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Between Qadis and Muftis: To Whom Does the Mamluk Sultan Listen?

In spite of the proliferation of scholarship on many aspects of life during the Mamluk era, one aspect of Mamluk society that still has not received the attention it deserves—despite the fact that it is crucial to our understanding of the dynamics of life during that time—is the relationship between members of the religious elite.

In this article, I propose to examine the relationship between two groups of religious officials, qadis and muftis, as reflected in their debates in both public and private forums. I will examine the role played by each group and their efforts to influence the changes occurring in society as well as the role of the sultan in endorsing changes in the law suggested by the religious scholars.

In order to do so, I will focus primarily on two cases which best reflect the extent of disagreement and competition which existed among the individuals who were members of these religious groups. The cases selected will show that the debates between religious scholars were frequently characterized by great tension and often led to the public´s opposition to the views of one of the two parties.

Debates between qadis and muftis focused mostly on conflicting interpretations of a point of law. The chronicles frequently report heated debates that took place in a *majlis* presided over by the sultan. The intense discussions would usually be provoked by a question put to the assembly of distinguished scholars by the ruler or an important amir. Occasionally, the full argument relating to the disagreement was expounded upon by a member of the two groups in a short *risālah,* or in a *fatwá.* As a result, we can follow the lines of argumentation of the two groups by consulting the extant *risālah*s or *fatwá*s, or by reading accounts in the chronicles. The examination of the full texts of these *risālah*s and *fatwá*s together with the comments provided by the medieval chroniclers also throws light on the legal procedures that introduced changes in the law. Indeed, this helps us understand how a legal opinion pertaining to a specific case could eventually become binding and take the form of a general law imposed by the ruler.

Before discussing the cases which were the object of disagreement between muftis and qadis, let me review the duties and responsibilities which were attached to their respective positions.[1]

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[1]For general information on the qualification, responsibilities, and function of medieval qadis see

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In his book on Islamic chancery al-Qalqashandī has a section entitled ″Al-Ijāzah bi-al-Iftā' wa-al-Tadrīs″ (License to teach and issue legal opinions).[2] From the title of this section we are already informed that in order to issue a valid legal opinion *(fatwá)* an individual should first receive a license allowing him to do so. The *ijāzah* represents the certification that the individual is authorized to issue a legal opinion according to a specific school of law. Medieval chronicles mention a number of religious scholars who had received *ijāzah*s from prominent scholars. Thus, Ibn Ḥajar al-'Asqalānī mentions in the obituaries for the year 801 that Jamāl al-Dīn al-Zuhrī al-Shāfi'ī had received such a license from his father in the year 791 (″wa-adhana lāhu abūhu fī al-iftā'″).[3] Elsewhere he writes that Muḥammad ibn Muḥammad al-Ghazzī (b. 724), a student in Jāmi' al-Ḥākim, had received a license to issue *fatwá*s from al-Badr Ibn Hilāl.[4] In the obituaries for the year 846 al-Sakhāwī writes about Muḥammad ibn 'Abd al-Raḥmān al-Maḥallī, who was a companion of Ibn Jamā'ah for ten years. Al-Maḥallī had received from the latter an *ijāzah* giving him permission to teach jurisprudence and to expound orally and ″use his pen″ to issue *fatwá*s according to the Shafi'i school of law.[5] Al-Qalqashandī himself had received an *ijāzah* from his shaykh, Sirāj al-Dīn Abū Ḥafṣ, known as Ibn al-Mulaqqin, when the latter had reached the port of Alexandria where the scholar was resident in the year 778.[6]

An individual could receive more than one *ijāzah* issued by different shaykhs. Presumably the more *ijāzah*s the individual had, the more reliable his opinion was. Thus, al-Sakhāwī writes in the obituaries for the year 846 that Qadi Shams al-Dīn al-Qurashī al-Shāfi'ī, who was born in al-Maḥallah in 763, was given an *ijāzah* by Maḥmūd al-'Ajlūnī. He was also given an *ijāzah* permitting him to teach and issue *fatwá*s by al-Bulqīnī in the year 809, while in 782 he had been given an *ijāzah* by Ibn 'Aqīl.[7] In the obituaries for the year 852 he writes about his own shaykh, Ibn Ḥajar al-'Asqalānī, and says that he had received *ijāzah*s to teach and to issue *fatwá*s from al-Bulqīnī, Ibn al-Mulaqqin, and al-Abnāsī.[8]

Al-Qalqashandī provides us with the text of his own *ijāzah,* which is interesting

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Ibrāhīm ibn 'Abd Allāh Ibn Abī al-Dam, *Adab al Qaḍā'* (Baghdad, 1984). For information on justice in the Mamluk period, see Jørgen S. Nielsen, *Secular Justice in an Islamic State: Maẓālim under the Baḥrī Mamlūks* (Leiden, 1985).

[2]Aḥmad ibn 'Alī al-Qalqashandī, *Ṣubḥ al-A'shá fī Kitābat al-Inshā'* (Cairo, 1913–18), 14:322.

[3]Aḥmad ibn 'Alī Ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr bi-Anbā' al-'Umr* (Beirut, 1986), 4:62.

[4]Ibid., 5:344–47.

[5]Muḥammad ibn 'Abd al-Raḥmān al-Sakhāwī, *Al-Tibr al-Masbūk fī Dhayl al-Sulūk* (1897; reprint, Cairo, [1972]), 60.

[6]Al-Qalqashandī, *Ṣubḥ,* 14:322–25.

[7]Al-Sakhāwī, *Al-Tibr,* 60.

[8]Ibid., 230–231.

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because it throws light on the qualifications of a mufti and the latitude that its possessor enjoyed in the interpretation of the law. In it one reads: ″Knowledge is the strongest form of worship *(‘ilm aqwá asbāb al-‘ibādah).* . . . Since the aforementioned [person] has grown and was brought up in the climate of knowledge and virtue *(‘ilm wa-al-faḍīlah)* and has shown high moral standards *(akhlāq)* and has been in the company of distinguished shaykhs and jurists working under their guidance . . . he has been given the license to teach according to the school of law of al-Imām al-Shāfi‘ī . . . and to issue *fatwá*s *(an yuftī)* to whomever approaches him for a legal opinion whether in written or oral form *(khaṭṭan aw lafẓan)* according to his own *madhhab.* This license is issued to him because he has been found perfectly eligible and highly qualified due to his vast knowledge.″ The *ijāzah* was certified and signed by a number of religious scholars.[9]

As is clear from the preceding, the mufti′s qualifications rested on his knowledge of the various fields of the religious sciences in his *madhhab.* It is not therefore surprising to read that the ones given *ijāzah*s were individuals who had proven themselves as scholars in their *madhhab*. These individuals often occupied teaching positions or at least, as in the case of al-Qalqashandī, were qualified to do so. This point is confirmed by information found in *waqf* documents. For example, one reads in the *waqfīyah* of Sultan Ḥasan that the founder appointed to the Qubbah a teacher-mufti *(mudarris muftī)* qualified to teach Quran exegesis.[10] The same document refers to a salary of three hundred *nuqrah* dirhams being paid to the *qāḍī al-qudāh* Tāj al-Dīn al-Subkī al-Shāfi‘ī, who was *qāḍī al-qudāh* in Damascus, to perform the duties of mufti *(‘alá waẓīfat al-iftā’)* during his lifetime and after him to his successor as *qāḍī al-qudāh* in Syria, provided that he also performed the functions of mufti *(yaqūm bi-waẓīfat al-iftā’).*[11] The *waqfīyah* refers also to the appointment of a shaykh *mi‘ād,* who should be a mufti well known for his religiosity *(‘ālim muftī mashhūr bi-al-diyānah).*[12] The *waqfīyah* of al-Mu’ayyad Shaykh stipulates that the *shaykh al-ṣūfīyah,* who was from the Hanafi *madhhab,* should be well acquainted with the works of jurisprudence of his own school and the works of the religious scholars of the other schools of law.[13] He had to be qualified to teach and to issue *fatwá*s. The *waqfīyah* of al-Jamālī Yūsuf al-Ustādār also mentions the appointment of a Shafi‘i religious scholar qualified to teach and issue *fatwá*s. As per the founder′s instructions the individual chosen, Shaykh Abū al-Ma‘ālī Muḥammad al-Khwārizmī al-Shāfi‘ī, was to take up residence in the

[9]Al-Qalqashandī, *Ṣubḥ,* 14:322–25.

[10]Ḥujjat Waqf al-Ṣulṭān Ḥasan, Dār al-Wathā’iq MS 365, fol. 441.

[11]Ibid., fol. 447.

[12]Ibid., fol. 444.

[13]Ḥujjat Waqf al-Ṣulṭān al-Mu’ayyad Shaykh, Ministry of Awqāf MS 938, fol. 44.

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foundation, a *khānqāh*. The shaykh was to be paid a salary for issuing legal opinions.[14]

Interestingly, it appears from these cases that the issuing of legal opinions was remunerated by a fixed salary paid from the *waqf*. In general, muftis who did not occupy endowed positions were also remunerated for their legal opinions. This, of course, opened the door for bribes and entailed the payment of large sums of money by rulers or amirs in return for a favorable opinion being issued by the mufti. On the other hand, since the issuance of *fatwá*s had become a lucrative business, religious scholars too fell prey to corruption as they began giving licenses to issue *fatwá*s to individuals who were not qualified to be muftis, in return for handsome sums of money. This poor state of affairs seems to have become widespread by the end of the fourteenth century. In the obituaries for the year 795, Ibn Ḥajar al-'Asqalānī mentions Aḥmad ibn 'Umar ibn Hilāl al-Iskandarānī, then al-Dimāshqī, a Maliki *faqīh* whom he praises as a good scholar. However, he wrote, he was to be blamed for accepting bribes *(rishwah)* to give licenses to issue *fatwá*s *('alá al-idhn fī al-iftā')* to individuals who were not qualified. He was often denounced for this by other religious scholars.[15]

An individual could have his license to issue *fatwá*s revoked if his peers called his performance or qualifications into question. Al-Sakhāwī mentions that in the year 852 a *majlis* attended by the sultan and by al-Qalqashandī, al-Manāwī, and other Shafi'i scholars met to reconsider the position occupied by Shaykh Ibn Jamā'ah, shaykh of the Ṣāliḥīyah in Jerusalem, at the request of al-Sirāj al-Ḥimṣī. The latter had claimed that Ibn Jamā'ah was not qualified to teach and accused him of issuing *fatwá*s which were faulty![16] Ibn Ḥajar wrote concerning the Shafi'i scholar Ibn al-Naqqāsh that his exegesis was rather peculiar and that he favored the amirs.[17] Ibn al-Naqqāsh's friendship with Sultan Ḥasan saved him temporarily from the attacks of Quṭb al-Dīn al-Hirmāsī. Yet, as al-Maqrīzī reports, in the year 760 he was summoned in front of a *majlis* attended by Qāḍī 'Izz al-Dīn ibn Jamā'ah at the request of Quṭb al-Dīn al-Hirmāsī and was accused then by al-'Irāqī of issuing *fatwá*s not in conformity with the teachings of the Shafi'i *madhhab*.[18] Ibn Ḥajar, who is more explicit, adds that he was accused of issuing *fatwá*s to some Copts. As a result, Ibn al-Naqqāsh was forbidden to issue *fatwá*s. He was

[14]Ḥujjat Waqf al-Jamālī Yūsuf al-Ustādār, Dār al-Wathā'iq MS 17/106.

[15]Ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr,* 3:171.

[16]Al-Sakhāwī, *Al-Tibr,* 216.

[17]Ibn Ḥajar al-'Asqalānī, *Al-Durar al-Kāminah fī A'yān al-Mi'ah al-Thāminah* (Beirut, n.d.), 4:71.

[18]Aḥmad ibn 'Alī al-Maqrīzī, *Kitāb al-Sulūk li-Ma'rifat Duwal al-Mulūk,* vol. 3 pt. 1 (Cairo, 1970), 47–48.

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also prevented from giving public sermons *(majālis al-wa'ẓ)* unless he read from a book.[19]

Regarding the qualifications of qadis, al-Qalqashandī wrote that the position of qadi was given to qualified individuals known for their caring, honesty, piety, and humility. He adds that the position should go to someone who is going to exert his personal *ijtihād* to ensure that justice prevails after having relied on the evidence presented by litigant parties, making sure that all are treated equally.[20]

Ibn Abī al-Dam al-Shāfi'ī defines *qaḍā'* as a *farḍ kifāyah* whose aim is to order people, compelling them to accept a ruling. When issuing a verdict in his capacity as judge, a qadi was bound by the testimony of witnesses and the evidence pertaining to the case he was examining. After consulting the various juridical sources he should be prepared to render his judgement. However, in cases where the judge could not find any precedent or help from the sources consulted, he was asked to use his *ijtihād,* if he considered himself a worthy *mujtahid.*[21] Otherwise, as al-Ṭarābulusī suggested, it was imperative for him to refer to a mufti ″in cases for which he does not find any information that can help him formulate his judgement; if he considers himself a *mujtahid* he could use his own *ijtihād* or use analogical reasoning based on precedent before rendering his judgement. But if he does not consider himself a *mujtahid* he should ask a mufti for an opinion and render his judgement on the basis of it. In any case, the qadi should never render a judgement without having full knowledge of the legal issue.″[22] In issuing a legal opinion, a mufti had a wider scope of proofs at his disposal than a qadi, taken from his own *madhhab* or other *madhhab*s. This latitude often allowed the mufti to propose opinions and solutions to problems which sometimes clashed with the narrower interpretations of the qadis. Accordingly, it is not surprising to see rulers and their amirs resort to the muftis whenever they wanted to legitimize some course of action or behavior which would normally raise criticism and opposition on the part of the religious scholars. Obviously, in doing so they were taking a risk, since the result of the *fatwá* was not guaranteed always to favor them. In spite of the resort to bribery already referred to, the mufti might still speak his mind and oppose the ruler. Thus, the dilemma for the ruler and the amirs would be whether to act on their own and face the wrath of their opponents, or to have some religious scholar sanction their actions. Often in cases which required measures which made it necessary to skirt the law, such as the illegal appropriation of

[19]Ibn Ḥajar al-'Asqalānī, *Al-Durar al-Kāminah*, 4:71.

[20]Al-Qalqashandī, *Ṣubḥ,* 14:341.

[21]Ibn Abī al-Dam, *Adab al Qaḍā',* 1:129 ff.

[22]'Alī ibn Khalīl al-Ṭarābulusī, *Mu'īn al-Ḥukkām fī-mā Yataraddad bayna al-Khaṣmayn min al-Aḥkām* (Cairo, 1973), 26.

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funds, for example, Mamluk rulers found themselves forced to consult the religious scholars. Since the measures contemplated by the ruler were considered illegal, religious scholars were put in an awkward position. Indeed, by providing an opinion which would favor the upholding of the law they would clearly oppose the ruler´s wishes and thus run the risk of incurring the ruler´s wrath. Few of them would take this risk if the ruler´s actions threatened their self interest. In general, by the end of the fourteenth century, upholding the letter of the law required courage. Accordingly, Ibn Ḥajar al-'Asqalānī praises Qāḍī Tāj al-Dīn al-Ṭarābulusī, who was mufti in Dār al-'Adl, saying that he would insist on his rulings and he would not knuckle under like others did.[23] Al-Maqrīzī writes that in the year 780 Barqūq, who was then *amīr kabīr,* convened a *majlis* to which he invited judges and other religious scholars to discuss the possibility of seizing land which had been endowed for mosques, madrasahs, *khānqāh*s, and *zāwiyah*s as well as a number of other endowments. This caused an uproar among some of the scholars who spoke against it. Al-Bulqīnī, who was present at the meeting, remained silent, possibly in an effort to avoid voicing his opposition to Barqūq´s request. When he was asked for the reason for this silence his answer was, ″No one asked for my opinion.″ So Barqūq indicated that he should speak and he was forced to voice his opposition to the confiscation of any legal endowment. Ibn Abī al-Baqā', who was also present at this meeting, stood up and in an apologetic way addressed the group of amirs, saying that they were in positions of authority and the decision was theirs. After an angry dispute al-Bulqīnī said, ″Oh amirs, you order the qadis [to give you their opinion] but if they don´t provide the opinion you want you dismiss them.″[24]

Ibn Ḥajar al-'Asqalānī mentions that in the year 803, when the Mongol Tīmūr had invaded Sivas and was advancing toward northern Syria, a *majlis* was convened to decide whether it was legal to seize half or a third of the merchants´ capital in order to equip the army. The request in itself was not unique but the answer provided was indeed revealing. The qadi Jamāl al-Dīn al-Malaṭī answered the ruler: ″If you decide on your own, you have the authority to do so *(fa-al-shawkah lakum),* but if you want to base your decision on our issuing a *fatwá* to that effect, then it is impossible for any of us to do so *(wa-in aradtum dhālika bi-fatāwinā fa-hādhā lā yajūz li-aḥad an yuftī bih).*″[25] Such an answer is quite interesting since it was uttered by someone who was often accused of favoring illicit behavior.

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[23]Ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr,* 9:22.

[24]Al-Maqrīzī, *Sulūk* , vol. 3 pt. 1, 345–46.

[25]Ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr,* 4:191. Elsewhere (4:350) the author writes that al-Maḥallī´s answer was: ″If you are acting from a position of authority then all the power is yours. As for us, we will not issue such a *fatwá* nor would we accept to endorse it″ *(wa-lā nuḥillu an yu'mal).*

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Indeed, this mufti was often accused of issuing *fatwá*s making it legal to eat hashish, and, says Ibn Ḥajar, he often exerted himself to find subterfuges (*ḥiyal)* to allow *ribā*.[26]

Issuing *fatwá*s which supported a view which was contrary to the traditional interpretations of jurists could have far reaching implications. Indeed, if adopted by the ruler and embraced by a group of scholars, such *fatwá*s could ultimately lead to changes and open the way for the widespread adoption of practices previously considered illegal by the majority of religious scholars. Muftis like al-Bulqīnī and al-Subkī were known to have defied the traditional views of their school of law without hesitation, despite the disapproval of their peers, because their legal opinions were supported by the ruler and the military elite. Al-Suyūṭī, who was aware of the legal implication of their *fatwá*s, provided an apologetic explanation for their behavior, saying that even though they had opened the door for illegal practices, they were responding to the needs of their time. Furthermore, he did not hesitate to claim that a *fatwá* should in fact reflect the reality of the time.[27]

The opinions of muftis seem to have played a major role in introducing legal changes. Accordingly, we should pay closer attention to the content of *fatwá*s and the way they were formulated, since in the long run, when the public uproar faded, they were often followed by the imposition of a law. The greater the prestige of the scholar issuing the opinion, the more effective his opinion and the weaker the chances that it would be challenged by his peers. Some qadis had forged quite a reputation for themselves and seem to have been put to the test. Muftis from the Syrian part of the empire seem to have been particularly effective in challenging the qualifications of other scholars. Ibn Ḥajar al-ʻAsqalānī notes the arrival in Cairo in the year 828 of Yūsuf ibn Quṭb al-Dīn al-Ḥanafī from Aleppo and his boast that no other scholar could compare to him. So the sultan al-Ashraf Barsbāy, eager to test the validity of his claim, summoned a group of renowned Hanafi scholars to a *majlis*. He asked for a collection of *fatwá*s to be brought. He then ordered that one *fatwá* should be assigned to each mufti for comment. Accordingly, Shaykh Niẓām al-Dīn Yaḥyá, the shaykh of the Ẓāhirīyah; Shaykh Badr al-Dīn al-ʻAntābī; Shaykh Sirāj al-Dīn, who was the shaykh of the Shaykhūnīyah; Ṣadr al-Dīn ibn al-ʻAjamī; Shaykh Saʻd al-Dīn ibn al-Dīrī, shaykh of al-Muʼayyadīyah; and Shaykh Yūsuf, respectively, were ordered to provide their legal opinion on the questions assigned to each of them. They all agreed except for shaykh Yūsuf, who said he only wrote opinions in his home. So they all proceeded to write. Once they had finished, the sultan forwarded their opinions to the Hanafi *qāḍī al-qudāh* Zayn al-Dīn for him to examine and decide who was

[26]Ibid., 348.

[27]Al-Suyūṭī, *Al-Ḥāwī lil-Fatāwī* (Beirut, n.d.), 1:206–10.

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right and who was wrong in his answer.[28] On the basis of this, are we to understand that the *qāḍī al-qudāh* had the power to oversee the *fatwá*s of other religious scholars? Until we have more information on the dynamics regulating *fatwá*s and the interaction between scholars at different levels any answer to this question would be pure speculation.

As far as ceremonial and public appearances go, it is certainly clear that the *qāḍī al-qudāh* enjoyed a higher status than the mufti of Dār al-'Adl. Indeed, concerning Dār al-'Adl al-Maqrīzī writes that the custom was for the sultan to sit in the Īwān Kabīr and the qadis of the four schools of law to sit at his side. The Shafi'i qadi, who enjoyed a higher status, would sit to his right, followed by the Hanafi, then the Maliki, and finally the Hanbali. However , after the rule of Sultan al-Nāṣir Muḥammad, this order changed and the four qadis took their place on either side of the sultan. The Shafi'i qadi sat to the right, followed by the Maliki and the *qāḍī 'askar,* then the *muḥtasib* of al-Qāhirah, then the Shafi'i mufti of Dār al-'Adl. The Hanafi qadi would sit to the sultan's left, followed by the Hanbali.[29]

Regardless of who took precedence over the other in legal or ceremonial matters, the question remains: to whom did the sultan listen when he was seeking advice? And whose decision was implemented when it came to serious matters?

Among the interesting cases mentioned by al-Maqrīzī there is one concerning a *majlis* which had met at the request of Sultan Ḥasan. This particular *majlis* gave way to a heated discussion between the qadis and muftis. This debate prompted Sultan Ḥasan to raise the question of the importance of muftis and their *fatwá*s. Indeed, while the qadis were entrenched in their positions and were attacking the opinions of muftis, claiming that they had no basis in the law, the sultan addressed himself to the qadis, saying, "If the *fatwá*s have no bearing on legal matters, let us abolish both the muftis and their *fatwá*s."[30]

This *majlis,* which was held at Siryāqūs, had met as a result of an incident which had taken place in the year 760, when the mosque of al-Ḥākim was being restored. The restoration took place under the supervision of Shaykh Quṭb al-Dīn al-Hirmāsī. On the occasion of this restoration the sultan had endowed the mosque with a *waqf* which was to support some of the needs of the foundation and the salaries of its staff. The sultan chose the same occasion to remunerate the supervisor of the work, al-Hirmāsī, by setting aside for this shaykh and his children some part of the agricultural land. It is this particular land which became the object of the controversy a year later. Indeed, in the year 761 Sultan Ḥasan, who had turned against al-Hirmāsī, confiscated his fortune and destroyed his house. The reason

[28]Ibn Ḥajar al-'Asqalānī, *Inbā' al-Ghumr,* 8:63–64.

[29]Al-Maqrīzī, *Al-Mawā'iẓ wa-al-I'tibār bi-Dhikr al-Khiṭaṭ wa-al-Āthār* (Bulaq, 1854), 2:208–9.

[30]Ibid., 278–80.

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behind this change of heart is in itself quite interesting. According to Ibn Ḥajar al-'Asqalānī, the person behind this reversal of fortune was Ibn al-Naqqāsh, who had been known for his unorthodox exegesis. As previously mentioned, this scholar had often been accused of issuing *fatwá*s which were in conflict with the teachings of the Shafi'i school of law. When Shaykh al-Hirmāsī heard about this, he attacked him in public and spread rumors about him. Ibn al-Naqqāsh tired of this and vowed to retaliate. His goal was reached when he succeeded in turning the sultan against al-Hirmāsī, prompting this ruler to seize the properties of the shaykh, to order the destruction of his house, which was built in front of the Jāmi' al-Ḥākim, and to exile him and his children.[31]

The subject of the heated debate between the qadis and muftis was a plot of agricultural land totaling 560 feddans in Ṭandatā.[32] A share of this land had been set aside as *waqf* to benefit the mosque, while the rest of the land had been given to al-Hirmāsī by the sultan at the request the shaykh. After the demise of al-Hirmāsī, the sultan wished to seize the shaykh´s share of this land. However, he was faced with a problem: al-Hirmāsī had turned the agricultural land received from the sultan into a *waqf*. By turning the land into a *waqf,* al-Hirmāsī had invalidated the clause which, in agreement with the Hanafi school of law, would have allowed the sultan to seize it.

Trying to find a loophole in the law, Sultan Ḥasan asked religious scholars to re-examine the validity of the whole *waqf,* claiming that when he had made his declaration *(ishhād)* and sworn in front of the witnesses that he had endowed this land, he had not read the whole document, nor was he aware of the exact share allotted to al-Hirmāsī. The sultan also claimed that he was convinced that the greatest part of the land endowed was to benefit the mosque of al-Ḥākim and that only a negligible plot was to benefit al-Hirmāsī. Upon investigation it appeared that the witnesses of this *waqf* had sworn that they had taken cognizance of the detailed content of the *waqf,* which had apparently been drafted by al-Hirmāsī and clearly favored him. The problem, put before the religious scholars, spurred a heated debate between qadis and muftis. Indeed, muftis such as Ibn 'Aqīl, al-Subkī, al-Bisṭāmī, al-Baghdādī, and others argued for the nullification of the *waqf* since it was contingent upon an invalid declaration. The Hanafis argued that regardless of the faulty acknowledgment and declaration of a witness, this *waqf* could not be nullified since the content of its clauses had been legally approved by the Hanafi qadi and its execution by qadis of other *madhhab*s was sound. So, says al-Maqrīzī,

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[31]Ibn Ḥajar al-'Asqalānī, *Al-Durar al-Kāminah*, 4:71.

[32]Ibrāhīm ibn Muḥammad Ibn Duqmāq, *Kitāb al-Intiṣār li-Wāsiṭat 'Iqd al-Amṣār* (Bulaq, 1893), section 2, 94, mentions Ṭandatā among the towns of the District of Gharbīyah, whose *'ibrah* was 15,000 dinars, distributed mostly as *iqṭā'* for the amirs´ *ṭablkhānah*s.

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the sultan summoned muftis and the qadis to Siryāqūs, where he was spending some time, but only Tāj al-Dīn al-Manāwī, the deputy of the Shafi'i qadi, appeared.[33] The Shafi'i, Hanafi, and Hanbali qadis claimed they were too sick to attend. Hence, the sultan gathered the religious scholars who were in attendance in one of the palaces located in Maydān Siryāqūs and put the case before them, asking them to decide the matter. All but one scholar concurred that the *waqf* was null. Al-Manāwī, however, said that, according to the school of Abū Ḥanīfah, the ruling was valid even if the declaration of the witness and swearing was faulty. This statement caused an uproar on the part of the muftis, both Shafi'is and Hanafis. They all argued that this was not the view of his *madhhab* and that since the consensus of scholars did not support al-Manāwī's views, they declared that the ruling was to be considered invalid. To this al-Manāwī replied, "Judgements are not rendered by way of *fatwá*s" *(al-aḥkām mā hiya bi-al-fatāwī)*. The aforementioned qadi had already claimed, in another *majlis* involving a case concerning the Jewish community, that the opinion of muftis was to be disregarded and that *fatwá*s should not be relied upon when issuing a judgement! Hearing this, the audience of scholars retorted that he was wrong and that he showed his great ignorance, since no legal judgement could be rendered without a *fatwá* from God and His messenger. They also added that the status of *fatwá*s was established first by God the Almighty as stated in the Quran. Sirāj al-Dīn al-Hindī and others who were present at the *majlis* declared that the statement of al-Manāwī was blasphemous and that the school of Abū Ḥanīfah held that whoever disdained *fatwá*s and muftis was an infidel *(kāfir)*. Defending himself, the shaykh argued that his objection was only to *fatwá*s which conflicted with the teachings of a school of law. Interestingly, they all answered that he was still wrong in arguing this, since a *fatwá* could contradict a particular *madhhab* and yet be in agreement with truth and justice. Sultan Ḥasan, who was present during this altercation, interjected: "If you claim that *fatwá*s have no authority, let us therefore dismiss all muftis and abolish *fatwá*s!" He then paused, confused about what he had heard, and asked: "How should I act in this situation?" Referring to this gathering, 'Alī Mubārak mentions that when Sultan Ḥasan asked the qadis and muftis whether he could invalidate the *waqf* of the plot of land in Ṭandatā they all concurred that he could except for al-Manāwī, who stood firm declaring that it was illegal to do so.[34] Praising the stand taken by this shaykh, al-Maqrīzī mentions that the land remained in the hands of al-Hirmāsī's children. In a note of dismay he also calls upon the reader to compare the principled stand taken by al-Manāwī to the behavior of scholars of

[33] Al-Maqrīzī, *Khiṭaṭ,* 2:280.

[34] 'Alī Mubārak Bāshā, *Al-Khiṭaṭ al-Tawfīqīyah al-Jadīdah li-Miṣr al-Qāhirah* (1888; reprint, Cairo,1980), 4:169.

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his time who all fail to uphold the rigorous application of the law and issue rulings which favor the ruling class.[35]

This case suggests that up to the mid-fourteenth century qadis were still able to hold their own and did not yield to pressure from the rulers or their amirs.[36] In fact it seems that the qadis´ influence remained strong up till the beginning of the fifteenth century, when they began to temporize in their rulings. This was probably due to the fact that the position of qadi came to be filled by people who, for the most part, had obtained their position by paying bribes and were unqualified. It is precisely then that the opinions of famous religious scholars seemed to matter. In fact, muftis´ legal opinions were carefully considered by qadis, who relied upon them especially when the rulings they had to issue would set a precedent that would initiate a change.[37] Often, the muftis´ opinion stood as a check on the lack of rigorous adherence to the letter of the law shown by qadis, reminding them of the necessity of applying the law without favoritism. One of the cases worth discussing concerns a *fatwá* issued by al-Suyūṭī entitled ″Al-Jahr bi-Man‘ al-Burūz ‘alá Shāṭi’ Nahr.″[38] This particular *fatwá* had led to the spread of false rumors among people, prompting al-Suyūṭī to defend himself, as he mentioned at the beginning of the *fatwá.* Ibn Iyās wrote that in 896 a rumor spread among the people claiming that Shaykh Jalāl al-Dīn al-Suyūṭī had issued a *fatwá* which stated that erecting a building on the shores of al-Rawḍah was not permissible since the consensus of religious scholars recognized that it was illegal to build on the banks of rivers. As for those who claimed that this was permissible according to the Shafi‘i school of law, said al-Suyūṭī, they are wrong since such permission was not found in any of the works of the Shafi‘i scholars.[39] Al-Suyūṭī reports the reasons which led him to issue this *fatwá,* saying that a man who owned a house in al-Rawḍah undertook some renovations which led to additions in the direction of the river. These additions were followed by other construction which brought the total to thirty six *dhirā‘,* all added in the direction of the banks of the river, that is to say, the interdicted area of the *"ḥarīm al-nahr."* Due to these new additions, his building was projecting beyond the row of houses adjacent to it. So, said al-Suyūṭī, he told him that this was illegal according to the four schools of law. The man started spreading rumors claiming that al-Suyūṭī issued a *fatwá*

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[35]Al-Maqrīzī, *Khiṭaṭ,* 2:280.

[36]For some other examples see al-Maqrīzī, *Sulūk* , vol. 3 pt. 1, 345–46; Ibn Ḥajar al-‘Asqalānī, *Inbā’ al-Ghumr,* 4:350.

[37]See, for example, what al-Suyūṭī says in *Al-Ḥāwī lil-Fatāwī,* 1:206–10; see also al-Sakhāwī, *Al-Tibr,* 164.

[38]Al-Suyūṭī, *Al-Ḥāwī lil-Fatāwī,* 1:194–97.

[39]Ibn Iyās, *Badā’i‘ al-Zuhūr fī Waqā’i‘ al-Duhūr* (Cairo, 1984), 3:283.

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asking for the demolition of all the houses of al-Rawḍah and this, according to the religious scholar, was a lie.

Because the rumor was creating an uproar among the people, al-Suyūṭī decided to defend himself in a work in which he produced the arguments of all four schools of law in support of the prohibition against building on the banks of rivers. Our interest in the *fatwá* lies in its conclusion which provides us with an insight into the procedures leading to the adoption of changes in legal practice. It also allows us to understand the relationship between the *qāḍī al-qudāh* of a *madhhab* and a mufti, since it shows how, at the request of the latter, the qadi confirmed the need for a change. Similarly, it reveals the role played by the sultan in the endorsement and promulgation of new laws.

In his conclusion al-Suyūṭī says: ″I sent the case of this man to the Shafi'i *qāḍī al-qudāh.* I joined to it the views of the four schools of law. I also informed him that rulings issued in the past by scholars allowing people to construct buildings on the shores of al-Rawḍah were illegal.″ The *qāḍī al-qudāh* accepted the truth and instructed his deputies not to issue permits to build on the shores of al-Rawḍah. As he prepared to summon the individual concerned to his court to sanction him and impose the prohibition on him, al-Suyūṭī sent the qadi a note in which he suggested that, rather than impose the prohibition on a single individual, it would be preferable that the prohibition take the form of a general prohibition. Because the qadi appeared perplexed, says al-Suyūṭī, he explained to him that this course of action was permissible since in an earlier case Shaykh Taqī al-Dīn al-Subkī had ruled in the same way and had even written a book about it. Al-Suyūṭī sent al-Subkī´s work to the *qāḍī al-qudāh,* who then issued a general prohibition against building on the shores of al-Rawḍah. His ruling was confirmed by the Hanbali *qāḍī al-qudāh* and the Maliki *qāḍī al-qudāh.* Following this prohibition, al-Suyūṭī sent the qadi´s ruling and his own work on the subject to the sultan. After taking cognizance of their works, the sultan imposed a general prohibition on encroaching on the shores of al-Rawḍah and threatened to demolish any such illegal buildings.

From the preceding it appears that in issuing his order of prohibition, the sultan was relying on the ruling of the *qāḍī al-qudāh* and not entirely on the *fatwá* of al-Suyūṭī. However, it also appears that the *qāḍī al-qudāh* did not decide on his own to issue a general prohibition but in doing so had taken the *fatwá* of al-Suyūṭī into consideration. Also, the one who initiated the contact with the sultan was not the *qāḍī al-qudāh* himself but the mufti, al-Suyūṭī.

We can therefore speculate that in order to be effective, any change in the law or any general decree had to have the final approval of the sultan who would be the one to issue it. Often, after adopting a decision which was met with great opposition from the population, a ruler would request from the religious scholars

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the writing of a *fatwá* or a *risālah* which would justify his action. Amirs would often follow the same pattern. For example, one important *risālah* was written for the amir Yashbak al-Dawādār when his decision to create changes in the urban landscape caused an uproar among the population. The *risālah,* written by Ibn Shiḥnah, provides arguments supporting the action of the amir. At the end of the work, the author writes: ″. . . and if you reflect upon the proof that I have provided it will become clear to you that this [action] is in conformance with truth and justice . . . and whoever opposes it in our time relies only on personal interest and whim.″[40] Ibn Iyās refers to this incident by saying that in the year 882 Yashbak decided to clean the streets and widen the thoroughfares. So he ordered the demolition of buildings that were blocking traffic in public streets, a matter which caused a lot of harm to the owners of these properties. Apparently he was able to do so thanks to the help of one of the deputies of the Shafi'i qadi, Fatḥ al-Dīn al-Sūhājī, who, under pressure from the amir, had issued a ruling favoring the demolition.[41]

Examination of the cases discussed above indicates that whenever the rulers were faced with problems involving decisions touching a point of law, they consulted with the qadis.[42] It is difficult, however, to determine whether their behavior was entirely dictated by their eagerness to respect the law or by their attempt to have someone else bear the blame for unpopular decisions. In any case, it seems clear that they would always prefer to clothe their actions in an aura of legality. Accordingly, in cases where the qadis′ opinions went against the rulers′ will, the latter would first try to exert pressure on them in an attempt force them to validate his decision. If still faced by the opposition of qadis who would not yield to pressure, as was often the case up to the beginning of the fifteenth century, the ruler could still ask a mufti to issue a *fatwá* in his favor. In general, muftis enjoyed greater latitude in their interpretation of the law. By the fifteenth century many were indeed inclined to condone decisions that were unpopular with the masses but favorable to the ruler or the elite.

When it came to introducing changes into the law, it seems that muftis′ legal opinions had first to be endorsed by the qadis before being enacted by the sultan. In all cases, whether the sultan listened to the qadis or the muftis, he was the one who had the final word in enacting a law or issuing a decree.

In conclusion, to answer the question, to whom did the Mamluk sultan listen when he was seeking advice? one is tempted to answer that the sultan listened to

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[40]Ibn Shiḥnah, ″Taḥṣīl al-Ṭarīq ilá Tashīl al-Ṭarīq,″ Arab League MS 1337, fol. 112.

[41]Ibn Iyās, *Badā'i' al-Zuhūr*, 3:127–28.

[42]It should be clear that qadis were often in possession of licenses which allowed them to issue *fatwá*s. However, when they were approached by the ruler seeking their advice in their capacity as *qāḍī al-qudāh,* it seems that they were bound by a stricter interpretation of the law.

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whomever was providing him with the opinion he wanted to hear. In other words, the Mamluk sultan listened to himself!

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