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## **Hanafism and the Turks in al-Ṭarasūsī's *Gift for the Turks* (1352)**

Wilferd Madelung's articles on the relationship between the spread of Hanafism and Maturidism and the expansion of Turkish political influence over the Near East underline "the militant Ḥanafism of the Turks."<sup>1</sup> During the reign of Ṭuğrul Bey (431–55/1040–63), for instance, the Seljuq state was strongly engaged in curbing the Shafi'is, and the ruler himself stood behind the measures, as is evident from an open letter of Abū al-Qāsim al-Qushayrī written in defense of Ash'arism, the theological school mostly identified with the Shafi'is.<sup>2</sup> This strong Seljuqid interest in Hanafism, coupled with the fact that the Ottomans, who succeeded in establishing the longest lasting dominion over Muslim lands, were also Hanafis, leads one to wonder whether Hanafism might be in any way more "government-friendly" than other legal schools. Or, to put it differently, would it have affected the political success of the Turks had they been, let us say, Shafi'is? This article is an attempt to answer this question negatively with a consideration of the Mamluk example.

The Turkish Mamluks, who ruled over Egypt and Syria for almost 150 years (648–784/1250–1382),<sup>3</sup> officially adopted the principle of the equality of the four

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<sup>1</sup> Wilferd Madelung, "The Spread of Māturīdism and the Turks," in *Actas do IV Congresso de Estudos Arabes e Islâmicos, Coimbra-Lisboa 1968* (Leiden, 1971), 109–68, reprinted in Madelung, *Religious Schools and Sects in Medieval Islam* (London, 1985); idem, "The Two Factions of Sunnism: Ḥanafism and Shāfi'ism," in *Religious Trends in Early Islamic Iran* (Albany, 1988), 26–38; idem, "The Early Murji'a in Khurāsān and Transoxania and the Spread of Ḥanafism," *Der Islam* 59 (1982): 32–39, reprinted in *Religious Schools and Sects*; and idem, "The Murji'a and Sunnite Traditionalism," in *Religious Trends in Early Islamic Iran*, 13–25, provide a plausible explanation of the Turkish attraction to the Hanafi school in the eastern provinces.

<sup>2</sup> Madelung, "The Spread of Māturīdism," 129. In 469/1077, however, the son of the same Abū al-Qāsim, Abū al-Naṣr Ibn al-Qushayrī, came to Baghdad to preach Ash'arism, with the official support of Nizām al-Mulk, the Shafi'i grand vizier of the Seljuqs; Sibṭ ibn al-Jawzī, *Al-Muntaẓam fī Tawārīkh al-Mulūk wa-al-Umam* (Beirut, 1995), 9:538–39.

<sup>3</sup> The personal religious affiliation of Turkish Mamluks, as a ruling class, is not easy to establish. Quṭuz (r. 657–58/1259–60) is blamed for being a Hanafi by Shafi'i sources, and Baybars (r. 658–



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Sunni schools of law.<sup>4</sup> The fact that they created three chief judgeships in addition to the Shafi'ī one might be considered an attempt to stunt the Shafi'ī position, yet they actually preserved the priority of the Shafi'ī school, as will be shown below.<sup>5</sup>

Within this framework where the Hanafis enjoyed a secondary rank at best, Najm al-Dīn Ibrāhīm ibn 'Alī al-Ṭarasūsī (d. 758/1357), the Hanafi *qāḍī al-quḍāh* of Damascus (746–58/1346–57), authored a treatise called *Tuḥfat al-Turk fīmā Yajib an Yu'mala fī al-Mulk*, in which he engaged in a deep effort to “sell” Hanafism to the Mamluk sultanate as the official law of the state.<sup>6</sup> In order to do this, the author strove to argue that Shafi'ism is not “government-friendly,” especially toward

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76/1260–77) is known to have shown personal favor to Hanafis; Jorgen S. Nielsen, “Sultan al-Zāhir Baybars and the Appointment of Four Chief Qāḍīs, 663/1265,” *Studia Islamica* 60 (1984): 173–75. The appointment of mostly Hanafi *qāḍī al-askars* (Joseph H. Escovitz, *The Office of Qāḍī al-Quḍāt in Cairo under the Bahrī Mamlūks* [Berlin, 1984], 187–89) suggests that the military establishment was predominantly Hanafi. As to how Hanafism may have spread among them, it is clear that the young “slaves” were going through some sort of religious education (David Ayalon, “L'esclavage du Mamelouk,” *Oriental Notes and Studies* 1 [1951]: 1–66, reprinted in Ayalon, *The Mamlūk Military Society* [London, 1979], 13). My colleague Adam Sabra suggested that this education would have been conducted by scholars who knew Turkish, and that condition would have been most easily met by Hanafi scholars who came from the eastern provinces as a result of the Seljuqid expansion and later the Mongol invasion. As to the Circassian Mamluks (784–922/1382–1517), I do not have any idea about their personal preference among legal schools, and that is why their period is excluded from this study. It is quite plausible, however, that they followed the Turks, since they even used to change their names to Turkish ones; David Ayalon, “Names, titles and ‘nisbas’ of the Mamlūks,” *Israel Oriental Studies* 5 (1975): 189–232, reprinted in Ayalon, *The Mamlūk Military Society*, 196.

<sup>4</sup>In 663/1265, Baybars established a chief judge for each of the generally-recognized Sunni schools of law, following the already established administrative practice of the Fatimids and Ayyubids (Nielsen, “Sultan al-Zāhir Baybars,” 169–71). I do not agree with the author, however, in his underlying assumption that the establishment of four chief judgeships broke the Shafi'ī predominance.

<sup>5</sup>This, of course, does not mean that the Shafi'īs were happy with the new arrangement; see Maelung, “The Spread of Māturīdism,” 165, n. 145.

<sup>6</sup>This text was first published by Riḍwān al-Sayyid (Beirut, 1992) with an extremely useful introduction (titled “Ṣīrā' al-Fuqahā' 'alā al-Sultāh wa-al-Sultān fī al-'Aṣr al-Mamlūkī min khilāl Kitāb 'Tuḥfat al-Turk' lil-Ṭarasūsī,” 5–50) and notes throughout the text, which led me to most of the references I used for this study. Al-Sayyid's edition of the *Tuḥfat al-Turk* is based on MS Berlin 5614; the manuscript I checked it with is İstanbul Millet Kütüphanesi, Feyzullah Efendi collection, 2122, fols. 96b–105b (hereafter MK), for which I have to thank Rifa'at Abou-El-Haj once more. For the life and works of the author, see Appendix I; for a study of this work, see Michael Winter, “Inter-Madhab Competition in Mamluk Damascus: Al-Tarsusi's Counsel for the Turkish Sultans,” *Jerusalem Studies in Arabic and Islam* 25 (2001): 195–211. Since I completed the first draft of this study, I have come across two other editions of the *Tuḥfat al-Turk*, one by Abū 'Abd Allāh Muḥammad Ḥasan Muḥammad Ḥasan Ismā'īl (Beirut, 1995), and another one by Mohamed Menasri (Damascus, 1997), the latter of which includes a detailed study as well as a complete French translation of the work. All citations in this article refer to al-Sayyid's edition.



a government of Turks. Yet, a closer look into his arguments and an examination of Shafi‘i views in a Mamluk context—which he at times misrepresents—reveal that: first, principles of constitutional law held by legal schools, at least those of Shafi‘ism, tend to accommodate political developments; second, in certain respects, Shafi‘ism may at times be even more “government friendly” than Hanafism; and third, there is a considerable tension between the letter of the law and its practice, which renders theoretical limitations meaningless in effect.

The first chapter of the *Tuḥfat al-Turk*, or *Gift for the Turks*, “on the explanation (of the validity) of the sultanate of the Turks,”<sup>7</sup> will be the focus of this article. Here, the author first outlines the necessary conditions for an imam, as laid down by the Shafi‘i sources, which emphasize that the imam should be of Quraysh and a *mujtahid*. Hanafism, argues al-Ṭarasūsī, does not claim any of these conditions.<sup>8</sup> Yet when he finishes his quotations from the Shafi‘i sources, he twists his earlier exposition and concludes that for Shafi‘is the *sultan* should be of Quraysh and a *mujtahid*, in which case neither the Turks, nor the Persians, could be legitimate

<sup>7</sup> *Fī Bayān (Ṣiḥḥat) Salṭanat al-Turk*; *ṣiḥḥah* does not appear in the Berlin manuscript (see *Tuḥfat al-Turk*, 60, and W. Ahlwardt, *Verzeichnis der arabischen Handschriften* [Berlin, 1893, reprinted: Hildesheim, 1980], 5:116), yet it is in the MK, fol. 96b, line 14.

<sup>8</sup> Al-Ṭarasūsī does not quote any Hanafi sources directly but states that Abu Ḥanifah and his *aṣḥāb* see neither descent from Quraysh, nor the quality of being a *mujtahid*, nor justice as a requirement expected from a sultan and presents the fact that Mu‘āwiyah was followed by the *ṣaḥābah*, despite his controversy with ‘Alī during the latter’s rule, as an example supporting his point; *Tuḥfat al-Turk*, 63; MK, fol. 96b, lines 26–28. Yet descent from Quraysh as a condition for the imam had been accepted in Hanafi circles elsewhere. Even during the Ottoman era, the question had to be dealt with, when, for instance, Luṭfi Pasha (d. c. 970/1562–63) was confronted by people citing ‘Umar al-Nasafī (d. 537/1142) and Sa‘d al-Dīn al-Taftāzānī (d. 790s/1390s), asking whether they had a valid imam; Hamilton A. R. Gibb, “Luṭfi Pa a on the Ottoman Caliphate,” *Oriens* 15 (1962): 287–95; see al-Taftāzānī, *Sharḥ al-‘Aqā‘id al-Nasafīyah* (Cairo, 1987), 98, where al-Nasafī states that the imam must be of Quraysh and al-Taftāzānī strenghtens it by citing the tradition of the Prophet (see below) to that effect. As for the Shafi‘i ones, he quotes [*Tuḥfat al-Turk*, 63–65; MK, fol. 96b, line 29–fol. 97a, line 3] al-Shāfi‘ī through al-Rāfi‘ī’s (d. 623/1226) *Kitāb al-Jināyāt al-Mūjibah lil-‘Uqūbāt*, which I have not been able to locate; al-Māwardī (d. 450/1058), *Al-Aḥkām al-Sulṭānīyah* (Bonn, 1853), 5–6; and al-Nawawī (d. 676/1277), *Rawḍat al-Ṭālibīn* (Beirut, 1992), 7:262—the quotations are not word-for-word, yet are in essence correct. He cites the Prophetic tradition *al-a’immah min quraysh* as the Shafi‘i justification of their position (among the six books examined by A. J. Wensinck, *Concordance et Indices de la Tradition Musulmane* [Leiden, 1936], 1:92, this hadith is only found in Ibn Ḥanbal, *Musnad* [Beirut, 1993], 3:163, no. 12292; 3:231–32, no. 12884; 4:565, no. 19722. But it is also found in al-Bayhaqī (d. 458/1066), *Al-Sunan al-Kubrā* [Beirut, 1994], 3:172 and 8:247–48, most of the chains coming from Anas). Interestingly enough, al-Shāfi‘ī himself does not cite this tradition when he deals with the qualification of the imams in the context of the prayer, though he does cite other traditions favoring Quraysh (*Kitāb al-Umm* [Beirut, 1993], 1:287–88), yet al-Muzanī (d. 264/878) puts it into the same section in his *mukhtaṣar*; *ibid.*, 9:28.



rulers. Thus, declares al-Ṭarasūsī, Hanafism is more suitable for the Turks than Shafi'ism.<sup>9</sup>

Yet, as Riḍwān al-Sayyid points out, he not only misrepresents al-Māwardī, who actually engaged in an effort to justify the sultanate-by-force within the framework of Muslim constitutional law,<sup>10</sup> but also neglects Badr al-Dīn Ibn Jamā'ah's (d. 733/1333) constitutional theory,<sup>11</sup> which shows very well how constitutional law accommodated political developments. Let us look at the political developments first.

After the end of the caliphate in Baghdad in 656/1258, the Mamluk sultan al-Zāhir Baybars (r. 658–76/1260–77) recognized the caliphate of an Abbasid prince in 659/1261,<sup>12</sup> creating a caliphate in Cairo, which brought some prestige and legitimacy to a sultanate of “slaves.” Yet, the caliph became nothing more than a ceremonial figure;<sup>13</sup> in time, the *bay'ah*, which was traditionally given by the subjects to a superior power as a sign of recognition, began to be given by the caliph to the sultan.<sup>14</sup> Thus, the distinction between the sultanate and the caliphate became negligible, so much so that the Ottomans did not even bother to continue the institution

<sup>9</sup> *Tuḥfat al-Turk*, 65; MK, fol. 97a, lines 4–8.

<sup>10</sup> Al-Sayyid, “Širā' al-Fuqahā',” 26–27; al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, 54–57 (*faṣl . . . imārat al-istīlā'*); Tilman Nagel, *Staat und Glaubensgemeinschaft in Islam* (Zurich, 1981), 1:362–66; Ann K. S. Lambton, *State and Government in Medieval Islam, an Introduction to the Study of Islamic Political Theory: The Jurists* (New York, 1981), 100–2.

<sup>11</sup> Ibn Jamā'ah held the Shafi'i chief judgeships of Jerusalem, Damascus, and Cairo several times throughout his life (see al-Maqrīzī, *Al-Muqaffā* [Beirut, 1991], 5:89–94) and authored, among other things, an important treatise called *Taḥrīr al-Aḥkām fī Tadbīr Ahl al-Islām* (ed. Fu'ād 'Abd al-Mun'im Aḥmad, 3rd. ed. [Qatar, 1988]); for a short assessment of this work, see Lambton, *State and Government*, 138–43; Nagel, *Staat und Glaubensgemeinschaft*, 1:436–40.

<sup>12</sup> David Ayalon, “Studies on the Transfer of the Abbasid Caliphate from Baghdad to Cairo,” *Arabica* 7 (1960): 50–51, reprinted in Ayalon, *Studies on the Mamlūks of Egypt (1250-1517)* (London, 1977).

<sup>13</sup> “When in 709/1310 the usurper al-Muẓaffar Baybars was confronted with a general revolt and tried to reinforce his authority with a new diploma from the caliph, his act provoked only the jeering comment, ‘Stupid fellow. For God's sake—who pays any heed to the caliph now?’” P. M. Holt, “The Position and Power of the Mamlūk Sultan,” *Bulletin of the School of Oriental and African Studies* 38 (1975): 248. According to al-Maqrīzī, the caliph “had no authority, not even the right of expressing his opinion. He spent his time among nobles, high officials, scribes, and judges, paying them visits to thank them for the dinners and entertainments to which they had invited him.” Cited by Donald P. Little, “Religion under the Mamlūks,” *Muslim World* 73 (1983): 173, reprinted in Little, *History and Historiography of the Mamlūks* (London, 1986).

<sup>14</sup> P. M. Holt states that the formula *bāya'ahu al-khalīfah bi-al-salṭanah* “appears occasionally from the accession of al-Nāṣir Aḥmad (740/1342) to the end of the Qalawunid dynasty, and becomes usual with al-Zāhir Barqūq and the Circassian sultans.” (P. M. Holt, “The Structure of Government in the Mamluk Sultanate,” in *The Eastern Mediterranean Lands in the Period of the Crusades*, ed. P. M. Holt [Warminster, 1977], 45).



of the Abbasid caliphate after they conquered Egypt in 1517. Selim I brought the last caliph, Muḥammad ibn Ya‘qūb al-Mutawakkil, to Istanbul where he first imprisoned him at the Seven Towers (Yedikule). In 1520, as Selim was approaching his death, he ordered the release of al-Mutawakkil and permitted him to move back to Egypt with a daily allowance of 60 *akçes*, where the latter died in January 1539, leaving behind two sons who continued to receive allowances from the Ottoman treasury.<sup>15</sup> Clearly, the Ottomans did not regard the last caliph and his male heirs as a threat to their sovereignty.

Ibn Jamā‘ah, writing during this process of marginalization of the caliphate, updated the constitutional theory by putting the sultanate on an equal footing with the caliphate. Whereas for al-Māwardī, what one can get by force was only an *imārah*, but not an *imāmah*, Ibn Jamā‘ah states that there are two types of *imāmah*, one by election and one by force. When enumerating the conditions for the imam by election, he does count descent from Quraysh as one of them.<sup>16</sup> Yet, for the imam whose *bay‘ah* is concluded as a result of his might and soldiers, no such condition is given; furthermore, it is stated that his being ignorant or sinful does not impair his *imāmah*, and anyone for whom the *bay‘ah* is concluded deserves to be called *khalīfat rasūl Allāh*.<sup>17</sup> Moreover, while counting the rights of the ruler over the subjects and his responsibilities toward them, Ibn Jamā‘ah uses the term *sulṭān* instead of *imām*, in contrast to al-Māwardī.<sup>18</sup> Thus, in the constitutional theory of

<sup>15</sup> Muṣṭafā Cenābī, “Gülşen-i Tevārīh,” Dār al-Kutub al-Qawmīyah (Cairo) MS 170 Tārīkh Turķī Tal‘at, fol. 80b; Aḥmad ibn Yūsuf al-Qaramānī, *Akhbār al-Duwal wa-Āthār al-Uwal fī al-Tārīkh*, ed. Aḥmad Ḥaṭīṭ and Fahmī Sa‘d (Beirut, 1992), 2:226.

<sup>16</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 51. An anonymous writer with strong Sufi leanings had argued, about half a century earlier, that Qurashi descent is not a necessary condition, in an effort to identify the imam with the ruling sultan Baybars; W. Madelung, “A Treatise on the Imamate dedicated to Sultan Baybars I,” in *Proceedings of the 14th Congress of the Union Européenne des Arabisants et Islamisants*, part one, ed. A. Fodor, in *The Arabist, Budapest Studies in Arabic* 13–14 (1995): 95; in this context I should note that Madelung’s presentation of Ibn Jamā‘ah, according to which the notion of a Qurashi representative head of the Muslim community is retained by Ibn Jamā‘ah (*ibid.*, 102), slightly disagrees with my presentation.

<sup>17</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 55, 57. It is interesting to note that Ibn Jamā‘ah clearly prohibits the use of the term *khalīfat Allāh* (*ibid.*, 57), whereas al-Māwardī mentions this prohibition only as the view of the majority, and he himself seems to be inclined to see it as permissible (*Al-Aḥkām al-Sulṭānīyah*, 22–23).

<sup>18</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 61, 65; al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, 23, 25; it is also interesting to note that whereas in al-Māwardī the responsibilities come first, and the rights are only two, Ibn Jamā‘ah first counts ten rights, and then ten responsibilities. Moreover, when explaining the meaning of the word *sulṭān* in the Arabic language, Ibn Jamā‘ah, citing the Quran, 14:10 (. . . Bring to us then a clear *proof* [Ahmed Ali tr. (Princeton, 1994), 218]), states that the sultan is so called for his being the proof of God and his unity (*Tahrīr al-Aḥkām*, 73); also indicated by Nagel, *Staat und Glaubensgemeinschaft*, 1:438.



Ibn Jamā'ah, we witness that the Shafi'ī principles change in order to accommodate political developments, invalidating al-Ṭarasūsī's claims that Shafi'īs do not recognize a government of the Turks.<sup>19</sup>

In the rest of the chapter, al-Ṭarasūsī discusses thirteen points of comparison between Hanafism and Shafi'ism, which are meant to strengthen his contention that Hanafism is better suited for the Turks. It is hard to categorize the issues, yet one may divide them roughly into five groups: finances, land management, criminal law, prayer, and war booty. Out of these, I chose to focus on the first two groups, as I believe they matter most for the smooth operation of a government.<sup>20</sup>

There are three points that pertain to land law. First, according to Abū Ḥanīfah, the sultan has the right to hire out *kharāj* land that belongs to someone who is unable to cultivate it and pay its *kharāj*, and to take the *kharāj* from the rent, whether the holder of the land consents or not; whereas al-Shāfi'ī does not bestow this right upon the ruler.<sup>21</sup> Second, the sultan is entitled, according to Abū Ḥanīfah, to confirm the conquered lands of the infidels in the hands of the current holders and levy *jizyah* on them, instead of dividing the lands among the soldiers, whether the soldiers consent or not. In contrast, for al-Shāfi'ī, the consent of the soldiers is necessary for the sultan to do that, otherwise he has to divide it among them.<sup>22</sup> And third, according to Abū Ḥanīfah, the person who revitalizes waste land may only own it with the permission of the ruler, whereas for al-Shāfi'ī, the permission of the sultan is not needed.<sup>23</sup>

<sup>19</sup> That was certainly not the first modification of constitutional law; al-Juwaynī (d. 499/1105), for instance, already questioned the condition of descent from Quraysh in his *al-Irshād*; Lambton, *State and Government*, 106.

<sup>20</sup> The points that I left out are summarized in Appendix II.

<sup>21</sup> *Tuḥfat al-Turk*, 65; MK, fol. 97a, lines 9–11. Sibṭ Ibn al-Jawzī actually goes further and states that the sultan is entitled to sell the land as well, if nobody is found to rent it, and take its *kharāj* from the price (*Al-Intiṣār wa-al-Tarjīḥ lil-Madhhab al-Ṣaḥīḥ* (Madīnat Naṣr, n.d.), 17).

<sup>22</sup> *Tuḥfat al-Turk*, 66; MK, fol. 97a, lines 11–14; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 17. This is a quite long debate stemming from the conquest of al-Sawād and how later jurists interpreted Caliph 'Umar's action in not dividing the land among the soldiers, but levying *kharāj* on the current holders of the land. Al-Shāfi'ī is not against the levy of *jizyah*, but his real contention is that any land that is conquered by force should be considered as *ghanimah*, and should be divided accordingly (one fifth for the ruler, and four-fifths to the soldiers) unless the soldiers consent otherwise; al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, 254–55, 302–3; al-Sarakhsī (d. 483/1090), *Kitāb al-Mabsūṭ* (Cairo, 1324), 10:15, 37; Abū Yūsuf (d. 182/798), *Kitāb al-Kharāj* (Cairo, 1981), 73–91. There is an important financial issue at stake, as the land divided among the soldiers becomes *ushr* land, whereas the land left to its holders is considered *kharāj* land (Abū Yūsuf, *Kitāb al-Kharāj*, 149), the tax rate of which is higher.

<sup>23</sup> *Tuḥfat al-Turk*, 66–67; MK, fol. 97a, lines 19–20; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 17; al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, 308–11. Al-Ṭarasūsī is actually not representing the general Hanafi view by quoting only Abū Ḥanīfah; see al-Marghīnānī (d. 593/1197), *Al-Hidāyah: Sharḥ*



None of these points had much significance for the Mamluk rulers. To begin with, the contemporary Shafi‘i viewpoint is slightly modified. Regarding the second point, for instance, Ibn Jamā‘ah is ambivalent in stressing the consent of the soldiers: “Land conquered by force: it is divided among the ‘capturers,’ then the imam calls upon them to forgo it, then he satisfies them with a substitute (*‘iwad*) or without a substitute, and he institutes it as a *waqf* (*waqqafa*) for the benefit of Muslims and imposes upon it the *kharāj*, as ‘Umar ibn al-Khaṭṭāb, may God be pleased with him, did with the *sawād al-‘irāq*. . . .”<sup>24</sup> Moreover, regarding the third point, Ibn Jamā‘ah inserts a significant limitation and states that no one may “guard” (*yahmī*) a waste land “guarded” by the sultan, and he would not “own” it if he did that. This statement might very well be regarded as qualifying his earlier statement that anyone may revitalize a waste land without the permission of the sultan.<sup>25</sup>

Furthermore, what really mattered for the Mamluks was the *iqṭā‘*, the basic principle of the exploitation of land by the “state.” Al-Maqrīzī summarizes this point very well by stating that “from the days of Saladin Yūsuf ibn Ayyūb until today, all Egyptian cultivated land has been assigned in the form of *iqṭā‘*s to the sultan, his *ajnād*, and his amirs.”<sup>26</sup> And on this issue the Shafi‘i understanding of the law does not present any problems for the ruler, at least as presented by Ibn Jamā‘ah, who states that this type of *iqṭā‘* is the contemporary practice in the lands of Egypt and Syria.<sup>27</sup>

Moreover, even when the law presented difficulties for the ruler, it was not necessarily the Shafi‘is who caused the problems. The reconquest of territory from the Mongols, for instance, raised the question of whether the land reverted to the original owners and their heirs, or could be disposed of by the sultan. In 666/1267–68,

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*Bidāyah al-Mubtadī* (Cairo, 1995), 6:199–203; and Abū Yūsuf, *Kitāb al-Kharāj*, 137–41, where it is clear that Abū Ḥanīfah’s view was modified, as the tradition of the Prophet, *man ahyā arḍan mawātan/maytatan fa-hiya lahu* is evoked; Wensinck, *Concordance*, 1:539, indicates that the tradition is mentioned in all the six books he examines.

<sup>24</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 102–3; actually, he treats the land conquered by force under *‘ushr* land as well, where he states that it is divided among the “capturers,” and that it becomes their *milk* (ibid., 106). Then he discusses the issue once more and presents the views of all the four founders of legal schools, without making any judgment; Mālik’s view is even stronger than Abū Ḥanīfah’s, and Aḥmad’s is not certain as there are versions that parallel all the three (ibid., 203–4). Hossein Modarressi Tabātabā‘i, *Kharāj in Islamic Law* (London, 1983), 124–25, states that “[w]hether the *imām* had the authority to divide the land or not, most Muslim jurists agreed that such an authority had never been exercised.”

<sup>25</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 108, 117.

<sup>26</sup> Cited by Hassanein Rabie, *The Financial System of Egypt A.H. 564–741/A.D. 1169–1341* (London, 1972), 26, from al-Maqrīzī’s *Kitāb al-Mawā‘iẓ wa al-I‘tibār fī Dhikr al-Khiṭaṭ wa al-Āthār* (Cairo, 1270), 1:97.

<sup>27</sup> Ibn Jamā‘ah, *Tahrīr al-Aḥkām*, 110. Al-Māwardī, on the other hand, had presented the possibility of the *iqṭā‘ al-istighlāl* in a more limited way (*Al-Aḥkām al-Sulṭāniyah*, 337–41).



lawyers supported the former view. Then “Baybars called a session in the Dār al-‘Adl to force through recognition of his rights over the land. All duly agreed with him except the Hanafi chief qadi of Damascus.”<sup>28</sup>

Regarding finances, al-Ṭarasūsī first asserts that even if a person has already paid the *zakāt* of his *sawā’im*, the sultan is entitled, according to Abū Ḥanīfah, to take it for a second time and distribute it to the poor, whereas al-Shāfi‘ī does not accord such a prerogative to the sultan.<sup>29</sup> The second issue is the *jizyah*, which brings more income if collected in accordance with the Hanafi practice: 48 dirhams from the rich, 24 dirhams from the “middle class,” and 12 dirhams from the poor. According to al-Shāfi‘ī, it is one dinar from everyone, which makes only 10 dirhams.<sup>30</sup> The third is about the distribution of the *ṣadaqāt*. For Abū Ḥanīfah, the ruler is entitled to keep the chattels (*a‘yān al-ṣadaqah*) and give its equivalent to the poor if he considers this to be in the public interest, whereas al-Shāfi‘ī does not allow this.<sup>31</sup> Finally, al-Ṭarasūsī states that if the sultan needs to strengthen his army, he may take what is necessary from the *arbāb al-amwāl* without their consent.<sup>32</sup>

These theoretical points of law do not have much relevance when one looks at the practice. To begin with the *jizyah*, the amount collected by the Shafi‘i Ayyubids in the sixth/twelfth century seems to be in line with what al-Ṭarasūsī presents as the Hanafi practice. In the first part of the seventh century, it is recorded as 2 dinars per head. And under the Mamluks, though there is no conclusive data, the *dhimmi*s “were frequently obliged to pay double the legal amount”; moreover, the one dinar per head was at times collected as an extra tax, in addition to the *jizyah*.<sup>33</sup> As for the late seventh and early eighth centuries, al-Qalqashandī remarks that the amount decreased quite a bit and is taken as 25 dirhams from the richest and 10 dirhams

<sup>28</sup> “The matter was settled when the original owners agreed to pay an annual sum to Baybars to retain possession,” and in 677/1279, al-Sa‘īd Barka Khān succeeded in canceling this arrangement; Nielsen, “Sultan al-Zāhir Baybars,” 174–75, and 175, n. 1.

<sup>29</sup> *Tuḥfat al-Turk*, 67, MK, fol. 97a, lines 23–26; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 17.

<sup>30</sup> *Tuḥfat al-Turk*, 68; MK, fol. 97a, lines 31–34. Al-Ṭaḥawī (d. 321/933), *Mukhtaṣar al-Ṭaḥawī* (Cairo, 1370), 294; and al-Marghinānī, *Al-Hidāyah*, 4:326–27, both cite the same amounts; the latter even states that the total is collected in monthly installments. Al-Shāfi‘ī, on the other hand, depends on three traditions of the Prophet and states that it should be one dinar, or its equivalent, from everyone; al-Shāfi‘ī, *Kitāb al-Umm*, 4:253 (where nn. 2–4 identify the traditions).

<sup>31</sup> *Tuḥfat al-Turk*, 68–69; MK, fols. 97a, line 34–97b, line 1. As al-Sayyid points out, Sibṭ Ibn al-Jawzī discusses this issue in his *Īthār al-Inṣāf fī Āthār al-Khilāf* (n.p., 1987), 67–71, providing several traditions to support the Hanafi point of view against the position shared by Mālik and al-Shāfi‘ī; yet his discussion is concentrated on *collecting* the substitute of that which is supposed to be collected.

<sup>32</sup> *Tuḥfat al-Turk*, 69; MK, fol. 97b, lines 1–2.

<sup>33</sup> Rabie, *The Financial System*, 108–12.



from the poorest.<sup>34</sup> Though not as profitable as the Hanafi figures, this practice is certainly not in line with what al-Shāfi‘ī states.

As for the *zakāt* on livestock, there is not much evidence pertaining to its collection. Yet, with regard to the *zakāt* on merchandise, the practice seems to have differed from the theory, and the taxpayers did pay double *zakāt* in one year.<sup>35</sup> And finally, regarding the strengthening of the army, there are two cases in the seventh century in which resources were extorted, once from the *ra‘āyā*, and once from the wealthy and the merchants.<sup>36</sup>

Thus, most of the points raised by al-Ṭarasūsī become meaningless when compared with the actual practice, which was not in line with what he presents as the Shafi‘ī stance. In addition to this discrepancy, there are certain issues in which the Shafi‘ī stance is actually more profitable to the “state” than the Hanafi one, as the author himself discloses: “As for the idea of the common people—and that is deeply rooted in the minds of the Turks—that the *madhhab* of al-Shāfi‘ī makes the state treasury an inheritor, this is not right. What is right about the *madhhab* of al-Shāfi‘ī is that in these times, the treasury does not inherit from anybody; on the contrary, the “uterine relatives” (*dhawū al-arḥām*) inherit as in the *madhhab* of Abū Ḥanīfah.”<sup>37</sup> Here again, al-Ṭarasūsī omits the practice of the Mamluks who actually had a special institution to deal with this matter: *dīwān al-mawārīth al-ḥashrīyah*, the bureau of escheat estates. This institution provided for the public treasury to claim, at the expense of the *dhawū al-arḥām*, either the whole of the estate of a deceased person if s/he died without legal heirs, or the residue of it if the heirs were not legally entitled to the whole of the estate.<sup>38</sup>

<sup>34</sup> Al-Qalqashandī (d. 821/1418), *Die Geographie und Verwaltung von Ägypten* [an epitome of the author’s *Ṣubḥ al-A‘shā fī Ṣinā‘at al-Inshā’*], tr. F. Wüstenfeld (Göttingen, 1879), 163.

<sup>35</sup> The way to do this was to collect it before it fell due; Rabie, *The Financial System*, 99.

<sup>36</sup> The first one was during the reign of Qutuz (657–58/1259–60) and the second in 699; Escovitz, *The Office of Qāḍī al-Quḍāt*, 160.

<sup>37</sup> MK, fol. 97b, lines 4–5; *Tuḥfat al-Turk*, 69, where al-Sayyid makes up for a missing part in the Berlin manuscript quite well. For the right of “uterine relatives” to inherit in Hanafism, see al-Sarakhsī, *Kitāb al-Mabsūt*, 30:2–13. Al-Ṭarasūsī bases his contention about the Shafi‘ī viewpoint on his personal conversation with Taqī al-Dīn al-Subkī (d. 756/1355), the Shafi‘ī chief judge of Damascus (739–56), who said to him that there is no difference between the two *madhhabs* as to the priority of “uterine relatives” over the treasury in matters of inheritance, for the state treasury is corrupted; *Tuḥfat al-Turk*, 69; MK, fol. 97b, lines 5–7.

<sup>38</sup> Al-Qalqashandī, *Geographie und Verwaltung*, 164–65; Rabie, *The Financial System*, 127–32; Donald P. Little, “The Significance of the Ḥaram Documents for the Study of Medieval Islamic History,” *Der Islam* 57 (1980): 189–219, reprinted in Little, *History and Historiography of the Mamlūks* (London, 1986), 203–5. It is interesting to note in this respect that the Hanafi theory, as presented by al-Ṭarasūsī, is in parallel to the Shi‘ī one as it was applied in Fatimid Egypt; Rabie, *The Financial System*, 127.



This is not the only issue where the Hanafi stance is more disadvantageous for the public treasury. Al-Ṭarasūsī claims that the Hanafi judge should be made responsible for the properties of orphans so that they would receive a more favorable treatment, as Hanafism does not impose *zakāt* on such properties, whereas Shafi'ism does.<sup>39</sup> This is probably why the properties of the orphans were almost exclusively controlled by the Shafi'ī chief judge throughout the Turkish Mamluk period.<sup>40</sup>

A glance at the times of the Turkish Mamluks provides more examples of favors given to the Shafi'īs. Even after the establishment of the other three chief judgeships, the Shafi'ī chief judge preserved his predominance, as he “was put in charge of the moneys of the orphans, as well as verifying *waqfiyāt* and legacies.”<sup>41</sup> Shafi'īs are also seen as viziers and occasionally even as *qāḍī al-ʿaskars*.<sup>42</sup> And their priority over the Hanafis is symbolized by the seating arrangements in the Dār al-ʿAdl in Cairo, where all the four chief judges sat to the right of the sultan, the Shafi'ī one preceding the Hanafi chief judge. Though the latter was later moved next to the sultan on his left side, preceding the Hanbali judge, he was still inferior to the Shafi'ī one, who kept his original seat on the right side of the sultan.<sup>43</sup> In exchange, the Shafi'ī judges seem to have been quite cooperative with the political authority, as some of the “government-friendly” decisions they took bear witness.<sup>44</sup> Inciden-

<sup>39</sup> *Tuhfat al-Turk*, 80; MK, fol. 98b, lines 10–15; the issue arises from the Hanafi viewpoint that the children, alongside “lunatics,” are exempted from *zakāt*, which is seen as part of the *ʿibādah*; Sibṭ Ibn al-Jawzī, *Īthār*, 72–75.

<sup>40</sup> Escovitz, *The Office of Qāḍī al-Quḍāt*, 183.

<sup>41</sup> *Ibid.*, 24.

<sup>42</sup> For viziers, see *ibid.*, 175–77; for a Shafi'ī army judge, *ibid.*, 189. The latter post was more generally given to the Hanafis, as al-Ṭarasūsī himself points out; *Tuhfat al-Turk*, 91; MK, fol. 100a, lines 12–14.

<sup>43</sup> Escovitz, *The Office of Qāḍī al-Quḍāt*, 25.

<sup>44</sup> To cite one example among many: in 780, when the judges were summoned to discuss the abolition of all the *awqāf* of Egypt and Syria, the Shafi'ī chief judge, Badr al-Dīn al-Subkī, “took the most politically advantageous line by saying that all the land belonged to the sultan, and he could do whatever he liked.” As a result a number of *awqāf* were turned into *iqṭāʿ*s (*ibid.*, 153). Though in a different context, other Shafi'ī scholars, too, showed signs of a positive disposition toward Turkish Mamluk rule; Ibn al-Nafīs (d. 687/1288), a doctor and *faqīh*, for instance, presented the rule of Baybars as almost the outcome of a foreordained divine plan; Remke Kruk, “History and Apocalypse: Ibn al-Nafīs’ Justification of Mamluk Rule,” *Der Islam* 72 (1995): 331. There is also Abū Ḥāmid al-Qudṣī’s (d. 888/1483) later work in which he cited *zulm al-turk wa-lā ʿadl al-ʿarab*, yet he is too late for our purposes and does not seem to be a good representative of the Shafi'ītes; Ulrich Haarmann, “Rather the Injustice of the Turks than the Righteousness of the Arabs—Changing ‘Ulamā’ Attitudes towards Mamluk Rule in the late Fifteenth Century,” *Studia Islamica* 68 (1988): 61–77; Haarmann is extremely unfair toward Mamluk jurists when he claims that “[t]he radical changes the Mamluk system of government introduced were kept out of systematic speculation” (*ibid.*, 61–62), and he seems to be unaware of Ibn Jamāʿah and Najm al-Dīn Ibrāhīm when he attributes a paucity of political writing to Mamluk Egypt and Syria.



tally, when the Ottoman sultan Murad II decided to attack the Karamanid dynasty of central Anatolia and sought legal opinions from Egyptian jurists that would legitimize his military enterprise against another Muslim power, the fatwa of the Shafi‘i judge, who happened to be the famous Ibn Ḥajar al-‘Asqalānī (d. 1448), was much more permissive than that of his Hanafi colleague.<sup>45</sup>

Thus, in Egypt under the Turkish Mamluks, we witness an ethnically Turkish rule operating quite well without engaging in an effort to make Hanafism—the legal school adhered to by most of the military establishment—the law of the state. And we see a legal school, Shafi‘ism, the foundations of which go back to the hadith movement that aimed at limiting the law-making capacity of the political authority, cooperating with and even legitimizing a political authority that did not necessarily follow the letter of the law as defined by al-Shāfi‘ī. It seems not only that the theoretical limitations put on political authority do change with a view to accommodating new developments, but also that the guardians of the theory do cooperate with rulers who contravene that very theory with their practice; and this collaboration is by no means limited to a particular legal school. As argued by Yossef Rapoport, the state and jurists from all four schools of law “shared a common vision of the social good.”<sup>46</sup> Therefore I would say it would not matter very much for the political success of the Turks had they been, let us say, Shafi‘is.

<sup>45</sup> İsmail Hakkı Uzunçarşılı, “Karamanoğulları devri vesikalarından İbrahim Beyin Karaman imareti vakfiyesi,” *Belleten* 1 (1937): 118–19 and 129–33.

<sup>46</sup> Yossef Rapoport, “Legal Diversity in the Age of *Taqīd*: *qāḍīs* under the Mamluks,” *Islamic Law and Society* 10, no. 2 (2003): 227.



### APPENDIX I: THE LIFE AND WORKS OF NAJM AL-DĪN IBRĀHĪM IBN 'ALĪ AL-ṬARASŪSĪ (D. 758/1357)

There are a couple of small problems related to the identity of al-Ṭarasūsī. First, Ḥājji Khalīfah mentions him in one of his entries as Burhān al-Dīn, and second, al-Qurashī identifies him as Aḥmad ibn 'Alī ibn 'Abd al-Wāḥid. Al-Qurashī names his father once as 'Alī ibn 'Abd al-Wāḥid, and once as 'Alī ibn Aḥmad ibn 'Abd al-Wāḥid, though talking about the same person in both cases. Probably because of the work of al-Qurashī, later biographers fall into some confusion.<sup>47</sup> Yet, the earliest sources available establish his identity quite firmly as Najm al-Dīn Ibrāhīm ibn 'Alī ibn 'Abd al-Wāḥid, though the question remains as to how al-Qurashī created this confusion despite his personal contact with the father 'Alī.<sup>48</sup>

<sup>47</sup> Ḥājji Khalīfah, *Kashf al-Zunūn 'an Asāmī al-Kutub wa-al-Funūn* (Tehran, 1967, 3rd reprint), 1:183; 'Abd al-Qādir al-Qurashī (d. 775/1373), *Al-Jawāhir al-Muḍīyah fī Ṭabaqāt al-Hanafīyah*, ed. 'Abd al-Fattāh Muḥammad al-Ḥulw (Cairo, 1978–), 1:213–14 (Aḥmad ibn 'Alī ibn 'Abd al-Wāḥid); 2:535–36 ('Alī ibn Aḥmad ibn 'Abd al-Wāḥid); #2040 in the *ansāb* section of the work ('Alī ibn 'Abd al-Wāḥid—I could not read this entry as it was not accessible to me during my research, yet the editor, to whom I owe a lot for leading me to most of the sources I used in this appendix, states that both entries talk about the same person, and give the name of the son as Aḥmad). Besides, Ibn Ḥajar al-'Asqalanī (d. 852/1449) has an entry for Aḥmad ibn 'Alī ibn 'Abd al-Wāḥid, yet it only gives the name without any biography (*Al-Durar al-Kāminah fī A'yān al-Mi'ah al-Thāminah* [Hyderabad, 1348], 1:217); and he provides the biography of Ibrāhīm ibn 'Alī ibn Aḥmad ibn 'Abd al-Wāḥid on pp. 43–44. Moreover, Abū al-Maḥāsīn ibn Taghrībirdī (d. 874/1470) has two entries describing our author in his *Al-Manhal al-Ṣāfi wa-al-Mustawfā ba'd al-Wāfi*, ed. Aḥmad Yūsuf Najātī (Cairo, 1956), 1:110–11 and 379–80 (the latter entry is named for Aḥmad ibn 'Alī ibn 'Abd al-Wāḥid, whereas the former is for Ibrāhīm ibn 'Alī ibn Aḥmad ibn 'Abd al-Wāḥid). Later sources are aware of the problem and state that the name should be Ibrāhīm; see Taqī al-Dīn Ibn 'Abd al-Qādir al-Tamīmī (d. 1010/1601), *Al-Ṭabaqāt al-Sanīyah fī Tarājim al-Ḥanafīyah*, ed. 'Abd al-Fattāh Muḥammad al-Ḥulw (Riyadh, 1983), 1:213–15; and 'Abd al-Ḥayy al-Laknawī (d. 1304/1886), *Kitāb al-Fawā'id al-Bahīyah fī Tarājim al-Ḥanafīyah* (Cairo, 1324), 10–11 [as indicated in the introduction, this work is for the most part an abridgement of Maḥmūd ibn Sulaymān al-Kaffawī's (d. 990/1582) *Katā'ib A'lām al-Akhyār*].

<sup>48</sup> The earliest sources for the life of the author are al-Ṣafadī (d. 764/1363), *A'yān al-'Aṣr wa-A'wān al-Naṣr*, ed. F. Sezgin and M. Amawī (Frankfurt am Main, 1990), 1:23–24, where the author mentions a personal contact with Ibrāhīm in 757/1356; and Muḥammad ibn 'Alī al-Ḥusaynī (d. 765/1363–64), "Al-Dhayl al-Thānī lil-Ḥusaynī," in *Min Dhuyūl al-'Ibar lil-Dhahabī wa-al-Ḥusaynī*, ed. Muḥammad Rashād al-Muṭṭalib (Kuwait, n.d.), 269 (for the father), 315–16 (for the son). Al-Qurashī, *Al-Jawāhir al-Muḍīyah*, 2:536, mentions that the father visited them (*wa-qadima 'alaynā al-Qāhirah ṣuḥbat al-quḍāt*); the editor of *Al-Manhal*, 379, n. 5, quotes probably another edition of al-Qurashī, which reads *qadima 'alaynā min Dimashq ilā al-Qāhirah ṣuḥbat al-'askar fī salṭanat al-malik al-Nāṣir Aḥmad ibn Muḥammad ibn Qalā'un*, which establishes the date of the visit of the father to Cairo as 742–43/1342.



Though the *nisbah* Ṭarasūsī refers to Tarsus,<sup>49</sup> Ibrāhīm's father 'Imād al-Dīn 'Alī ibn Aḥmad actually came from Egypt. He was born in 669/1271 in Munyah ibn Khaṣīb in Upper Egypt.<sup>50</sup> His teaching career in Damascus seems to have begun in 720/1320 at the Qal'ah Mosque.<sup>51</sup> In 722/1322, upon the death of Shams al-Dīn ibn al-'Izz, the deputy of the Hanafi chief judge of Damascus, 'Imād al-Dīn succeeded the deceased, who happened to be his father-in-law as well, in office.<sup>52</sup> This led him to succeed the chief judge, when the latter died in 727/1327. He taught at a number of madrasahs, such as al-Nūrīyah and al-Qaymāzīyah.<sup>53</sup>

Chamberlain argues for a strong competition for *manṣibs* among the elite of Damascus in the thirteenth and fourteenth centuries.<sup>54</sup> Teaching posts seem to have been a means of preserving the elite status of one's family in the future, and fathers worked hard for their sons to succeed them in their posts. Taqī al-Dīn al-Subkī could do no more than wish for "just three things: that my son here take up my posts, that I see my [dead] son Aḥmad in a dream, and that I die in Cairo." Later he went to the tomb of Shaykh Ḥamād outside the Bāb al-Ṣaghīr and sought the

<sup>49</sup> Yāqūt, *Mu'jam al-Buldān* (Beirut, 1955–57), 4:28, states: *madīnah bi-thughūr al-Shām bayna Anṭākiyah wa-Ḥalab wa-bilād al-rūm*; and al-Sam'ānī, *Al-Ansāb* (Hyderabad, 1978), 9:65, reads: *bilād al-thaghr bi-al-Shām*. Gabriela Linda Guellil, *Damaszener Akten des 8./14. Jahrhunderts nach at-Ṭarasūsīs* Kitāb al-I'lām: *Eine Studie zum arabischen Justizwesen* (Bamberg, 1985), 17, n. 3, takes it correctly to refer to Tarsus in modern Turkey, hence her title; yet she, too, is aware that in the sources the proper spelling is al-Ṭarasūsī.

<sup>50</sup> Al-Qurashī, *Al-Jawāhir al-Muḍīyah*, 2:535; al-Nu'aymī (d. 927/1521), *Al-Dāris fī Tārīkh al-Madāris* (Damascus, 1948), 1:622; Ibn Ṭūlūn (d. 953/1546), *Quḍāt Dimashq* (Damascus, 1956), 196. Munyah ibn Khaṣīb is located, according to al-Nu'aymī and Ibn Ṭūlūn, in upper Ṣa'īd (Upper Egypt), whereas Yāqūt, *Mu'jam al-Buldān*, 5:218, calls the town Munyah Abī al-Khuṣayb and indicates that it is in lower Ṣa'īd. Al-Ḥulw states that this town is modern Mīnyā, located on the western bank of the Nile, the capital of the province of Mīnyā, one of the provinces of central Ṣa'īd; al-Qurashī, *Al-Jawāhir al-Muḍīyah*, 2:535, n. 1.

<sup>51</sup> Al-Nu'aymī (*Al-Dāris*, 1:622); Ibn Ṭūlūn (*Quḍāt Dimashq*, 196); Ibn Kathīr (d. 774/1373), *Al-Bidāyah wa-al-Nihāyah* (Beirut, 1994), 14:7:77.

<sup>52</sup> That 'Imād al-Dīn was the son-in-law of Shams al-Dīn ibn al-'Izz is only mentioned by Ibn Kathīr, *Al-Bidāyah wa-al-Nihāyah*, 14:7:81. Yet Najm al-Dīn Ibrāhīm does refer to him as his maternal grandfather in *Tuhfat al-Turk*, 109, where the name appears wrongly because of the Berlin manuscript; see MK, fol. 102a, lines 14–15, where the name is correct; al-Sayyid misidentifies the person, reading Shams al-Dīn as Ṣadr al-Dīn (*Tuhfat al-Turk*, 109, n. 2).

<sup>53</sup> For the location of these madrasahs, see Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge, 1994), map 2, p. xv. Besides these two, he also taught at al-Rayḥānīyah, the tenure of which he held even after giving up his chief judgeship, and al-Muqaddamīyah; Ibn Kathīr, *Al-Bidāyah wa-al-Nihāyah*, 14:7:126, 175; al-Nu'aymī, *Al-Dāris*, 1:622; Ibn Ṭūlūn, *Quḍāt Dimashq*, 197; for a document about his appointment to al-Rayḥānīyah, see al-Qalqashandī, *Ṣubḥ al-A'shā fī Ṣinā'at al-Inshā'* (Cairo, 1332-40), 12:78–80, cited by Guellil, *Damaszener Akten*, 18.

<sup>54</sup> Chamberlain, *Knowledge and Social Practice*, 91–107.



shaykh's intercession: "I have three sons, one of whom has gone to God, another is in Ḥijāz and I know nothing of him, and the third is here. I want him to take my posts."<sup>55</sup>

ʿImād al-Dīn seems to have operated in this framework as well. In 734/1334, his son Najm al-Dīn Ibrāhīm began teaching at al-Iqbālīyah al-Ḥanafīyah, when he was only 15 years old; and in 737/1337, he taught at al-Shiblīyah.<sup>56</sup>

A widely used method for securing the tenure of one's intimates was the *nuzūl*, or "resignation," of the office holder in favor of them, while he "had the power to do so."<sup>57</sup> That is exactly what ʿImād al-Dīn did in 746/1346; thus Najm al-Dīn, after a deputyship of about two years, became the chief Hanafi judge of Damascus and succeeded his father in the teaching position at al-Nūrīyah as well.<sup>58</sup> ʿImād al-Dīn died in 748/1348 in al-Mizzah, on the outskirts of Damascus.<sup>59</sup>

Najm al-Dīn Ibrāhīm was born in al-Mizzah, in 720/1320.<sup>60</sup> From 746/1346 onwards, he held the Hanafi chief judgeship and a teaching position at al-Nūrīyah. Among the interesting anecdotes about his life mentioned in the biographical dic-

<sup>55</sup> Cited by Chamberlain, *Knowledge and Social Practice*, 95 and n. 23, from al-Subkī, *Ṭabaqāt al-Shāfiʿīyah al-Kubrā* (Cairo, 1964–76), 6:175. What Taqī al-Dīn asked for was realized, as his son Tāj al-Dīn succeeded him in office; Ibn Ṭūlūn, *Quḍāt Dimashq*, 103.

<sup>56</sup> Ibn Kathīr, *Al-Bidāyah wa-al-Nihāyah*, 14:7:133–34, 141. Al-Shiblīyah is on the foot of Mount Qāsyūn, northwest of Damascus; Ibn Ṭūlūn, *Al-Qalāʾid al-Jawharīyah fī Tārīkh al-Šāliḥīyah* (Damascus, 1949), 128–29.

<sup>57</sup> Chamberlain, *Knowledge and Social Practice*, 93–94.

<sup>58</sup> Al-Šafādī, *Aʿyān al-ʿAṣr*, 23, uses the exact terminology: *nazala la-hu wāliduhu ʿan mansīb al-qaḍāʾ*. To arrange this affair, the father talks to the amir Sayf al-Dīn Yalbughā [*nāʾib* in Damascus, 746–48; Ibn Ṭūlūn, *Iʿlām al-Warā bi-man Wullīya Nāʾiban min al-Atrāk bi-Dimashq al-Shām al-Kubrā* (Cairo, 1973), 19–20], who in turn writes to the sultan and gets his approval. See also Ibn Kathīr, *Al-Bidāyah wa-al-Nihāyah*, 14:7:175; and for a document about his appointment to al-Nūrīyah, see al-Qalqashandī, *Šubḥ al-Aʾshā* (Cairo ed.), 12:353–55, cited by Guellil, *Damaszener Akten*, 21. The way the father succeeds his father-in-law and is succeeded by his son is very much in line with the predominant practice of the age. Escovitz indicates that 25 out of 31 judges of Cairo under Turkish Mamluk sultans, whose reason for appointment can be discerned, came to office through nepotism, *nāʾib* succession, the combination of both, and patronage (see the chart of "Reasons for Appointments" in Escovitz, *The Office of Qāḍī al-Quḍāt*, 82). This should lead us to consider carefully whether these informal ways of coming to office are anomalies, or the very basis, hence the norm, of the operation of public offices.

<sup>59</sup> For Mizzah, see Yāqūt, *Muʿjam al-Buldān*, 5:122. Besides the sources cited, biographical information about ʿImād al-Dīn may also be found in al-Ḥusaynī, "Al-Dhayl al-Thānī," 269; Ibn Ḥajar, *Al-Durar al-Kāminah*, 3:18–19; Abū al-Maḥāsin Ibn Taghribirdī, *Al-Nujūm al-Zāhirah fī Mulūk Miṣr wa-al-Qāhirah* (Cairo, 1949), 10:181; and al-Laknawī, *Al-Fawāʾid al-Bahīyah*, 117.

<sup>60</sup> The date is given as 721 by al-Šafādī, *Aʿyān al-ʿAṣr*, 23, and Ibn Ḥajar, *Al-Durar al-Kāminah*, 4:43, though this date does not agree with Ibn Kathīr, who states that Najm al-Dīn was 15 years old in 734/1334 (*Al-Bidāyah wa-al-Nihāyah*, 14:7:133–34). Ibn Ṭūlūn, *Quḍāt Dimashq*, 198, gives a precise date, 2 Muḥarram 720, which is closer to Ibn Kathīr's statement.



tionaries, there is one that supports Chamberlain's argument about the competition among the elite over available positions at madrasahs. Najm al-Dīn was challenged over the position at al-Khātūnīyah by someone called 'Alā' al-Dīn Ibn al-Uṭrūsh, and some members of the scholarly elite got involved in the issue by writing letters in support of Najm al-Dīn. One of them, Abū al-Baqā' al-Subkī, later Shafi'ī chief judge of Damascus, claimed Najm al-Dīn to be the shaykh of Ḥanafīyah in all Syria (al-Shām).<sup>61</sup>

Najm al-Dīn seems to have had good relationships with the political authorities as well; in 750/1349, he received a robe of honor from Cairo.<sup>62</sup> And when he died in 758/1357, his funeral prayer was led by the amir 'Alī al-Mārdānī, the deputy of the sultan in Damascus.<sup>63</sup> His works are many, and the following is a tentative list:

- *Tuḥfat al-Turk fīmā Yajib an Yu'mala fī al-Mulk*, written in 753/1352, for which Brockelmann mentions three copies, among them the Berlin 5614, which is the manuscript used by al-Sayyid for publication. In addition to the ones mentioned by Brockelmann, at least two more copies exist, the second of which formed the basis for a draft translation into English by Rifa'at Abou-El-Haj.<sup>64</sup>
- *Al-Nūr al-Lāmi' fīmā Yu'malu bi-hi fī al-Jāmi'*, a short treatise about the administration of the Umayyad mosque in Damascus, inserted into the sixth

<sup>61</sup> Ibn Ḥajar, *Al-Durar al-Kāminah*, 4:43; al-Tamīmī, *Al-Ṭabaqāt al-Sanīyah*, 1:214; the latter source is the fullest about Najm al-Dīn's life, as it makes use of almost all the biographical dictionaries written earlier. For Abū al-Baqā' al-Subkī, see Ibn Ṭūlūn, *Quḍāt Dimashq*, 106–7.

<sup>62</sup> Ibn Kathīr, *Al-Bidāyah wa-al-Nihāyah*, 14:7:186. Actually, the text suggests that this occasion might be his official appointment as well: on Monday, 15 Jumādā II, . . . Najm al-Dīn . . . *ḥukkimal ḥakama, wa dhālika bi-tawqī' sultānī wa-khil'ah min al-diyār al-Miṣrīyah*. The date corresponds to the coming of the new *nā'ib* Aytamish; Ibn Ṭūlūn, *I'lām*, 21. Gaudefroy-Demombynes, *La Syrie a L'époque des Mamelouks* (Paris, 1923), 160, states that the chief judges of Damascus were appointed by the *tawqī' sharīf* of the palace. If that was his official appointment, one wonders on what grounds he may have held his office until then.

<sup>63</sup> Al-Ṣafadī, *A'yan al-'Aṣr*, 23, and following him, Ibn Ḥajar, *Al-Durar al-Kāminah*, 4:43; al-Tamīmī, *Al-Ṭabaqāt al-Sanīyah*, 1:214; al-Mārdānī was the *nā'ib* of Damascus between 753 and 759; Ibn Ṭūlūn, *I'lām*, 22–23.

<sup>64</sup> Ḥājjī Khalifah, *Kashf al-Zunūn*, 1:364, and Ibn Taghrībirdī, *Al-Manhal*, 1:111, both give the same date, suggesting the possibility that they saw the autograph version of the work. For the three copies, see C. Brockelmann, *Geschichte der Arabischen Literatur* (Leiden, 1949), 2:95/79; idem, Supplementband II (Leiden, 1938), 87; Ahlwardt, *Verzeichnis*, 5:116. A fourth copy is mentioned by al-Ziriklī, *Al-A'lām* (Beirut, 1979, 4th ed.), 1:51 (cited by al-Sayyid, "Ṣirā' al-Fuqahā'," 18, n. 2), as 'Arif Ḥikmat Library (in Medina), *fiqh ḥanafī*, n. 83; and the fifth one is in İstanbul, Millet Kütüphanesi, Feyzullah Efendi collection, 2122, fols. 96b–105b, ascribed to Feyzullah Efendi (d. 1115/1703), an Ottoman *ṣeyhülislām*, of which Rifa'at Abou-El-Haj was kind enough to let me borrow the microfilm. Abou-El-Haj's unpublished English translation is a draft, though it greatly helped me in finding my way in the Arabic original.



chapter of the *Tuḥfah*, thus published by al-Sayyid as well.<sup>65</sup> Ḥājjī Khalīfah attributes it to Ibn al-‘Izz al-Ḥanafī, a name mentioned as a pseudo-author in his entry for the *Tuḥfah* as well.<sup>66</sup>

- *Anfa‘ al-Wasā’il ilá Taḥrīr al-Masā’il*, or *Al-Fatāwá al-Ṭarasūsīyah*, the best-known work of the author. Several manuscripts exist; it was published in 1926, and it was abridged by at least three later authors.<sup>67</sup>
- *Al-I‘lām bi-Muṣṭalaḥ al-Shuhūd wa-al-Ḥukkām*, large parts of which have been published and translated into German by Guellil.<sup>68</sup>
- *Urjūzah fī Ma‘rifat mā bayna al-Ashā’irah wa-al-Ḥanaḥīyah min al-Khilāf fī Uṣūl al-Dīn*, a short poem, mentioned by Ibn Ḥajar, and already reproduced by al-Ṣafadī.<sup>69</sup>

Apart from these published works, there are six titles mentioned by al-Maqrīzī:<sup>70</sup>

- *Raf‘ al-Kulḥah ‘an al-Ikhwān fī Dhikr mā Quddima fīhi al-Qiyās ‘alá al-Istihsān*;<sup>71</sup>

<sup>65</sup> *Tuḥfat al-Turk*, 102–5; MK, fol. 101a, line 26–fol. 101b, line 35; also see, Ahlwardt, *Verzeichn - nis*, 5:393. Although Guellil, *Damaszener Akten*, 23, n. 32, thinks that the Berlin manuscript only includes a fragment of the work, as al-Sayyid points out, it contains all of it (“Ṣirā‘ al-Fuqahā,” 19–20, n. 1).

<sup>66</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 1:364, 2:1983; Ahlwardt, *Verzeichn - nis*, 5:116, argues that Ibn al-‘Izz and Najm al-Dīn should be the same person since the grandfather of Najm al-Dīn was called Shams al-Dīn al-‘Izz. Yet, first of all, the grandfather is Shams al-Dīn *ibn* al-‘Izz, and he is a maternal grandfather, as MK, fol. 102 a, lines 14–15 reads (see also note 52 above); and second, the Paris copy of the *Tuḥfat al-Turk* is ascribed to Aḥmad ibn al-‘Izz al-Ḥanafī, not Ibrāhīm (Brockelmann, *GAL*, 2:95/79). Thus, this problem might be connected to the biographical issue with the name Aḥmad, mentioned above; however, none of this endangers the identification of the author of *Tuḥfat al-Turk* and *al-Nūr*; see the next footnote.

<sup>67</sup> *Al-Fatāwá al-Ṭarasūsīyah aw Anfa‘ al-Wasā’il ilá Taḥrīr al-Masā’il*, ed. Muṣṭafá Muḥammad Khafājī (n.p., 1344/1926). See Brockelmann, *GAL*, 2:95/79, and Supplementband II, 87, where it is mentioned that the two abridgements were made in the sixteenth and eighteenth centuries; the third one is taken from Ḥājjī Khalīfah’s entry on the book in *Kashf al-Zunūn*, 1:183, which does not give a date. The *Anfa‘* is referred to by the author in the *Tuḥfat al-Turk* as his own work, clinching the case for Najm al-Dīn’s authorship of the *Tuḥfat al-Turk* (*Tuḥfat al-Turk*, 136; MK, fol. 104b, lines 32–33).

<sup>68</sup> See n. 49 above. The four manuscripts examined by Guellil are described in *Damaszener Akten*, 29–32. The work is also attributed to a different author: see Brockelmann, Supplementband II, 87; and Ḥājjī Khalīfah, *Kashf al-Zunūn*, 1:127. Guellil resolves the problem, *Damaszener Akten*, 29.

<sup>69</sup> Ibn Ḥajar, *Al-Durar al-Kāminah*, 1:44, and following him al-Tamīmī, *Al-Ṭabaqāt al-Sanīyah*, 1:215; they may have seen the poem in al-Ṣafadī, *A‘yān al-‘Aṣr*, 23–24.

<sup>70</sup> Al-Maqrīzī (d. 845/1442), *Kitāb al-Sulūk li-Ma‘rifat Duwal al-Mulūk* (Cairo, 1970), 3:1:36; and following him, Ibn Taghrībirdī, *Al-Nujūm*, 10:326, and idem, *Al-Manhal*, 1:110–11.

<sup>71</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 1:830 and 910, both referring apparently to the same work.



- *Al-Ikhtilāfāt al-Wāqi‘ah fī al-Muṣannafāt*;<sup>72</sup>
- *Manāsik al-Ḥājj*;<sup>73</sup>
- *Maḥzūrāt al-Ihrām*;<sup>74</sup>
- *Al-Ishārāt fī Dabṭ al-Mushkilāt*;<sup>75</sup>
- *Al-Fawā'id al-Manzūmah fī al-Fiqh*.<sup>76</sup>

Another important title might be *Wafayāt al-A‘yān min Madhhab Abī Ḥanīfah al-Nu‘mān*, which seems to be at least three volumes.<sup>77</sup>

Two more works of his are available in manuscript form:

- *‘Umdat al-Ḥukkām fīmā lā Yanfudhu min al-Aḥkām*;<sup>78</sup>
- *Al-Unmūdhaj min al-‘Ulūm li-Arbāb al-Fuhūm*.<sup>79</sup>

Other titles attributed to him are:

- *Al-Khiṣāl fī Furū‘ al-Ḥanafīyah*;<sup>80</sup>
- *Risālah fī Jawāz (al-Jum‘ah) fī Mawḍi‘ayn min Miṣr*;<sup>81</sup>

<sup>72</sup> Ibid., 1:33.

<sup>73</sup> Ibid., 2:1832, referred to as *Manāsik al-Ṭarasūsī*, yet the description of the book as *muṭawwal* parallels al-Maqrīzī and Ibn Taghrībirdī.

<sup>74</sup> Ibid., 2:1616.

<sup>75</sup> Ibid., 1:97.

<sup>76</sup> This is the work referred to by Brockelmann as *Al-Fawā'id al-Fiqhīyah al-Badrīyah*, written in 754/1352, composed in one thousand verses; see *GAL* 2:95/79, and Supplementband II, 87. Ḥājjī Khalīfah has two different entries, one called *Al-Fawā'id al-Fiqhīyah*, described as a *manzūmah* (*Kashf al-Zunūn*, 2:1300); and one called *Manzūmah fī al-Furū‘*, described as comprising a thousand verses. Ḥājjī Khalīfah adds that the author called it *Al-Fawā'id al-Badrīyah al-Fiqhīyah*, then wrote a commentary on it, called *Al-Durrah al-Sanīyah*, which became a source for the *manzūmah* of Ibn Wahbān (ibid., 2:1867); see also Ismā‘īl Pāshā al-Baghdādī, *Īdāḥ al-Maknūn fī al-Dhayl ‘alā Kashf al-Zunūn* (Tehran, 1967, 3rd ed.), 1:615. This work is probably the second-best-known title of the author, as Ibn Quṭlūbughā (d. 879/1474), *Tāj al-Tarājīm fī Ṭabaqāt al-Ḥanafīyah* (Baghdad, 1962), 4, only cites two works of the author in his short entry, namely *Al-Fawā'id* and *Al-Fatāwā*.

<sup>77</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 2:1098 and 2019, apparently both referring to the same work; al-Ziriklī mentions a copy of it in al-Zāhirīyah library in Damascus (*Al-A‘lām*, 1:51, n. 9625); and Maḥmūd Ḥasan al-Tunkī, *Mu‘jam al-Muṣannifīn* (Beirut, 1344), 3:243, mentions that he came across the first and third volumes of this work. This work might be the reason why Wüstenfeld included Najm al-Dīn Ibrāhīm among the historians of the Arabs in his *Die Geschichtsschreiber der Araber und ihre Werke* (Göttingen, 1882), 419.

<sup>78</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 2:1166–67; Brockelmann, *GAL*, 2:95/79.

<sup>79</sup> Ismā‘īl Pāshā al-Baghdādī, *Īdāḥ al-Maknūn*, 1:137; al-Ziriklī, *Al-A‘lām*, 1:51, states this title is available in Awqāf Baghdād, no. 6470.

<sup>80</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 1:705; Ismā‘īl Pāshā al-Baghdādī, *Īdāḥ al-Maknūn*, 1:430.

<sup>81</sup> Ḥājjī Khalīfah, *Kashf al-Zunūn*, 1:858; this treatise is written in response to *Risālah fī al-Jum‘ah wa-‘Adam Jawaz al-Ṣalāt fī Mawāḍi‘ Muta‘addidah* by a certain Qiwām al-Dīn Amīr Kātib ibn



- a *sharḥ* to the famous *Hidāyah* of al-Marghīnānī;<sup>82</sup>
- *Al-Sirāj wa-al-Wahhāj*;<sup>83</sup>
- *Rafʿ Kulfat al-Taʿab li-mā Yuʿmalu fī al-Durūs wa-al-Khuṭab*;<sup>84</sup>
- *Dhakhīrat al-Nāẓir fī Ashbāh wa-al-Naẓāʾir*.<sup>85</sup>

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Amīr ʿUmar.

<sup>82</sup> *Ibid.*, 2:2039, supposedly in five volumes.

<sup>83</sup> *Ibid.*, 1:984, yet the identification of the author is far from certain, as only the *nisbah* al-Ṭarasūsī is mentioned. According to the description of Ḥājji Khalīfah, the work seems to have been translated into Ottoman Turkish in the sixteenth century.

<sup>84</sup> *Ibid.*, 1:910.

<sup>85</sup> Al-Ziriklī, *Al-Aʿlām*, 1:51.



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## APPENDIX II: FURTHER POINTS OF COMPARISON BETWEEN HANAFISM AND SHAFI'ISM<sup>86</sup>

First, the application of a *ḥadd* punishment to a slave: according to al-Ṭarasūsī, Abū Ḥanīfah states that the owner of the slave is not eligible to apply the *ḥadd* without the permission of the ruler, whereas al-Shāfi'ī claims that the owner does not need the permission of the ruler. For the author, this is an offense against the sovereignty of the sultan because the Prophet said: “(The prerogative of) the *ḥudūd* belongs to the rulers.”<sup>87</sup>

Second, according to al-Ṭarasūsī, whereas Abū Ḥanīfah does not hold the ruler responsible for a person who dies under a deserved *ta'zīr*, al-Shāfi'ī does.<sup>88</sup>

Third, if a person kills a *laqīṭ*, according to Abū Ḥanīfah, the sultan has the license to execute retaliation, whereas for al-Shāfi'ī, he does not.<sup>89</sup>

Fourth, for Abū Ḥanīfah, the feast prayer is permissible only if the sultan or his deputy is present, whereas al-Shāfi'ī does not see the sultan's or his deputy's presence as necessary.<sup>90</sup>

<sup>86</sup> See n. 20 above.

<sup>87</sup> *Tuḥfat al-Turk*, 67; MK, fol. 97a, lines 20–23. Here, as in most of the other points, the source of al-Ṭarasūsī, as indicated by al-Sayyid, seems to be Sibṭ Ibn al-Jawzī's (d. 654/1256) *Al-Intiṣār wa-al-Tarjīḥ lil-Madhhab al-Ṣaḥīḥ* (Madīnat Naṣr, n.d.), 17. However, Sibṭ Ibn al-Jawzī never mentions al-Shāfi'ī as the opposing view; he states the other view as *wa-qāla ghayruhu*, or *wa-qāla man khālafahu* in all his nine points. Another Hanafi, al-Marghīnānī (al-Ṭarasūsī wrote a *sharḥ* of his *Al-Hidāyah*; see Appendix I), states that al-Shāfi'ī argues that the owner has absolute *wilāyah* over his slave; then he invokes the tradition of the Prophet that four (prerogatives) belong to the rulers, among them the *ḥudūd*, which is a version of the tradition that al-Ṭarasūsī employs (*Al-Hidāyah*, 4:119–20). Yet the tradition seems to be quite weak, as there are at least three versions of it where the four things mentioned differ, and one of them includes only three prerogatives; see Jamāl al-Dīn al-Zayla'ī (d. 762), *Naṣb al-Rāyah, Takhrīj Aḥādīth al-Hidāyah* (published together with *al-Hidāyah*), 4:119–20, for the three versions the transmissions of which do not reach back to the Prophet; the tradition is not mentioned by Wensinck.

<sup>88</sup> *Tuḥfat al-Turk*, 66; MK, fol. 97a, lines 16–18; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 17. Al-Marghīnānī, *Al-Hidāyah*, 4:175, states that al-Shāfi'ī holds the *bayt al-māl* responsible for blood money.

<sup>89</sup> *Tuḥfat al-Turk*, 68; MK, fol. 97a, lines 28–29; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 18.

<sup>90</sup> *Tuḥfat al-Turk*, 67–68, MK, fol. 97a, lines 26–28. There is a disagreement over the presence of the sultan or his deputy at the Friday prayer, but I could not find any reference to the issue in feast prayer; see al-Ṭaḥawī, *Mukhtaṣar al-Ṭaḥawī*, 35; al-Marghīnānī, *Al-Hidāyah*, 2:233; al-Sarakhsī, *Kitāb al-Mabsūt*, 2:25, where the author states that if the sultan stays in his residence, then the people should find out whether its door is open or not, the open door indicating permission for the Friday prayer. The argument seems to depend on the weak tradition referred to above, as the Friday prayer is one of the four prerogatives mentioned. On the other hand, the Shafi'ī al-Shīrāzī (d. 476) recognizes the permission of the sultan for Friday prayer as a *sunnah*; and al-Māwardī, by dividing the mosques into two, the government mosques—which are big and hence host the Friday prayer—and the public mosques, and by giving the right of appointment of a prayer leader to the former



Fifth, in a funeral prayer where both the sultan and the relatives of the deceased are present, Abū Ḥanīfah says that the sultan should lead the prayer, while al-Shāfi'ī claims that the relatives have priority.<sup>91</sup>

Sixth, the booty of the killed does not belong to the killer according to Abū Ḥanīfah, unless the ruler specifies beforehand that whoever kills someone has the right to the booty of the killed; whereas for al-Shāfi'ī, the booty belongs to the killer whether the ruler stipulated so or not.<sup>92</sup>

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exclusively to the sultan, in effect modifies the Shafi'ī view; Norman Calder, "Friday Prayer and the Juristic Theory of Government: Sarakhsī, Shīrāzī, Māwardī," *BSOAS* 49 (1986): 41, 44–45; al-Māwardī, *Al-Aḥkām al-Sulṭānīyah*, 172, 179–80.

<sup>91</sup> *Tuḥfat al-Turk*, p. 68; MK, fol. 97a, l. 29–31; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 18. Al-Shāfi'ī, *Kitāb al-Umm*, 1:461, sees this as a private matter, hence the priority of the relatives. See also al-Ṭaḥawī, *Mukhtaṣar al-Ṭaḥawī*, 41; and al-Marghīnānī, *Al-Hidāyah*, 2:315, who gives an elaborate line of succession according to which if the sultan is not present, then the *qāḍī* should lead the prayer; if he is not present either, then the imam of the neighborhood should lead the prayer; the relatives come only after him.

<sup>92</sup> *Tuḥfat al-Turk*, p. 66; MK, fol. 97a, lines 14–16; Sibṭ Ibn al-Jawzī, *Al-Intiṣār wa-al-Tarjīḥ*, 17; al-Sarakhsī, *Kitāb al-Mabsūṭ*, 10:47–48. Al-Shāfi'ī, *Kitāb al-Umm*, 4:184, states that what the Prophet said at the battle of Ḥunayn, *man qatala qaṭīlan la-hu salabuhu*, is a *ḥukm* since the Prophet gave the booty to the killer on other occasions as well, as opposed to an *ijtihād* limited to this particular case, a view held by Mālik (see n. 2, p. 184). This becomes a trivial issue as that kind of booty is limited to the things that are on the body of the person who is killed, excluding his properties (Ibn Jamā'ah, *Taḥrīr al-Aḥkām*, 220); besides, there are five conditions which qualify whether the killer deserves the booty of the killed (*ibid.*, 219–20).

