

Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Ḥanafī Jurisprudence

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Article 1705: A witness is required to be a person of probity (‘*ādil*). A person of probity is one whose good deeds exceed their bad deeds. Consequently, the testimony of those who habitually disregard the requirements of propriety and virtue (*al-nāmūs wa-l-murūʿa*), such as professional dancers and jokesters,¹ as well as those who are known to be liars, is rejected.

—*Majallat al-aḥkām al-‘adliyya*²

Consequently, the testimony of the wine-drinker or consumer of other intoxicants, those who commit major sins, those ignorant of the fundamentals of Islam, the professional dancer or jokester or singer, the party-crasher (*tufaylī*), the juggler³...those who spread out their legs in company, those who go about the streets wearing only their trousers (*sarāwīl*), or with uncovered heads in places where this is not customary, those who behave in ways or commits acts that contravene honour and virtue, or habitually curse people or animals,⁴ or consume unlawful foods, or swear false oaths, or are known for miserliness or lying, or answer the call of nature (either urine or stool) in alleys or public squares, or enter bathhouses without a waist-towel (*miʿzar*) or habitually commit lowly acts...is rejected.

—‘Ali Ḥaydar, d. 1353/1934⁵

God does not forgive the association of partners with Him (*an yushraka bihi*); but He forgives lesser sins for whomsoever He wills...

—Q. 4:48

Though their temporal origins, format, and organization betray them as distinctively ‘modern,’ the Late Ottoman *Mecelle* and its commentaries are indebted to a juristic culture that was already by the period in question well over a millennium old. In important ways, their indebtedness to this culture is profound; until recently, however, the degree and nature of this influence had not been properly acknowledged. The monograph under review is a meticulous and formidably-learned study of continuity and change in post-classical Islamic law. More particularly, it explores the increased scope for sultanic authority in *furūʿ* works of what the author terms “Late

Ḥanafism” (8-13), in its Ottoman context. Ayoub contends that too much emphasis has hitherto been placed on Islamic law’s supposedly purely “juristic” character (23-24); careful attention supports the conclusion that, beginning sometime in the post-Mongol period (21) and especially from the sixteenth and seventeenth centuries onward, *fuqahā*’ increasingly came to afford the powers that be considerable room to intervene in the substance and adjudication of the law. Building on Mamlūk-era developments that recognized the need for executive oversight in the domain of public order (68-70), Ottoman jurists integrated sultanic edicts and directives into their legal writings, binding their scholarly peers to the authority of the Empire. Ayoub notes that this process was selective; the seminal Ibn Nujaym (d. 969 or 970/1563), for example, did not shy away from criticism of official corruption (33, 62), condemnation of imperial interference in private endowments (58-60), or the observation that *siyāsa* was only tolerable in the event that it did not infringe the bounds of justice (55). Ayoub emphasizes that the relationship of sultans and jurists in law-making terms was mutual, rather than one-sided (6-7). Previous scholarship has also tended to neglect *mutūn* (base-texts) and their *shurūḥ* (commentaries) in its account of how Islamic law reflects social reality, instead emphasizing the importance of court cases and *fatāwā*. This approach subverts the importance of these genres as explicitly spelled out by premodern jurists, and so misses a number of key insights (68, 102). This is all extremely well done. Some reference to recent scholarly findings on the quasi-divine characterization of sultanic power in this later period would have been useful here.⁶ The notion of the ruler as “God’s shadow on earth” of course predates Islam as an historical religion, but references to the possessor of the “auspicious conjunction” (i.e. the *ṣāhib qirān*) seem to have enjoyed a “special prominence” among early modern Muslim potentates, including the Ottomans.⁷ It seems to be fair to assume that there exists some sort of causal relationship between this enhanced status and the newly augmented law-making capacity of post-Mongol rulers. It would be interesting to know, in this vein, whether Ayoub’s observations about the Ottoman context are true elsewhere, especially in the (similarly Ḥanafī) Mughal case: did jurists in Delhi and Agra reference imperial edicts in their writings, or was legal authority structured in quite different ways there? One suspects, provisionally, that Ottoman developments were in important respects unique (in degree though perhaps not in kind): the creation of an imperial “learned hierarchy”, the deep

bureaucratization of the *‘ulamā’*, the radically institutional character of *medrese* education, and so on. More work must be done to establish this.⁸

The book is comprised of four key chapters, temporally and thematically organized around the following subjects, respectively: the seminal intervention of Ibn Nujaym; the adoption of sultanic edicts in the legal works of four major jurists of the seventeenth and eighteenth centuries; Ibn ‘Ābidīn (d. 1258/1842) and structures of authority in Late Ḥanafism, and the character of the *Mecelle*. The author insists, throughout, on properly evidencing his conclusions with copious citation of legal works (including helpful appendices, and charts displaying patterns of reference): this represents a considerable advance on previous scholarship on the *Mecelle*, in particular, which seems to have been based in most cases on unwarranted assumptions about its juristic eclecticism (134-136). Through a close examination of this text, Ayoub demonstrates that it is “overwhelmingly” faithful to Late Ḥanafī doctrine and so represents “a Muslim response to modernity and its legal order, argued and justified from within the tradition” (150-151). The author is not insensitive to the massively altered conditions of the Late Ottoman Empire in which context these developments took place, including the facts of Western hegemony and the drastically diminished prestige enjoyed by traditionally-trained jurists (131-133 and 97, respectively). In the course of his discussion, Ayoub documents six legal cases with the aim of proving his argument about this relationship between the *Mecelle* and Late Ḥanafism (144-150). In most instances, this is a straightforward exercise in calling attention to shared points of doctrine, or justifications of slight departures from the established (*rājih*) view of the School. The author is to be warmly congratulated on his painstaking mining of this and other texts, on which he successfully brings his training as a *faqīh*—of no mean ability—to bear.

Ayoub’s second example from the *Mecelle* is much more noteworthy. This case concerns the “prerequisites for valid testimony” (*shurūṭ al-shahāda*). Ayoub notes the striking absence of religion from this discussion, a criterion that had always figured prominently in this context; “Islamic jurisprudence...typically resists admitting the testimony of non-Muslims against Muslims” (146). “Typically” here is something of an understatement.⁹ Unusually, the *Mecelle* and its commentaries alike are conspicuously silent on this radical parting of the ways with the apparent consensus of Muslim jurists. They do not justify it by invoking the normal arguments deployed by figures like Ibn ‘Ābidīn to explain dissent from earlier Ḥanafī

teaching, including “necessity (*darūra*)...change of time (*ikhtilāf ‘asr wa zaman*), and widespread communal necessity (*‘umūm al-balwā*)” (110): Ayoub’s claim that “the doctrinal shifts contained in the *Mecelle* were perpetuated from within the *madhhab* through the application of an organic internal mechanism” (137) therefore requires qualification. This particular departure represents an embarrassing concession by Ottoman jurists to *raison d’état*. The emergence of what Ussama Makdisi has recently termed “the ecumenical frame” evidently “did not stem from an internally initiated debate about the immorality of discrimination against non-Muslims...it stemmed from the imperative to resuscitate a faltering empire... a desperate bid to appease circling European powers...”¹⁰ Nor were these changes to the symbolic hierarchy of the Empire at all popular among Ottoman Muslims at the time, jurists or otherwise, and they took several decades to be fully (if imperfectly) internalized.¹¹ The *Mecelle’s* implicit non-recognition of religion on this question is paradoxical, not least because of its insistence that “a person of probity is one whose good deeds exceed their bad deeds” (epigraph one, above) and that the slightest deviation from the norms of propriety entail the loss of one’s capacity to bear witness (as in the second epigraph). In both respects, the *Mecelle* and its commentary tradition draw on centuries of juristic discussion. The paradox lies in the unacknowledged fact that associating partners with God (*shirk*) constitutes the most odious of evil deeds, in common Muslim understanding; something that is in an eschatological context, according to the Qur’ān, unforgivable (epigraph three). The Prophet (ﷺ) himself is informed in no uncertain terms that “if you associate partners with God, your [good] deeds will be as naught (*layaḥbaṭan^{na} ‘amaluk*)” (Q. 39.65). In other words, the non-recognition of religious identity in the *Mecelle’s* article on witness testimony, combined with its reference to probity, constitutes an incipient secularism, an observation that later legal developments in the Middle East surely bear out. There is no evidence that juristic resistance to imperial fiat on this question was at all successful. The mutuality that characterized jurist-sultanic relations in earlier periods noted by Ayoub simply ceases to operate in the context of the radically centralizing, utterly sovereign state of the nineteenth century. This Hallaqian claim is not necessarily one that Ayoub would contest (e.g., 24).

The author freely concedes his debt to the existing scholarship and builds on this in exciting ways. In our opinion, the most important achievement of this monograph is its granular account of what sultanic

intervention actually looks like in juristic texts. Ayoub presents more than a dozen instances of this, carefully contextualizing each example and giving suggestions as to potential broader implications. Sultanic authority is ultimately of a piece with wider developments in authority structures in Late Ḥanafism, he demonstrates, including the pervasive influence of Ibn Nujaym (48-50), the Egyptian jurist whose legal writings first incorporated the insights of Anatolian jurists belonging to the Ottoman learned hierarchy. Only in the century after his death does one find explicit references to sultanic edicts in *furū*‘ works, reflecting imperial authority to “settle juristic disputes, to order judges and jurists to adopt specific opinions in their legal determinations, and to establish his [sultanic] orders as authoritative and final reference points” (65). The Egyptians again loom large in this period of the School’s history, notwithstanding their provincial status. By the time of Ibn ‘Ābidīn, this view of sultanic authority has been fully internalized (119-125). Ayoub also successfully captures the constrained dynamism of the regime of *taqlīd* in the career of this important Damascene *muftī* (113-116), who goes as far as acknowledging that “the works of the late scholars are superior to those of the early scholars in exactitude, brevity, clarity of language, and containment of the different opinions within the school” (114-115).

Law, Empire and the Sultan constitutes a valuable contribution to our understanding of how imperial law-making came to figure more prominently in the works of the Late Ḥanafī School in its Ottoman context. It also adds to our knowledge of the dynamics of *madhhab* authority in this period, and affords us important insights into some key continuities of the history of the School into modernity. The book ends with a gesture towards the twentieth century, which we have good reason—based on this excellent book—to expect the author will continue to illumine with his careful, diligent research.

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Endnotes

1. ‘Comedian’ would be appropriate here, were it not for the anachronism. One commentator, ‘Alī Ḥaydar, defines the jokester as “one whom people mock and make fun of; one who gathers people about him and makes them laugh with trivial remarks (*aqwāl tāfiha*); his testimony is rejected because he commits

- unlawful deeds to earn money.” See *Durar al-ḥukkām sharḥ Majallat al-aḥkām*, trans. Fahmī al-Ḥusaynī (Riyadh: Dār ‘ālam al-kutub, 1423/2003), 4:407.
2. Beirut: al-Maṭba‘a al-adabiyya, 1302/1884-5, 247.
 3. In the sense of deceiver; not the professional entertainer who tosses balls in the air.
 4. Most commonly, riding animals. C.f. the camel ‘You Bastard’ from Terry Pratchett’s Discworld novels.
 5. *Durar al-ḥukkām*, 4:407. The author cites ‘al-Shiblī, *Lisān al-ḥukkām* and *al-Natīja*’ as his authorities on this point. Owing to my lack of familiarity with the Ḥanafīs, I have had some difficulty identifying these, with the exception of the second work, *Lisān al-ḥukkām fī ma‘rifat al-aḥkām* of Ibn al-Shiḥna al-Ḥalabī (d. 882/1515-6).
 6. See for example Hüseyin Yılmaz, *Caliphate Redefined: The Mystical Turn in Ottoman Political Thought* (Princeton: Princeton University Press, 2018). Similarly useful is Azfar Moin’s *The Millennial Sovereign: Sacred Kingship and Sainthood in Islam* (New York: Columbia University Press, 2012). Somewhat older but much neglected—and admittedly differently focussed in temporal and other respects—is Aziz al-Azmeh’s *Muslim Kingship: Power and the Sacred in Muslim, Christian and Pagan Polities* (London: IB Tauris, 1997).
 7. See Naindeep Singh Chann, “Lord of the Auspicious Conjunction: Origins of the Şāhib-Qirān,” *Iran & the Caucasus* 13, no. 1 (2009): 93-110. The cited text occurs in the article’s abstract.
 8. For some initial insights and an outline of the key challenges to answering this question, see Guy Burak, *The Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire* (New York: Cambridge University Press, 2015), 208-224. Burak suggests that Ottoman developments were generally *not* distinctive.
 9. See, for example, the extensive discussion of this issue by Ibn al-Mundhir (d. 318/930) in his encyclopaedic *al-Awsaṭ min al-sunan wa-l-ijmā‘ wa-l-ikhtilāf*, ed. Muḥyī al-Dīn al-Bakkārī (al-Fayyūm: Dār al-falāḥ, 1431/2010), 7:314-318, which takes for granted the non-admissibility of non-Muslim testimony against Muslims. Explaining the view that rejects the testimony of non-Muslims entirely (i.e. even against fellow non-Muslims), Ibn al-Mundhir notes that “the *dhimmī* most possessed of probity according to them [fellow *dhimmīs*] is the most grievous (*a‘zamahum*) in their association of partners with God, the most devoted (*asjadahum*) of them to the Cross” (315).
 10. *Age of Coexistence: The Ecumenical Frame and the Making of the Modern Arab World* (Berkeley: University of California Press, 2019), 46. For the definition of the term “ecumenical frame”, see 7-8.
 11. *Ibid.*, 54, 58, etc.