Ṭabbākh's rulings were well received.

[539] Consider the "fatwá giver" (*fetvâcı*) in the mosque of Ayntab as an example of such a local authority. Peirce, *Morality Tales,* pp. 115.

which they claimed affiliation. Nevertheless, as I have already suggested, their case represents, at least in some respects, a larger group of jurists. The affiliation to specific traditions that were mostly rooted in the Arab lands of the empire and predated the Ottoman rule in these provinces was manifest through social interactions across time and space and especially in the connection between students and specific teachers. In this respect the authority of these muftīs differed from that of members of the imperial learned hierarchy. Although, as I have argued in chapter 2, the imperial learned hierarchy channeled the authority of a chain (or several chains) of transmission within the Ḥanafī school, as the hierarchy consolidated over the course of the late fifteenth and the sixteenth centuries, the importance of the connection between a particular teacher and his student for the transmission of authority and knowledge declined. Instead, the learned hierarchy as a whole became increasingly important as the channel of the authority of the school (or, to be precise, of the specific sub-school).[540]

In the case of the non-appointed muftīs, the immediate affiliation with specific traditions was much more significant. The emphasis on the affiliation with specific traditions shaped the biographies of the three muftīs (as lived experiences and as texts that document and report about these experiences), their textual production, and their

[540] Interestingly enough, both al-Timūrtāshī and al-Nābulusī studied with teachers who were members of the imperial learned hierarchy, although neither officially entered the training path of the imperial learned hierarchy. It is unclear at this point to what extent they could claim on the basis of their studies with these teachers affiliation to the sub-school endorsed by the imperial learned hierarchy.

rulings. These muftīs' biographies and their jurisprudential production, in turn, circulated throughout the empire, and specifically throughout its Arab provinces, and served to constitute and propagate their affiliation to specific authoritative and jurisprudential traditions within the school. In this respect, the function of these legal documents resembled that of the rulings of the chief imperial jurisconsults, as we have seen in chapter 4.

To be sure, not all these texts were intended for the same audience. The circulation of the jurisprudential texts was perhaps limited to scholarly circles. The rulings, on the other hand, clearly reached a wider audience. The biographies, too, circulated in scholarly circles but at least some contained almost hagiographic materials that might have reached a wider audience. Consider, for example, the dreams that both al-Timūrtāshī and al-Ramlī are said to have dreamt. According to his anonymous seventeenth-century biographer, in one of al-Timūrtāshī's dreams the Prophet appears in his residence in Gaza. During this encounter, al-Timūrtāshī sucks the Prophet's tongue.[541] This alludes to other pious figures in Islamic history that are said to have performed the same act. The early eighteenth-century biographer and chronicler al-Muḥibbī mentions one of al-Ramlī's dreams in which the eponymous founder of the Shāfiʿī school releases al-Ramlī from his school and urges him to

[541] Anonymous, *Tarjmat Muḥammad al-Timūrtāshī,* pp. 2v-3r.

follow the Ḥanafī school.[542] The narration of the dream is intended to emphasize al-Ramlī's special status, as he is represented as a symbolic gift made by the eponymous founder of the Shāfiʿī school to his Ḥanafī counterpart.

The importance of the affiliation with specific traditions within the school is reflected in the efforts invested by various jurists from the Arab lands, including al-Timūrtāshī and al-Ramlī, to study with specific teachers. These efforts are also documented in detail in their textual biographies. The anonymous biographer and al-Muḥibbī mentions of al-Timūrtāshī's teachers in Egypt: the muftī of Egypt (*muftī al-diyār al-Miṣriyyah*) al-shaykh Amīn al-Dīn ʻAbd al-ʻĀl; the prominent Egyptian muftī Najm al-Dīn Ibn Nujaym; and the renowned member of the imperial establishment Kınalızâde.[543] The first two were eminent jurists in the Arab lands, while the third, at least potentially, linked al-Timūrtāshī to the tradition of the imperial religious-judicial establishment. As in his biography of al-Timūrtāshī, in his biographical entry of al-Ramlī, al-Muḥibbī lists his biographee's teachers. One of his most important teachers was ʻAbd Allāh b. Muḥammad al-Naḥrīrī (d. 1617), one of the most prominent Ḥanafīs who taught in al-Azhar,[544] who taught al-Ramlī and his brother privately in addition to his public lectures in al-Azhar.[545] Among al-Ramlī's

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[542] Al-Muḥibbī, *Khulāṣat al-Athar*, vol. 2, p. 134.

[543] Anonymous, *Tarjmat Muḥammad al-Timūrtāshī,* p. 3v. al-Muḥibbī, *Khulāṣat al-Athar*, vol. 4, p. 19.

[544] al-Muḥibbī, *Khulāṣat al-Athar*, vol. 3, p. 64.

[545] Ibid., vol. 2, p. 134.

teachers were other renowned Ḥanafī jurists, such as Muḥammad Sirāj al-Dīn al-Ḥanūtī[546] (d. 1601) and Aḥmad b. Muḥammad b. Amīn al-Dīn b. ʻAbd al-ʻĀl (d. c. 1630).[547] Although al-Nābulusī did not travel to Egypt, he, too, through his father and teacher, Ismāʻīl, was linked to leading authorities in Cairo and possibly to authorities in the core lands of the empire, as his father entered the Ottoman madrasah system.[548]

All three muftīs, moreover, referred in their rulings to teachers with whom they had studied across the Arab lands. By invoking the opinion of a prominent authority, the jurist reasserted his affiliation to a specific authoritative network and, in turn, his support of specific opinions. In his fatāwá, al-Timūrtāshī refers to several late fifteenth- and sixteenth-century Egyptian authorities, such as Burhān al-Dīn al-Karakī,[549] Muḥammad al-Ḥanūtī,[550] Nūr al-Dīn al-Maqdisī,[551] and Shaykh al-Islām al-Aqṣarā'ī.[552] al-Ramlī, as we have seen in chapter 3, cites extensively Muḥammad al-Ḥanūtī and the Damascus-based al-Shihāb al-Ḥalabī.

Likewise, the biographers list quite meticulously the muftīs' students.

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[546] Ibid., vol. 3, p. 154.

[547] Ibid., vol. 1, 518-521.

[548] Von Sclegell, *Sufism,* pp. 32-33. His father, Ismāʻīl, had his own entry in al-Muḥibbī's biographical dictionary. See: al-Muḥibbī, *Khulāṣat al-Athar*, vol. 1, pp. 452-454.

[549] Al-Timūrtāshī, *Fatāwá*, p.21r. Ibrāhīm al-Karakī (d. 1516), see: al-Ghazzī, *al-Kawākib,* vol. 1, pp. 112-113. al-Timūrtāshī calls him "the shaykh of our shaykh."

[550] Ibid., p. 108r. On Muḥammad al-Ḥanūtī see: al-Muḥibbī, *Khulāṣat al-Athar,* vol. 4, pp. 76-77.

[551] al-Timūrtāshī, *Fatāwá,* p. 38r.

[552] Ibid., p. 170r.

Moreover, since the biographies were written posthumously, the biographies were intended to establish the authority of the students as well. The biographees, then, emerge as affiliates but also as transmitters of specific traditions. Nevertheless, the biographies capture the widely recognized excellence of these jurists and their importance as teachers during their lifetime. Al-Timūrtāshī's anonymous biographer provides a fairly long list of students. In addition to his son Ṣāliḥ, al-Timūrtāshī had students from Gaza and Jerusalem. Other sources indicate that Damascenes studies with al-Timūrtāshī as well.[553] The list of al-Ramlī's students includes "*mawālī* (jurists who were affiliated with the Ottoman learned hierarchy), prominent 'ulamā' (*al-'ulamā' al-kibār*), muftīs, teachers (*mudarrisūn*), and compilers of texts (*aṣḥāb al-ta'ālīf wa-l-mashāhīr*)."[554] Moreover, his students came from Jerusalem, Gaza, Damascus, Mecca and Medina.[555] He also had some students from the central lands of the empire, such as Muṣṭafâ Paşa, the son of the grand vezir Meḥmed Köprülü, who asked al-Ramlī to grant him a permit to transmit religious knowledge (*ijāzah*) for his brother, the grand vezir Aḥmed Köprülü (d. 1673).[556]

In addition, it is worth paying attention to these muftīs' response to other jurists'

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[553] The state-appointed muftī of Damascus, Darwīsh al-Ṭālūwī obtained an *ijāzah* from al-Timūrtāshī. See: Darwīsh Muḥammad b. Aḥmad al-Ṭālūwī, *Sāniḥāt Dumá al-Qaṣr fī Muṭāraḥāt Banī al-'Aṣr* (Beirut: 'Ālam al-Kutub, 1983), vol. 2, pp. 118-119.

[554] al-Muḥibbī, *Khulāṣat al-Athar*, vol. 2, p. 135.

[555] Ibid., vol. 2, pp. 135-136.

[556] Ibid., vol. 2, p. 136.

opinions and rulings. The response or opposition of a Greater Syrian muftī to, for example, the opinion of the Ottoman chief muftī or even to that of another provincial muftī draws attention to the challenges the muftīs may have perceived to their own authority within a context of competition over a constituency of followers. This is not to suggest, however, that one should read a strict functionalist reading of the jurisprudential discourse. Muftīs might have genuinely believed that their opinion is sounder and preferable on the basis of their reading of the authoritative texts, without taking into consideration the support of their community. References to their peers' rulings are significant, nonetheless, because they reveal which adversaries/peers certain muftīs deemed important enough to comment on in their rulings. Al-Timūrtāshī, for instance, responded to some of the rulings of the sixteenth-century chief jurisconsult, Ebû's-Suʿûd Efendi,[557] and to the fatāwá issued by presumably the state-appointed muftī of Damascus.[558] There were other instances of scholarly exchange between different jurisconsults. Al-Ramlī, for example, corresponded with the şeyḫülislâm at the time, Minḳârizâde, concerning an epistle the former wrote on questions of oath under the pain of being declared an infidel (*kāfir*).[559]

The spatial spread of the questioners who sent their questions to a particular

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[557] Ibid., p. 12r.

[558] Ibid., p. 73r

[559] al-Muḥibbī, *Khulāṣat al-Athar*, vol. 2, pp. 131-132. Moreover, Minḳârîzâde, in his fatāwá collection, cites al-Ramlī as an authoritative reference.

muftī provides an interesting testimony to the eminence of a certain muftī in different localities and to the circulation of his rulings. For demarcating this area, I use the information about the places of origin as recorded in the fatāwá collections themselves. Granted, it is impossible to determine the provenance of every question. In fact, in most cases this piece of information remains obscure. But in many cases, the questions reveal important details about the questioner and his geographical location. The questions and the muftī's answers also occasionally provide clues about competing authorities that the questioners might have consulted or, at least, were familiar with their opinion.

Al-Timūrtāshī's fatāwá collection records questions sent from Gaza,[560] where al-Timūrtāshī lived, Damascus,[561] and Jerusalem.[562] Al-Ramlī's fatāwá collection offers even richer information concerning the provenance of the questions. Al-Ramlī received questions from places as distant from one another as Medina[563] to Istanbul[564] and Damascus[565] to Dumyat.[566] Questions were also sent from the Palestinian cities of

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[560] al-Timūrtāshī, *Fatāwá,* p. 163v.

[561] Ibid., pp. 46r-47v.

[562] Ibid., p. 204v

[563] Al-Ramlī, *al-Fatāwá al-Khayriyyah,* vol. 1, p. 85.

[564] Ibid., vol. 2, p. 11.

[565] Ibid., vol. 2, p. 22.

[566] Ibid., vol. 1, pp. 136-137.

Hebron,[567]Gaza (including from al-Timūrtāshī's son, Ṣāliḥ),[568] Jerusalem,[569] Nablus,[570] and Safed.[571] As for al-Nābulusī, he received questions from the Hijaz,[572] Nablus,[573] Safed,[574] Jerusalem,[575] and most likely Damascus. These examples clearly indicate that questioners were willing to send their questions over long distances when they sought the opinion of a specific muftī, whose opinion carried, or at least was thought to carry, special weight. As al-Muḥibbī explains in his biography of al-Ramlī, "[r]arely would any problem arise in Damascus or other main cities without him being consulted for an opinion about it, despite the availability of many other muftīs."[576] As we have seen in the previous chapter, the questions sent to the

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[567] Ibid., vol. 2, p. 19.

[568] Ibid., vol. 1, p. 100; vol. 2, p. 227.

[569] Ibid., vol. 2, p. 170; vol. 1, p. 181; vol. 2, p. 237; vol. 2, p. 239; vol. 2, p. 241.

[570] Ibid., vol. 1, p. 6; vol. 2, p. 38; vol. 2, p. 39; vol. 2, 113.

[571] Ibid., vol. 1, p. 214.

[572] 'Abd al-Ghanī al-Nābulusī, *al-Jawāb al-Sharīf li-Ḥaḍrat al-Sharīf,* Süleymaniye Library MS Es'ad Efendi 1762, pp. 252r-259v.

[573] 'Abd al-Ghanī al-Nābulusī, *al-Ajwibah 'alá 161 Su'ālan* (Damascus: Dār al-Fārābī al-'Arīb, 2001).

[574] 'Abd al-Ghanī al-Nābulusī, *al-Jawāb al-Mu'tamad 'an Su'ālāt Wāridah min al-Ṣafad,* Süleymaniye Library MS Es'ad Efendi 3606, pp. 239v-243r.

[575] 'Abd al-Ghanī al-Nābulusī, *Jawāb Su'ālayn Warada 'Alayhi min al-Quds al-Sharīf,* Süleymaniye Library MS Çelebi Abdullah Efendi 385, pp. 67r-71v.

[576] Judith E. Tucker, "The Exemplary Life of Khayr al-Dīn al-Ramlī," in Mary Ann Fay (ed.), *Auto/ Biography and the Construction of Identity and Community in the Middle East* (New York: Palgrave, 2001), p. 16.

şeyḫülislâm from the Arab lands demonstrate exactly this phenomenon.[577]

Finally, collections of these muftīs' rulings circulated throughout the empire, as the fact that some copies of these collections are located in the imperial capital indicates. As we have seen in the previous chapter, the collections themselves played an instrumental role in establishing the authority of the imperial chief jurisconsult and his state-appointed subordinates. It is quite possible that the collections of rulings issued by non-appointed muftīs played a similar function. The main difference, however, is that the chief imperial muftīship was an official institution within the Ottoman legal system, and the rulings could have been consulted as precedents within that system. In the case of muftīs who did not hold a state appointment, as their position did not rest on state-sponsored institutions, the collections of their rulings were primarily used to establish the authority of the traditions with which they were affiliated.

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[577] It is worth comparing the "topography of authority" of the muftīs who did not hold a state appointment to that of their provincial state-appointed colleagues. As to the state-appointed Damascene muftīs, it is difficult to determine the exact origin of the questions sent to them, for the questions rarely reveal this fact. Questions that provide some information about a concrete location, however, indicate that the questioners were from Damascus.[Al-Ḥā'ik, *al-Shifā',* pp. 57v-58r, 65r, 105v.] Moreover, biographical dictionaries and other sources describe the state-appointed muftīs as the muftīs of a specific locality. [For example: Muḥibbī, *Khulāṣat al-Athar,* vol. 1, 442-445; vol. 1, 552-555; vol. 2, p. 114-116. The son of the appointed Ḥanafī muftī of Jerusalem, 'Abd al-Rahīm b. Abī Lutf al-Maqdisī, identifies his father as the muftī of Jerusalem. See 'Abd al-Rahīm b. Abī Luṭf al-Maqdisī, *al-Fatāwā al-Rahīmiyyah, p. 3v.*] On the other hand, the state-appointed Ḥanafī muftī of Jerusalem 'Abd al-Raḥīm b. Abī al-Luṭf received several questions from Damascus and even from Tripoli. [Ibn Abī Luṭf, *al-Fatāwá al-Raḥimiyyah,* p. 65r, 70r, 80r, 93r-94v, 97v-98v. The question from Tripoli: ibid., p. 191r.] It is interesting to note that all these *fatāwá* dealt with waqf-related issues.

Non-appointed Muftīs and Official Authorities

There are still some crucial questions that remain to be answered: what was the position of the muftīs, especially those who were not appointed by the state, vis-à-vis other official judicial and administrative authorities, namely judges and Ottoman officials? Did these officials respect their opinion? Why did questioners assume that by obtaining these muftīs' opinion they would promote their interests? And what was the relationship between these "independent" muftīs?

To be sure, all three muftīs were loyal subjects of the Ottoman state, despite occasional disputes and disagreements with members of the imperial establishment and other Ottoman authorities. [578] They all considered the Ottoman sultan the imām in all the cases in which Ḥanafī jurisprudence relegated the authority to the holder of this title, as in matters of appointments of judges. Al-Timūrtāshī even penned a short treatise on the virtues of the Ottoman dynasty. In this treatise, he praises the Ottomans for pacifying the newly conquered territories, undertaking charitable projects, and supporting scholars and jurists.[579] Al-Nābulusī, too, compiled in 1694 a poem praising the Ottoman dynasty and the Ottoman sultan at the time, Aḥmed II (r. 1691-1695).[580]

Al-Timūrtāshī's and al-Ramlī's fatāwá collections provide some answers to the

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[578] Von Schlegell, *Sufism,* pp. 96-101.

[579] Muḥammad al-Timūrtāshī, *Faḍā'il Āl 'Uthmān,* Süleymaniye Library MS Es'ad Efendi 2337.

[580] Von Schlegell, *Sufism,* pp. 96-101.

aforementioned questions. Cases in which a judge addressed these muftīs directly are quite rare. Nevertheless, this was, it seems, a possibility that qāḍīs were aware of. The qāḍī of the Egyptian town of Dumyat, for instance, asked for al-Ramlī's opinion concerning a waqf-related issue, which stood at the center of controversy in Egypt.[581] So did the qāḍīs of Gaza[582] and Hebron.[583] It is difficult to identify the qāḍīs that solicited the muftī's opinion, but it is likely that these qāḍīs were local jurists, who were appointed either by the provincial chief qāḍī, who was sent from Istanbul, or directly by the sultan. Although the cases are quite rare, it is remarkable that a state-appointed qāḍī sought the opinion of a non-appointed muftī in order to settle a jurisprudential dispute.[584]

Much more common are cases in which the muftīs were asked about court resolutions, as in the case that opens this chapter.[585] It is important to keep in mind that some of the questions might have been hypothetical, and their main purpose might have been to help a solicitor in assessing his/her odds if s/he decided to petition against the judge or to ask for a fatwá from a state-appointed muftī. But it is also

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[581] Al-Ramlī, *al-Fatāwá al-Khayriyyah,* vol. 1, pp. 136-137.

[582] Ibid., vol. 1, p. 100.

[583] Ibid., vol. 2, p. 19.

[584] It is possible that the practice of asking non-appointed muftīs was more common in Egypt. Ibn Ghānim al-Maqdisī was asked by the chief judge of Egypt 'Abd al-Ghanī for his opinion. Sirāj al-Dīn al-Ḥānūtī, *Fatāwá al-Ḥānūtī,* Bayezit Library MS Veliyüddin 1494, pp. 454r-456v.

[585] For example: Al-Ramlī, *al-Fatāwá al-Khayriyyah*, vol. 2, p. 91; vol. 1, p. 131.

possible that the solicitors actually returned to the court, or went to another, with al-Timūrtāshī's or al-Ramlī's opinion with the hope of changing the previous resolution. In some cases, these muftī's rulings seem to have abrogated the court's resolution. Al-Ramlī's biography echoes this practice: "If someone was ruled against in a non-sharīʿah fashion, the person could come with a copy of the qāḍī's ruling and Khayr al-Dīn [al-Ramlī] could issue a fatwá that nullified that ruling, and it was his fatwá that would be implemented."[586] al-Muḥibbī's definition of "non-sharīʿah fashion" remains somewhat unclear. It is also questionable whether judges always changed their rulings following al-Ramlī's fatwá. But the impression that this was the case lasted for decades after al-Ramlī's death. On the other hand, as Judith Tucker has argued, legal rulings by these Greater Syrian muftīs were rarely brought to court, or at least rarely recorded in the court records.[587]

Others sought the non-appointed muftīs' opinions regarding state officials, ranging from provincial administrators to the sultan himself. These questions can be divided into two, often interrelated, categories—questions about appointments to positions and questions about the officials' comportment. The following question posed to al-Timūrtāshī at some point between 1566 and 1599 serves as an example of the first type of question:

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[586] Tucker, "The Exemplary Life," pp. 15-16.

[587] Tucker, *In the House of the Law,"* pp. 20-21.

[The muftī] was asked about a man who had been registered in the register of the sultan of Islam (*daftar sultān al-Islām*, i.e. the Ottoman sultan) as the only preacher (*khaṭīb*), upon whom no [preacher] should be added or [from whom no preacher should be] reduced. This was recorded in the old imperial register (*al-daftar al-khaqāni al-qadīm*) [of the reign of] the deceased sultan Süleymân Khân. This manner persisted until the time of our sultan now. Then a new preacher came [to serve as preacher] with the previous preacher (*al- khaṭīb al-sābiq*). So [the position of the] preacher in this mosque was [manned] by two [preachers], one preaching in the [first] week and the other in the [second] week. The [position of the] other preacher and prayer leader [*al- khaṭīb wa-l-imām al-thānī*] had not been recorded in the old register. The sultan—may God grant him victory—introduced the new preacher and left the previous preacher in the former position. Is it permissible to introduce [changes] to the endowment? Will you permit both (appointment) edicts? Will the sultan or in turn whoever has the authority be rewarded [by God] (*yuthābu wa-yu'jaru*)? And if he [the sultan] issued a new appointment deed for the position of the preacher and the imām, should it be prevented and rejected? Issue your opinion for us.

[The muftī] answered: It is illicit to introduce [changes] in the endowment, as our deceased masters (*mashāyikhinā*) have declared. What is [written] in *al-Dhakhīrah* and other [texts] supports that: "if a judge appointed a person as a servant to a mosque without the stipulation of the endower [while he is] aware of [this fact], the judge is not allowed to do so [to appoint] and the servant is not allowed to assume [the position]," despite the fact that the mosque needs the servant, for it is possible

that a servant would be hired without an appointment by the judge. God knows best.[588]

Al-Timūrtāshī's answer clearly condemns the sultanic appointment. Since the positions were all recorded and allocated by the imperial bureaucracy, the case raises intriguing questions as to the intentions of the solicitor. It is possible that the solicitor wanted to know what the opinion of a respected jurisprudential figure was before he addressed a state-appointed provincial muftī or perhaps even the imperial chief muftī. The important point is that solicitors thought that obtaining al-Timūrtāshī's opinion would serve their goals, even if the muftī's answer did not eventually fulfill their expectations.

Many solicitors resorted to these muftīs to express their anxiety about oppressive, or what they considered oppressive, officials. Al-Ramlī, for example, was asked about a sipâhî (a cavalryman who was allocated lands and villages as salary) who acted oppressively against the villagers and against endowed property.[589] But, as an interesting question preserved in al-Ramlī's collection suggests, at times the sipâhîs themselves, or someone on their behalf, addressed the Palestinian muftī:

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[588] Al-Timūrtāshī, *Fatāwá,* p. 48r-48v.

[589] Al-Ramlī, *al-Fatāwā al-Khayriyya,* vol. 1, p. 99. On oppressive qāḍīs: ibid., vol. 2, p. 148; vol. 1, p. 141.

> [The muftī] was asked about a group of sipahis in the town of Nablus who were told, "You have been registered for the campaign." They then gave their leaders who were going off on the campaign permission [to pay to get them exempted, saying] that if they [the leaders] met with....the governor of Damascus...and extracted from His Grace what is called a *buyuruldu* to the effect that they did not have to campaign in accordance with the imperial edict, [then] whatever exemption payment they [the leaders] made to the state, whether small or large, they [the sipâhîs] would pay it [as reimbursement] to them [the leaders] in any case. If it becomes clear that they are *not* registered, do they [still] have to pay up [to the leaders] or not, legally?
>
> Answer: They do not have to do that (seeing as they made it dependent on their being registered for the campaign, but they were in fact not registered), since their giving [the leaders] permission to pay the exemption fee was conditional on that. "No condition, no conditioned"—clearly. But God knows best.[590]

Those solicitors clearly believed that al-Ramlī's opinion would outweigh these of other muftīs. Perhaps al-Ramlī's connections with higher officials, both at the local level, such as the governor of Gaza,[591] and at the imperial level, such as his contacts with some members of the Köprülü family and with the şeyḫülislâm, might have led solicitors to assume that al-Ramlī could channel their complaints effectively.

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[590] Al-Ramlī, *al-Fatāwá al-Khayriyya,* vol. 2, pp. 38-39.

[591] Al-Muḥibbī, *Khulāṣat al-Athar,* vol. 2, pp. 135.

Ultimately, questioners could have played the "local" muftīs off against each other, although, it appears, these cases are quite rare. For the most part, later non-appointed jurists cited their predecessors approvingly.[592] A controversy concerning the inclusion of the descendants of an endower's daughters in his family endowment is an example of these fairly uncommon instances. This controversy stems from the existence of two contradictory sayings, both attributed to Abū Ḥanīfah, and thus ostensibly of equal weight.

Writing in Egypt soon after the Ottoman conquest, the famous jurist Zayn al-Dīn b. Ibrāhīm b. Nujaym (d. 1563) was asked whether the daughters' descendants (*awlād al-banāt*) should benefit from the revenues of a waqf. The collector of Ibn Nujaym's fatāwá added an important comment following the latter's opinion. In his comment, the former briefly describes the controversy:

> If the endower stipulated: "I have endowed [this endowment] to my children and to the children of my children," the daughters' descendants (*awlād al-banāt*) are not included. On [the basis of this principle] the fatwá [should be issued]. Al-Ṭarsūsī[593] in his *Fawā'id*[594] chose this [opinion] from one of two transmitted sayings (*riwāyatayn*) from Abū Ḥanīfah. But Shaykh al-Islām

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[592] al-Ramlī, for instance, cites al-Timūrtāshī's *Tanwīr al-Abṣar* and *Minaḥ al-Ghaffār.* See chapter 3.

[593] Ibrāhīm b. 'Imād al-Dīn al-Ṭarsūsī (d. 1356).

[594] *al-Fawā'id al-Fiqhiyya al-Badriyya.* See: Brockelmann, GAL, Suplementband II, p. 87.

> ‘Abd al-Barr [Ibn al-Shiḥnah][595] preferred in his commentary on the *Manẓūmah* (*Sharḥ al-Manẓūmah*)[596] the inclusion [of the daughters’ descendant].[597]

Ibn Nujaym’s student, al-Timūrtāshī, was asked about another case regarding a dispute between an endower’s grandchildren:

> [The muftī] was asked about an incident that took place in the well-protected [city of] Damascus. A man endowed [an endowment and stipulated it to] his children, to his grandchildren and to his descendants [as the beneficiaries]. After them [if his lineage perishes] he [stipulated the revenues] to the poor. The judge approved the validity of this endowment. The [right to exploit the revenues of] the endowment devolved to the sons of the [endower’s] male [descendents] and the sons of the [endower’s] female [descendants]. Then there was a legal dispute between the sons of the male descendants (*awlād al-awlād*) and the sons of the female descendants (*awlād al-banāt*) [brought before] a Ḥanafī judge, who issued a *shar‘i* resolution to devolve the endowment to the descendants of the sons and to exclude the descendants of the daughters from the [beneficaries] of the endowment. After a while, the sons of the [endower’s] daughter had a dispute with the sons of the [endowers’] sons and they brought the case before some

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[595] On ‘Abd al-Barr Ibn al-Shiḥnah (d. 1515), see Ibn al-Ḥanbalī, *Durr,* vol. 1 (part II), pp. 843-847.

[596] Ibn al-Shiḥnah wrote several commentaries on *manẓūma*s. See: Brockelman, GAL, Suplimentband II, p. 94.

[597] Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *al-Fatāwá al-Zayniyyah*, p. 31v.

judges, who ruled for the inclusion of the daughter's descendents [in the endowment] and abrogated the ruling of the first qāḍī not to include the daughter's desncents. Is it permissible [for the second judge] to do so or not? If the first ruling is based on what several jurists have approved (*ṣaḥḥaḥa*) and said that [according to this opinion a muftī should] issue [his] fatwá (*'alayhi al-fatwá*), is it sound and reliable or not? [Is] the second [opinion] null *(wa-lā 'ibrah bi-l-thānī*)? Issue your opinion.

[The muftī] answered: Know that if [in a certain] issue there are two sound opinions, it is permissible for the muftī and the qāḍī to issue fatāwá and rule according to one of these [opinions]... Our master Shaykh al-Islām [Ibn Nujaym] in his commentary of the *al-Kanz* [*al-Baḥr al-Rā'iq*] in [the chapter on] endowments (*kitāb al-waqf*) [wrote]: "The son of the daughter should not be included in the endowment for the descendent[s] [neither] individually nor collectively, [according] to the prevailing view of the school (*ẓāhir al-riwāyah*), which is the sound [opinion] for issuing fatāwá...." The descendants of the daughters should not be included according to the prevailing view of the school (*ẓāhir al-riwāyah*) and according to this opinion the fatwá should be issued. [discusses the opinion of other Ḥanafī authorities]... the first ruling by the Ḥanafī qāḍī against the inclusion of the daughters' descendent is sound, reliable and should be implemented. No judge is allowed to abrogate (*naqḍ*) this required [ruling] (*al-mujāb*)....[598]

[598] Al-Timūrtāshī, *Fatāwá,* pp. 46r-47r,

This intriguing question posed to the muftī discloses fascinating details about how both parties—the descendants of the endower's son and the descendants of his daughters—made use of the legal tools at their disposal.

The first qāḍī, who was Ḥanafī, ruled in favor of the descendants of the sons. Then their adversaries identified another venue that would rule in their favor. It is not clear, however, if the second qāḍī or qāḍīs were Ḥanafīs, although they might have been.[599] Apparently, the second qāḍī's ruling was in fact valid and was implemented. This led the descendant of the endower's son to seek support that would restore the ruling of the first qāḍī. To this end, they decided to address al-Timūrtāshī.

In his detailed and lengthy reply, al-Timūrtāshī surveys numerous opinions, including Ibn Nujaym's, on this issue. From the outset he argues that when there are two sound opinions it is permissible for the muftī and the qāḍī to choose any of these. Against Ibn Nujaym's opinion he lists other authoritative texts, such as *Fatāwá Qaḍīkhān* and *al- Fatāwá al-Sirājiyyah*, which support the inclusion of the daughters' progeny. Eventually, despite the debate between different Ḥanafī authorities, al-Timūrtāshī favors the resolution of the first qāḍī to exclude the daughters' descendants. He reasons that the two opinions transmitted from Abū Ḥanīfah are not of equal jurisprudential weight, since "[according] to the transmitted opinion (*riwāyah*) of al-Khaṣṣāf and Hilāl they [i.e. the daughters' descendants]

[599] This practice was well documented by Boğaç Ergene for the seventeenth- and eighteenth-century. See Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire*, pp. 106-108.

should be included, whereas according to the prevailing view of the school (*ẓāhir al-riwāyah*) they should not, and upon this [opinion] the fatwá should be issued (*'alayhi al-fatwá*)."[600] Therefore, like his master, al-Timūrtāshī's approves the first qāḍī's resolution.

Although it is possible that the decision to address al-Timūrtāshī was random, it is not unlikely that the solicitors knew what his opinion on this issue was. Alternatively, the sons' descendents may have addressed the muftī unilaterally, that is, without the approval of the daughters' descendants. A third possibility is that al-Timūrtāshī was chosen as an agreed upon arbitrator. As such, al-Timūrtāshī, as well as other muftīs, should be perceived as an alternative legal site in which disputes could have been adjudicated. It is also plausible, however, that litigants thought that al-Timūrtāshī's opinion would abrogate the qāḍī's opinion in court, by challenging the latter's interpretation of the law.

Several decades later, Khayr al-Dīn al-Ramlī offers a different solution to a similar case in one of his rulings. Although he acknowledges, as al-Timūrtāshī does, that the two opinions are not equally sound, he supports the somewhat weaker opinion, that of al-Khaṣṣāf and Hilāl, because

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[600] Al-Timūrtāshī, *Fatāwā,* p. 47r-47v.

> in these times (*hādhihi al-aʿṣār*) it is appropriate to prefer the opinion (*riwāyah*) that asserts the inclusion because this is their [the Ottoman] custom [‘*urfihim*] and they do not know any [other practice] but this one.[601]

In other words, the difference between al-Timūrtāshī’s and al-Ramlī’s answers echoes a controversy that refused to die out. Both opinions were already fully developed and in circulation for centuries in the Arab lands. Each of these opinions had its own supporters among the muftīs. This situation, then, allowed solicitors to navigate their case between the different muftīs and multiple legal sites to promote their legal (and other) interests.

Al-Ramlī’s answer, on the other hand, may explain why the solicitors who approached al-Timūrtāshī decided to do so. The Gaza-based muftī apparently defended a local practice. As the debate surrounding the practice of renewal of faith and other examples demonstrate, Greater Syrian muftīs defended legal arguments that contradicted or at least posed an alternative to the arguments advocated by the establishment and prevailed in the core lands of the empire.[602] Al-Timūrtāshī, for instance, clearly distinguishes between the customary practice of taking oath on the pain of divorce in the Shām and the customary practice in Anatolia as it appears in

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[601] Al-Ramlī, *al-Fatāwā al-Khayriyyah,* vol. 1, p. 150. To support his opinion he cites a fatwa by Shihāb al-Dīn al-Ḥalabī, who in turn cites a fatwa by qāḍī al-quḍāt Nūr al-Dīn al-Ṭārabulusī.

[602] For a more general discussion of this issue in Ḥanafī jurisprudence see: Baber Johansen, "Coutumes Locales et Coutumes Universelles," *Annales Islamologiques* 27 (1993), pp. 29-35.

Ebû's-Su'ûd's fatāwá. Al-Timūrtāshī speculates that the eminent şeyḫülislâm ruled the way he did because the oath (*ḥilf*) is not known in "their lands" (*fī diyārihim*), that is, in the central lands of the empire.[603] As we have seen in the previous chapter, state-appointed muftīs in Damascus, and probably elsewhere, also defended local practices and at times even explained their legal rationale to members of the imperial establishment.

Navigating between Three Muftīs

As has been argued in several instances in this study, the "legal landscape" of the sixteenth and the seventeenth centuries was characterized by the simultaneous activity of multiple jurisconsults. It is therefore important to bear in mind that solicitors could and most probably did send their questions to both state-appointed muftīs and their colleagues who did not hold a state appointment. This section aims at exploring the use of the multiple available jurisprudential authorities, by looking at three fatāwá from the second half of the seventeenth and the early eighteenth century. Although it is highly unlikely that the solicitors are the same, juxtaposing the fatāwá may tell us something about the circulation of legal knowledge and about the use of the different jurisprudential authorities. This example, therefore, further illustrates most of the issues we have discussed thus far.

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[603] Al-Timūrtāshī, *Mu'īn,* pp. 203-204.

All three fatāwá deal with exactly the same issue, the right to use the water of a river. The latest question was sent to Şeyḫülislam Menteşîzâde Efendi (served as chief muftī between 1715-1716):

> Question: What is the opinion of your Excellency Shaykh al-Islām […] concerning a river which reaches several villages, some of which are up [the stream and closer] to the spring, [while] other are down [the stream]. In some years in which the flow of the river declines, the inhabitants of the upper [villages] started damming the river [thus depriving] the inhabitant of the lower [villages of water]. Are they allowed to do so? Dispense your opinion to us, [may you] be rewarded.

It is noteworthy that the questioner does not provide any details about the location of this river. The fact that the question was written in Arabic and followed specific formulae (see chapter 4) indicates that it was probably sent from the Arab lands of the empire. Several decades earlier, the same question (with very slight variations) was submitted to the provincial state-appointed muftī of Damascus, Ismā‘īl al-Ḥā’ik (d. 1701). This question, in turn, resembles a question that was sent from Damascus to the Palestinian muftī, Khayr al-Dīn al-Ramlī. Nevertheless, unlike the other two, the question posed to al-Ramlī reveals more details about the setting. First, the question explicitly discloses the whereabouts of the questioner, and the river is a concrete river,

the Bardī river. In addition to the villages that appear in the other questions, here the questioner also mentions several endowments of the treasury (*awqāf bayt al-māl*) that are entitled to enjoy this water. Moreover, the questioner provides detailed information about the damming technique that caused the water shortage in the villages down the stream. Not all the answers are equally detailed, but all three muftīs ruled that the inhabitants of the lower villages are entitled to use the water as well.

The fact that two of the questions were either sent from Damascus or addressed to the state-appointed muftī of the city and the similarities between the three questions may support the assumption that the one sent to the chief muftī also originated from this region. If this is indeed the case, we have a debate that took place in Damascus (or its environs) and spans at least half a century. Since very little is known about the solicitors, much room is left for speculations concerning their decision to address a certain muftī. It appears, however, that the questioners, or those who articulated the question on their behalf, knew to employ specific phrases and perhaps were even aware of the previous rulings. Furthermore, the seventeenth-century solicitor's decision to consult al-Ramlī demonstrates that in some cases questioners considered non-appointed muftīs authoritative. It also indicates that the decision to address a certain muftī was not always about his opinion on a particular issue, but there were other, institutional and procedural concerns that influenced the solicitor's choice.

Not insignificant is the fact that both al-Ramlī and al-Ḥā'ik refer in their answer to the same authority, to 'Ubayd Allāh b. Mas'ūd al-Maḥbūbī (d. 1346 or 7). In his abridgement of *al-Wiqāyah*, al-Maḥbūbī discusses the same scenario his later colleagues were asked to address.[604] This may suggest that whoever drafted the questions on behalf of the solicitors was aware of al-Maḥbūbī's work. If this is indeed the case, thıs case illustrates another aspect of the "translation" of the solicitor's original question (or complaint) into the legal experts' discourse. It is also an important reminder that despite some substantial differences, both state-appointed and non-appointed muftīs often consulted and followed the same Ḥanafī authorities. Furthermore, one should not overrule the possibility that al-Ḥā'ik was in fact relying on al-Ramlī's ruling, given the latter's prominence in Greater Syrian scholarly circles (and beyond).

Conclusions

By concentrating on the case study of the controversial concept and practice of renewal of faith, this chapter has examined some aspects of the activity of jurisconsults who did not hold a state appointment across Ottoman Greater Syria. More broadly, it has aimed to draw attention to other legal sites that were at the disposal of Ottoman subjects in the Arab lands. Furthermore, the chapter has intended

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[604] 'Ubayd Allāh b. Mas'ūd al-Maḥbūbī (Ṣadr al-Sharī'ah), *Mukhtaṣar al-Wiqāyah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2005), vol. 2, p. 204.

to point to the success of the non-appointed muftīs in preserving and negotiating their authority within the evolving imperial framework. The decision of different solicitors, including solicitors who were not members of scholarly circles, to approach these muftīs also indicates that the prestige and reputation these muftīs enjoyed among scholars and jurists were shared by non-scholars. This achievement is particularly remarkable given the decision of various solicitors to consult state-appointed muftīs.

The picture that emerges, then, is a dynamic one, in which state-supported legal institutions are used to counter provincial jurists who did not hold a state appointment, and vice versa. In her study of seventeenth and eighteenth-century muftīs, Judith Tucker contends "there is little evidence to suggest that the muftī and qāḍī worked hand-in-glove... Unlike their core-region counterparts, most Syrian and Palestinian muftīs served the court system only as a secondary endeavor; their primary mission was that of delivering legal advice to the local community of which they were a part."[605] This might have often been the case, especially as far as the non-appointed muftīs are concerned, although it is clear that the opinions of dominant non-appointed muftīs were influential, including in certain courts across Greater Syria. On the other hand, state-appointed muftīs, such as al-Ḥā'ik, were more scrupulous to follow the opinion of the chief muftī and might have worked more closely with the qāḍī. In short, dividing the muftīs according to the core regions/

[605] Tucker, *In the House of the Law*, p.21.

province dichotomy seems to miss the complexity of the Greater Syrian legal landscape in particular and of the empire in general. As Mundy and Smith compellingly show, to a large extent it is the appointment by the state or the "independence" of the muftī that marks the difference between the muftīs in Greater Syria and across the Ottoman lands.

As we have seen in chapter 1, the state-appointed muftīs monopolized the institutional authority to issue enforceable legal opinions within the imperial legal system. For this reason, the Ottoman state did not prevent prominent Greater Syrian muftīs who did not hold an official appointment from issuing their own legal opinions. This fact is even more striking given the opposition some of these non-appointed muftīs voiced in their rulings to certain legal rulings by chief muftīs and judges. Nevertheless, it appears that for the most part the Ottoman authorities were not troubled by the activity of eminent muftīs who did not hold a state appointment, and even at times adopted their rulings and writings. The Ottoman acceptance of these muftīs' activity and rulings may be attributed to the fact that the non-appointed jurists were outsiders to the Ottoman religious-judicial establishment and thus their opinion was not institutionally enforceable. On the other hand, it may be interpreted in other, not necessarily mutually exclusive ways as well, ranging from the Ottoman state's inability to eliminate every alternative legal venue to the establishment's self-confidence as a dominat actor in the imperial legal landscape.

From the solicitors' perspective, as we have seen in chapter 4, it is noteworthy that they sought to obtain for various reasons the opinion of the state's chief jurisprudential authority (and its representative in the province). By doing so, they invited the religious-judicial establishment to intervene in their or their community's affairs. Concurrently, it is likely that in certain circumstances the same question was addressed to both imperial and provincial authorities. Although it is difficult to assess the degree to which every solicitor considered all the available muftīs, it seems that some were aware of and used the multiplicity of both state-appointed and not officially appointed muftīs.

Therefore, the reconstruction of the "topography of jurisprudential authority" of Ottoman Bilād al-Shām could serve as a fruitful direction for examining the boundaries of the Ottoman religious-judicial establishment within the Ottoman domains. Moreover, it enables us to map out a concrete spatial spread of specific legal arguments within the Ottoman imperial framework in a manner that transcends the core lands/Arab provinces divide. Instead, it draws attention to the overlapping geographies of different arguments within a single province.

Conclusion

The previous chapters have tried to reconstruct some steps of the delicate and complex choreography between various jurists and their respective jurisprudential traditions and scholarly practices through which they consolidated, preserved, and negotiated their jurisprudential authority and position within both the Ottoman Empire and the Ḥanafī school. These steps occurred in multiple sites and in different temporalities, and assumed different forms. In some cases they were amicable exchanges, in others fierce disputes. Nevertheless, they were limited by the shared affiliation to the Ḥanafī school on the one hand, and the political boundaries of the Ottoman Empire on the other. In other words, what was at stake was the different jurists' positions both within the Ḥanafī school and the imperial jurisprudential landscape. In fact, as this dissertation has shown, the affiliation with a particular tradition within the school dovetailed with the jurists' positions in the imperial order.

The connection between the position within the school and the position within the empire enables us to begin to explore the implication of the Ottoman state's adoption of the Ḥanafī school—or more accurately, of a specific branch (or sub-school) within the school—as its official school. Furthermore, since some of the jurists studied in the previous pages were affiliated with the imperial religious-judicial establishment, this dissertation has aimed at casting light on the importance

of the emergence of such an establishment (in the Ottoman domains and beyond) for understanding the evolution of Islamic law in post-Mongol Central and South Asia and the Middle East.

As the Ottoman case demonstrates, by developing an imperial religious-judicial establishment (or learned hierarchy), the sovereign—the sultan, the dynasty, and more generally, the state—intervened in defining the content of Islamic law in unprecedented ways. Moreover, paying attention to the function of the imperial learned hierarchy—and to the function of the chief imperial muftī who presided over it—adds additional layers to the historiographical debates concerning the relationship between Islamic law (*sharī'ah* or *şerî'at*) and dynastic law (*ḳânûn*) in the Ottoman Empire. As we have seen, since the establishment was shaped by imperial decrees and regulations (*ḳânûn*), and since the establishment was instrumental in determining what constituted the *sharī'ah* its members were to apply, what constituted Islamic law in the Ottoman context was predicated on dynastic law.

The intense encounter in the wake of the Ottoman conquest of the Arab lands throws into relief this connection between the Ottoman state, its learned hierarchy, and a specific branch within the Ḥanafī school. This connection had been established several decades prior to the conquest, but only when the establishment-affiliated jurists came into intense contact and dialogue with other Ḥanafī jurists who claimed affiliation to other jurisprudential and scholarly traditions within the Ḥanafī school,

and promoted a different understanding of the relationship between the sultan (or the sovereign) and the community of jurists, did the former former have to reiterate more explicitly for themselves and for the Ottoman ruling elite their commitment to the Ottoman enterprise. More specifically, the gradual incorporation of the Arab lands and their jurists into the empire spurred members of the imperial learned hierarchy to reconstruct and record their particular intellectual genealogy (or sub-school) within the Ḥanafī school that linked them to eponymous founder of the school. This was particularly so, since members of the Ottoman religious-judicial establishment had to compete with other jurists who claimed affiliation to the same general jurisprudential tradition (the Ḥanafī school).

The jurists and jurisconsults from Greater Syria (and, more generally, the Arab lands), too, had to adjust to the new reality. First, the political center moved from Cairo to the imperial capital Istanbul, which was also the center of the imperial religious-judicial establishment. Secondly, in the new imperial order their followers could turn to members of the imperial establishment and solicit their opinion. In this new reality, over the course of the sixteenth and seventeenth centuries (either as full members or, more commonly, as its appointees) some of these jurists and jurisconsults sought affiliation with the Ottoman state and its establishment. Other eminent jurisconsults, by contrast, adhered to pre-Ottoman scholarly practices and did not obtain a state appointment.

The activity of those muftīs who did not hold a state appointment merits attention for it offers an opportunity to examine the complexity and diversity of the imperial legal landscape, and particularly that of Greater Syria. While the Ottoman state and its religious-judicial establishment were clearly aware of these muftīs' activity, and of their occasional opposition to some of the establishment's procedures and practices, their activity continued unmolested. This is particularly remarkable as the activity of other legal institutions, such as independent courts, was banned.

Taken together, the picture that emerges is one of selective intervention by the state in order to regulate the imperial legal landscape. At the same time, this selective intervention should be seen against the backdrop of the evolution of an imperial learned hierarchy in the late fifteenth and sixteenth centuries. In other words, the emergence and consolidation of the imperial establishment was part of a set of strategies employed by the imperial ruling and judicial elite to administer and navigate the diverse legal landscape of the empire. Fittingly, various institutional, scholarly, and textual practices served to inculcate a sense of "imperial consciousness" among the members of the establishment and to turn them into what Lauren Benton calls "carriers of an imperial legal culture." Nevertheless, senior members of the imperial establishment consulted, albeit selectively, the opinions of eminent jurisconsults who did not hold a state appointment. Moreover, some of the texts authored by these jurists were even incorporated into the imperial jurisprudential

canon. In this sense, despite the fact that these renowned jurisconsults did not hold a state appointment, senior members of the imperial establishment sought to coopt their authority.

As already argued above, the complexity and diversity of the Ottoman (Ḥanafī) legal landscape is also pertinent for understanding the implication of the Ottomans' adoption of the Ḥanafī school as their state school. Some important exceptions notwithstanding, most studies of the Ottoman legal administration have tended to overlook the differences within the school. This study, by contrast, is an attempt to nuance this view. Although members of the imperial religious-judicial establishment were Ḥanafīs by school, they considered themselves different from other Ḥanafīs across the empire both institutionally (as they were members of the imperial establishment) and doctrinally (as they were affiliated to a particular branch within the school). Paying attention to the differences within the community of Ḥanafī jurists throughout the empire is also crucial for appreciating the nature of the "Ḥanafīzation" of jurists from the Arab lands over the course of the sixteenth and the seventeenth centuries (and in later periods as well). Seen from this perspective, the "Ḥanafīzation" of certain jurists did not perforce mean that they affiliated themselves with the Ottoman imperial establishment.

Ultimately, the rise of an imperial religious-judicial establishment and state-appointed muftīs raises several issues that deserve further study and should be considered in numerous historiographical contexts.

The first context is that of post-Mongol Central, South and West Asia. As a polity that emerged from, and was part of, the Mongol sphere of direct influence, the Ottoman polity inherited—and was engaged in dialogue with—political and legal traditions that circulated throughout these regions. Specifically, the Ottoman sultans (and more broadly the dynasty) adopted the notion that the sovereign is the ultimate regulator of the Law and thus is allowed to determine its content, including, to some extent at least, the content of Islamic law. Other polities across post-Mongol South and Central Asia and Anatolia, it seems, also followed this principle. The Ottoman case, then, enables us to explore what the implications of this post-Mongol notion of sovereignty are as far as Islamic law is concerned. Studies of the legal administration of other post-Mongol Islamic polities, such as the Timurids, the Shibānids, the Mughals, and even the Safavids, will surely contribute to a better understanding of the similarities and the differences between other polities across South and Central Asia and Anatolia which were heirs to the same, or at least similar, legal-political traditions.

Secondly, the impact of the rise of an imperial learned hierarchy on non-Ḥanafī jurists and jurisprudential traditions remains to be explored. More specifically,

as I hope this study demonstrates, the imperial religious-judicial establishment played an instrumental role in determining the content of the Ḥanafī jurisprudential tradition applied by the establishment's members. The extent to which this practice shaped non-Ḥanafī Sunnī legal traditions throughout the empire remains unclear and warrants further investigation.

Finally, the emergence of state-appointed muftīs and of a religious-judicial establishment in the Ottoman context may be examined in light of the development of religious-judicial establishments and the institution of the state-appointed jurisconsult in the successor nation-states throughout the Arab Middle East in the nineteenth and twentieth centuries. As I have suggested in the preceding pages, during the sixteenth and the seventeenth centuries the practice of state-appointed muftīs became increasingly common throughout Greater Syria and, more broadly, the Arab lands of the empire. Nevertheless, as we have seen, other perceptions of the institution of the muftī did not fully wane and persisted as an alternative throughout. This study has outlined the first three centuries of this dialogue/debate over the nature of the institution of the muftī. The debate concerning the nature of the state-appointed muftīship in later centuries still awaits thorough study.[606] It is clear, however, that the

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[606] Interesting studies in this directions: Rudolph Peters, "Muḥammad al-'Abbāsī al-Mahdī (d. 1897), Grand Mufti of Egypt, and his *al-Fatāwá al-Mahdīyya,*" *Islamic Law and Society* 1 (1994), pp. 66-82; Liat Kozma, *Policing Egyptian Women: Sex, Law, and Medicine in Khedival Egypt* (Syracuse: Syracuse University Press, 2011), pp. 11-12; Jakob Skovgaard-Petersen, *Egyptian State: Muftis and Fatwas of the Dār al-Iftā'* (Leiden: Brill, 1997).

rise of religious-judicial establishments throughout the post-Ottoman Middle East is one of the most transparent, yet deeply rooted legacies of four centuries of Ottoman rule in the Arab Middle East.

Appendix I:
Fatāwá Collections

Most of the rulings I study in this dissertation were preserved in *fatāwá* collections. These collections may be divided into three clusters according to the identity of the jurisconsults who issued the rulings. The collections of sixteenth- and seventeenth-century chief imperial muftīs form the first cluster. The second cluster comprises of the collections of two late seventeenth-century state-appointed Arab muftīs, ʻAbd al-Raḥīm b. Abī al-Luṭf and Ismāʻīl al-Ḥāʾik. The muftīs who did not hold a state appointment are represented in the third group that consists of the collections of Muḥammad al-Timūrtāshī and Khayr al-Dīn al-Ramlī. This appendix is a brief survey of the main features of the collections in each cluster.

Fatāwá Collections by Imperial Chief Muftīs

As I have argued in chapter 4, as part of the emergence of an imperial learned hierarchy over the course of the fifteenth century, jurists who were affiliated with the Ottoman polity made considerable efforts to develop a distinctive Ottoman *fatwá.* To this end, they developed discursive and bureaucratic conventions that would characterize the identifiably Ottoman *fatwá*. Another important related development is the emergence of the Ottoman *fatāwá* collections in the late fifteenth century. Prior

to that point, it seems, these rulings circulated exclusively as documents, usually containing a single ruling.[607]

In the following centuries, collecting the chief imperial muftī's rulings as well as those of many of his provincial subordinates, usually after their death, became fairly common. Although not every state-appointed muftī had his rulings collected, it appears that the rise of the religious-judicial establishment and of an "establishment consciousness" was accompanied by an "archiving thrust," a conscious decision to sort, organize, and archive the rulings of previous muftīs. In this sense, it would be fruitful to consider the chief muftīs' and their provincial subordinates' fatāwá collections as another archive, or more accurately, as multiple archives, which were administered and regulated by the imperial religious-judicial establishment. In other words, the fatāwá collections draw attention to different archival practices that coexisted throughout the Ottoman domains.

The rulings were often gleaned from the muftī's records. These records were usually administered by his secretary (or secretaries), and reflect what the collector deemed the most important or most representative of the muftī's rulings. Since muftīs issued thousands of rulings during their tenure, the collections document a small fraction of their production. The compilers' intention was to render the rulings

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[607] Apparently the first collection of rulings by an Ottoman chief muftī was Molla Arab's collection. Şükrü Özen, "Osmanlı Döneminde Fetva Literatürü," *Türkiye Araştırmaları Literatür Dergisi* 3(5) (2005), p. 282.

accessible to scholars and jurists throughout the empire. The collections were also supposed to be searchable. To this end, collectors often organized the rulings according to the order of the chapters in one of the widely consulted jurisprudential texts, most frequently al-Marghīnānī's *al-Hidāyah.*

It is also worth noticing that the rulings issued by certain muftīs, such as the eminent jurist Ebû's-Su'ûd Efendi, for example, were collected in more than one collection. Moreover, even when the chief muftī is known to have a single collection there were differences between the different copies. Consider, for instance, the opening folios of the chapter on purity rules from the collection(s) of the chief muftī Minḳârîzâde. Note that there are significant differences between the manuscripts. Some rulings do not appear in all of them, and the texts the muftī consulted (when the compiler decided to include them in the collection) are not the same. This is not to say, however, that the authenticity of individual rulings should be questioned.

Fatāwá Collections of Greater Syrian State-Appointed Muftīs

The fatāwá in the collections that feature in the second cluster were issued by state-appointed Ḥanafī muftīs from Greater Syria. As the practice of appointing Ḥanafī jurists from Greater Syria to serve as muftīs across the province grew common over the course of the sixteenth and seventeenth centuries, the practice of collecting their rulings became more and more common as well. The rulings in these collections were

issued almost exclusively in Arabic and do not always follow the conventions which are associated with the Ottoman fatwá. Moreover, these muftīs do not specify systematically the texts they consulted as many of their contemporaries from the core lands of the empire did. Nevertheless, it appears that the Ottoman establishment insisted on collecting the rulings of state-appointed Greater Syrian muftīs. When the chief imperial muftī Feyżullah Efendi appointed ʻAbd al-Raḥīm b. Abī al-Luṭf's son to the muftīship of Jerusalem after his father's death, for example, he also ordered him to collect the ruling issued by the deceased, the former state-appointed muftī of Jerusalem. As I suggest in chapter 4, the compilation of the collection was part of the imperial establishment's attempts to propagate and regulate the use of certain discursive conventions, and to promote specific legal arguments within the imperial establishment and among its Greater Syrian appointees.

Fatāwá Collections of Non-appointed Muftīs

The collections of the sixteenth-century Muḥammad al-Timūrtāshī and the seventeenth-century Khayr al-Dīn al-Ramlī form the third cluster of collections. The former collected his own fatāwá, whereas al-Ramlī's collection was produced by his son, and, after his son's death, by his student Ibrāhīm b. Suliymān al-Jinīnī during his lifetime. Both collections are organized according to the order of the chapters in *al-Hidāyah.* Despite the similar organization of the collections, they diverge in some

respects from those of the chief imperial muftīs. Most significantly, the answers tend to be longer than those of the chief imperial muftīs and they usually do not mention the jurisprudential texts they consulted. The questions often include more details than those posed to the chief muftīs.

It is also appropriate to mention some calligraphic and stylistic differences between the collections produced in the core lands of the empire and those produced in its Arab provinces. These differences are particularly salient in the seventeenth century. Furthermore, these conventions were preserved even in the nineteenth-century printed editions of the different collections. In the seventeenth-century collections of the chief muftīs' rulings, each fatwá is recorded separately, and often distinguished from the previous one by a line (often drawn in red ink). In the collections from the Arab lands, the fatwás are not separated spatially on the sheet. Instead, the new fatwá is marked by the word "question" (*mas'alah*) or "[The muftī] was asked" (*su'ila*). These words are often written in red ink. In some cases, a red line on top of the first word of the question marks the new question.

In addition, while the overwhelming majority of the fatāwá collections from the Arab lands were written in *Naskh* (*Nesiẖ* in Turkish) script, some of the collections of the chief muftis' fatāwá were written in *Naskh Ta'līq* (*Nasta'lik* in

Turkish) script.[608] More sumptuous copies of fatāwá collections, as figures 1-4 show, were decorated. The decoration of the manuscripts produced in the core lands of the empire differed from that of the manuscripts from the Arab provinces. Therefore, the decoration also served to indicate the provenance of the work, or at least of the copy.

[608] On the different scripts see: Sheila S. Blair, *Islamic Calligraphy* (Edinburgh: Edinburgh University Press, 2006), ch. 8 and 11; Idhām Muḥammad Ḥanash, *al-Khaṭṭ al-'Arabī fī al-wathā'iq al-'Uthmāniyyah* (Amman: Dār al-Manāhij, 1998).

Appendix II:

The Classification of the Authorities of the Ḥanafī School

The *ṭabaqāt* works compiled by members of the imperial learned hierarchy classify the authorities of the Ḥanafī school, in addition to their reconstruction of the genealogy of the imperial establishment. The classification of the authorities of the different Sunnī jurisprudential schools has a long history that predates the Ottoman period, but it appears that in the Ottoman context Kemâlpaşazâde's treatise on the authorities of the school played a particularly prominent role, as all the later authors responded to this treatise by offering their own taxonomies of the authorities of the school.[609] Although in many ways these authors follow Kemâlpaşazâde's treatise, they occasionally diverge from it. What follows is an attempt to summarize the major similarities and differences between the treatises.

It is not fully clear why, when, and in what capacity Kemâlpaşazâde compiled his treatise on the hierarchy of the authorities of the school. Nevertheless, his appointment as the chief imperial jurisconsult (and hence the head of the imperial learned hierarchy) and the fact that he was considered during his lifetime a prominent

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[609] In addition to his *ṭabaqāt* work, Kınalızâde wrote two treatises that deal with the hierarchy of the authorities of the Ḥanafī school. Although they diverge in certain points from Kemâlpaşazâde's treatise, the treatises bear clear similarities to Kemâlpaşazâde's treatise: Kınalızâde 'Alî Çelebi, *Risālah fī Masā'il Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Reisülküttab 1221, pp. 52v-54r; H. Yunus Apaydın, "Kınalı-zade'nin, Hanefi Mezhebini Oluşturan Görüşlerin Toplandığı Ederlerin Gruplandırılmasına Dair bir Risalesi," in Ahmed Hulusi Köker (ed.), *Kınalı-zade Ali Efendi (1510-1572)* (Kayseri: Erciyes Üniversitesi Matbbası, 1999), pp. 96-100; Menderes Gürkan, "Müctehidlerin Tasnifinde Kemalpaşazade ile Kınalızade arasında bir Mukayese," in ibid., pp. 83-95.

jurist contributed to the immense popularity of this treatise. This popularity is reflected in the numerous copies of this treatise located in many libraries and in the attention it attracted from Kemâlpaşazâde's contemporaries, successors, and modern scholars.

Kemâlpaşazâde's classification of the authorities of the school consists of seven ranks. The jurists in each rank are limited in their authority to exercise independent reasoning (*ijtihād*) in relation to the previous ones. In this sense, the general narrative is a narrative of decline or, alternatively of consolidation of the school's authority. The first rank, the rank of those who were allowed to employ the utmost degree of independent reasoning in order to reach a ruling (*mujtahidīn fī al-shar'*), includes the eponymous founders of the Sunnī legal schools (including the schools that did not survive). The jurists of this rank established the fundamental principles (*uṣūl*) and derived legal rulings (*furū'*) on the basis of the Qur'ān, the Sunnah, consensus, and analogy (*qiyās*).

The members of the second rank, namely Abū Yūsuf and Muḥammad al-Shaybānī, are already members of a school, the Ḥanafī school in this case. These jurists are considered *mujtahids* but they have to follow the principles set by Abū Ḥanīfah, despite numerous disagreements between them and the founder of the school. The jurists of the third rank are also considered *mujtahids* but they practice *ijtihād* only in particular cases that were not addressed by the eponym.

Chronologically, the jurists in this rank lived from the ninth century to the twelfth. These jurists, like their predecessors from the second rank, are committed to the principles set by the eponymous founder of the school.

From the fourth *ṭabaqah* onward, the jurists, most of whom lived in the twelfth century, are no longer considered *mujtahid*s. Due to their mastery of the principles defined by the Abū Ḥanīfah and due to their understanding of how rules were derived by members of earlier *ṭabaqāt,* the jurists of this rank are allowed to practice *takhrīj,* an activity that requires a limited form of *ijtihād* whereby the jurist confronts the established opinions of the founder of the school and those of his companions, and are to resolve juridical ambiguities and point out which opinion is preferable.

The last three *ṭabaqāt* are those of the followers (*muqallid*s) of the eponym. The *muqallid*s of the fifth rank, who lived in the eleventh and twelfth centuries, are known as the people of *tarjīḥ* (*aṣḥāb al-tarjīh*), which means that they are allowed to choose a preferable solution among the several solutions offered by their predecessors. Members of the sixth rank (lived in the thirteenth and the fourteenth centuries) are able to classify the extant opinions according to their soundness and authoritativeness. More importantly, since many of them compiled authoritative legal manuals (*al-mutūn al-mu'tabara min al-muta'akhkhirīn*), they weeded out less authoritative and weaker opinions. The last *ṭabaqah*, the seventh, includes the

lowliest followers, including poorly trained jurists, who are incapable of "differentiating right from left." Although not stated explicitly, it seems that Kemâl Pâşâzâde assumes that he and his peers are part of the seventh *ṭabaqah.*[610]

As already mentioned, Kemâlpaşazâde's successors wrote their own versions of the classification of the authorities of the school, which were based explicitly or implicitly on the former's treatise. In the introduction to his genealogy of the Ḥanafī school, Kınalızâde explains that he includes a classification of the school's authorities to assist the muftī in his rulings, for the latter should follow the rulings of the school according to Kemâlpaşazâde's hierarchy of authorities.[611] The treatise, he argues, can assist the perplexed muftī in applying the soundest opinion among the opinions at his disposal.[612] Nevertheless, despite clear similarities, Kınalızâde diverges from Kemâlpaşazâde's treatise in some points. For instance, he lists only six ranks of jurists instead of Kemâlpaşazâde's seven-rank typology. Moreover, Kınalızâde further elaborates on the relationship between the eponyms and his disciples, and explains that the muftī is allowed in cases of controversy among the leading authorities of the school to follow the minority opinion, if it serves the interests (*maṣlaḥah*) of his

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[610] Ibn Kamāl Pāşā, *Risālah.* Hallaq, *Authority,* pp. 14-17. Hallaq also compares Kemâlpâşâzâde's classification to classifications in the other Sunnī legal schools. Ibid., pp. 1-23. Zouhair Ghazzal, *The Grammar of Adjudication: The Economics of Judicial Decision Making in Fin-de-Siècle Ottoman Beirut and Damascus* (Beirut: IFPO, Institut Francais du Proche-Orient, 2007), pp. 48-49.

[611] Edirneli Meḥmet Kâmî cites this classification almost verbatim. Edirneli Meḥmet Kâmî, *Mahāmm al-Fuqahā' fī Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Aşir Efendi 422, pp. 41v-43r.

[612] Kınalızâde 'Alā' al-Dīn 'Alī Çelebī Amr Allāh b. 'Abd al-Qādir al-Ḥumaydī al-Rūmī al-Ḥanafī, *Ṭabaqāt al-Ḥanafiyyah* (Amman: Dār Ibn al-Jawzī, 2003-2004), pp. 93-98.

community.[613] The fact that in certain cases Kınalızâde approves of the minority opinion may also account for the inclusion of Abū Ḥanīfah together with his companions in the first *ṭabaqah* in another tract he authored on the authorities of the school. However, in the body of his genealogy of the school, Abū Ḥanīfah is not part of the 21 *ṭabaqāt,* although he is part of the taxonomy of the school's authorities that Kınalızâde offers in the introduction.

Several decades later, in his introduction to his genealogy of the Ḥanafī school, Kefevî also provides his reader with his own classification of the authorities of the school. His taxonomy, however, differs in some important respects from the one presented in Kemâlpaşazâde's treatise and from the one recorded in Kınalızâde's introduction. Still, the fact that Kefevî felt compelled to include this taxonomy in his introduction indicates that he was aware of the ongoing debate among establishment-affiliated jurists concerning the taxonomy of jurists within the Ḥanafī school. The first important difference is that Abū Ḥanīfah, the eponymous founder of the school, is not included in the taxonomy of the Ḥanafī jurists. Instead, he is in the same *ṭabaqah* with the eponyms of the other Sunnī legal schools. The justification for this decision is that the eponyms do not follow the principles of other jurists, as the jurists who are affiliated with a school are required to do.

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[613] Ibid., p. 98. There is a discord between the manuscripts concerning this statement. According to some manuscripts, the muftī is *not* allowed to rule according to the minority opinion. On the other hand, the fact that the "interest of the community" is mentioned supports the version that allows the muftī to follow the minority opinion. See p. 98/f.n. 2.

The second major difference between Kefevî's taxonomy and that of his predecessors is that he divides the Ḥanafī jurists into five ranks, as opposed to the seven and six ranks that Kemâlpaşazâde and Kınalızâde offered respectively. The first rank, according to Kefevî, includes the jurists who were the direct disciples of Abū Ḥanīfah, such as Abū Yūsuf, Muḥammad al-Shaybānī, Zufar, and others. They form the first *ṭabaqah* because of their competence to derive rulings on the basis of the principles set by Abū Ḥanīfah. In addition, the jurists of this rank further elaborated the principles jurists should follow in their rulings. The second *ṭabaqah* consists of leading jurists of later centuries such as al-Khaṣṣāf, al-Taḥāwī, al-Karkhī, al-Ḥilwānī, al-Sarakhsī, Qāḍīkhān, and others. These jurists may employ their jurisprudential capacities, but only in cases where there is no explicit ruling by Abū Ḥanīfah. In the third rank are jurists, such as Muḥammad b. Abī Bakr al-Razī, who are allowed to employ *takhrīj,* that is, they were allowed, based on juristic competence, to explicate unclear issues. Nevertheless, they were required to follow the principles set by Abū Ḥanīfah. In the fourth rank are Ḥanafī jurists who may determine, whenever there is a disagreement between Abū Ḥanīfah and his disciples, which opinion is preferable. The last rank includes jurists who are familiar with the various categories concerning the soundness of an opinion within the Ḥanafī school.[614] Although not stated

[614] Maḥmûd b. Süleymân Kefevî, *Katā'ib A'lām al-Akhyār min Fuqahā' Madhab al-Nu'mān al-Mukhtār,* Süleymaniye Library MS Esad Efendi 548, pp. 2r-2v.

explicitly, it seems that Kefevî considers himself and his contemporaries to be part of the fifth rank of jurists.

Appendix III:
Ak Şems Çelebi's Ṭabaqāt

In his comprehensive bibliography *Kashf al-Ẓunūn,* the seventeenth century bibliographer Kâtip Çelebi mentions a *ṭabaqāt* work by Ak Şems Çelebi (d. 1551), who had served as professor in several madrasahs before his appointment as the tutor to Selîm II, while the latter was still a young Ottoman prince.[615] Kâtip Çelebi does not provide any information with regard to the features or the content of this work. An examination of the extant manuscripts of the work, however, raises some problems concerning its, and consequently concerning the periodization of the *ṭabaqāt* genre in the Ottoman context.

I have consulted two manuscripts that are catalogued as Şems Çelebi's *ṭabaqāt* (H. Hüsnü Paşa 848 and Ali Emiri Arab 2510). In spite of significant differences between the extant manuscripts, as far as the jurists included in these manuscripts and their organization are concerned, these works are identical to Kınalızâde's *Ṭabaqāt.* But while the first manuscript (H. Hüsnü Paşa 848) includes only the names of the jurists included in each of the twenty-one *ṭabaqāt,* the second manuscript attributed to Şems Çelebi (Ali Emiri Arab 2510) is verbatim identical to

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[615] Kâtip Çelebi, *Kashf al-Ẓunūn fī Asāmī al-Kutub wa-l-Funūn* (Istanbul: Milli Eğitim Basımevi, 1971), vol. 2, pp. 1098-1099.

Kınalızâde's *Ṭabaqāt.* This raises an important question: Did Kınalızâde copy (or, in fact, plagiarize) Şems Çelebi's *ṭabaqāt*?

Kâtip Çelebi explicitly describes Kınalızâde as an abridged *ṭabaqāt* (*mukhtaṣar*) "[organized] in twenty-one *ṭabaqāt*, in which he documented the most famous [jurists] starting with Abū Ḥanīfah and concluding with Ibn Kemâl Paşa." On the other hand, he does not say that the work is verbatim identical to Şems Çelebi's *ṭabaqāt*. It is possible that Kâtip Çelebi never had the opportunity to read Şems Çelebi's *ṭabaqāt.* If he did, however, then the lack of any reference to the features of Şems Çelebi's *ṭabaqāt* may suggest that the work he consulted was different from Kınalızâde's. On the other hand, the fact that the copyists were confused and attributed the same text to different authors raises the possibility that the works were indeed quite similar. In this case, Kınalızâde and Şems Çelebi shared an identical view of the history of the school. It is even possible that Kınalızâde adopted Şems Çelebi's general outline and expanded the entries.

If Şems Çelebi was indeed the one to develop the outline on which Kınalızâde relied, it means that this vision of the genealogy of the Ḥanafī school had been circulating in scholarly circles slightly earlier, that is, possibly in the 1530s-1540s. Be that as it may, it seems that Kınalızâde's work gain of greater popularity, if the number of extant manuscripts may serve as an indication.

Appendix IV:

Kefevî's Chains of Transmission [616]

1. Kefevî > al-Sayyid Muḥammad b. ʻAbd al-Qādir> Nūr al-Dīn al-Qarāṣū'ī > Sinān Pāşā Yūsuf b. Khuḍur Bey > Khuḍur Bey b. Jalāl al-Dīn [>Muḥammad b. Armağān (Mawla Yegân) > Shams al-Dīn Muḥammad b. Ḥamza al-Fenārī > Muḥammad b. Muḥammad b. Maḥmūd al-Bābartī > Qiwām al-Dīn Muḥammad al-Kālī > al-Ḥusayn b. ʻAlī al-Saghnāqī > Ḥāfiẓ al-Dīn Muḥammad b. Naṣr al-Bukhārī > Muḥammad b. ʻAbd al-Saṭṭār al-Kardarī > ʻAlī b. Abī Bakr al-Marghīnānī > Ḥusām al-Dīn ʻUmar b. ʻAbd al-ʻAzīz b. ʻUmar b. Māzah > ʻAbd al-ʻAzīz b. ʻUmar > Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl al-Sarakhsī > ʻAbd al-ʻAzīz b. Aḥmad al-Ḥilwānī > al-Ḥusayn b. ʻAlī al-Nasafī > Muḥammad b. al-Faḍl al-Bukhārī > ʻAbd Allāh b. Muḥammad al-Subadhmūnī > Abū Ḥafṣ al-Ṣaghīr Abū ʻAbd Allāh > Abū Ḥafṣ al-Kabīr al-Bukhārī > Muḥammad [al-Shaybānī] > Abū Ḥanīfah.]
2. Kefevî > Muḥammad b. ʻAbd al-Wahhāb > Aḥmad b. Sulimān b. Kamāl Pāşā > Muṣliḥ al-Dīn al-Qasṭalānī > Khuḍur Bey b. Jalāl al-Dīn> Muḥammad b. Armağān (Mawla Yegân) > Shams al-Dīn Muḥammad b. Ḥamza al-Fenārī > Muḥammad b. Muḥammad b. Maḥmūd al-Bābartī > Qiwām al-Dīn

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[616] Maḥmûd b. Süleymân Kefevî, *Katā'ib A'lām al-Akhyār min Fuqahā' Madhab al-Nu'mān al-Mukhtār,* Süleymaniye Library MS Esad Efendi 548, p. 41v.

Muḥammad al-Kālī (?) > al-Husayn b. ʻAlī al-Saghnāqī > Ḥāfiẓ al-Dīn Muḥammad b. Naṣr al-Bukhārī > Muḥammad b. ʻAbd al-Saṭṭār al-Kardarī > ʻAlī b. Abī Bakr al-Marghīnānī > Husām al-Dīn ʻUmar b. ʻAbd al-ʻAzīz b. ʻUmar b. Māzah > ʻAbd al-ʻAzīz b. ʻUmar > Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl al-Sarakhsī > ʻAbd al-ʻAzīz b. Aḥmad al-Ḥilwānī > al-Ḥusayn b. ʻAlī al-Nasafī > Muḥammad b. al-Faḍl al-Bukhārī > ʻAbd Allah b. Muḥammad al-Subadhmūnī > Abū Ḥafṣ al-Ṣaghīr Abū ʻAbd Allah > Abū Ḥafṣ al-Kabīr al-Bukhārī > Muḥammad [al-Shaybānī] > Abū Ḥanīfah.

3. Kefevî > ʻAbd al-Raḥman > Saʿd Allāh b. ʻĪsā b. Amīr Khān > Muḥammad b. Ḥasan al-Samsūnī > Ḥasan b. ʻAbd al-Ṣamad al-Samsūnī > Ilyās b. Yaḥyā b. Ḥamza al-Rūmī > Muḥammad b. Muḥammad b. Maḥmūd al-Ḥāfiẓī al-Bukhārī AKA Khāwāja Muḥammad Pārsā > Ḥāfiẓ al-Ḥaqq wa-l-Dīn Abū Ṭāhir Muḥammad b. Muḥammad b. al-Ḥasan al-Ṭāhirī > Ṣadr al-Sharīʿah ʻUbayd Allāh b. Masʿūd b. Tāj al-Sharīʿah Maḥmūd b. Aḥmad > Tāj al-Sharīʿah Maḥmud b. Aḥmad b. ʻUbayd Allāh > Shams al-Dīn Aḥmad b. Jamāl al-Dīn ʻUbayd Allāh b. Ibrāhīm al-Maḥbūbī > ʻUbayd Allāh b. Ibrāhīm b. ʻAbd al-Malik Jamāl al-Dīn al-Mahbuni AKA Abū Ḥanīfah > ʻImād al-Dīn ʻUmar b. Bakr b. Muḥammad al-Zaranjarī > Bakr b. Muḥammad al-Zaranjarī > ʻAbd al-ʻAzīz b. Aḥmad al-Ḥilwānī > Abū ʻAlī al-Nasafī > Muḥammad b.

al-Faḍl > Abū al-Ḥarth ʻAbd Allāh al-Subadhmūnī > Abū Ḥafṣ al-Ṣaghīr > Abū Ḥafṣ al-Kabīr > Muḥammad [al-Shaybānī] > Abū Ḥanīfah.

Appendix V:

Minḳârîzâde's and al-Ramlī's Bibliographies

General comments:

The bibliographies are organized in alphabetical order. I have not been able to identify all the works that appear in the muftīs' bibliographies. At times, there are several works with the same titles. The bilbliographies are based on Minḳârîzâde's fatāwá collection (MS Hekimoğlu 421) and on al-Ramlī's published collection. Some of the idenfitications are based on the electronic catalogue of the Süleymaniye Library. In addition, when possible, I have included reference to one (or more) of the following works:

- GAL — Carl Brockelmann, *Geschichte der Arabischen Litteratur* (Leiden: Brill, 1937-1942).
- IQ — Ibn Quṭlūbughá, Qāsim. *Tāj al-Tarājim fī man Ṣannafa min al-Ḥanafiyyah* (Damascus: Dār al-Ma'mūn lil-Turāth, 1992).
- KZ — Kâtip Çelebi, *Kashf al-Ẓunūn 'an Asāmī al-Kutub wa-al-Funūn* (Istanbul: Milli Eğitim Basımevi, 1971).
- Mahāmm — Edirneli Muḥammed Kâmî, *Mahāmm al-Fuqahā' fī Ṭabaqāt al-Ḥanafiyyah,* Süleymaniye Library MS Aşir Efendi 422.
- Qurashī — 'Abd al-Qādir b. Muḥammad al-Qurashī, *al-Jawāhir al-Muḍīyah fī Ṭabaqāt al-Ḥanafiyyah* (Cairo: Dār Iḥyā' al-Kutub al-'Arabiyyah, 1978-), 2 vols.
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In some cases, I have included reference to the published edition of the work.

Minḳârîzâde's bibliography

1. *Adab al-Awṣiyā' fī Furū'* by ʻAlî b. Muḥammad al-Jamālī (d. 1524). [KZ, 1, 45]. There is another work with the same title by Ghiyāth al-Dīn Abū Muḥammad Ghānim b. Muḥammad al-Baghdādī (d. 1620) [GAL S. II, p. 502.]

2. *Adab al-Qāḍī* by Aḥmad b. ʻUmar al-Khaṣṣāf (d. 874-875) [Cairo : Qism al-Nashr, al-Jāmiʿah al-Amrīkiyyah bi-al-Qāhirah, c1978; for an English translation: Lahore : Kazi Publications, 1999].

3. *Aḥkām al-Awqāf wa-l-Ṣadaqāt* by Aḥmad b. ʻUmar al-Khaṣṣāf (d. 874-875) [Cairo: Maṭbaʻat Dīwān ʻUmūm al-Awqāf al-Miṣriyyah, 1322 (1904)].

4. *Aḥkām al-Ṣighār* by Majd al-Dīn Abī al-Fatḥ Muḥammad b. Maḥmūd al-Asrūshnī (d. ca. 1232) [KZ, 1, 19]

5. *Aḥkām fī al-Fiqh al-Ḥanafī* by Aḥmad b. Muḥammad b. ʻUmar al-Nāṭifī al-Ḥanafī (d. 1054) [KZ, 1, 22] [Mecca: al-Maktabah, 1997].

6. *al-Shifā' (?)*

7. ʻAlī al-Maqdisī (Ibn Ghānim) (d.1596) – unknown work

8. *Anfa' al-Wasā'il ilá Taḥrīr al-Masā'il* by Najm al-Dīn Ibrāhīm b. ʻAlī b. Aḥmad al-Ḥanafī al-Ṭarsūsī (d. 1357) [KZ, 1, 183]

9. *al-Ashbāh wa-l-Naẓā'ir* by Zayn al-Dīn Ibrāhīm Ibn Nujaym (d. 1563) [KZ, 1, 98-99] [Cairo: Mu'assasat al-Halabī wa-Shurakāh lil-Nashr wa-al-Tawzīʿ, 1968.]

10. *Badā'iʿ al-Ṣanā'iʿ fī Tartīb al-Sharā'iʿ* by ʿAlā' al-Dīn Abī Bakr b. Masʿūd al-Kāsānī (d. 1191) [Beirut: Dār al-Kitāb al-ʿArabī, 1974.]

11. *al-Baḥr al-Rā'iq* by Zayn al-Dīn Ibrāhīm Ibn Nujaym (d. 1563). A commentary on *Kanz al-Daqā'iq*. [KZ, 2, 1515]

12. *al-Bidāyah (Bidāyat al-Mubtadá fī al-Furūʿ)* by ʿAlī b. Abī Bakr al-Marghīnānī (d. 1196 or 7) An abridged summary (*mukhtaṣar*) of *Mukhtaṣar al-Qudūrī* and *al-Jāmiʿ al-Ṣaghīr*. [IQ, *Taj,* p. 148; KZ, 1, 227-228]

13. *al-Ḍamānāt al-Fuẓayliyyah* by Fuḍayl Çelebi b. ʿAlī b. Aḥmad al-Jamālī Zenbillīzāde (Fużayl Çelebi b. ʿAlî b. Aḥmed el-Cemâlî Zenbillîzâde) (d. 991/1583) [KZ, 2, p. 1087].

14. *Ḍamānāt Ghānim (al-Baghdādī) (Majmaʿ Ḍamānāt)* by Abū Muḥammad b. Ghānim Baghdādī (d. 1030/1620)

15. Ebû's-Suʿûd Efendi – most likely one the fatāwá collection of Ebû's-Suʿûd Efendi (d. 1574) [KZ, 2, p. 1220]

16. Fakhr al-Dīn al-Rāzī (d. 1210) – unspecified work

17. *Fatāwá Abī al-Layth al-Samarqandī* by Naṣr b. Muḥammad al-Ḥanafī Abū al-Layth al-Samarqandī (d. 985) [KZ, 2, p. 1220]

18. *al-Fatāwá al-ʻAttabiyyah* by Zayn al-Dīn Aḥmad b. Muḥammad b. ʻUmar al-ʿAttābī al-Bukhārī (Abū Naṣr) (d. 1190) [GAL S I, p. 643; KZ, 2, p. 1226]

19. *al-Fatāwá al-Bazzāziyyah* by Ḥāfiz al-Dīn Muḥammad b. Muḥammad al-Kardarī (d. 1433) [KZ, 1, p. 242]

20. *Fatāwá al-Burhānī (Dhakhīrat al-Fatāwā/al-Dhakhīra al-Burhāniyyah)* by Burhān al-Dīn Maḥmūd b. Aḥmad b. ʻUmar b. ʻAbd al-ʻAzīz b. ʻUmar b. Māzah al-Bukhārī (d. 1219). This is an abridged version of his *al-Muḥīṭ al-Burhānī*. [KZ, 1, p. 823]

21. *al-Fatāwá al-Qāʿidiyyah* by Muḥammad b. ʿAlī b. Abī al-Qāsim al-Ḥujandī [KZ, 2, pp. 1228]

22. *al-Fatāwá al-Ṣayrafiyyah* by Majd al-Dīn Esʿad b. Yūsuf al-Ṣayrafī (d. ?) [KZ, 2, 1225-1226]

23. *al-Fatāwá al-Sirājiyyah* by Sirāj al-Dīn ʻUmar b. Isḥāq al-Hindī al-Ghaznawī (d. 1372) [KZ, 2, p. 1224].

24. *al-Fatāwá al-Ṣughrā* by Ḥusām al-Dīn ‘Umar b. ‘Abd al-‘Azīz al-Bukhārī al-Ṣadr al-Shahīd (d. 1141) [KZ, 2, 1224-1225]

25. *al-Fatāwá al-Tātārkhāniyyah* by ‘Ālim b. ‘Alā’ al-Dihlawī al-Ḥanafī (d. 1384 or 5) [KZ, 1, 268]

26. *al-Fatāwá l-Fatāwā al-Walwālijiyyah* by ‘Abd al-Rashīd b. Abī Ḥanīfah al-Walwālijī (d. ca. 1145) [KZ, 2, pp. 1230-1231]

27. *al-Fatāwá al-Ẓahīriyyah ‘alá Madhhab al-Sādat al-Ḥanafiyyah* by Muḥammad b. Aḥmad b. ‘Umar al-Ḥanafī Ẓahīr al-Dīn al-Bukhārī (d. 1222) [KZ, 2, p. 1226]

28. *Fatāwá Ibn Nujaym* by Zayn al-Dīn Ibrāhīm Ibn Nujaym (d. 1563) [KZ, 2, 1223]

29. *Fatāwá Khayr al-Dīn al-Ghazzī* (al-Ramlī) [probably not the extant collection] (d. 1671)

30. *Fatāwá Qāḍīkhān* by Fakhr al-Dīn Ḥasan b. Manṣūr b. Maḥmūd al-Ūzjandī (d. 1195) [KZ, 2, pp. 1227-1228].

31. *Fatāwá Qārī al-Hidāyah* by Sirāj al-Dīn ‘Uma b. ‘Alī al-Kinānī Qārī al-Hidāyah (d. 1422) [KZ, 2, 1227]

32. *Fatḥ al-Qadīr* by Muḥammad b. ‘Abd al-Wāḥid b. al-Humām. A commentary on the *Hidāyah* (d. 1459 or 60).

33. *Fayḍ al-Karakī* by Ibrāhīm b. ʻAbd al-Raḥman b. Muḥammad b. Ismāʻīl b. al-Karakī (d. 1516) [KZ, 2, pp. 1304-1305]

34. *Fetava-i Çivizade* by Muḥyiddîn Muḥammed b. Ilyâs el-Menteşevî Çivîzâde (d. 1547)

35. *al-Fuṣūl al-ʻImādiyyah (Fuṣūl al-Iḥkām li-Uṣūl al-Aḥkām)* by Jamāl al-Dīn ʻAbd al-Raḥīm b. ʻImād al-Dīn b. ʻAlī al-Marghīnānī (d. 1253) [KZ, 2, pp. 1270-1271]

36. *Fuṣūl fī al-Muʿādalāt* by Muḥammad b. Maḥmūd b. al-Ḥusayn al-Ustrūshanī (d. 1234) [KZ, 2, p. 1266]

37. *Ghāyat al-Bayān wa Nādirat al-Aqrān* by Qiwām al-Dīn Amīr Kātib b. Amīr ʿUmar al-Itqānī (d. 758/1356). This work is a commentary on al-Marghīnānī's *Hidāyah.*

38. *Ghurar al-Aḥkām* and *Durar al-Ḥukkām fī Sharḥ Ghurar al-Aḥkām,* both by Muḥammad b. Feramerz b. ʻAlī Molla Hüsrev (d. 1480) [KZ, 2, 1199-1200]

39. *Ḥāshiyah Saʿdiyyah* [possibly Saʻdî Çelebi's gloss on the tafsīr of al-Bayḍāwī]

40. Ḥāshiyat al-Qudūrī (?)

41. *Ḥāwī* by al-Taraḥidī (?)

42. *Ḥāwī al-Munya* by al- Najm al-Dīn Mukhtār b. Maḥmūd al-Ghazmīnī al-Zāhidī al-Ḥanafī (d. 1259)

43. *al-Ḥāwī al-Qudsī* by Jamāl al-Dīn Aḥmad b. Muḥammad b. Saʿīd al-Ḥanafī al-Ghaznawī (d. 1196) [KZ, 1, 627]

44. *al-Ḥāwī fī al-Fatāwá* by Muḥammad b. Ibrāhīm al-Ḥanafī (d. 1106)

45. *al-Hidāyah* by ʿAlī b. Abī Bakr al-Marghīnānī (d. 1196 or 7) [KZ, 2, pp. 2031-2040]

46. *al-Ikhtiyār* by Abū al-Faḍl Majd al-Dīn ʿAbd Allāh b. Maḥmūd (b. Mawdūd) al-Mawṣilī (d. 1284). A commentary on *al-Mukhtār fī Furūʿ al-Ḥanafiyyah* [KZ, 2, p. 1622]

47. *al-ʿInāyah fī Sharḥ al-Hidāyah* by Akmal al-Dīn Muḥammad b. Maḥmūd al-Bābartī (d. 786/1384). This work is a commentary on al-Marghīnānī's *Hidāyah.*

48. *al-Isʿāf [al-Isʿāf fī Aḥkām al-Awqāf]* by Burhān al-Dīn Ibrāhīm b. Mūsā b. ʿAbd Allāh al-Ṭārablusī (d. 1516). [KZ, 1, p. 85.]

49. *al-Jāmiʿ* by Aḥmad b. ʿUbayd Allāh b. Ibrāhīm al-Maḥbūbī Saḍr al-Sharīʿah (d. 1232) [KZ, 1, pp. 563-564]

50. *Jāmiʿ al-Fatāwá* by Kırk Emre al-Ḥamīdī (d. 1475) [KZ, 1, 565-566].

51. *Jāmi' al-Fuṣulayn* by Badr al-Dīn Maḥmūd b. Qāḍī Simāwnah (d. 1416?) [Karāchī : Islāmī Kutubkhānah, 1402 [1982] [KZ, 1, 566-567]

52. *Jāmi' al-Rumūz* by Shams al-Dīn Muḥammad b. Ḥusām al-Dīn al-Quhistānī (d. 1554). – this a commentary on *al-Niqāyah.*

53. *al-Jāmi' al-Ṣaghīr* by Muḥammad b. Ḥasan b. Ferkad al-Ḥanafī al-Shaybānī (d. 804) [KZ, 1, pp. 561-562].

54. *Jawāhir al-Fatāwá* by Rukn al-Dīn Muḥammad b. ʻAbd al-Rashīd al-Kirmānī (d. 1169) [KZ, 1, 615]

55. *al-Jawharah al-Nā'irah (or al-Munīrah) fī Sharḥ Mukhtaṣar al-Qudūrī* by Abū Bakr b. ʻAlī al-Ḥaddādī (d. 1397). This is an abridge version of his *al-Sirāj wa-l-Wahhāj.* [KZ, 2, 1631]

56. *al-Kāfī fī Furū' al-Ḥanafiyyah* by al-Ḥākim al-Shahīd Muḥammad b. Muḥammad al-Ḥanafī (d. 945) [KZ, 2, p. 1387]

57. *Kanz al-Daqā'iq* by ʻAbd Allāh b. Aḥmad al-Nasafī (d. 1310) [KZ, 2, pp. 1515-1517]

58. *Kashf al-Asrār* by Abū al-Ḥusayn ʻAlī b. Muḥammad al-Pazdawī (d. 1089) [GAL S. I p. 637; KZ, 1, 112]

59. *Khizānat al-Akmal fī al-Furū‘* by Abū Ya‘qūb Yūsuf b. ‘Alī b. Muḥammad al-Jurjānī al-Ḥanafī. A work in 6 volumes. The author started working on this text in 1128. [KZ, 1, 702]

60. *Khizānat al-Fatāwá* by al-shaykh al-imām Ṭāhir b. Aḥmad al-Bukhārī al-Sarakhsī (d. 1147). There is another work with the same title by ʿAlī b. Muḥammad b. Abī Bakr al-Ḥanafī (d. 522/1128). [KZ, 1, pp. 702-703]

61. *Khizānat al-Fiqh* by Abū al-Layth al-Samarqandī (d. 373/983) [KZ, 1, p. 703]

62. *Khizānat al-Muftīyīn fī al-Furū'* by al-Ḥusayn b. Muḥammad al-Samīqānī al-Ḥanafī (d. 740/1339) GAL SII, p. 204; KZ, 1, p. 703]

63. *Khizānat al-Riwāyāt* – might be the work by Jeken al-Ḥanafī of Gujarat [KZ, 1, p. 702]

64. *Khulāṣat al-Fatāwá* by Iftikhār Ṭāhir b. Aḥmad b. ‘Abd al-Rashīd Ṭāhir al-Bukhārī (d. 1147) [KZ, 1, p. 718]

65. al-Kirmānī, possibly Qiwām al-Dīn Abū Mas‘ūd b. Ibrāhīm al-Kirmānī (d. 1348), the author of a commentary on *Kanz al-Daqā’iq*. [KZ, 2, 1516]

66. *Kitāb al-Mabsūṭ* by Muḥammad b. Aḥmad al-Sarakhsī (d. 1090) [KZ, 2, pp. 1580].

67. *Kitāb al-Mabsūṭ* by Muḥammad b. Ḥusayn b. Muḥammad b. al-Ḥasan al-Bukhārī, also known as Bakr Khohar Zāde (d. 1090) [IQ, *Taj,* p. 213; KZ, 2, p. 1580]

68. *Kitāb al-Wāqiʿāt min al-Fatāwá* by Ḥusām al-Dīn ʻUmar b. ʻAbd al-ʻAzīz al-Bukhārī al-Ṣadr al-Shahīd (d. 1141) [KZ, 2, 1998]

69. *Lawāzim al-Quḍat by Dakhī Efendi (Lawāzim al-Quḍat wa-l-Ḥukkam fī Iṣlāḥ Umūr al-Anām)* by Muṣṭafá b. Muḥammad b. Yardim b. Saruhan al-Sirūzī al-Dīkhī (Muṣṭafâ b. Muḥammed b. Yardim b. Saruhan es-Sirozî ed-Dikhî (d. 1090/1679)

70. al-Maḥallī - possibly Jalāl al-Dīn Muḥammad b. Aḥmad al-Maḥallī's (d. 1459) commentary on *Jamʻ al-Jawamiʻ fī Uṣūl al-Fiqh* by Tāj al-Dīn ʻAbd al-Wahhāb b. ʻAlī b. al-Subkī (d. 1369). al-Subkī's work is a *mukhtaṣar on uṣūl.* Although both the author and the commentator were Shafiʻi, it seems their works were popular even among Hanafis. [KZ, 1, p. 595]

71. *Majmaʿ al-Baḥrayn wa-Multaqá al-Nahrayn* by Muẓaffar al-Dīn Aḥmad b. ʻAlī al-Baghdādī Ibn al-Sāʿātī (d. 1293) [KZ, 2, pp. 1599-1601]

72. *Majmaʿ al-Fatāwá* by Aḥmad b. Muḥammad b. Abī Bakr al-Ḥanafī (d. ?). A collection of fatāwá issued by various jurists, from al-Ṣadr al-Shahīd to ʻAlī al-Jamālī. [KZ, 2, 1603].

73. *Majmaʿ al-Nawāzil (?)*

74. *Miʿrāj al-Dirāyah fī Sharḥ al-Hidāyah* by Muḥammad b. Muḥammad Kākī (d. 1348 or 9). [KZ, 2, p. 2035]

75. *Minaḥ al-Ghaffār* by Shams al-Dīn Muḥammad al-Timūrtāshī (d. 1595) [KZ, 1, 501]

76. *al-Muḥīṭ (al-Burhānī)* by Burhān al-Dīn Maḥmūd b. ʻAlī b. al-Ṣadr al-Shahīd (d. 570/1174). [KZ, 2, 1619-1620]

77. *al-Muḥīṭ al-Raḍawī fī Fiqh al-Ḥanafī* by Raḍī al-Dīn Muḥammad b. Muḥammad al-Sarakhsī (d. 544/1149) [KZ, 2, p. 1620]

78. *al-Muḥīṭ* by al-Sarakhsī by Shmas al-A'imma Muḥammad b. Aḥmad b. Abī Sahl al-Sarakhsī (d. 438/1046) [KZ, 2, 1620]

79. *Mukhtaṣar al-Qudūrī* by Abū al-Ḥusayn Aḥmad b. Muḥammad al-Qudūrī al-Baghdādī (d. 1037)

80. *Mukhtaṣar al-Ṭaḥāwī* by Abū Jaʿfar Aḥmad b. Muḥammad b. Salāma al-Ḥajrī al-Ṭaḥāwī (d. 933) [GAL S I p. 293; KZ, 2, pp. 1627-1628]

81. *al-Muntaqá* by Ibrāhīm b. 'Alī b. Aḥmad b. Yūsuf b. Ibrāhīm Abū Isḥāq, also known as Ibn ʻAbd al- Ḥaqq al-Wāsiṭī (d. 1343) [IQ, pp. 11-12]. [There is another

work entitled *al-Muntaqá fī Furū‘ al-Ḥanafiyyah* by al-Ḥākim al-Shahīd (d. 945). KZ, 2, pp. 1851-1852.]

82. *Munyat al-Muftī* by Yūsuf b. Abī Saʿīd Aḥmad al-Sijistānī (d. 1240) [GAL SI p. 653; KZ, 2, p. 1887]

83. *Munyat al-Muṣalli wa-Ghunyat al-Mubtadī* by Sadīd al-Dīn al-Kāshgharī (d. 1305) [KZ, 2, pp. 1886-1887]

84. *Nāfi' [al-Fiqh al-Nāfi']* by Naṣr al-Dīn Muḥammad b. Yūsuf Abū al-Qāsim (d. 1258) [IQ, pp. 175-176; KZ, 2, pp. 1921-1922].

85. *Naqd al-Fatāwá* by Muḥammad b. Ḥamzah al-‘Alā’ī [Mahāmm, 143r]

86. *Naqd al-Masā'il fī Jawāb al-Sā'il* by Istanbullu ‘Alī b. Muḥammad al-Riḍā’ī (Rizai) (d. 1039/1629) [KZ, 2, p. 1974]

87. *Nawāzil fī Furū' al-Ḥanafiyyah* by Naṣr b. Muḥammad al-Ḥanafī Abu al-Layth al-Samarqandī [KZ, 2, 1981]

88. *al-Nihāyah fī Furū' al-Fiqh al-Ḥanafī* by Ḥusām al-Dīn Ḥusayn b. ʿAlī al-Ṣighnāqī (d. 711/1311). This work is a commentary on al-Marghīnānī’s *Hidāyah.*

89. *Qunyat al-Munyah li-Tatmīm al-Ghunyah* by Najm al-Dīn Mukhtār b. Maḥmūd al-Ghazmīnī al-Zāhidī al-Ḥanafī (d. 1259) [KZ, 2, p. 1357]

90. Shams al-Dīn al-Wafā'ī (?)

91. *Sharḥ al-Jāmi' al-Ṣaghīr* by al-Timūrtāshī (?)

92. Sharḥ al-Mabsūṭ (?)

93. *Sharḥ al-Majma'* by ʻAbd al-Laṭīf b. ʻAbd al-ʻAzīz Ibn Malak (Firişteoğlu) (d. 1395). A commentary on *Majmaʻ al-Baḥrayn.* [KZ, 2, p. 1601; GAL, S. II, p. 315].

94. Sharḥ al-Muḥkī (?)

95. *Sharḥ al-Sirājiyyah* by Aḥmad b. Yaḥyá b. Muḥammad b. Saʻd al-Dīn al-Taftāzānī (d. 1510) [GAL, S.II, p. 309]

96. *Sharḥ al-Ziyādāt* by Fakhr al-Dīn Ḥasan b. Manṣūr b. Maḥmūd al-Ūzjandī (d. 1195) [GAL S. I p. 645].

97. *Sharḥ Mukhtaṣar al-Qudūrī* by Najm al-Dīn Mukhtār b. Maḥmūd al-Zāhidī (d. 1259) [KZ, 2, 1631]

98. *Sharḥ Mukhtaṣar al-Ṭāḥāwī* by ʻAlā' al-Dīn b. Muḥammad b. Ismāʻīl al-Ḥanafī al-Isbijābī (d. 1140) [KZ, 2, pp. 1627-1628]

99. *Shaykh al-Islām al-Arzsadī,* an unspecified work by possibly Burhān al-Dīn b. Muḥammad al-Arzsadī [GAL, S. II, p. 951].

100. *Tabyīn al-Ḥaqā'iq fī Sharḥ Kanz al-Daqā'iq* by Fakhr al-Dīn ʻUthman b. ʻAlī al-Zaylaʿī (d. 1342 or 3). A commentary on *Kanz al-Daqā'iq* [KZ, 2, p. 1515]

101. *Tafsīr al-Qur'ān* by Muḥammad ibn Abī Bakr al-Rāzī (d. 1261)

102. *al-Tajrīd fī al-Khilāfiyyāt* by Aḥmad b. Muḥammad b. Aḥmad al-Baghdādī al-Qudūrī (d. 1036) [KZ, 1, p. 346].

103. al-Tajziyah (?)

104. *Tarjīḥ al-Bayānāt* by Ibn al-Ghānim al-Baghdādī (d. 1620). There is another work with the same title by Muḥammad b. Muṣṭafá al-Vānī (d. 1591). [KZ, 1, p. 398]

105. *Taṣḥīḥ al-Qudūrī* by Qāsim Ibn Quṭlūbughā (d. 1474)

106. *Tatamat al-Fatāwá* by Burhān al-Dīn Maḥmūd b. Aḥmad b. ʻAbd al-ʻAziz al-Ḥanafī (d. 1219).

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37. *Fatāwá Ibn Quṭlūbughā* (d. 1480)

38. *Fatāwá Muḥammad al-Timūrtāshī* (d.1595)

39. *Fatāwá Qāḍīkhān* by Fakhr al-Dīn Ḥasan b. Manṣūr b. Maḥmūd al-Ūzjandī (d. 1195) [KZ, 2, pp. 1227-1228]

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121.*al-Tajrīd al-Burhānī fī Furū' al-Ḥanafiyyah* – unkown author [Mahāmm, 68v]

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123.Taqī al-Dīn 'Alī b. 'Abd al-Kāfī al-Subkī – unspecified work

124. *Taṣḥīḥ al-Qudūrī* by Qāsim Ibn Quṭlūbughā (d. 1474)

125. *Tuḥfat al-Mulūk fī al-Furū'* by Zayn al-Dīn Muḥammad b. Abī Bakr Ḥasan al-Rāzī (d. 1261) [KZ, 1, 374-375]

126. *'Uyūn al-Masā'il* by Abū al-Layth al-Samarqandī (d. 985) [KZ, 2, 1187]

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