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Taqlīd and Tillage in the Works of Two Taqī al-Dīns

Taqī al-Dīn al-Subkī (683–756/1284–1355) and Taqī al-Dīn Ibn Taymīyah (661–728/1263–1328) were two prominent scholars that shared a name, a time period, and a geographic locale. They were, however, anything but colleagues: al-Subkī embodied the Cairo Sultanate's administrative normativity; a chief judge and the father of a chief judge, al-Subkī stood in stark contrast to the oft-dissenting Ibn Taymīyah, the latter being no stranger to the Sultanate's jail cells. The two scholars also diverged legally on many points: al-Subkī's biography is replete with mentions of polemics against Ibn Taymīyah and vice versa. Despite their famous differences on points ranging from the eternality of hellfire[1] to the legal status of oaths of divorce,[2] the two men had a shared position on *muzāraʿah,* the sharecropping contract. The Hanbali Ibn Taymīyah concurred with his *madhhab*'s position on the topic, offering a new rationale to the classical position. The Shafiʿi al-Subkī, in contrast, admits that by adopting the opinion he articulates on sharecropping, he dissents with the dominant position of the *madhhab,* including the opinion of its revered eponymous scholar, Muḥammad ibn Idrīs al-Shāfiʿī (d. 820).

This study explores the ways the two scholars dealt with this legal question and uses the question of sharecropping to better understand how scholars dissented or concurred with their *madhhab*s based on both legal and extra-legal factors. We are interested here in how scholars understood their position within the legal schools and how they understood the status of peasants within the polity. The two views, strikingly enough, are deeply intertwined. Considering that "under the *muzāraʿa* contract, the unequal distribution of the means of production must necessarily lead to an unequal and hierarchical relationship between the partners to the contract,"[3] studies of relations to the means of production can enrich our understanding of social category and hierarchy among the various subjects inhabiting the Cairo Sultanate's countryside.

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[1]Muḥammad ibn Ismāʿīl al-Amīr al-Sanʿānī, *Rafʿ al-astār li-abṭāl adallat al-qāʾilīn bi-fanāʾ al-nār,* ed. Muḥammad Nāṣir al-Dīn al-Albānī (Beirut, 1984).

[2]Carolyn Baugh, "Ibn Taymiyya's Feminism?" in *Muslima Theology: The Voices of Muslim Women Theologians* (Frankfurt, 2013), 181.

[3]Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London, 1988), 58.

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I argue that the overlap between al-Subkī and Ibn Taymīyah on this point of normative law demonstrates the complex ways in which jurists could navigate delicate legal and political questions. The two jurists reached the same position using different methods, and positioned themselves differently vis-à-vis their respective legal schools. This demonstrates, first, that jurists found various methods to reach a desirable legal position on the topic of sharecropping, a desirability that was rooted in socio-political as well as moral necessities. Second, the positions of the two Taqī al-Dīns demonstrate that deference to the *madhhab* did not strictly fall in the *taqlīd-ijtihād* dichotomy. In fact, they do not fall in the triumvirate proposed by Ahmed Fekry Ibrahim, where he proposes to break the dichotomy by introducing the term *ittibāʿ*.[4] For Ibrahim, *ittibāʿ* "refers to the verification of the evidentiary grounds of a legal rule, whether performed by a jurist or a layperson."[5] Instead, I propose that we think of the dominant position of the *madhhab* as a hegemonic opinion within a certain legal community, an opinion that top jurists could concur with or dissent from, often using fatwas to articulate their position. The methods and reasons jurists cited for their concurrence or dissent allowed for a subtle and ongoing evaluation of moral and social questions. Not every return to the foundational sources of Islamic law was an attempt to dissent from the dominant opinion, and not every attempt to adhere to the *madhhab*'s position was a strict concurrence with that opinion. Sharecropping is an important case study because it offers an opportunity to examine a point where questions of morality, politics, law, and administration came together for jurists in tangible ways.

The importance of the smallholding farmer's knowledge, the cohesion of the rural community, and the realities of farming in the Nile Valley and the Levant were as influential on each jurist's legal position as *madhhab* affiliation or administrative position. Apart from the political and economic realities, I point to how the metaphors for farming that permeate several genres of late medieval literature recur in legal literature across *madhhab*s, and how these metaphors may have also led the two jurists to similar conclusions. I agree with the work of Sherman Jackson[6] and Mohammed Fadel,[7] who have stipulated that *taqlīd* was important for the independence of the judiciary and the rule of law, respective-

[4] Ahmed Fekry Ibrahim, "Rethinking the Taqlīd–Ijtihād Dichotomy: A Conceptual-Historical Approach," *Journal of the American Oriental Society* 136, no. 2 (2016): 285, https://doi.org/10.7817/jameroriesoci.136.2.285.

[5] Ibid., 288.

[6] Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī,* Studies in Islamic Law and Society, vol. 1 (Leiden, 1996).

[7] Mohammad Fadel, "The Social Logic of Taqlīd and the Rise of the Mukhtaṣar," *Islamic Law and Society* 3, no. 2 (1996): 193–233, https://doi.org/10.1163/1568519962599122.

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ly. I work with both their theses to posit that within the "régime of *taqlīd*" there existed a subtle and intricate way that legal thinkers could articulate their moral and legal positions. The question of sharecropping, as it played an essential role in the Cairo Sultanate's politics and involved the downtrodden peasants, elegantly demonstrates these possibilities. Bilal Ibrahim has previously argued for the egalitarian intentions of the juristic revisions that took place during the period of the Cairo Sultanate.[8] This paper corroborates that argument and considers both *how* and *why* jurists articulated this "egalitarian import."

This article begins with an overview of the Hanbali position on *muzāraʿah,* showing how the flexibility of the *madhhab* may explain its centrality to Mamluk agricultural administration, followed by an overview of al-Subkī's life, as his background may shed light on his position on sharecropping. Finally, it will explain al-Subkī's opinion and how it differs from the Hanbali opinion as presented by Ibn Taymīyah. I do not invoke Ibn Taymīyah as a standard, orthodox scholar but precisely because he dissented so readily with his peers. The overlap between the two scholars is noteworthy because they represent two distinct sides of the legal community under the Cairo Sultanate. The study will conclude with a brief overview of agricultural practices and conceptions of cultivation in administrative and practical sources, indicating the legal necessities of such a system, to suggest that the literary milieu and political exigencies of the time may have led the two scholars to similar conclusions. I argue that the shared values, political background, and literary education of the jurists intersected with the material realities surrounding them, pushing them to similar hermeneutical conclusions. These conclusions however ultimately point to the flexibility that existed within the "régime of *taqlīd*."

Keep the Seeds

Administrative Adoption of Hanbali *Fiqh*

Modern scholars cannot read legal or administrative texts from the early fourteenth century outside the context of an increasingly centralized economic system under the Cairo Sultanate. The Mamluk Sultanate functioned with four Sunni legal schools, Baybars I having instituted this system soon after his ascent to power in 1260. The goal from the elevation of the first Hanafi, Hanbali, and Maliki "chief judges" in Dhū al-Ḥijjah of 1265 was to retain the primacy of the Shafiʿi jurists while preventing a legal hegemony that could lead to disadvantageous rulings. As Sherman Jackson argues, "the Sultan was responding to

[8]Bilal Ibrahim, "Beyond State and Peasant: The Egalitarian Import of Juristic Revisions of Agrarian and Administrative Contracts in the Early Mamlūk Period," *Islamic Law and Society* 16, no 3 (2009): 337–82.

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the need, on the one hand, to retain chief justice Ibn Bint al-Aʿazz in a highly visible public office while, at the same time, responding to complaints about the latter's inflexibility and his exclusivist policies as head of the judiciary."[9]

Texts from the period provide insight into how the sultan negotiated his position vis-à-vis the legal community. The period of the Cairo Sultanate was one where scholars consolidated *madhhab* positions through *mukhtaṣar*s and other legal genres.[10] Chancery manuals, however, can give us solid clues to actual legal practice because they at least claim to depict the legal documents that actual officials issued. Shihāb al-Dīn Aḥmad ibn ʿAlī al-Qalqashandī al-Fazārī's (d. 821/1418) magnum opus, *Ṣubḥ al-aʿshá fī ṣināʿat al-inshāʾ* (Daybreak for the night-blind in the craft of chancery, completed 1412), is one such work, shedding light on (among other things) the relationship between law, power, and administration. Al-Qalqashandī takes many of his documents, including the administrative texts under question in this section, from *Kitāb al-taʿrīf bi-al-muṣṭalaḥ al-sharīf* by Shihāb al-Dīn Aḥmad ibn Faḍl Allāh al-ʿUmarī (d. 1349). Al-ʿUmarī, like al-Qalqashandī, was an administrator under the Cairo Sultanate whose work also offers instructions on the drafting of chancery documents.[11] The text is a formulary model for a judge's *waṣīyah,* or a judicial investiture decree. Al-ʿUmarī begins his accounts of judicial investitures with a generic formula and recommends that a scribe include a different ending for the appointment of a judge from each *madhhab,* each culmination adding points specific to the various schools of law.

The secretary, in *Ṣubḥ al-aʿshá,* is instructed to list the points about which each judge is to take special care, or, in other words, to outline the jurisdictions between the various schools of law. In the case of Hanbalis, he includes matters involving *waqf* trusts and divorce as it relates to the abandoned wife. The judge is told to give verdicts in accordance with the rulings that are agreed upon in the Hanbali *madhhab* on each issue. Finally, the very last point upon which the judge is instructed is: *al-muʿāmalah allatī lawlā al-rukhṣah ʿindahum fīhā lamā akala akthar al-nās illā al-ḥarām al-maḥḍ, walā ukhidha qism al-ghilāl wa-al-muʿāmil huwa alladhī yazraʿ al-budhūr wa-yaḥrith al-arḍ* ("[On t]he conduct which, without the dispensa-

[9] Sherman A. Jackson, "The Primacy of Domestic Politics: Ibn Bint al-Aʿazz and the Establishment of Four Chief Judgeships in Mamlûk Egypt," *Journal of the American Oriental Society* 115, no. 1 (1995): 52–65.

[10] Fadel, "Social Logic."

[11] The period of the Cairo Sultanate witnessed a flourishing of encyclopedic works, of which al-Umarī and al-Qalqashandī are just two examples. These examples are more explicitly formed for chanceries, although, as Muhanna has argued, the other encyclopedic works of the period were likely also part of an expanding realm of knowledge associated with the sultanate's chancery. See Elias Muhanna, *The World in a Book: Al-Nuwayri and the Islamic Encyclopedic Tradition* (Princeton, 2018).

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tion presented by them [i.e., the Hanbali jurists], would have caused most people to consume food that is prohibited outright, and would have prevented them from partaking in the harvest. The conduct [refers to] the laborer who plants seeds and tills land"). We do not have an exact date for this draft document, but the arguments that our two Taqī al-Dīns put forward toward their fellows in the *madhhab* indicate that the document represents the status quo at the time they were writing.

From the early years of Islamic jurisprudence, the sharecropping contract had been controversial because of the contrast between its moral questionability and the pressing social and economic need for it. Johansen reports that "the generation of Muslim jurists who created Islamic law as a specialised discipline and a literary genre condemned the *muzāraʿa* on the grounds that it violated religious, moral, and legal principles. Mālik, Abū Ḥanīfa, and Shāfiʿī made it clear that, with regard to arable lands, they considered only the contract of tenancy to be admissible."[12] Of the predominant opinions within the four schools of law at the time of the Cairo Sultanate, the most laxity with regard to the terms of the sharecropping contract could be found in the Hanbali school, hence the decree we find in *Ṣubḥ al-aʿshá*. The Hanbali stance gave unique flexibility to sharecroppers and, therefore, lessened the responsibility of absentee landowners. What distinguished the Hanbalis from the Hanafis (the second most lenient school on the issue) was that the Hanbalis unanimously permitted the sharecropper to own the seeds himself. By entrusting the questions of sharecropping to the Hanbali judge and explicitly mentioning the position of the seeds, the sultan ensured that sharecroppers could draft contracts where they themselves owned the seeds, meaning those who owned the land had minimal contact with or responsibility to it. As I will demonstrate later, such an arrangement would have been convenient for an absentee *iqṭāʿ*-holding government official or army general.

The Hanbali ruling gives the sharecropper a right to the harvest both as a function of his labor and of his ownership of the seeds. The landowner, then, is not simply purchasing the sharecropper's labor by giving him part of the harvest, nor can the landowner replace him with privately owned labor. Legally, the landowner enters a cooperative with the sharecropper where he is needed for his seeds as well as his labor.

Al-Subkī, al-ʿUmarī, and Ibn Taymīyah all wrote around the start of the fourteenth century. An important contemporaneous event was the Nāṣirī *rawk* of 1313–25. These vast cadastral surveys were commissioned and personally overseen by the sultan al-Nāṣir Muḥammad, and were followed by dramatic changes

[12] Johansen, *Islamic Law,* 53.

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in the economic, political, and social configuration of the Sultanate's military elite.[13] The sultan was convinced to commission this survey by his Coptic viziers (the word *rawk* is Coptic, not Arabic), claiming that such reforms would curb the power of his amirs, who were amassing great wealth through land grants and tax farms. The *rawk* was, therefore, not just a land reform: taxes on cattle, prostitution, and sales were amended, and the goal, ultimately, was a centripetal one.[14] However, in order to centralize power in his own hands, the sultan needed to designate certain prerogatives to the peasants, who, unlike his amirs, posed no administrative threat to him. Giving more flexibility to the peasant would necessarily detract from the power of the amir.

On the surface, the Hanbali ruling seems to govern only the relationship between landowner and sharecropper, but the ruling also governs the relationship between landowner and sultan. Al-Qalqashandī does not go into detail regarding the implications of this ruling in terms of agricultural power structures, but we can extrapolate that such a ruling may have been connected to attempts at diffusing the power of large land grant-holding military amirs by giving sharecroppers increased mobility and independence. In cases regulated by such rulings, landowners needed to convince sharecroppers to tend their land, since the peasants had both the means (the labor) and the products (the seeds) necessary to farm. The extralegal taxes that Mamluk amirs levied on their peasants, taxes that characterized agricultural relations prior to the fourteenth century *rawk*s, would not be helpful in such an endeavor. As such, though the sultan may have been using the Hanbali ruling to confirm a common practice, he was also checking the monetary power of his amirs. Through this decree the sultan bolstered his own authority, forming a connection between the rights of sharecroppers and his own authority. By giving the sharecroppers this flexibility, the sultan prevented his amirs from taxing them illegally, thereby closing off all potential funds that were not directly tied to his person.

Ibn Taymīyah's Rationale

A brief analysis of Ibn Taymīyah's opinion on *muzāraʿah,* he being himself a jurist working within the Cairo Sultanate, will shed light on the logic and implications of the ruling endorsed by the sultan, while also showing how a jurist as contrarian as Ibn Taymīyah did not dissent on this particular point of law. He famously did not shy away from dissenting with the consensus when he saw the need. In fact, his position on divorce got him put in prison, where he died. Regarding that

[13] Amalia Levanoni, *A Turning Point in Mamluk History: The Third Reign of al-Nāṣir Muḥammad Ibn Qalāwūn (1310–1341)* (Leiden, 1995).

[14] Amīn Sāmī, Faḍl Ṣalāḥ, and Aḥmad Zakarīyā Shalaq, *Taqwīm Al-Nīl* (Cairo, 2002), 2:173.

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opinion, al-Subkī accused him of dissenting from the consensus not only of the *madhhab* but of all Muslims.[15] True to his character as depicted by Jon Hoover, Ibn Taymīyah does not just declare his allegiance to the *madhhab*. Although not averse to *taqlīd,* he uses the fatwa as a chance to reiterate and present a more personal rationale for his opinion. In effect, his fatwa is in concurrence with the dominant position of his legal school. Another scholar might have simply asserted that a position was the opinion of the *madhhab* and moved on, but Ibn Taymīyah takes the opportunity not only to explain his own logic, but to appeal across *madhhab*s. Unlike al-Subkī, who we will explore shortly, Ibn Taymīyah's logic extends beyond the hermeneutical methods of the school, and he does not appeal to the opinions of his Hanbali forbears. Instead, Ibn Taymīyah reaches out to a larger Muslim consensus. *Taqlīd,* then, is not only toeing the school's line: Ibn Taymīyah turns it into both a personal process and a universalist project by adhering to the school's position but also returning to the foundational legal texts to rethink the morality of the position. At the center of his thought process is the question of fairness and the position of the peasant.

Felicitas Opwis analyzes Ibn Taymīyah's project of assigning a *ratio legis* to existing Hanbali rulings, a trend she identifies in other of his opinions.[16] This process "combines both adherence to the actual ruling and innovative interpretation regarding the legal principles underlying that ruling."[17] In doing so, Ibn Taymīyah may have been restructuring authority within the school, but he was also giving the Hanbali opinion a rationale that would appeal even to those outside of the *madhhab*. Unlike al-Subkī, Ibn Taymīyah's opinion on this topic does not meditate extensively on the history of sharecropping in the *madhhab*. Instead, he chooses to assign his own, new *ratio legis*. The administrative implications and the Hanbali judge's monopoly on the contract must not have escaped the scholar's mind. Ibn Taymīyah may have been using a point of law securely within Hanbali jurisdiction to assert his own position with the *madhhab,* as Opwis shows with other cases. His way of doing this was colored by his own legal style, as described by Hoover: innovative, moralizing, and eager to cross *madhhab* lines.

Ibn Taymīyah says in his fatwa on sharecropping that a common misconception among scholars (all scholars—he does not identify them according to *madhhab*) is that *muzāraʿah* is a contract of compensatory employment *(muʿāwaḍah)*

[15] Jon Hoover, *Ibn Taymiyya* (London, 2019).

[16] Felicitas Opwis, "The Construction of Madhhab Authority: Ibn Taymiyya's Interpretation of Juristic Preference (Istihsān)," *Islamic Law and Society* 15, no. 2 (2008): 219–49, https://doi.org/10.1163/156851908X290592.

[17] Ibid,, 244.

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rather than one of cooperation *(sharikah).*[18] He discusses his school's ruling in a fatwa he offers during his time in Damascus. He conceives of three distinct factors in any sharecropping *(muzāraʿah)* contract. First, he describes what he calls the permanent foundations *(uṣūl bāqiyah)* of cultivation: the land, the body of the laborer, the bodies of his livestock, and the tools.[19] These are foundations that, at the end of the term of the contract (typically one year), return to each party.[20] Second are the impermanent portions *(ajzāʾ fāniyah)* necessary for cultivation, the material parts of the various foundations that are lost in the process of sharecropping: the nutrients of the soil that seeds consume, the seeds themselves, and "parts of the laborer and his livestock," meaning manure used as fertilizer. The third factor is impermanent goods *(manāfiʿ fāniyah):* the labor of the laborer and the means of maintaining this labor, namely his own food and shelter. These three aspects, according to Ibn Taymīyah, are necessary for any cultivation to take place. Both the land and the body of the laborer must offer a partial sacrifice for cultivation to be successful.

To illustrate the threefold factors of cultivation, Ibn Taymīyah draws an analogy between sharecropping and Quran 2:223, particularly the section of the verse that reads "women are your tilth." He claims that if God makes such an analogy, it must be taken as an accurate description of the cultivation process. He says that a human child appears like his mother, and that when an animal gives birth, the owner of the mother is legally the owner of the offspring. A human child, however, inherits their state of freedom or servility from the father, not the mother. Thus, Ibn Taymīyah argues, neither the seed nor the land is dominant in the cultivation process, and in the case of crops—as in the case of children—"there is no doubt that it [the harvest] is a creation of both of them" *(lā rayb annahu makhlūq minhumā jamīʿan).* He reasons that crop cultivation requires effort from both parties, making the contract one of cooperation, not employment. Payment cannot be in the form of set compensation *(muʿāwaḍah);* but rather each party must be allotted a portion of what they produce. Ibn Taymīyah returns to the revealed scriptures to produce a legal case for the sharecropping contract. The anthropomorphization of the environment is taken as a basis for legal rulings and the division of the fruits of labor. This anthropomorphization echoes the land-as-mother image that will appear in other, non-legal genres I will present shortly.

In drawing a parallel between sharecropping and procreation, Ibn Taymīyah places the sharecropper and the landowner on an equal footing, even placing

[18] Ibn Taymīyah, *Majmūʿat al-fatāwá,* ed. ʿĀmir al-Jazzār (Mansoura, 1998), 30:61.

[19] Ibid., 29:68.

[20] Tsugitaka Sato, *State and Rural Society in Medieval Islam: Sultans, Muqtaʿs and Fallahun* (Leiden, 1997), 189.

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the sharecropper in the position of the male partner in a marriage. He was surely aware of the social and political realities that regulated the relationship between Mamluk amirs and the farmers that tilled their land. By articulating the legal relationship thus, he sought to emphasize the legal equality of the two parties, an equality that was probably more aspirational than reflective of reality. Ibn Taymīyah claims that just as the landowner has agency over the land, the laborer has agency over his body. The landowner needs the laborer—who is an independent agent—to enter a contract *with his body* for cultivation to take place. This formulation creates two parties that are mutually dependent on each other; the laborer is not depicted as a propertyless peasant, but an owner of a permanent and essential foundational source of cultivation: their own body.

Although the theoretical outline that Ibn Taymīyah creates presents the two parties as equal, he seems to be creating a discursive equality that had no real bearing on the ground. Even without delving into other sources, someone who has sovereignty over land clearly has more power than a person who has sovereignty over only their own body. The two parties were anything but equal. Ibn Taymīyah, however, is using the process of writing a concurrence to create a discursive framework where scholars can confront the morality of the contract and consider the theoretical equality of the parties.

On the controversial point of who owns the seeds to be cultivated, Ibn Taymīyah argues that seeds do not count as property and are not analogous to land or cattle. According to him, this analogy is false because seeds cannot be retrieved; they, like labor, are contributed to the process of cultivation, and the same seed that was placed in the ground will never return to the cultivator. Seeds are closer in nature to the labor than to the land, Ibn Taymīyah argues, so sound logical deduction would yield a decision wherein laborers should contribute the seeds because they share more attributes with labor than with land. In his fatwa, Ibn Taymīyah claims that the seed "goes [into the process of cultivation] irretrievably, as does the labor of the laborer and the labor of his cattle, and for this reason it is within the category of [impermanent] goods, not of [permanent] property, and so stipulating that [the seeds] come from the laborer is closer to [sound] analogy." As a result, seeds are of the same type *(jins)* as labor, not capital.[21]

Here, Ibn Taymīyah refers to the three categories he mentioned previously: permanent foundations, impermanent portions, and impermanent goods. Neither the laborer's efforts nor the seeds can be retrieved if the contract is dissolved, so they come to be understood analogously. Just as the land offers its

[21] Ibn Taymīyah, *Majmūʿah,* 30:65: *"yadhhab bi-lā badal kamā yadhab ʿamal al-ʿāmil wa-ʿamal baqarih bi-lā badal fakān min jins al-nafʿ lā min jins al-māl wa-kān ishṭirāt kawnihī min al-ʿāmil aqrab fī al-qiyās."*

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nutrients to the crops, the body of the laborer offers its labor. By conceptually alienating the laborer from his body, Ibn Taymīyah allows for a discussion about the abstracted body *(badan al-ʿāmil)* and the land *(al-arḍ)* as two permanent foundational sources owned by the two parties that are privy to the contract: the laborer and the landowner respectively. Each source "loses" some substances, and so the ownership of the crop by the two parties is a function of this cooperative investment. By mentioning the loss of nutrients in the soil due to processes of cultivation *(ḍaʿf al-arḍ),* Ibn Taymīyah allows the body and the land to be analogous, so the landowner and sharecropper are theoretically equal contributors to the cultivation process.

In closing his fatwa, he remarks that *muzāraʿah* is preferable to compensatory employment[22] because when a set compensation is established, one party or the other may feel wronged if the endeavor does not yield the anticipated results. This creates a type of social danger *(khaṭar)* because such relations may lead to resentment. By splitting the harvest into ratios, *muzāraʿah* satisfies both parties as they ultimately share the same fate. Ibn Taymīyah conceives of sharecropping as a form of comradery between landowner and farmer, this time by dividing the crops in ratios. His sensitivity to the danger of unjust agricultural practices shows that he was no stranger to the tumultuous history of the rural areas of the Sultanate and that he sought to create a more sustainable system through the law.

This "shared fate" logic is Ibn Taymīyah's final argument for why *muzāraʿah* is not only permissible but favorable, even if not explicitly mentioned in the Quran. He argues that because the harvest is split, the contract is one of cooperation rather than rent or employment. There is no purchase of labor in the contract, but rather cooperation between two parties. The landowner cannot stipulate that the farmer farm a specific crop, and the farmer cannot stipulate that the land yield a specific amount, so the joint venture is between two parties that must have mutual trust. The prosperity of one is a condition of the prosperity of the other. For such a relationship to be sustainable, there must be an underlying sense of justice, so Ibn Taymīyah ends the fatwa with the pithy statement: "*muzāraʿah* is built upon justice" *(al-muzāraʿah mabnāhā ʿalá al-ʿadl).*

This view of the relationship between sharecropper and landowner contrasts sharply with twentieth-century Arab historiography. Amīn Pāshā Sāmī, for example, claims that since the Ayyubid period the *fallāḥīn* of the Delta have been effectively enserfed by the military landowning elite.[23] These peasants may well have been in unjust and unfavorable conditions (commentaries on al-Subkī's

[22] Ibid., 66.

[23] Sāmī, *Taqwīm al-Nīl,* 123.

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fatwa seem to confirm this); jurists were pushing back on the enserfment of these peasants, perhaps with sultanic support.

"Formed on a Sunday"

Sabk al-Aḥad is a small village near the town of Ashmūn in the Nile Delta. The name is composed of two words; the second, *aḥad,* means Sunday, and the first, *sabk,* is defined in Lane's lexicon as "to found, to cast (metal)." In 2017, the village made headlines across Egypt when protests broke out due to record levels of disease and an unbearable stench that loomed over the agricultural village. The Ministry of Water Resources and Irrigation had failed to differentiate the sewage canals from the irrigation canal that ran through the village, a canal overlooked by most homes. The result was a sanitary disaster that is not unique to Sabk al-Aḥad and has not been resolved. The crisis epitomizes the issues that can arise when a legislating centralized authority fails to consider local knowledge and needs.[24]

In the fourteenth century, Sabk al-Aḥad would have been known for a very different reason: it offered the locative *nisbah* to one of the Mamluk Sultanate's most prominent and illustrious Shafiʿi scholarly and bureaucratic households: the al-Subkīs. Stationed in Cairo and Damascus, the al-Subkīs were deeply informed by their Delta village; though the family were Arabs of the Khazraj tribe, the members were identified not with their tribal lineage but their rather provincial locale. One of the most prominent al-Subkīs of the Mamluk era was Taqī al-Dīn al-Subkī, carrying the titles *qāḍī al-quḍāh* (chief judge) and *shaykh al-Islām,* as well as *Shāfiʿī al-zamān* (the Shāfiʿī of our times).

Taqī al-Dīn's son, Tāj al-Dīn, describes his father's formation in great detail: we know that the young al-Subkī first learned law at the hands of his father and that al-Subkī's uncle was a prominent judge who had an important role in educating him. Tāj al-Dīn describes how the entire family cooperated to ensure that al-Subkī was forged into an exceptional scholar: he was not allowed to eat red meat until he reached the age of twenty-one, out of fear that eating mutton would render his mind less sharp.[25] His paternal uncle arranged for his marriage to the uncle's daughter on the condition that she "not ask of him anything of the world." The day the cousin did ask her husband for money, the uncle—her own father—made al-Subkī divorce her.[26] For the al-Subkī family, producing scholars was a matter of grave concern that involved all members of the clan.

[24] Maḥmūd Shākir, "Ṣuwar maṣārif al-Minūfīyah maṣdar taṣdīr al-amrāḍ lil-ahālī," *Al-Yawm al-sābiʿ* November 20, 2017. https://www.youm7.com.

[25] Tāj al-Dīn ʿAbd al-Wahhāb ibn ʿAlī al-Subkī, *Ṭabaqāt al-Shāfiʿīyah al-Kubrá,* ed. Maḥmūd Muḥammad al-Ṭanāḥī and ʿAbd al-Fattāḥ Muḥammad al-Ḥulū (Cairo, 1964), 10:144.

[26] Ibid., 144.

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Tāj al-Dīn also mentions his father's various opinions along with the positions he took. One character appears and reappears in the entry: Ibn Taymīyah. The son mentions his father's involvement in Ibn Taymīyah's imprisonment.[27] Later, he reports that al-Subkī honored his *madhhab* with his erudite rebuttals to Ibn Taymīyah's opinions on the unilateral dissolution of marriage *(ṭalāq)* and grave visitation *(ziyārah).*[28] For the latter, he dedicated the rather colorfully named treatise *Shann al-ghārah ʿalá man ankar al-ziyārah* (Launching a raid upon he who condemns grave visitation). The one who condemned this visitation was, predictably, Ibn Taymīyah.

Al-Subkī is hailed as a great Shafiʿi jurist, defending the opinions of the *madhhab* and upholding its principles, but he was hardly a passive member of the school: he reviewed and challenged various opinions, many of which were held by Imām al-Shāfiʿī himself. In dissenting with accepted opinions of the *madhhab,* al-Subkī often seems to actually be promoting and strengthening its cohesion and identity. For example, in contrast to his peers within the school, he declared a marriage officiated by a Hanafi judge to be invalid if the contract was not officiated by a guardian on behalf of the woman *(walī).* He explained his position by saying, "I would be ashamed *(astaḥī)* to sanction a marriage which we know from the Prophet to be invalid. [I cannot allow it to] be elevated to heaven simply based on an opinion held by a judge from among the people *(ḥākim min al-nās),*" meaning none other than Abū Ḥanīfah.[29] Al-Subkī was dissenting with a commonly held Shafiʿi opinion at the time, but in doing so he was bolstering the group identity of the school. Similar situations include his deviation from the *jumhūr* of the Shafiʿis in removing all restrictions from the irrigation contract *(musāqāh)* and allowing *muzāraʿah.*[30] That his sanctioning of sharecropping is mentioned in his biographical dictionary entry indicates that the change in legal position was a noteworthy development in the school.

On his deathbed, as chief judge of Damascus, al-Subkī was asked what his final wishes were. He responded, "I want three things: for my son Aḥmad to return from Ḥijāz, for [my son] ʿAbd al-Wahhāb to be appointed chief judge of Damascus, and for me to die in Cairo after the accomplishment of those two."[31] Those words provide a deep insight into al-Subkī's motivations and views: he was a man who wanted to meet his Lord only after ensuring that his family's position of influence would endure and he returned to the political center of the Sultanate. I argue that this intelligent and bold man, formed in the Nile Delta,

[27] Ibid., 149.

[28] Ibid., 167.

[29] Ibid., 233.

[30] Ibid., 232.

[31] Ibid., 218.

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was aware of the legal realities that surrounded him, his family, and the school of law with which their name was so deeply associated. As such, he was able to forge an opinion on *muzāraʿah* that was novel and sensitive to the realities that surrounded his community. Until his decision, the only school that the sultans found flexible enough to engage the complexities of sharecropping was the Hanbalis, but al-Subkī managed to articulate the permissibility of *muzāraʿah* in a way that was distinct from Hanbali doctrine and logic, entering a previously monopolized space of legal administration.

Al-Subkī's fatwa, unlike Ibn Taymīyah's, is a dissent from the opinion of his school. He reaches an opinion similar to Ibn Taymīyah's, but his method attempts to be more Shafiʿi than al-Shāfiʿī; to argue against the Shafiʿi opinion through the eponymous scholar's logic. Here, we see a different form of *taqlīd:* al-Subkī does not reject al-Shāfiʿī's authority but attempts to use Prophetic traditions that al-Shāfiʿī would have presumably accepted to reform the dominant position of the school. He is, in this sense, interested in harmonizing between social needs and the opinion of the *madhhab*. I agree with Mohamed al-Dhfar's recent dissertation that al-Subkī's reviews of the dominant opinions of the school were motivated by a certain social concern.[32] This concern, however, may have been for the dominance of the Shafiʿi *madhhab,* and opening a new jurisdiction to Shafiʿi judges.

No Strings Attached

Within the Shafiʿi legal tradition up until al-Subkī, *muzāraʿah* was only permissible as an accompaniment to *musāqāh*. This position seems to have been well-rooted in the tradition: ʿIzz al-Dīn ʿAbd al-ʿAzīz ibn ʿAbd al-Salām al-Sulamī (d. 660/1262), the leading Shafiʿi jurist of the previous generation in Cairo and Damascus, refers to *muzāraʿah* in a *maqāṣid* text, presenting several possible reasonings for the prohibition of sharecropping.[33]

Al-Subkī frames his fatwa on *muzāraʿah* as a personal intervention in an ongoing conversation. He says that remarks about the topic have *ittasaʿa wa-ṭāl,* "grown expansive and prolonged."[34] As a result, he felt inclined *(māl khāṭirī)* to explain his argument for *muzāraʿah*'s permissibility, citing first and foremost the narrations about Khaybar, and telling us from the outset that he viewed the contract as a nonbinding one that did not require a certain party to own the

[32] Mohammed al-Dhfar, "A Case Study: An Analysis and Interpretation of Taqī al-Dīn al-Subkī's Legal Evolution" (Ph.D. thesis, University of Nottingham, 2020).

[33] Al-Sulamī, *Qawāʿid al-aḥkām fī maṣāliḥ al-anām,* ed. ʿAbd al-Laṭīf Ḥasan ʿAbd al-Raḥmān (Beirut, 1971), 2:95.

[34] Al-Subkī, *Fatāwá al-Subkī,* ed. Ḥusām al-Dīn al-Qudsī (Beirut, 1992), 1:389.

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seeds.[35] He is also explicit about the methodology of his argument: he says that he will provide and explain all the hadiths about the topic, and in doing so "the truth will become clear."[36]

Refuting Dominant Opinions

Using the content of hadiths, al-Subkī levels several attacks on the dominant Shafiʿi opinion. He says that the Shafiʿi view that *muzāraʿah* is permissible only if performed along with *musāqāh* is baseless because permissibility is an essential quality, *aṣl,* and so cannot be attributed to something by association *(bi-ṭarīq al-tabaʿīyah).*[37] He tackles al-Shāfiʿī's opinion that *muzāraʿah* is impermissible due to the fact that there is no set price exchanged for the labor[38] and the Hanafi anxiety that there is unnecessary risk, *gharar,* in sharecropping[39] only after presenting all of the hadith evidence. In both cases, jurists prohibit sharecropping out of a concern that an injustice will occur if the parties do not stipulate clear compensation. Al-Subkī argues that if the two parties agree to split the harvest, the laborer and landowner reach a deal agreeable to both parties and there is no injustice.

Risk *(gharar)* is not a valid grievance, according to al-Subkī, because the *ʿādah,* or custom of the land, is to bear fruit each year. The definition of *gharar* according to him is *mā taraddada bayna jāʾizayn* ("that which vacillates between two equally possible outcomes"), not that which is highly improbable. Thus, *gharar* is not applicable in the case of sharecropping.[40] Here we see al-Subkī invoking a recurring concept in discussing *muzāraʿah: ʿādah*. Later, he writes that portions are to be split according to social *ʿādah,* but here we see al-Subkī developing an argument dependent upon attributing an *ʿādah* to the very soil. The root of the word, often translated as "custom" or "tradition," has to do with repetition. As someone who lived in the Nile Delta, al-Subkī would have been familiar with the importance of *wafāʾ al-Nīl,* the loyalty, constancy, or trustworthiness of the Nile, that being the term used to describe the annual flooding of the river. Al-Subkī writes with language and imagery that are sensitive to his environment, and the soil's customs, tied to the river's trustworthiness, are the basis for his legal argument. The similarity to Ibn Taymīyah's anthropomorphization of the elements is worth noting, but al-Subkī adds another layer as the environment

[35] Ibid.

[36] Ibid., 390.

[37] Ibid., 418–19.

[38] Ibid., 418.

[39] Ibid., 419.

[40] Ibid.

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around him has a repetitive, dependable rhythm. He uses this rhythm to defend his legal opinion.

Whether out of reverence for al-Shāfiʿī's position or out of genuine conviction, al-Subkī argues that the various hadiths cited by al-Shāfiʿī that appear to prohibit sharecropping amount to *nahy tanzīh,* precautionary prohibition. An example of this precautionary prohibition is the oft-cited account regarding the famously pious ʿAbd Allāh ibn ʿUmar's (610–93) refusal to partake in the practice, instead choosing to grant the land to the peasants. Al-Subkī argues that this case cannot be considered as grounds for prohibition because Ibn ʿUmar was "at the summit of piety" *(fī ghāyat al-waraʿ).*[41] He does say toward the end of the fatwa that he does not believe abandoning *muzāraʿah* is a form of piety *(lā naqūl anna al-waraʿ fī tarkihā).* His suspicion that the Prophetic hadiths prohibiting the practice are of weak legal grounding[42] echoes almost verbatim the anxieties of Ibn Qudāmah, Ibn Taymīyah, and other Hanbali jurists.[43]

Time

Al-Subkī is concerned about the question of whether a specific time limit must be placed on the contract *(taʾqīt),* and whether the contract is binding *(lāzim)* or nonbinding *(ghayr lāzim).* The question of *luzūm,* the binding nature of the contract, revolves around whether the contract can be dissolved unilaterally. Al-Subkī argues that the *muzāraʿah* contract is *ghayr lāzim,* a statement that generally destabilizes the contractual relationship between peasant and landlord. The peasants can be turned off the land, or they can abandon the property, resulting in a disruption of the agricultural process. Al-Subkī is arguing against the legality of tying peasants to the land.

To advance his argument, al-Subkī presents evidence agreed upon by hadith scholars regarding the condition of the Jewish community of Khaybar: the Prophet allowed them to stay, but ʿUmar I had them expelled against their will.[44] Significantly, al-Subkī does not draw from this example the conclusion that the contract is non-binding to the landowner but binding to the laborer. Rather, according to him, the contract is non-binding to both parties. Such a relationship was probably more detrimental to the landowners than the villagers. After all, villagers often belonged to the same tribes as Bedouin nomads, and therefore could depend on forms of solidarity and belonging that transcended the tax-

[41] Ibid., 422.

[42] Ibid., 423.

[43] Muwaffaq al-Dīn Ibn Qudāmah, *Al-mughnī,* ed. ʿAbd Allāh ibn ʿAbd al-Muḥsin al-Turkī (Riyadh, 1997), 7:555.

[44] Al-Subkī, *Fatāwá al-Subkī,* 391.

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farm.[45] The landowner, on the other hand, needed villagers to till and cultivate the land, so being abandoned by his peasants meant financial ruin.

Al-Subkī preemptively responds to a group of unidentified Hanafi jurists who claim that there must be some form of time stipulation since particularly summer vegetables like "watermelon, cucumber, and Armenian cucumber *(qithāʾ)*" require tending and cultivation *(taḥtāj ilá al-khidmah wa-al-tarbiyah).*[46] Such produce would be harvested immediately prior to the flooding of the Nile, when much of the prime agricultural land was submerged, so the sense of urgency on the part of the Hanafi jurists is understandable. Al-Subkī's response, however, is striking: there need not be a time stipulation because if the harvest is split (echoing Ibn Taymīyah's shared fate thesis) then the interest of the farmers will lie in seeing to the completion of the harvest cycle.[47] The unstated concern in his explanation is that the peasants would abandon the farm, not that they would be evicted by the landlord. This implies that the legal infrastructure al-Subkī calls for allows the peasants to escape and requires landlords to entice the laborers. Thus, for al-Subkī, environmental factors made time stipulations irrelevant; indefinite irrigation was an absolute impossibility, at least in the Nile Valley.[48] The stipulation of time was inherent not through a legal contract but by virtue of environmental factors. Al-Subkī takes both the custom of the land (here literally the soil, not the people on the land) and the Nile's fulfillment of its promise to flood as helping form the set of required stipulations for the contract.

Al-Subkī says that only Ibn Ḥanbal opined explicitly that there need not be a time stipulation for the validity of the *muzāraʿah* contract, "and I would have loved for one of our associates to have said this, so that I could agree with him" *(wa-kuntu awaddu law qāl bihī aḥd aṣḥābinā ḥattá uwāfiquhu).*[49] Overall, however, he is aware that, as far as this topic is concerned, he is breaking ground and sowing seeds that no previous Shafiʿi scholar had done. He does this apologetically, almost resenting that he alone among his associates is aligned with Imām Aḥmad. Perhaps al-Subkī's yearning to have his associates agree with him is directly connected to the jurisdictions of the Shafiʿi and Hanbali judges. Al-Subkī's ad-

[45] Yossef Rapoport, "Invisible Peasants, Marauding Nomads: Taxation, Tribalism and Rebellion in Mamluk Egypt," *Mamlūk Studies Review* 8, no. 2 (2004): 1–22.

[46] Al-Subkī, *Fatāwá al-Subkī,* 1:422.

[47] Ibid., 423.

[48] From the historical context, we can clearly understand why al-Subkī finds time stipulations to be unnecessary: until the construction of the Aswan Low Dam in 1902, perennial irrigation was unknown in the Nile Valley. Jennifer L. Derr, *The Lived Nile: Environment, Disease, and Material Colonial Economy in Egypt* (Stanford, 2019).

[49] Al-Subkī, *Fatāwá al-Subkī,* 1:425.

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ministrative intellect must have thought that if Shafiʿi judges could also oversee sharecropping contracts, their role in the Sultanate would expand. An important question arises, however, particularly regarding his prolonged discussion of time stipulations. Considering the analogies al-Subkī, Ibn Taymīyah, and others provide about the relationship between marriage and agriculture, revisiting marriage and farming contracts could be an important parallel to draw. Although none of them make this explicit connection, a marriage contract with a time stipulation would be invalid for all Sunni schools of law.

Seeds

One case where al-Subkī does use the metaphor of sexual procreation in both Hanbali law and the farming handbooks is the question of seed ownership. He writes that although the farmer can own the seeds, he must have the explicit permission of the landowner to cultivate the land. The harvest of the *ghāṣib* or usurper (someone who farms the land without a contract) belongs to the landowner because "through [drawing an] analogy from the case of the child of a female slave, whether it [the child] be from her husband or from an ambiguous copulation or any other situation, it belongs to her master. The female slave is like the earth, and the fluids of the husband or the ambiguous copulator are like the seeds, there is no difference between the two, save that their bodily fluids are not capital *(māl)* but the seeds are ... otherwise the two are precisely the same."[50] The occurrence of this metaphor here is important because through a valid *muzāraʿah* contract, the laborer becomes metaphorically the legal husband of the land, providing his seed in order to create plants that in turn need care and attention. By entering the contractual relationship, the laborer guarantees that the seeds do not produce a harvest that belongs by default to the landowner (who owns the land as he owns a slave) but rather enters into a sanctified union that produces legitimate "offspring," over which he has legal custody.

Al-Subkī refutes his Shafiʿi colleagues who consider *muzāraʿah* simply a form of *muḍārabah,* or sleeping contract. Their rationale is that in *muzāraʿah,* capital is handed over to the laborer for some profit to be made. Al-Subkī says that the two cases are distinct because the *muzāraʿah* contract is based on the planting of new seeds "which are not of the land, but are outside of it."[51] Therefore, according to him, the *muzāraʿah* contract is a distinct contract subject to its own rules. It is clear that al-Subkī conceives that the farmer owns the seeds by default. Unlike Ibn Taymīyah, who elaborately argues that the seeds are not property and so allows the farmer to own them, al-Subkī rationalizes ownership of the seeds

[50] Ibid., 427.

[51] Ibid., 418.

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by fully embracing the farmer's ownership of some property. This distinguishes al-Subkī's rationale from Ibn Taymīyah's and means that al-Subkī understands the conditions for cultivation as creating the conditions for a unique relation of power and property.

As for how the portions are to be divided, al-Subkī leaves it up to custom—this time social custom. He cites Ibn al-Ṣalāḥ (d. 1245) approvingly, saying that the portions ought to be divided "as is the custom right here in Damascus" *(kamā hiya al-ʿādah hāhunā fī Dimashq).* Ibn al-Ṣalāḥ argues that in having handed the land over to a peasant, the landowner forfeits even the right to own the harvest of the *ghāṣib* mentioned above, because the land and its production are under the control of the laborer. In this point, al-Subkī rather climactically says, "is a glorious benefit that will enhance rulings" *(wa-hādhihi fāʾidah jalīlah tanfaʿ fī al-aḥkām).*[52] The benefit of this point clearly comes at the cost of the landowner. Al-Subkī would not point to how beneficial such a ruling would be were he not appealing to a very specific relationship, probably between landowner and sultan.

Al-Subkī sees usurpation as an important point to bring up in association with leaving the exact portions to be regulated by custom. By governing the division by local custom but emphasizing that the contract alienates the landowner from his land, al-Subkī echoes Johansen's point (mentioned at the start of this article) that "the sharing of the crop is largely determined by the distribution of the means of production between the partners to the contract."[53] Here we see the handing over of means interwoven with discussions on sharing of the crop. This custom may not necessarily support the farmer, but it definitely takes portioning the harvest out of the hands of the landowner. Al-Subkī also stipulates a temporary situation where the "distribution of the means of production" is at least theoretically monopolized by the laborer. This fatwa provides a paradigm that is distinct from the Hanafi notions of the power dynamic between landowner and laborer, ultimately allowing local custom to dictate an essential part of the contract and setting up (at least textually) a situation where the landowner is alienated from the land.

Al-Subkī's fatwa deviates consciously from the dominant position within the *madhhab,* but he attempts to maintain the methods of the school, appealing to its scholars and their standards of hadith analysis. He dissents apologetically, falling short of claiming that if al-Shāfiʿī knew what al-Subkī knew, the two would not disagree. Al-Subkī's polite, *maddhab*-conscious dissent provides an excellent counter example of how jurists could tackle pressing social and economic issues under the régime of *taqlīd.* In a way, the legal schools provided scholars with an additional layer of eloquence to their legal opinions: if and how they deviated

[52] Ibid., 427.

[53] Johansen, *Islamic Law,* 69.

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from their schools could tell us about their administrative positions, their relationships to their associates, and their views on the larger legal community.

Cultivation Under the Cairo Sultanate

Any legal opinion, or fatwa, is given in a political, scientific, and cultural context. The various textual forms that constitute the Islamic legal tradition include both a "library" of theoretical texts and a more colloquial "archive" composed of questions and answers that confront the jurist.[54] In developing their opinions, rationalizations, and analogies, premodern jurists would engage both canonical and vernacular knowledge. Brinkley Messick, discussing the relationship between various genres and knowledge formation, writes that "in considering the relation of elite and vernacular knowledge, we must go beyond an emphasis on either 'trickle-down' or 'trickle-up' effects...and stress instead dialectical interconnections. Each type of knowledge should be thought of as standing in a complex, constituting/constituted relation to the other."[55] Scholars like al-Subkī and Ibn Taymīyah would have been exposed to some amount of scientific and practical knowledge regarding agriculture. Various manuals and encyclopedias that engaged agricultural knowledge circulated among elite circles, chief among them the fourth chapter of Muḥammad ibn Yaḥyá al-Kutubī al-Warrāq al-Waṭwāṭ's (632–718/1235–1318) *Mabāhij al-fikar wa-manāhij al-ʿibar,* titled *Al-Fann al-rābiʿ fī al-filāḥah*. Ibn Taymīyah's rationale has striking parallels to al-Waṭwāt's writing, as I will demonstrate presently. Though both al-Subkī and Ibn Taymīyah were centered for many years in Cairo and Damascus, agriculture and the countryside would not have been foreign to either of them, particularly considering that neither scholar hailed from the capital cities themselves. The content of their fatwas demonstrates that just as elite theory engages the vernacular experience, so too does the urban engage the rural.

Handbooks

An important source that may have informed the sensitivities of these scholars would have been the large body of agricultural handbooks circulating in the period. These texts combined the mythical with the practical, the traditional with the protoindustrial. However, the metaphors and anxieties expressed in these texts would interest a legal scholar. Al-Waṭwāṭ, for example, poses the question of whether or not plants are alive: he says that a farmer can observe whether his

[54] This duality is borrowed from Brinkley Messick's *Sharīʿa Scripts: A Historical Anthropology* (New York, 2018).

[55] Brinkley Messick, "Kissing Hands and Knees: Hegemony and Hierarchy in Shariʿa Discourse," *Law & Society Review* 22, no. 4 (1988): 639.

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plants are satiated or in need, and so plants may possess some type of expressive capacity.[56] The author also relates a debate contemporary to his own time about whether one can attribute the quality of movement, *ḥarakah,* to plants: some say that plants do not move, as they cannot avoid the scythe of the harvester, or avoid being trampled upon. Others, however, claim that they can digest nutrients in the soil *(haḍm)* and they do in fact lean towards the sun, and therefore can be considered to have the capacity for movement.[57]

The metaphors that appear in legal literature also appear in the agricultural manual literature. The metaphorical connection between farming and marriage that Ibn Taymīyah uses to stipulate the marriage contract, and al-Subkī uses to explain the functions of ownership, feature prominently in al-Waṭwāṭ's texts. For example, al-Waṭwāṭ writes that farming is "just like marriage" because two parties contribute some substance, and when one side is dominant the child comes out a male or a female. Likewise, the four elements come together to form a plant, and depending on these elements, the plant develops its humor.[58] He also says that "the soil is to plants what the pregnant mother is [to her child.] Water occupies the position of nutrients and air, and fire and air are like the two nurturing protectors."[59] We see here the integration of the metaphor of earth-as-mother with Aristotle's four elements of matter such that they function seamlessly together. As we have seen above, this metaphor features prominently in the legal writings of both Taqī al-Dīns and is central to how they reach their legal conclusions.

Each year, after the Nile floods receded, village headmen and government officials evaluated the quality of the soil in various plots of land and redistributed the land to the peasants who farmed it. This process was known as "preparation" or "rendering present" *(taḥḍīr).*[60] Al-Waṭwāṭ describes the process of evaluation, categorizing all arable land into either "good," "medium," or "poor" quality. Evaluators would dig a hole, one handspan by one handspan by one handspan and remove all the soil from the hole. Once the hole was cleared, they were instructed to put the soil back into it without pressing it down. If the hole filled up and soil was left over, the land was deemed to be of the best quality. If it filled the hole with no leftover soil, then the land was of medium quality. A hole that did not fill signaled poor soil quality.[61] If one did not have very good

[56] Ibn al-Waṭwāṭ, "Mabāhij al-fikar wa-manāhij al-ʿibar," Oxford University MS 4:184.

[57] Ibid.

[58] Ibid., 185.

[59] Ibid., 184: *al-arḍ lil-nabāt bi-manzilat al-umm al-ḥāmil wa al-māʾ bi-manzilat al-ghidhāʾ wa-al-hawāʾ wa-al-nār bi-manzilat al-murabiyayn al-muṣliḥayn al-ḥāfiẓayn.*

[60] Sato, *State and Rural Society,* 193.

[61] Ibn al-Waṭwāṭ, "Mabāhij al-fikar," 202.

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soil, one would need fertilizer, which al-Waṭwāṭ claims provides warmth for the seeds, paralleling the warmth of the sun. This insight explains Ibn Taymīyah's care to mention and discuss the legal status of manure in his fatwa.

Al-Waṭwāṭ tells his readers that a seed itself is cultivated by all the four elements and contains within it all four humors. Through the process of growth, a plant acquires a specific humor.[62] Here, the question of the "seed," a question that will play an important role in legal discourses, is understood as a microcosm of all the elements. Scholars of the period would have seen the seed as an almost self-sustaining phenomenon, mythical and profound. ʿAbd al-Wahhāb al-Shaʿrānī, a sixteenth century Sufī and Shafiʿi scholar, echoes the mythical aspect of the seed when he discusses *muzāraʿah* in his own treatise: the first seeds were sent down with Adam from Paradise, and were "as large as ostrich eggs, whiter than milk, softer than butter, and sweeter than honey." As people sinned more and more, however, seeds became smaller and harder.[63]

Conclusion

Much historiography of rural life in the Mamluk period characterizes the life of the peasants as indistinguishable from slavery or serfdom.[64] I have attempted to show two phenomena by tracing the fatwa of al-Subkī in relation to contemporary Shafiʿi and Hanbali law, as well as to agricultural manuals from the period. First, I sought to demonstrate that the legal status of sharecroppers was complicated, dynamic, and far from passive. In fact, they were consistently portrayed as the active partner in the legal analogies with marriage that so often accompanied discussions of *muzāraʿah*. Second, I argued that legal scholars were intimately aware of rural life, and that, though there is little scholarship on the topic today, the Mamluk countryside occupied the minds, writings, and debates of Mamluk-era scholars. The stakes were very high: in an agricultural society, regulating sharecropping in a just and practical way was essential for the continued function of the circle of justice.

Ibn Taymīyah and al-Subkī provide us with two distinct examples of jurists. Their relationships to sultanic authority, grave visitation, and even marriage differed starkly, but their opinions converged on the question of *muzāraʿah*. Whereas Ibn Taymīyah used a complex analogy to demonstrate his point, al-Subkī relied primarily on hadiths and environmental factors. Both scholars, however, saw the farmer as an active partner in the contract, with full agency. The notion that rural farmers were, from time immemorial, serfs at the mercy

[62] Ibid., 184.

[63] ʿAbd al-Wahhāb al-Shaʿrānī, *Kashf al-ghummah ʿan jamīʿ al-ummah* (Beirut, 1977), 2:31–32.

[64] Qāsim ʿAbduh Qāsim, *Al-Ḥayāh al-yawmīyah fī Miṣr: ʿaṣr salāṭīn al-Mamālīk* (Giza, 2019).

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of a strong, militarized authority simply does not hold true in the Mamluk period. The image that Timothy Mitchell presents of peasants tied to the land by a centralized authority[65] is an early nineteenth-century development that would not have had the legal infrastructure to support it in the premodern period.

To close, I present an excerpt from a book by Tāj al-Dīn al-Subkī, Taqī al-Dīn's son. In a handbook dedicated mainly to the description of the roles of government officials, Tāj al-Dīn mentions with outrage what he has heard of forced restrictions on the movement of *fallāḥīn*. His response is swift, harsh, and damning, no doubt echoing the concerns of his father. That such a complaint arose means that the impetus to tie peasants to the land existed under the Cairo Sultanate, and that the scholars we have mentioned were striving against a very possible injustice. Tāj al-Dīn however ties the farmers' right to freedom of movement directly to the position of God as a sovereign legislator:

> the *fallāḥ* is a free man, no human hand has any authority over him; he is the commander of his own self... none of this [confinement] is permissible to implement *(yaḥillu iʿtimādihi),* and the towns *(bilād)* are to be administered without this practice, indeed they [the towns] will be ruined by this practice, because they [the military commanders] constrain *(yuḍayyiqū ʿalá)* the people *(al-nās)* and so God will constrain the[se commanders]...they say, "this is the legislation *(sharʿ)* of the sultan's court *(dīwān),*" while the court has no legislation of its own, indeed legislation belongs to Allāh, the Sublime, and to His Prophet, and so this speech leads ultimately to disbelief.[66]

[65] Timothy Mitchell, *Colonising Egypt* (Berkeley, 1991), ix.

[66] Tāj al-Dīn al-Subkī, *Muʿīd al-niʿam wa-mubīd al-niqam,* ed. Muḥammad ʿAlī Najjār, Abū Zayd Shalabī, and Muḥammad Abū al-ʿUyūn (Cairo, 1948), 33: *al-fallāḥ ḥurr lā yad li ādamī ʿalayhi wa-huwa amīr nafsihi...kull dhālik lā yaḥil iʿtimādihi wa-al-bilād tuʿmar bidūn dhālik bal inmā takhrib bidhālik li-annahum yuḍayyiqūn ʿalá al-nās fayudayyiq Allāh lahum...yaqūlūn hathā sharʿ al-dīwān, wa-al-dīwān lā sharʿ lahu, bal al-sharʿ lillāh taʿālā wa-lil rasūl fahāthā al-kalām yantahī ilá al-kufr.*

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