

**A CASE STUDY: AN ANALYSIS AND INTERPRETATION OF TAQĪ
AL-DĪN AL-SUBKĪ'S (D. 756/1355) LEGAL EVOLUTION**

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To the Memory of my parents, Sabīka (d. 2014) and ‘Abd al-‘Azīz (d. 2015),
whose spirit has continued to shape my work and my life

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Abstract

This thesis demonstrates that there is relationship between the development of Islamic law and the context in which it is applied. Utilising the writings of the fourteenth century Mamlūk jurist Taqī al-Dīn al-Subkī (d. 756/1355) as a case study, the thesis concludes that the scientific, cultural, and socio-political development of the Early Mamlūk Sultanate in his era contributed to the evolution of his legal positions. This study examines three legal cases demonstrating al-Subkī's legal development: 1) the legal method for determining the beginning of the month of Dhū al-Ḥijja, 2) the legal ruling against non-Muslims who curse the Prophet Muḥammad, and 3) the legal preference of establishing more than one Friday prayer in one city. This thesis highlights the importance of considering and utilising social history in understanding the development of Islamic law and therefore proposes an integration of social history into the current madrasa curriculum.

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Introduction

The Muslim jurist Taqī al-Dīn al-Subkī (d. 756/1355) was a member of the Shāfi‘ī legal school (*madhhab*), which takes its name from Muḥammad b. Idrīs al-Shāfi‘ī (d. 206/820). Some Shāfi‘īs praise al-Subkī and highlight the importance of his role within the tradition of the Shāfi‘ī *madhhab*. However, other Shāfi‘īs have struggled to make sense of the fact that al-Subkī held opinions that differed from the mainstream views of the *madhhab* on a number of legal cases. When al-Subkī was in Cairo between 698/1299 and 739/1338, he held one set of positions on a number of cases, but when he took up the post of Shāfi‘ī Chief Judge of Damascus from 739/1338 to 756/1355 and become a well-known *mufīī*, he developed a new perspective on these same cases.

Later Shāfi‘īs have hypothesised as to why al-Subkī changed his stance on those legal cases. Al-Subkī’s son Tāj al-Dīn (d. 771/1370) alongside Shāfi‘ī jurists al-Suyūṭī (d. 911/1505), al-Ramlī (d. 919/1513), al-Anṣārī (d. 926/1555), al-Dāwūdī (d. 945/1538), and al-Haytamī (d. 974/1567) all argue that the development of his opinions reflected his capacity to perform *ijtihād* in his new-found role as a *mujtahid*.¹ This thesis aims to go beyond this kind of apologetic explanation to focus on the circumstances that facilitated his intellectual and

¹ Tāj al-Dīn ‘Abd al-Wahhāb b. ‘Alī al-Subkī, *Ṭabaqāt al-Shāfi‘iyya*, ed. Muḥammad al-Ṭanāḥī and ‘Abd al-Fattāḥ al-Ḥulw, 10 vols (Cairo: Dār Hajar, 1992), 10:226; Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *Taqrīr al-istinād fī tafsīr al-ijtihād*, ed. ‘Abd al-Mun‘im Aḥmad (Alexandria: Dār al-Da‘wa, 1982), 55; Zakariyya b. Muḥammad al-Anṣārī, *al-I‘lām wa al-ihtimām bi-jam‘ fatāwā shaykh al-islām*, ed. Aḥmad ‘Abīd (Beirut: ‘Ālam al-Kutub, 1984), 278-279; Shams al-Dīn b. Shihāb al-Dīn al-Ramlī, *Fatāwā al-Ramlī*, 4 vols (Cairo: al-Maktaba al-Islāmiyya, n.d.); 4:21-22; Muḥammad b. ‘Alī al-Dāwūdī, *Ṭabaqāt al-mufasssīrīn*, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1983), 1:286; Aḥmad b. Muḥammad al-Haytamī, *al-Fatāwā al-ḥadīthiyya* (Beirut: Dār al-Ma‘rifa, 1998), 114. With the exception of his son Tāj al-Dīn, the later Shāfi‘īs, while acknowledging al-Subkī’s right as a *mujtahid*, do not agree with his divergence from the mainstream views of the *madhhab*.

legal engagement in those cases, providing interpretations as to why al-Subkī developed and changed his views. The conclusions are derived from a wide range of historical sources coupled with a socio-political explanatory framework.

This study of al-Subkī's opinions focuses on the development of three legal cases: the legal method for determining the beginning of the month of Dhū al-Ḥijja; the legal ruling against non-Muslims who curse the Prophet Muḥammad; and the legal preference on establishing more than one Friday prayer in one city. In all three cases, al-Subkī held two opinions: one in Cairo, which we will refer to as the Cairene opinions, and another in Damascus, which we will refer to as the Damascene opinions.

The first legal case is analysed in Chapter Two. In 726/1326 Cairo, al-Subkī claimed that the legal method for declaring the beginning of the month of Dhū al-Ḥijja is to observe the crescent of the new moon with the naked eye. In 749/1348, he favoured the use of astronomical calculation as a supporting tool to aid crescent moon sightings. He also argued for the use of astronomical calculation to exclude sightings that are mathematically impossible. The second case is analysed in Chapter Three. In 734/1334 Cairo, al-Subkī argued that the predominant opinion, known as the *mashhūr* of the Shāfi'ī *madhhab*, is to pardon non-Muslims who have cursed the Prophet Muḥammad on the condition that they repent and convert to Islam. In 751/1350, he favoured another narrative in the Shāfi'ī *madhhab*, which states that such people are to be executed regardless of their repentance and conversion to Islam. The third and final case is analysed in Chapter Four. In 726/1326 in Cairo, al-Subkī was in support of establishing more than one Friday prayer in one city when the need arose, as this was the

prevailing position of the Shāfi‘ī *madhhab*. In 754/1353 Damascus, he argued that establishing more than one Friday prayer in one city is not legally allowed even when needed.

There is currently no comprehensive academic study addressing why al-Subkī changed his views. As noted, some Shāfi‘īs have tried to explain these developments; however, their conclusions are apologetic rather than analytical and historical. This thesis argues that al-Subkī’s legal development reflects, and is a response to, the development of the scientific, cultural, and socio-political history of the Early Mamlūk Sultanate. His legal thought evolved according to the changes that occurred in his day. Scholars have already noted that Islamic law reflects the social reality, suggesting Islamic law is dynamic and is able to accommodate changes.² This study is a contribution to the body of work in this

² David Powers, “The Mālikī Family Endowment: Legal Norms and Social Practices,” *International Journal of Middle East Studies* 25 (1993): 379-406; Powers, *Law, Society, and Culture in the Maghrib, 1300-1500* (Cambridge: Cambridge University Press, 2002); Haim Gerber, “Rigidity Versus Openness in Late Classical Islamic Law: The Case of the Seventeenth-Century Palestinian Muftī Khayr al-Dīn al-Ramlī,” *Islamic Law and Society* 5, no. 2 (1998): 165-195; Baber Johansen, *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh* (Leiden: E. J. Brill, 1999); Kevin Reinhart, “Transcendence and Social Practice: Muftis and Qadis as Religious Interpreters,” *Annales Islamologiques*, 27 (1993): 5-28; Gideon Libson, “On the Development of Custom as a Source of Law in Islamic Law,” *Islamic Law and Society* 1 (1994): 131-55; Muhammad Khalid Masud, Brinkley Messick, and David Powers (eds.), *Islamic Legal Interpretation: Muftīs and Their Fatwas* (Cambridge, MA: Harvard University Press, 1996), particularly their “Muftis, Fatwas, and Islamic Legal Interpretation” in that volume, 3-32; Miriam Hoexter, “Qadi, Mufti and Ruler: Their Roles in the Development of Islamic Law,” in *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish*, ed. R. Shaham (Leiden: Brill, 2006); Wael B. Hallaq, “From Fatwās to *Furū‘*: Growth and Change in Islamic Substantive Law,” *Islamic Law and Society* 1 (1994): 29-65; Hallaq, *A History of Islamic Legal Theories* (Cambridge, Cambridge University Press, 1997), especially Chapter 5, 162-206; Hallaq, *Authority, Continuity and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001); Hallaq, *Sharī‘a: Theory, Practice, Transformations* (Cambridge, Cambridge University Press, 2009); Yossef Rapoport, “Ibn Taymiyya on Divorce Oaths,” in *The Mamluks in Egyptian and Syrian Politics and Society*, ed. Amalia Levanoni and Michael Winter (Leiden: Brill, 2004), 191-217; Rapoport, *Marriage, Money and Divorce in Medieval Islamic Society* (Cambridge: Cambridge University

area with a particular focus on the jurist al-Subkī through his writings in different episodes of his life. This thesis hopes to provide a new perspective on legal participants, especially in the Shāfi‘ī community, on the importance of considering and utilising social history in understanding the development of Islamic law. While engagement with social history is practiced by legal historians in Western academia, it is not as mature in its development in other parts of the world. I also aim, through this thesis, to open a channel of dialogue for the integration of social history into our Shāfi‘ī madrasa curriculum.

The sources of al-Subkī’s Cairene and Damascene opinions are scattered among his legal works. Cairene opinions discussed in Chapters Two and Four are found in *Ibtihāj*, which is al-Subkī’s commentary on al-Nawawī’s Shāfi‘ī legal manual, *Minhāj*.³ The sources for al-Subkī’s Damascene opinions in Chapters Two and Four are found in his *Fatāwā*.⁴ The Cairene and Damascene opinions discussed in Chapters Three are mentioned in one source: al-Subkī’s

Press, 2005); Christian Müller, “Settling Litigation without Judgment: The Importance of a Hukm in Qadi Cases of Mamluk Jerusalem,” in *Dispensing Justice in Islam: Qadis and Their Judgements*, ed. Muhammad Khalid Masud, Rudolph Peters, and David Powers (Leiden, Brill, 2005), 47-70; Müller “A Legal Instrument in the Service of People and Institutions: Endowments in Mamluk Jerusalem as Mirrored in the Ḥaram Documents,” *Mamlūk Studies Review* 12, no. 1 (2008): 173-91; Donald P. Little, “Documents Related to the Estates of a Merchant and His Wife in Late Fourteenth-Century Jerusalem,” *Mamlūk Studies Review* 2 (1998): 93-193; Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (New York: Oxford University Press, 2011); Mohammad Fadel, “The Social Logic of *Taqīd* and the Rise of the *Mukhtaṣar*,” *Islamic Law and Society* 3 (1996): 193-233; Aziz Al-Azmeh, *Islamic Law: Social and Historical Contexts* (New York: Routledge, 2013); Franz Rosenthal, *Muslim Intellectual and Social History: A Collection of Essays (Variorum Collected Studies)* (New York: Routledge, 1990).

³ Taqī al-Dīn ‘Alī Ibn ‘Abd al-Kāfī al-Subkī, *al-Ibtihāj fī sharḥ al-minhāj*, ed. Aḥmad al-‘Arabī et al, 6 vols (Makkah: Maktabat al-Malik ‘Abd Allāh al-Jāmi‘iyya, 2007-2010).

⁴ Al-Subkī, *Fatāwā al-Subkī*, ed. Ḥusām al-Qudsī, 2 vols (Cairo: Maktabat al-Quds, 1936-1938); al-Subkī, *Fatāwā al-Subkī fī furū‘ al-fiqh al-shāfi‘ī*, ed. Muḥammad Shāhīn, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 2004).

Sayf.⁵ We will discuss these works in more depth in the next chapter when analysing al-Subkī's legal works.

There are a number of differences between al-Subkī's Cairene and Damascene opinions. The most prominent differences are the length of writing, the purpose of their authorship, and the relationship between the writings and certain events. While his Cairene opinions were characterised by succinctness and directness, his Damascene opinions were sometimes complex and lengthy. Further, al-Subkī did not inform us of why he wrote any of his Cairene opinions, whereas he explicitly states his reasons for writing most of his Damascene opinions. Since his Damascene opinions were controversial, it is possible that he wrote additional details about them to clarify and defend his positions. Al-Subkī did not provide much detail regarding his Cairene opinions; the relationship with their conclusions and the reality around him is an interpretation derived from my analysis. In contrast, the Damascene opinions are clearly related to events that occurred in Damascus, as mentioned by al-Subkī himself alongside other historians.

Another prominent difference between al-Subkī's Cairene and Damascene opinions is his different professional function when authoring those works. The Cairene opinions were all expressed by al-Subkī in his remit as a jurist (*faqīh*). The Damascene opinions on the other hand were judicial rulings that he had issued or co-issued as a judge. Two of these judicial rulings were issued by al-Subkī in his Shāfi'ī court as the Shāfi'ī Chief Judge in Damascus (Chapters Two and Four). The other judicial ruling was issued in the Supreme

⁵ Al-Subkī, *al-Sayf al-maslūl 'alā man sabb al-Rasūl*, ed. Iyād al-Ghawj (Amman: Dār al-Fath, 2000).

Court (*mazālim*), of which the Governor of Damascus was the head and al-Subkī was a member (Chapter Three). We will shed more light on the hierarchy of the Mamlūk judicial institutions in the following chapter. Despite the fact that those Damascene opinions were judicial rulings, al-Subkī's reasoning behind those rulings was based on his role as *mufīī*. Those three professional functions (jurist, judge, and *mufīī*) are intertwined in one man, and the nature of this combination of responsibilities will be elaborated throughout the thesis.

A question that may arise when discussing these three cases is whether al-Subkī was aware of the development of his opinions. As will be noted in Chapter Three, al-Subkī informs us that he developed his opinion regarding Christians that abuse the Prophet, providing legitimate justification based on legal reasoning. That being said, he did not explicitly refer to his Cairene opinions at all in the other two cases. Both his Cairene and Damascene opinions discussed in Chapter Three were written in the same book, *Sayf*, which might explain his explicit reference to the earlier Cairene opinion. The lack of such mention in the other opinions is perhaps because they had already been mentioned in a longer book, *Ibtihāj*, which consists of 6 volumes. Al-Subkī may have felt that there was no need to repeat them explicitly.

Methodology

This thesis is a study of legal and social history. I will explain the reason behind the development of al-Subkī's opinions by first analysing the textual arguments in his old (Cairene) opinions alongside his new (Damascene) opinions. After a comparative contextualisation of the opinions, I will draw upon

the political, social, and cultural history of the Early Mamlūk Sultanate (1250-1382) to understand the background of these three legal cases. In light of this history, I will analyse the reasons behind al-Subkī's legal development.

The sources of this thesis are grounded in medieval works such as historical chronicles, biographical dictionaries, legal manuals, *fatāwā*, epistles of different *madhhabs* as well as modern studies related to the political, social, legal, and cultural history of the Early Mamlūk Sultanate. Due to the diversity of topics covered in this thesis, each chapter will present its own sources from both medieval and modern works to be engaged with both critically and cautiously.

As for the key medieval sources, the thesis is based on the historical writings of al-Subkī's son Tāj al-Dīn,⁶ al-Nuwayrī (d. 733/1333),⁷ al-Jazarī (d. 738/1338),⁸ al-Udfūwī (d. 748/1347),⁹ al-Şafadī (d.764/1362),¹⁰ al-Isnawī (d. 772/1370),¹¹ Ibn Kathīr (d. 774/1373),¹² al-Maqrīzī (d. 845/1442),¹³ Ibn Shuhba

⁶ Al-Subkī, *Ṭabaqāt al-Shāfi'iyya; Mu'īd al-ni'am wa mubīd al-niqam*, eds. Muḥammad al-Najjār et al. (Cairo: Maktabat al-Khānjī, 1993).

⁷ Aḥmad b. 'Abd al-Wahhāb al-Nuwayrī, *Nihāyat al-arab fī funūn al-adab*, 33 vols (Cairo: Dār al-Kutub wa al-Wathā'iq al-Qawmiyya, 2002).

⁸ Muḥammad b. Ibrāhīm b. Abū Bakr al-Jazarī, *Tārīkh ḥawādith al-zamān wa anbā'ih wa waḥyāt al-akābir wa al-a'yān min abnā'ih*, ed. 'Umar 'Abd al-Salām Tadmūrī, 3 vols (Beirut: al-Maktaba al-'Aşriyya, 1998).

⁹ Ja'far b. Tha'lab al-Udfūwī, *al-Ṭāli' al-sa'īd fī tarājim ahl al-şa'īd*, ed. 'Abd al-Raḥmān Qarīṭ (Cairo: al-Maṭba'a al-Jamāliyya, 1914).

¹⁰ Şalāḥ al-Dīn Khalīl b. Aybak al-Şafadī, *A'yān al-'aşr wa a'wān al-naşr*, ed. 'Alī Abū Zayd, 6 vols (Beirut: Dār al-Fikr al-Mu'āşir, 1998); *al-Wāfi bi-l-waḥyāt*, ed. Turkī Muşṭafa and Aḥmad al-Arnā'ūt, 29 vols (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 2000).

¹¹ 'Abd al-Raḥmān b. al-Ḥasan al-Isnawī, *Ṭabaqāt al-Shāfi'iyya*, ed. 'Abd Allāh al-Jubūrī, 2 vols (Baghdad: Ri'āsat Dīwān al-Awqāf, 1970).

¹² Ismā'īl b. 'Umar Ibn Kathīr, *al-Bidāya wa al-nihāya*, ed. 'Alī Shayrī, 14 vols (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1988).

¹³ Aḥmad b. 'Alī al-Maqrīzī, *al-Mawā'iz wa al-i'tibār fī dhikr al-khiṭaṭ wa al-athār*, 4 vols (Beirut: Dār al-Kutub al-'Ilmiyya, 1998); *al-Sulūk li-ma'rifat duwal al-mulūk*, ed. Muḥammad 'Abd al-Qādir, 8 vols (Beirut: Dār al-Kutub al-'Ilmiyya, 1997).

(d. 851/1448),¹⁴ Ibn Ḥajar al-‘Asqalānī (d. 852/1449),¹⁵ Ibn Taghrī Birdī (d. 874/1470),¹⁶ al-Suyūṭī (d. 911/1505),¹⁷ al-Nu‘aymī (d. 927/1520),¹⁸ Ibn Ṭūlūn (d. 953/1546),¹⁹ and Ibn Ḥajar al-Haytamī (d. 974/1567).²⁰ Those historical writings are vital, as they include important information related to both al-Subkī as an individual, and Mamlūk history as a whole, forming the background of the three above-mentioned cases. I will also draw on further medieval sources relevant to the requirements of each chapter in the thesis.

¹⁴ Abū Bakr b. Muḥammed Ibn Qāḍī Shuhba, *Ṭabaqāt al-Shāfi‘iyya*, ed. Al-Ḥāfiẓ ‘Abd al-‘Alīm Khān, 4 vols (Beirut: ‘Ālam al-Kutub, 1986); *Tārīkh Ibn Shuhba*, ed. ‘Adnān Darwīsh, 3 vols (Damascus: al-Ma‘had al-Faransī, 1994).

¹⁵ Ibn Ḥajar Shihāb al-Dīn Aḥmad al-‘Asqalānī, *al-Durar al-kāmina fī a‘yān al-mī‘a al-thāmina*, ed. Muḥammed Sayyid Jād al-Haqq, 5 vols (Cairo: Dār al-Kutub al-Ḥadītha, 1966-1967).

¹⁶ Abū al-Maḥāsīn Yūsuf Ibn Taghrī Birdī, *al-Nujūm al-zāhira fī mulūk Miṣr wa al-Qāhira*, 10 vols (Cairo: al-Mu‘assasa al-Miṣriyya al-‘Āmma li-l-Ta’līf wa al-Ṭibā‘a wa al-Naṣh, 1963-1971).

¹⁷ Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *Husn al-muḥādara fī tārikh Miṣr wa al-Qāhira*, ed. Muḥammed Abū al-Faḍl Ibrāhīm, 2 vols (Cairo: ‘Īsā al-Bābī al-Ḥalabī, 1967-1968).

¹⁸ ‘Abd al-Qādir b. Muḥammad al-Nu‘aymī, *al-Dāris fī tārikh al-madāris*, ed. Ibrāhīm Shams al-Dīn, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1990).

¹⁹ Shams al-Dīn Muḥammed b. ‘Alī Ibn Ṭūlūn, *Quḍāt Dimashq*, ed. Ṣalāḥ al-Dīn al-Munajjid. (Damascus: Dār al-Nawādir, 2006).

²⁰ Al-Haytamī, *al-Fatāwā al-ḥadīthiyya; al-Fatāwā al-fiqhiyya al-kubrā*, 2 vols (Cairo: al-Maktaba al-Islāmiyya, n.d.); *al-Ṣawā‘iq al-muḥriqa ‘alā ahl al-rafd wa al-zandaqa*, ed. ‘Abd al-Raḥmān al-Turkī, 2 vols (Beirut: Mu‘assasat al-Risāla, 1997).

As for the key modern sources, the thesis consulted the works of Norman Calder,²¹ Wael Hallaq,²² Yossef Rapoport,²³ and Ahmad El Shamsy.²⁴ The works of those leading scholars established the foundation of our understanding of the field of Islamic legal history, guiding us to the proper context of al-Subkī's legal writings. Other modern sources on the political, social, cultural, and technological history of the Early Mamlūk Sultanate will be identified throughout the thesis, depending on the topic of each chapter.

Outline

The topic of this thesis will be explored in four chapters. Chapter One first presents a background on the formation and development of the Early

²¹ Calder, "Al-Nawawī's Typology of Muftīs and its Significance for a General Theory of Islamic Law," *Islamic Law and Society* 3 (1996): 137-164; "Nawawī and the Typologies of Fiqh Writing," in *Islamic Jurisprudence in the Classical Era*, ed. Colin Ember, (Cambridge: Cambridge University Press, 2010), 99-106; "Scholars, Muftis, Judges and Secular Power: The Need for Distinction," in *Islamic Jurisprudence in the Classical Era*, ed. Colin Ember, (Cambridge: Cambridge University Press, 2010), 116-166; "The Social Function of Fatwas," in *Islamic Jurisprudence in the Classical Era*, ed. Colin Ember, (Cambridge: Cambridge University Press, 2010), 167-200.

²² Hallaq, "Was the gate of ijtihad closed?" *International Journal of Middle East Studies* 16 (1984): 3-41; "From Regional to Personal Schools of Law? A Reevaluation." *Islamic Law and Society* 8, no. 1 (2001): 1-26; *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005); "From Fatwās to *Furū* ',"; *History of Islamic Legal Theories; Authority; Sharī'a*.

²³ Rapoport, "Legal Diversity in the Age of *Taqīd*: The Four Chief *Qāḍīs* under the Mamluks," *Islamic Law and Society* 10 (2003): 210-228; "Ibn Taymiyya's Radical Thought," in *Ibn Taymiyya and His Times*, ed. Yossef Rapoport and Shahab Ahmed, (Karachi: Oxford University Press, 2010), 191-226; "Royal Justice and Religious law: *Siyāsah* and Shari'ah under the Mamluks," *Mamluk Studies Review* 16, (2012): 71-102; "Ibn Taymiyya on Divorce Oaths,"; *Marriage*.

²⁴ El Shamsy, "The First Shāfi'ī: The Traditionalist Legal Thought of Abū Ya'qūb al-Buwayṭī (d. 231/846)," in *Islamic Law and Society* 14 (2007): 301-341; "Al-Shāfi'ī's Written Corpus: A Source-Critical Study," *Journal of the American Oriental Society* 132 (2012): 199-220; *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013); "The *Hāshiya* in Islamic Law: A Sketch of the Shāfi'ī Literature," *Oriens* 41, no. 3/4 (2013): 289-315; El Shamsy and Aron Zysow. "Al-Buwayṭī's Abridgment of al-Shāfi'ī's *Risāla*: Edition and Translation," in *Islamic Law and Society* 19 (2012): 327-355.

Mamlūk Sultanate. An overview of the Mamlūk engagement with religion will be discussed, together with its impact on religious pluralism and the plural legal system in the Sultanate. This chapter will explore the shaping of al-Subkī's career through the political, social, and religious development of the Early Mamlūk Sultanate. Chapter One will also present a biography of al-Subkī and outline his role within the Shāfi'ī *madhhab* through his most important legal writings. This chapter will provide an understanding of the context of al-Subkī's legal cases that form the basis of the present discussion.

Chapter Two discusses the first of three legal cases in which al-Subkī held two different opinions (Cairene and Damascene). This first case revolves around the legal method for determining the beginning of the month of Dhū al-Ḥijja. The first opinion by al-Subkī was to declare the beginning of the month by observing the crescent moon with the naked eye, while his later opinion favoured the use of astronomical calculation to aid in the sighting of the crescent moon. This latter opinion also saw al-Subkī argue for the use of astronomical calculations to exclude mathematically impossible moon sightings. This chapter will highlight the impact of the scientific and cultural history of the Early Mamlūk Sultanate on the opinions of al-Subkī. The role of the early muezzins and the later *mīqāṭī* in determining the beginning of the month will be explored, as will the interplay between their moon sightings and the opinions of al-Subkī in this legal case. The shift in the support of al-Subkī from sightings based on folk astronomy to those based on mathematical astronomy and legal reasoning will be discussed. Furthermore, the possible scientific and religious communication between al-Subkī and the renowned astronomer Ibn al-Shāṭir

will be analysed to argue for the former's confidence in providing a solution to a legal problem that involved astronomical time.

Chapter Three discusses the second case regarding the legal ruling on non-Muslims who curse the Prophet Muḥammad. The first opinion held by al-Subkī was to pardon these non-Muslims on the condition that they repent and convert to Islam; this was the predominant (*mashhūr*) opinion of the Shāfi'ī *madhhab*. However, the later ruling held by al-Subkī was to execute these non-Muslims regardless of their actions afterwards. This chapter will expound on the socio-political context of the two different periods when al-Subkī held his differing opinions. The status of Christian officials in the Sultanate, as well as the preservation of the Sultanate's reputation, will be taken into consideration when analysing this legal case. The rising discontent of some Muslims with the employment of Christian officials and their inclusion in the administration of the Sultanate played an important role in the formation of the legal opinions held by al-Subkī, who at first had the aim of maintaining the stability of the Sultanate. The turning point for this discontent occurred with the death of Sulṭān al-Nāṣir Muḥammad, after which the political, social, and economic condition of the Sultanate deteriorated. The causes of this deterioration will be explored, as will the attempts to restore security to the Sultanate. The origins and development of the practice of cursing the Prophet Muḥammad during the Mamlūk Sultanate will be analysed vis-à-vis the later opinion held by al-Subkī on the execution of Christians who engaged in this practice.

Chapter Four discusses the last of the three legal cases: establishing more than one Friday prayer in one city. The Cairene opinion held by al-Subkī was in support of this practice as this was the *mashhūr* position of the Shāfi'ī *madhhab*.

However, in his later Damascene opinion, al-Subkī argued against this practice, stating that it is not legally allowed even if it is needed. This opinion also held that only one Friday prayer congregation would be deemed valid in any one city, with the rest considered invalid. This chapter will explore the socio-political development of congregational mosques in the Mamlūk Sultanate during the first half of the fourteenth century and the response to this development by al-Subkī, who sought to limit the establishment of these mosques in his day and reduce the legal consequences of their plurality. The expansion and increase in the number of congregational mosques in the Sultanate will be analysed in the context of al-Subkī's initial support for the plurality of these mosques. The timeline of al-Subkī's arrival into Cairo and his legal writings on the topic will be mapped, with the crucial turning point being a rapid increase in the number of mosques built in the Sultanate between the time that al-Subkī wrote his first and second opinions. This chapter will also explore al-Subkī's use of legal opinions from all four main *madhhabs* in his discussions of this topic, and in particular his focus on the Ḥanbalī *madhhab*, which was in fact the strongest promoter of the plurality of congregational mosques in Damascus at the time.

The concluding chapter of the thesis then will link al-Subkī's legal interaction to his day, establishing his vision of *fiqh* as a response to the social reality and what the society needs. A reflection follows on how al-Subkī's legal initiatives suit his Shāfi'ī *uṣūlī* education as well as his theological background. Lastly, the impact of this research on the Shāfi'ī community today will be discussed.

The next chapter – Chapter One – will present an overview of the history of the Mamlūks, together with a biography of al-Subkī. This will provide an

important background to understanding the legal cases discussed in later chapters.

Chapter 1

Early Mamlūk Sultanate and Taqī al-Dīn al-Subkī

1. Introduction

The introductory chapter outlined the present study's approach towards al-Subkī's opinions in three legal cases. This thesis does not only seek to explain the legal arguments in al-Subkī's writings, but also tries to understand the motives behind these opinions. Al-Subkī lived in the Mamlūk era and thus there is no way to provide a critical assessment of al-Subkī's legal writings without engaging the historical context of the Early Mamlūk Sultanate (1250-1382).

We will first survey the history of the Sultanate's formation and its development. We will then provide an overview of Mamlūk engagement with religion and its impact on their policy of religious pluralism in the Sultanate. We will then discuss the emergence of the Mamlūk judiciary and its development and how its pluralistic nature reflected the Mamlūks' religious pluralism. After presenting these primary political, religious, and legal developments, demonstrating how they framed al-Subkī's career, we will present al-Subkī's biography and outline his most important legal writings as well as his role within the Shāfi'ī *madhhab*. This chapter provides a basis for understanding the context of al-Subkī's three legal cases to be discussed throughout the thesis.

2. Early Mamlūk Sultanate

Historians often divide the Mamlūk era (1250-1517) into two periods: the Early Mamlūk Sultanate, also known as Turkish Mamlūks (1250-1382), and the Late Mamlūk Sultanate, also known as Circassian Mamlūks (1382-1517). The geographical boundaries of the Early Mamlūk Sultanate were Egypt, Syria, and the Hijaz. Cairo was the capital, and Damascus ranked second in political and economic importance. Cities such as Jerusalem, Aleppo, Tripoli, Alexandria, Mecca, and Medina also had varying levels of importance.²⁵

The word *mamlūk* means ‘slave’ in Arabic; historically, the term referred to military slaves.²⁶ The Mamlūk Sultanate is a system governed by a ruling elite comprised of military slaves. The *Mamlūk* institution was a milestone in Islamic history. Since the ninth century CE, young people from pagan lands were recruited by Umayyad and Abbasid rulers to become military soldiers. The group included different ethnicities such as Turkish, Armenians, Chinese, Persians, Kurdish, and Black Africans.²⁷ When the Ayyubids rose to power in 1174, they continued to follow the same approach of purchasing *mamlūks* for military purposes. The last Ayyubid Sultān, al-Şāliḥ Najm al-Dīn Ayyūb (1240-1249), bought a very large number of Turkish *mamlūks* and had to build a garrison for them on the island of al-Rawḍa on the Nile River near Cairo.²⁸

²⁵ Robert Irwin, *The Middle East in the Middle Ages: The Early Mamluk Sultanate 1250 - 1382* (Carbondale: Southern Illinois University Press, 1986), 1-23; Linda S. Northrup, “The Baḥrī Mamlūk Sultānate, 1250-1390,” in *The Cambridge History of Egypt. Vol. 1: Islamic Egypt, 640-1517*, ed. Carl F. Petry (Cambridge: Cambridge University Press, 1998), 250-251; Amir Mazor, *The Rise and Fall of a Muslim Regiment: The Manşūriyya in the First Mamluk Sultanate, 678/1279 –741/1341* (Bonn: Bonn University Press at V&R Unipress, 2015), 20.

²⁶ Irwin, *Early Mamluk*, 3-4; Northrup, “Baḥrī,” 244; Mazor, *Manşūriyya*, 15.

²⁷ Irwin, *Early Mamluk*, 4-5; Northrup, “Baḥrī,” 245; Mazor, *Manşūriyya*, 15-16.

²⁸ Mazor, *Manşūriyya*, 16-18.

2.1. Formation and development

Northrup suitably divides the Early Mamlūk Sultanate into five main periods based on its political and economic differentiation: 1250-1260 saw the ascent of the Turkish *mamlūks* to power; 1260-1293 was a period of consolidation; 1293-1310 was a period of struggle and political instability; 1310-1341 saw the third reign of Sulṭān al-Nāṣir Muḥammad; and 1341-1382 was a period of economic and social tension coupled with internal political conflict.²⁹ I will follow Northrup's model of the Early Mamlūk Sultanate, as it is conducive to engage with these five periods to achieve our purpose of contextualising al-Subkī's writings.

2.1.1. The ascent of the Turkish *mamlūks* to power (1250-1260)

The Turkish regiment emerged from the multi-racial *mamlūks* to acquire power after the Ayyubids. They exploited the political circumstances of the Ayyubids to their advantage. The Turkish regiment ranks in the Ayyubid army showed great martial skill against the 1249 Crusade of the King of France, Louis IX. As a result, the reputation of the Turkish regiment rose until they were seen as the saviours of Islamdom. The Turkish regiment relished this notoriety and yearned for more power. After the death of Sulṭān al-Ṣāliḥ Ayyūb in the same year, they exercised their influence by nominating Shajar al-Durr, a Turkish slave and the widow of Sulṭān al-Ṣāliḥ Ayyūb, to take power. Shajar al-Durr married a military commander from the Turkish regiment, Aybak, who in turn became a Sulṭān after his wife abdicated and gave him the throne. By taking

²⁹ Northrup, "Baḥrī," 251.

power in 1250, Sulṭān Aybak paved the way for the beginning of the Early Mamlūk Sultanate. The Turkish regiment however became full of political jealousy; Sulṭān Aybak was assassinated in 1257 by one of his ambitious advisors, Quṭuz, who then took over rule. Afterwards, due to increasing competition, the commander of the Turkish regiment, Baybars, assassinated Quṭuz and wrested power from him in 1260.³⁰

2.1.2. The period of consolidation (1260-1293)

Baybars reigned from 1260 to 1277. Because of his long, prosperous reign, he is often considered the true founder of the Early Mamlūk Sultanate. Al-Manṣūr Qalāwūn reigned after Baybars from 1278 to 1290, followed by his son, al-Ashraf Khalīl, from 1290 to 1293. This period was marked by a united Mamlūk military elite after the war against the Crusaders and the confrontation with the Mongols. In addition, the military elite wanted to put more effort into organising the Sultanate, protecting trade, and buying more *mamlūks*. The three sulṭāns—Baybars, Qalāwūn, and Khalīl—were thus fortunate because there was less political rivalry and jealousy among the military elite as a result of their preoccupation with state building.³¹

Al-Manṣūr Qalāwūn was an ambitious and distinguished sulṭān, wanting his descendants to continue to rule. During the reign of Sulṭān Baybars, Qalāwūn was one of the most important commanders. Berk Khān, Baybars' son, married Qalāwūn's daughter. A year later, Baybars died and Berk Khān took over rule

³⁰ Irwin, *Early Mamluk*, 20-34; Northrup, "Baḥrī," 249-250; Mazor, *Manṣūriyya*, 16-19.

³¹ Irwin, *Early Mamluk*, 38-79; Northrup, "Baḥrī," 250-251.

with the aid of Qalāwūn. In 1280, Sulṭān Berk Khān died and the Mamlūks unanimously agreed that Qalāwūn, the most influential commander in the army, should take over the Sultanate.³² Qalāwūn established a new Mamlūk elite in his royal court through the purchase of slaves of different races, with the aim of dismantling the Turkish regiment's power. Qalāwūn realised that the Turkish regiment had been a dominant force in state decisions since the formation of the Early Mamlūk Sultanate such that they almost had the authority of a sulṭān.³³

The new Qalāwūn Mamlūk elite brought Sulṭān al-Ashraf Khalīl to power after the death of Qalāwūn. Al-Ashraf Khalīl continued his father's efforts to strengthen the Mamlūk elite, whose loyalty was to the Qalāwūn dynasty. After Sulṭān al-Ashraf Khalīl assumed power and was on his way to one of the important battles with the Crusaders, he went directly to the tomb of Qalāwūn. It had been customary for the Turkish regiment to pay homage to the tomb of al-Šāliḥ Ayyūb, the last sulṭān of the Ayyubid, to honour him as the master who had first bought them. Sulṭān al-Ashraf Khalīl's changing of this custom and replacing it with a visit to the grave of his father is considered the start of a new identity established among the Mamlūk military elite, and a strengthening of their allegiance to the Qalāwūn dynasty.³⁴

2.1.3. The period of struggle and political instability (1293-1310)

At that time, the Turkish Mamlūks had split into two groups: the Šāliḥiyya, in reference to al-Šāliḥ Ayyūb, and the Qalāwūnids, in reference to Qalāwūn. This

³² Irwin, *Early Mamluk*, 62-64.

³³ Irwin, *Early Mamluk*, 64-71; Mazor, *Manṣūriyya*, 34-40.

³⁴ Northrup, "Baḥrī," 252; Mazor, *Manṣūriyya*, 75-81.

period witnessed bitter rivalry between the two groups, which emerged when the Şālihiyya Mamlūks assassinated Sulṭān al-Ashraf Khalīl in 1293. The Qalāwūnid Mamlūks, however, succeeded in installing Sulṭān al-Nāşir Muḥammad, the brother of Sulṭān al-Ashraf Khalīl, who continued to rule for eight years. A year later, the Şālihiyya Mamlūks succeeded in removing Sulṭān al-Nāşir Muḥammad from rule and assigned power to Sulṭān Kitbugha, who continued to rule for two years. The Şālihiyya Mamlūks remained in power through Sulṭān Lājīn taking over power from 1296 to 1298. Thereafter, the Qalāwūnid Mamlūks were able to reinstate Sulṭān al-Nāşir Muḥammad in 1299 until 1309. However, the Şālihiyya Mamlūks did not despair and were able to remove Sulṭān al-Nāşir Muḥammad and install Sulṭān Baybars al-Jāshankīr. After a year, Sulṭān al-Nāşir Muḥammad returned to power for the third time, but this time, he reigned for nearly 30 years, the longest reign in Mamlūk history.³⁵

2.1.4. The third reign of Sulṭān al-Nāşir Muḥammad (1310-1341)

The third reign of Sulṭān al-Nāşir is often described as a period of internal and external political stability coupled with economic prosperity. External political stability was achieved by extinguishing the Mongols threat. Internal political stability was gained through the Sulṭān's empowerment of the civil elite to take over high-level tasks and positions previously assigned only to the military elite. Utilising the skilled civil elite, the Sulṭān was able to foster improved productivity and increased economic return in the Sultanate's

³⁵ Northrup, "Baḥrī," 252; Mazor, *Manşūriyya*, 81-144.

administrative structures. With the empowerment of the civil elite, the Sultān removed the filament of conspiracies and intrigues that had come to be expected with the military elite. The influence of the military elite was further reduced through reductions in their allotment of money and lands. By establishing a special office and appointing a civilian supervisor to head it, he ensured that the Mamlūk allotment was distributed at the discretion of the Sultān himself. With this change, he confined the status of power all to himself.³⁶

2.1.5. The period of economic and social tension alongside internal political conflict (1341-1382)

With the death of Sultān al-Nāṣir Muḥammad, the Early Mamlūk Sultanate entered another period of political instability and economic decline. The years 1341 to 1382 saw the short-lived reigns of twelve sultāns. These sultāns, except for Sultān Ḥasan (r. 1347-1351, 1354-1361) and Sultān Sha‘bān (r. 1363-1377) ruled in name only; the real power was once again held by the military elite. The plague, which spread in 1347 and 1348, exposed the Sultanate to a terrible economic crisis.³⁷ In that period, the cold war against the Mongols returned through the exiled states of the Ilkhanate Empire and the Mamlūk Sultanate, particularly in Syrian territories.³⁸

³⁶ Amalia Levanoni, *A Turning Point in Mamluk History: The Third Reign of al-Nāṣir Muḥammad Ibn Qalāwūn (1310-1341)* (Leiden: E. J. Brill, 1995), 28-80; Irwin, *Early Mamluk*, 86, 105, 112-113; Northrup, “Baḥrī,” 253-254, 264.

³⁷ Jo Van Steenbergen, *Order out of Chaos: Patronage, Conflict and Mamluk Socio-political Culture 1341-1382* (Leiden: Brill, 2006), 53-122; Irwin, *Early Mamluk*, 125-127, 130, 134-137; Northrup, “Baḥrī,” 253, 257.

³⁸ Anne Broadbirdge, *Kingship and Ideology in the Islamic and Mongol Worlds* (Cambridge: Cambridge University Press, 2008), 99-137; Moojan Momen, *An Introduction to Shi‘i Islam: The History and Doctrines of Twelver Shi‘ism* (New Haven: Yale University Press, 1985), 93; Stefan Winter, “Shams al-Dīn Muḥammad Ibn Makkī

2.2. Religion and the Mamlūks

The Mamlūks were deeply engaged in religious life for both their personal piety and political expediency. This personal and political engagement shaped the religious and legal character of the Sultanate. In this section we will discuss how the adoption of Islam as a religion of the Sultanate helped the Mamlūks legitimise their rule. We will also demonstrate how Islam served as an expression of their personal piety through their various initiatives.

The chapter will then highlight how religious pluralism—one of the primary characteristics of the Mamlūks—encompasses the diverse religious spectrum within the Sultanate. This section will allow us to understand the nature of religious and legal conversation between al-Subkī and the Mamlūks as well as al-Subkī’s involvement with others from the religious spectrum such as followers of different *madhhabs* as well as Christians.

2.2.1. Islam as a means for piety and legitimacy

In his influential article ‘Religion under the Mamluks’, Little writes:

Out of religious conviction and personal piety in some instances but also with an acute sense of their own welfare, the Mamluks strove to keep diverse religious

“al-Shahīd al-Awwal” (d. 1384) and the Shī‘ah of Syria,” *Mamluk Studies Review* 3 (1999): 150-182, especially 162-163.

forces in Egypt and Syria in a state of equilibrium. In such circumstances, Islam undeniably flourished.³⁹

The Mamlūks engaged in many Islamic endeavours as part of their faith as well as to gain support for their legitimacy to rule. This semblance of piety and legitimacy was achieved through important religious channels such as *jihād*, the establishment of the Abbasid caliphate in Cairo, the justice system, and the patronage of buildings and religious symbols.

Strong Muslim faith and identity underline Mamlūk *jihād* against the Crusaders and the Mongols. Ibn Khaldūn (d. 1406) views the Mamlūks as sent by God to protect Islam from its enemies.⁴⁰ Through the concept of *jihād*, the Mamlūks intended to prove that they were fighters who had saved Islamdom from the Crusaders and the Mongols, and thus deserved support in their call for the seizure of power. When Ayyubid leader Sulṭān al-Ṣālīh Ayyūb died in 1250, a possible justification for the Mamlūks' claim to the throne was the important role that they played in their victory against the Crusade of King Louis IX in the battle of Manṣūra near the Egyptian coast. The battle of 'Ayn Jālūt in 1260 against the Mongols was another example that provided a moral basis for their call to establish rule. The Mamlūks were thus keen to keep the Sultanate as a military state in order to strengthen the image among their subjects, namely that

³⁹ Donald Little, "Religion under the Mamluks," *The Muslim World* 73 (1983): 165-181. The quote from page 181. For different perspectives on religion and the Mamlūks, see Jonathan Berkey, "Mamluk Religious Policy," *Mamluk Studies Review* 13, no. 2 (2009): 8-22; "The Mamluks as Muslims: the military elite and the construction of Islam in medieval Egypt," *The Mamluks in Egyptian politics and society* (1998): 163-73. For an assessment of the modern scholarship on the subject, see Emil Homerin, "The Study of Islam within Mamluk Domains," *Mamluk Studies Review* 9, no. 1 (2005): 1-30.

⁴⁰ Little, "Religion," 165-166.

they always were, and would always, remain the saviours of Islamdom.⁴¹ The emphasis on *jihād* also disguised the fact that the Mamlūks were former slaves and did not have a known dynasty. While it is true that they were originally brought in as soldiers, they were also slaves and of pagan origin, which would be considered a disgrace and would render their rule over Muslim communities illegitimate, as the status of an individual depended much on tribal institution.⁴²

Mamlūk association with the institution of the caliphate was one image that connected them with Islam as a faith, helping to boost their legitimacy. The Abbasid caliph was brought from Bagdad to Cairo as an Islamic symbol; the caliph did not rule and was mostly put under house arrest. The caliph appeared at public events and at the oath of allegiance of the sultāns. On these occasions, the sultāns occasionally sat down below the caliph out of religious respect, sending a message to the people that the caliph of the Muslims was the highest-ranking person in the Sultanate. The Shāfi'ī judge Badr al-Dīn Ibn Jamā'a (d.733/1333) was one member of the *'ulamā'* who provided legal justification for the Sultanate absorbing the caliphate institution. Berkey argues that Ibn Jamā'a acknowledged that all effective authority may indeed have been delegated to the sultāns. He did however maintain the notion that a Qurashī imām should delegate authority.⁴³

The patronage of religious buildings and symbols such as mosques, madrasas, and the *'ulamā'* was also one of the manifestations of Mamlūk

⁴¹Albrecht Fuess, "Mamluk Politics," in *Ubi sumus? Quo vademus: Mamluk Studies—State of the Art*, ed. Stephan Conermann (Göttingen: Vandenhoeck & Ruprecht, 2013), 96-99; Berkey, "Mamluk Religious Policy," 9-10; Irwin, *Early Mamluk*, 34; Northrup, "Baḥrī," 255.

⁴²Northrup, "Baḥrī," 255.

⁴³Berkey, "Mamluk Religious Policy," 12.

attachment to Islam. They were also used as an expression of their piety and legitimacy in order to consolidate their rule. It is not surprising that their era would stand out as one of the most prominent in Islamic history, especially when one considers the unusually high number of mosques and madrasas that were founded at the time.⁴⁴ The religious elite was in support of the Mamlūks' desire to expand the construction of mosques and madrasas as it helps link the people to their faith. It was also the product of continuous generosity offered by the Mamlūks to the religious elite in exchange for their support in the ascension to power.⁴⁵

The Mamlūks were heavily involved in administering justice, indicating their religious concerns. They enforced religious punishments for wider offences that occurred in society in order to correct incorrect practices and to eradicate injustice in society. It is evident from the Mamlūk decrees which focus on issues like controlling women in public places, fraud investigation, public oversight, and directing the abuse of power by government officials.⁴⁶ At the same time, justice was an important tool used by the Mamlūks to strengthen their legitimacy. Mamlūks had to be, in the eyes of their subjects, just and accessible rulers. The Sulṭān personally presided over and listened to people's complaints twice a week. Judges from the various *madhhabs* were appointed to be the arms of the Sulṭān to mete out justice. This hyperinflation of Mamlūk justice is a

⁴⁴ Nimrod Luz, "Icons of Power and Religious Piety: The Politics of Mamlūk Patronage," in *Material Evidence and Narrative Sources: Interdisciplinary Studies of the History of the Muslim Middle East*, ed. Daniella Talmon Heller, Katia Cytryn Silverman (Leiden: Brill, 2014), 239; Northrup, "Bahṛī," 270.

⁴⁵ Jonathan Berkey, *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education*. (Princeton: Princeton University Press, 2014), passim; Berkey, "Mamluk Religious Policy," 19-20.

⁴⁶ Rapoport, "Royal Justice," 72-102; Stilt, *Islamic Law in Action*, passim.

phenomenon that requires consideration; the Ottoman sultāns did not make themselves available to the public in this manner.⁴⁷ Mamlūk justice, along with its institutions, has gained the attention of modern scholarship. A section of this chapter will be dedicated to the judiciary in the Sultanate, as it is an important basis for understanding the general context of al-Subkī's writings thereafter.

2.2.2. The Mamlūks and religious pluralism

There were many races, religions, and sects within the Early Mamlūk Sultanate in Egypt and Syria. This cultural diversity allowed the Mamlūks to accommodate all religious interpretations under their rule. That being said, the Mamlūks continued to support Sunnī Islam as the religion of the Sultanate. At the time, the Sunnī Muslims were organised into four *madhhabs*: the Shāfi'īs, the Ḥanafīs, the Mālikīs, and the Ḥanbalīs. Through these institutions, the followers expressed themselves religiously and socially, forming their affiliations and loyalties.

The Shāfi'īs represent the largest segment of the Mamlūk Sunnī community. The Shāfi'ī presence was widespread in Cairo and Damascus. This was because it was the oldest *madhhab* in the region. The ancient presence of the Shāfi'īs in Cairo dates back to the ninth century to Muḥammad Ibn Idrīs al-Shāfi'ī, the founder of the Shāfi'ī *madhhab*. He is said to have relocated to Cairo

⁴⁷ Northrup, "Baḥrī," 260; Albrecht Fuess, "Zulm by Mazālim? The Political Implications of the Use of Mazālim Jurisdiction by the Mamluk Sultans," *Mamlūk Studies Review* 13, no. 1 (2009): 122-147, especially 136; Fuess, "Mamluk Politics," 98; Berkey, "Mamluk Religious Policy," 13-16; Jørgen S. Nielsen, *Secular Justice in an Islamic State: Mazālim under the Baḥrī Mamlūks, 662/1264– 789/1387* (Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985), 125.

to spread his *madhhab* in light of the strong Ḥanafī influence and established presence in Baghdad. His Egyptian followers then spread his *madhhab* there.⁴⁸ Hallaq rejects the idea that al-Shāfi‘ī’s relocation or his Egyptian followers influenced the spread of the Shāfi‘ī *madhhab*, arguing instead that the Shāfi‘ī *madhhab* was only spread with the advent of the Ayyubids in the twelfth century.⁴⁹ However, testimonies of medieval historians, including those of the Shāfi‘īs, prove the opposite.⁵⁰ All indications point towards the entry of al-Shāfi‘ī as the moment at which the Shāfi‘ī *madhhab* started to take shape. More importantly, al-Shāfi‘ī’s Egyptian followers helped spread his *madhhab*, which became the most prevalent *madhhab* in Cairo until the advent of the Ayyubids. Otherwise, it would be difficult to explain why the Ayyubids chose the Shāfi‘ī *madhhab* to be the official *madhhab* of the state. The Shāfi‘īs also had a strong presence Damascus since the tenth century. This presence stems from Abū Zar‘a, the Shāfi‘ī jurist who presided over the judiciary in 302/914.⁵¹

The Ḥanafīs represent the next largest community in Mamlūk society. Although they were fewer in number in Cairo, they had a great presence in Damascus. The Ḥanafī *madhhab* spread due to its age; it had been the official *madhhab* throughout the Abbasid caliphate. The popularity of the Ḥanafīs increased when the Mamlūks took over rule because of existing Mamlūk

⁴⁸ E. Chaumont, “Al-Shāfi‘iyya,” in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 28 July 2018, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/al-shafiyya->.

⁴⁹ Hallaq, *Origins*, 241.

⁵⁰ Al-Subkī, *Ṭabaqāt*, 1:326; al-Ṣafadī, *Wāfi*, 4:163-169; al-Maqrīzī, *Khīṭaṭ*, 4:369; Aḥmad b. Ḥusayn al-Bayhaqī, *Manāqib al-imām al-Shāfi‘ī*, ed. Aḥmad Ṣaqr, 2 vols (Cairo: Dār al-Turāth, 1970), 1:71; Ibrāhīm b. ‘Alī al-Shīrāzī, *Ṭabaqāt al-fuqahā*, ed. Iḥsān ‘Abbās (Beirut: Dār al-Rā‘id al-‘Arabī, 1970), 97-98; ‘Abd al-Raḥmān b. Muḥammad Ibn Khaldūn, *Muqaddimat Ibn Khaldūn*, ed. Abū ‘Abd Allāh al-Sa‘īd al-Mandūh, 2 vols (Beirut: Mu’assasat al-Kutub al-Thaqāfiyya, 1994), 1:449; see also Chaumont, “Al-Shāfi‘iyya,” *EI*²; and El Shamsy *Canonization*, 116.

⁵¹ Al-Subkī, *Ṭabaqāt*, 1:326.

affiliation with the Ḥanafī *madhhab*, as it was the *madhhab* that had spread among the Turks. The fact that the Ḥanafī *madhhab* was popular among the Mamlūk military elite resulted in the migration of a number of Ḥanafīs to the Mamlūk lands to escape the Mongol rule of eastern regions.⁵²

The Mālikīs had a concentrated presence in the Mamlūk community, specifically in Alexandria and Upper Egypt, due to the presence of the companions of Mālik Ibn Anas (d. 179/795), the founder of the Mālikī *madhhab* in the eighth century. Mālikīs had a small presence in the Syria. The number of Mālikīs increased in the Early Mamlūk community, primarily due to Moroccan immigrants utilising the Mamlūks' adoption of all four *madhhabs*.⁵³

The Ḥanbalīs were the least present communities in both Cairo and Damascus. They were more influential in Damascus than in Cairo as they had been living in Damascus since the eleventh century after fleeing from the Crusades in Palestine. Although Palestine eventually came under Mamlūk rule, Ḥanbalī migration did not stop until the fourteenth century. The Ḥanbalīs found better economic opportunities in Damascus, as was the case with the Ḥanafīs and Mālikīs. Also, in Damascus, the Ḥanbalīs were able to form a strong community akin to tribal unity. As I argue in Chapter Four, they were bound

⁵² W. Heffening, J. Schacht, "Ḥanafīyya," in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 28 July 2018, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/hanafiyya->; Michael Winter, "'Ulama' Between the State and the Society in Pre-Modern Sunni Islam," in *Guardians of Faith in Modern Times: 'Ulama' in the Middle East*, ed. Meir Hatina (Leiden: Brill, 2008), 19-46, especially 34.

⁵³ N. Cottart, "Mālikīyya," in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 28 July 2018, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/malikiyya->; Winter, "'Ulama'," 35; al-Jazarī, *Tārīkh*, 2:325.

together not only by *madhhab*, but even more through lineage and marriage, a matter rarely found among the remaining *madhhabs*.⁵⁴

Outside the Muslim population, Christians represented a unique social fabric in the Early Mamlūk Sultanate. The Copts had a prominent presence in Egypt and Syria, as they were the original inhabitants.⁵⁵ Some studies of these regions have examined the ongoing tensions between Muslims and Christians in the Mamlūk era, such as the burning of mosques by Christians and the burning of churches by Muslims. Some refer to sultāns forcefully compelling Christians to convert to Islam, and in other times, imposing sumptuary laws such as inflicting taxes and forcing them to commit to a specific dress code. Scholars have proposed various theories to understand the causes of tension between Christians and Muslims in the fourteenth century, including the impact of the Crusades and the Mongol wars on the perception of Muslims towards Christians as well as the perceived association of Christians with external enemies. Another

⁵⁴ H. Laoust, “Ḥanābila,” in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 28 July 2018, <https://reference.brillonline.com/encyclopaedia-of-islam-2/hanabila->; Daniella Talmon Heller, “The Shaykh and the Community: Popular Hanbalite Islam in 12th-13th Century Jabal Nablus and Jabal Qāsyūn,” *Studia Islamica*, 79 (1994): 103-120; Winter, “‘Ulama’,” 35. The coexistence of the followers of the four *madhhabs* in the Mamlūk community had little to do with scholarship. The only source I am aware of which provides details on inter-*madhhab* dynamic in the Mamlūk community, particularly in Damascus, is in French: Louis Pouzet, *Damas Au VII/XIIIe Siècle: Vie Structures Religieuses d'une Métropole Islamique*. 2nd ed (Beirut: Dār al-Mashriq, 1991). Unfortunately I could not read it because of the language barrier.

⁵⁵ Georges C. Anawati, “The Christian Communities in Egypt in the Middle Ages,” in *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 237-252; Terry G. Wilfong, “The non-Muslim Communities: Christian Communities,” in *The Cambridge History of Egypt. Vol. 1: Islamic Egypt, 640-1517*, ed. Carl F. Petry (Cambridge: Cambridge University Press, 1998), 175-197; Nehemia Levtzion, “Conversion to Islam in Syria and Palestine and Survival of Christian Communities,” in *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 289-312.

theory is that Christian acquisition of jobs in the bureaucracy gave them influence, angering some Muslims.⁵⁶

It is likely that these actions were often driven by political context. The Mamlūks therefore interacted with the Christians according to a policy of expediency. At the peak of the campaigns to expel Crusaders from Syria coupled with tensions with the Mongols and their Christian allies in the second half of the thirteenth century, Sulṭān Qalāwūn and his son, Khalīl, imposed sumptuary laws against the Christians. When the political tension subsided in the fourteenth century, Christians started to be employed in important positions in the court of Sulṭān al-Nāṣir Muḥammad. Christian officials reached a high status in the Sultanate, which aroused the anger of some Muslims. The Sulṭān, through a variety of strategies, managed to retain his staff and contain the wrath of the angered Muslims. After the death of Sulṭān al-Nāṣir Muḥammad, and due to economic deterioration and political instability, Christian officials were often persecuted to maintain security, as they were seen to be exploiting the weakness of Mamlūks at that critical time. We will discuss this in more detail in Chapter Three of this thesis.

⁵⁶ Linda Northrup, "Muslim-Christian Relations during the Reign of the Mamluk Sultan al-Mansur Qalawun, A.D. 1278–1290," in *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 253-261; Donald Little, "Coptic Conversion to Islam under the Baḥrī Mamlūks, 692–755/1293–1354," *Bulletin of the School of Oriental and African Studies* 39, no. 3 (1976): 552-569; Little, "Coptic Converts to Islam during the Baḥrī Mamluk Period," in *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 263-288; Tamer El-Leithy, "Coptic Culture and Conversion in Medieval Cairo, 1293-1524 A.D.," unpublished Ph.D. diss. (Princeton: Princeton University, 2005); Donald Richards, "The Coptic Bureaucracy under the Mamlūks," in *Colloque international sur l'histoire du Caire*, eds. André Raymond, Michael Rogers, Magdi Wahba (Cairo: Dominican Institute for Oriental Studies, 1969), 373-381.

2.3. Judiciary

As we mentioned, religious pluralism was a key characteristic of the Mamlūks. The judiciary was affected by the Mamlūks' policy of pluralism, generating various institutions and judges from all four *madhhabs*. For the purpose of this thesis and to ascertain the nature of al-Subkī's three legal cases, we will review the Mamlūk judicial system with a focus on two institutions: the Supreme Court (*mazālim*), and the courts of the four *madhhabs* (the Shāfi'ī court, Ḥanafī court, Mālikī court, and Ḥanbalī court).

2.3.1. Supreme Court (*mazālim*)

The word *mazālim* primarily denotes the removal of injustice. The roots of this institution date back to the Abbasid period or perhaps earlier. Theoretically, individuals would submit complaints against state officials in the *mazālim* court. This presumably required an independent entity. Although al-Māwardī (d. 1058) provided a theoretical treatment of this institution with emphasis on the independence of the *mazālim* court, the actual workings of *mazālim* as a practice still needs historical treatment.⁵⁷

In the Early Mamlūk Sultanate, *mazālim* sessions operated differently to al-Māwardī's theory. While complaints were submitted against state officials, the Mamlūks themselves headed the *mazālim*. Continuing the Ayyubid tradition, Baybars continued his chairmanship of *mazālim* on a regular basis. While the *mazālim* sessions were held in the House of Justice established by the Ayyubids,

⁵⁷ Nielsen, *Secular Justice*, 1-31, 48, 67; Fuess, "Zulm by Mazalim," 121-123.

the reign of Qalāwūn saw the sessions move to the Citadel. This shift in location contributes to our understanding of the continuous Mamlūk policy to strengthen their legitimacy. It is a sign that removal of injustice was an important matter that the Sulṭān held dearly, as the new location was closer to his residence and demanded his attention.⁵⁸

Mazālim sessions were held twice a week, Monday and Thursday, and were usually headed by the Sulṭān. In areas such as Damascus and Aleppo, the governor would head the *mazālim*. A ceremony and procession would be held on the days of *mazālim* sessions. In addition to the Sulṭān, employees that were permanently present in the *mazālim* (the military elite, the main component of *mazālim* sessions, the four *madhhab* judges, *ḥājib*, *muḥtasib*, and some administrative staff) would also be present.⁵⁹ Cases under the jurisdiction of the *mazālim* were varied but concentrated on executions, crimes, feudal disputes, endowments, and confiscation of funds. These cases were either presented directly to the *mazālim* or were referred from the four *madhhab* courts. The procedure in *mazālim* sessions is explained by Rapoport:

The *mazālim* panel, described in detail in administrative manuals, included the four chief qadis, who not only gave legal advice but sometimes issued judgments at the request of the sultan. In many cases, and in virtually all

⁵⁸ Nielsen, *Secular Justice*, 48; Fuess, “Zulm by Mazalim,” 121, 123-125; Mathieu Tillier, “The Mazalim in Historiography,” in *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2018) 375; Berkey, “Mamluk Religious Policy,” 15.

⁵⁹ Nielsen, *Secular Justice*, 74-75, 80- 83; Fuess, “Zulm by Mazalim,” 125.

waqf cases, qadis were consulted. The jurists often disagreed among themselves, and the sultan and the amirs may have sided with one faction against the other, but the eventual result was based on shari‘ah reasoning, even if the jurists were not present. Moreover, when a trial is reported in some detail, there is evidence of rules of procedure, such as the calling of witnesses, the taking of oaths, and presentation of documentary evidence.⁶⁰

2.3.2. The four *madhhab* courts

In the Early Mamlūk Sultanate, there were four *madhhab* courts, each headed by a judge from one of the four *madhhabs*. The four *madhhab* courts date back to 1265 when the Mamlūk Sulṭān Baybars appointed three judges in Cairo besides the Shāfi‘ī judge, who had previously been the sole judiciary entity since the Ayyubid era. Although the status of the three other judges eventually rose to become equal to the status of the Shāfi‘ī judge, he did keep some unique powers, such as supervision of the state treasury. The reform was applied in Damascus in the following year. Within a century, the four *madhhab* courts had gradually expanded, with each *madhhab* court having branches in Mamlūk towns and villages. The four *madhhab* courts were abolished immediately after the Ottoman invasion of Egypt at the beginning of the sixteenth century.⁶¹

⁶⁰ Rapoport, “Royal Justice,” 80-81. For other perspectives on the procedure followed in *mazālim* sessions, see Nielsen, *Secular Justice*, 74, 77, 103, 113-114, 125; Fuess, “Zulm by Mazalim,” 132-136; Berkey, “Mamluk Religious Policy,” 15.

⁶¹ Rapoport, “Legal Diversity,” 210; Joseph Escovitz, *The Office of Qādī al-Qudāt in Cairo under the Bahrī Mamlūks* (Berlin: Klaus Schwartz, 1984), 20-29; Jørgen S.

Recently, scholars like Escovitz, Nielsen, Rapoport, and Jackson have provided various explanations for the motivation behind Baybars' decision. The issue has been examined demographically, politically, and legally. His decision could have been in response to the need of the growing population in Cairo following the Mongol invasion, which resulted in the coming of immigrants from all the different *madhhabs*.⁶² It may have also been in support of the Ḥanafī *madhhab*, which was the dominant *madhhab* among the Mamlūks.⁶³ Baybars' decision could have been to provide more flexibility to the growing rigidity in the judicial system.⁶⁴ It might even have been for a very specific purpose: to overcome the Shāfi'ī judge al-A'azz' rejection of one of his orders deemed contrary to the Shāfi'ī *madhhab*.⁶⁵

Nielsen, "Sultan al-Zāhir Baybars and the Appointment of Four Chief Qādis, 663/1265," *Studia Islamica*, 60 (1984): 167-176; Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi* (Leiden: E. J. Brill, 1996), 64-68.

⁶² Escovitz, *The Office*, 20-29.

⁶³ Nielsen, "al-Zāhir Baybars," 167-176.

⁶⁴ Rapoport, "Legal Diversity," 212-213.

⁶⁵ Jackson, *Islamic Law*, 64-68. Jackson's interpretation is historically convincing, owing to many factors regarding the formation of the Sultanate and the status of al-A'azz as a respected judge. The Sultanate at that time had just started to emerge, and the Mamlūks were not yet strong. They were still in the process of gaining legitimacy from the community, especially the 'ulamā', such that Baybars could not simply dismiss al-A'azz for his violation. Instead, Baybars instated two things to limit al-A'azz's influence. The first was to appoint additional judges from the three other *madhhabs*. Thus, Baybars gained the support of other *madhhabs*, which further increased his legitimacy among the 'ulamā' and the public. Secondly, he divided Cairo into two administrative regions: Cairo and Fustāt. Then, he appointed a Shāfi'ī Chief Judge for each of those two regions. In this way, he was able to disrupt the influence of al-A'azz (Escovitz, *The Office*, 63-64). Al-A'azz was powerful at that time due to his exclusive control of the judiciary. It is possible that al-A'azz's rejection Baybars' order was an expression of his strictness in following the Shāfi'ī *madhhab*, but it could also be related to the limited extent of the power of the Mamlūks and the extent to which the community had accepted them as rulers at that time. For example, Arab loyalty to Baybars had not yet formed, and they did not recognise him as fully legitimate. Al-A'azz acquired his courage perhaps from the political balances, which made him think that his influence was stronger than Baybars' (Nielsen, *Secular Justice*, 117).

In fourteenth century, Rapoport argues, quite convincingly, that the system of four judges resulted in a more stable rule of law and in more predictable and less arbitrary judgments. This is apparent from the sultānic decrees of appointment that instruct the four Chief Judges to follow the predominant views of their *madhhabs*. Moreover, decrees were not mere guidance; they imposed a legal obligation, and a judge who failed to follow the predominant views of his *madhhab* would be dismissed.⁶⁶ This facilitated a degree of legal pluralism throughout the Sultanate and many individuals were at liberty to consult with the *madhhab* of their choice.⁶⁷ Ultimately, Baybars' reform was interpreted by fourteenth century Mamlūk courts "in its proper institutional context".⁶⁸ Rapoport records statements from fourteenth century Chief Judges demonstrating 'ulamā' support of the quadruple judiciary.⁶⁹

One example belongs to al-Subkī himself, who says:

In our generation, a judge who receives a general appointment from the Sultan must rule according to the predominant view (*mashhūr*) of his school if he is a *muqallid*, and according to his own interpretation if he

⁶⁶ Rapoport, "Legal Diversity," 215-217.

⁶⁷ Rapoport, "Legal Diversity," 223.

⁶⁸ Rapoport, "Legal Diversity," 213.

⁶⁹ Rapoport, "Legal Diversity," 215-221 and *passim*. The 'collaboration' between the Mamlūks and the judges in general is also supported by Steven Humphreys in *Islamic History: A Framework for Inquiry* (Princeton: Princeton University Press, 1991), 202. Others see the relationship between the Mamlūks and the judges as a 'competition' more than 'collaboration'. For a discussion of the scholarly trends on this subject, see Stilt, *Islamic Law in Action*, 33-34. Between the judges themselves, some scholars show also a degree of competition. For this see Michael Chamberlain, *Knowledge and Social Practice in Medieval Damascus, 1190-1350* (Cambridge: Cambridge University Press, 2002), *passim*; Winter, "'Ulama'," 19-46.

has attained the level of *ijtihād*. But if the Sultan appoints him to rule according to a specific School of Law, he should not deviate from this School. If he is a *mujtahid* in his school, he can choose from among the opinions in the school on the basis of strong evidence. But he should not breach the boundaries of that school, whether he is a *muqallid* or a *mujtahid*, for the terms of his appointment limit him in this respect. Nor should he rule according to a weak minority view in his school, even if he thinks it to be the correct opinion, because this too amounts to a breach of school boundaries.⁷⁰

Being privy to this background allows us to contextualise the nature of al-Subkī's writings, especially those relevant to this thesis. Although al-Subkī's interaction with the Shāfi'ī *madhhab* is a core tenant of his writings, comparative jurisprudence is one of his particular characteristics. Al-Subkī was constantly engaged with the arguments of the four *madhhabs*, mentioning the four judges themselves. Al-Subkī's writings, as well as the writings of jurists in general at that time, reflect the historical significance of the Mamlūk era, namely the intimate interaction between four *madhhabs*. While the Islamic legal tradition

⁷⁰ Translated by Rapoport and cited in his "Legal Diversity," 215. Yet Tāj al-Dīn shows some resentment of Baybars' reform and includes statement from his father too. This can be found in al-A'azz's biography in al-Subkī, *Ṭabaqāt*, 8:320. Tāj al-Dīn's resentment however falls perhaps within Tāj al-Dīn's polemic for Shāfi'īs.

has been pluralistic from its beginning,⁷¹ the Mamlūk era brought comparative jurisprudence into practice rather than limiting it to the theoretical level.

Rapoport attempts to explain the reason behind al-Subkī's engagement with the four judges. He notes that it was one of al-Subkī's tasks as Shāfi'ī Chief Judge:

The Shāfi'ī Chief Qāḍī retained overall responsibility for the proper functioning of the system as a whole. One of his tasks was to ensure that non-Shāfi'ī qāḍīs did not deviate from the doctrines of their respective schools.⁷²

This is plausible, as the evidence from the upcoming three legal cases show that al-Subkī tried to advise his colleagues' judgements in line with the function of the quadruple judiciary system. However, al-Subkī's engagement with legal tradition of the four *madhhabs* in general should be understood within his broader treatment of social, political, and legal problems relating to his day. This falls under al-Subkī's professional functions not only as judge but also as jurist and *muftī*, which will be further elaborated shortly.⁷³

⁷¹ The best example of a comparative jurisprudence in Islamic legal tradition is perhaps the work of the Andalusian twelve century Ibn Rushd, *Bidāyat al-mujtahid wa nihāyat al-muqtaṣid*.

⁷² Rapoport, "Legal Diversity," 217.

⁷³ The Shāfi'ī Chief Judge being responsible for the proper functioning of the judiciary system of all four schools needs further investigation. There is nothing in al-Subkī's biography or his writings that mentions it explicitly. Also, the evidence from the upcoming three cases shows that none of the judges or the officials paid attention to al-Subkī's opinions and advice. If this was al-Subkī's job, then they must apply it or at least consider it. On the contrary, the non-Shāfi'ī judges continue to carry out rules and judgments according to their own authorities and interpretations of their *madhhabs*. The

3. Taqī al-Dīn al-Subkī

In spite of his well-known reputation in the Islamic tradition, especially among the Shāfi‘īs in the post-classical era, there has been no recent academic study of al-Subkī’s life, works, or impact on Islamic history. There is an emerging body of research, however, that focuses primarily on a collection of his short treatises and legal responses, which have been printed in several modern editions under the title *Fatāwā al-Subkī*.⁷⁴ This collection of *fatāwā* is the main source for a number of modern studies.⁷⁵

Norman Calder devotes two chapters in one of his works to discovering the complexity of al-Subkī’s *fatāwā*. Seth Ward dealt with a number of al-

status of the four judges seems to be equal in the eye of the public, the officials, and the judges themselves. Al-Subkī targeting the four judges is perhaps due to the fact that the decisions of the four judges have had an impact on the escalation of the legal problem that al-Subkī was addressing.

⁷⁴ Al-Subkī, *Fatāwā al-Subkī*, ed. Ḥusām al-Qudṣī, 2 vols (Cairo: Maktabat al-Quds, 1936-1938); al-Subkī, *Fatāwā al-Subkī fī furū‘ al-fiqh al-shāfi‘ī*, ed. Muḥammad Shāhīn, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 2004).

⁷⁵ In chronological order: Seth Ward, “Construction and Repair of Churches and Synagogues under Islam: A Treatise by Taqī al-Dīn ‘Alī b. ‘Abd al-Kāfī al-Subkī,” Ph.D. Diss. (New Haven: Yale University, 1984); Ward, “Sabbath Observance and Conversion to Islam in the 14th Century—A Fatwā by Taqī al-Dīn al-Subkī,” in *Proceedings of the Ninth World Congress of Jewish Studies*, Division B, vol. 1, The History of the Jewish People from the Second Temple Period until the Middle Ages (Jerusalem, 1986), 47-54; Ward, “Taqī al-Dīn al-Subkī on Construction, Continuance, and Repair of Churches and Synagogues in Islamic Law,” in *Studies in Islamic and Judaic Traditions II*, ed. William Brinner and Stephen Ricks, (Atlanta: Scholars Press, 1989), 169-190; Ward, “Dhimmi Women and Mourning,” in *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, (Cambridge, MA: Harvard University Press, 1996), 87-97; Nisreen Haram, “Use and Abuse of the Law: A Muftī’s Response,” in *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, (Cambridge, MA: Harvard University Press, 1996), 72-86; Lutz Wiederhold, “Blasphemy against the Prophet and His Companions (*Sabb al-Rasūl, Sabb al-Ṣaḥābah*): The Introduction of the Topic into Shāfi‘ī Legal Literature and its Relevance for Legal Practice under Mamluk Rule,” *Journal of Semitic Studies* 42 (1997): 39-70; Devin Stewart, “The Students’ Representatives in the Law Colleges of 14th Century Damascus,” *Islamic Law and Society* 15 (2008): 185-218; Calder, “Scholars, Muftis, Judges,” 116-166; Calder, “The Social Function of Fatwas,” 167-200; Miroslav Melcak, “Reconstruction of the Lost Ayyubid Waqf. Madrasa al-Shāmīya al-Juwwānīya in Damascus as Depicted in the Fatāwā of Taqī al-Dīn al-Subkī (d.756/1355),” *Oriental Archive* 80 (2012): 1-39.

Subkī's *fatāwā*, most of which concerned the legal ruling regarding churches. Devin Stewart and Miroslav Melcak wrote articles on al-Subkī's *fatāwā* regarding a *waqf* of a madrasa in Damascus. Lutz Wiederhold wrote an article on Shāfi'ī legal literature concerning blasphemy against the Prophet and his Companions, involving one of al-Subkī's *fatāwā*. Owing to the diversity of these works, we will engage with some of these topics in some chapters of this thesis when appropriate. Most of these topics however are beyond the scope of this study. In the following section, I will present an introduction to al-Subkī's biography and his most important legal writings. I will then discuss his role within the Shāfi'ī *madhhab*.

3.1. Taqī al-Dīn's biography

Much of what we know about al-Subkī comes from the famous and lengthy biography entry constructed by his son, Tāj al-Dīn al-Subkī, in *Ṭabaqāt al-Shāfi'iyya*.⁷⁶ Although most of those who wrote about Taqī al-Dīn relied mainly on the writings of Tāj al-Dīn regarding his father, they make small additions not found in *Ṭabaqāt*.⁷⁷ I will summarise Taqī al-Dīn's biography based on those sources but with a focus on his son's entry.⁷⁸

As his name indicates, Taqī al-Dīn Abū al-Ḥasan 'Alī Ibn 'Abd al-Kāfi al-Subkī was descended from Subk, a village located southwestern of the Nile

⁷⁶ Al-Subkī, *Ṭabaqāt*, 10:139-336.

⁷⁷ Ibn Ḥajar, *Durar*, 3:63; al-Isnawī, *Ṭabaqāt*, 2:75; al-Ṣafadī, *A'yān*, 3:417-420; al-Ṣafadī, *Wāfi*, 21:166-169; al-Suyūṭī, *Ḥusn*, 1:276-282; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:37; Ibn Taghrī Birdī, *Nujūm*, 10:318; Ibn Ṭūlūn, *Quḍāt Dimashq*, 101.

⁷⁸ Henceforth, I will refer to al-Subkī, the father, as Taqī al-Dīn, and to the son as Tāj al-Dīn.

Delta, north of Cairo. He was born on 1 Ṣafar in the year 683 (18 April, 1284) into a family belonging to the Khazrajī tribe, who were among the Prophet Muḥammad’s supporters in Medina. His father was Zayn al-Dīn ‘Abd al-Kāfi (d.1335) who studied under Ibn Daqīq al-‘Īd (d.1302). Ibn Daqīq al-‘Īd was a famous scholar of both the Mālikī and Shāfi‘ī *madhhabs*, and had served as the Shāfi‘ī Chief Judge in Cairo.⁷⁹ Ṣadr al-Dīn (d.1325), the uncle of Taqī al-Dīn, was also a judge in the village of Maḥalla near Cairo.⁸⁰ Taqī al-Dīn had two daughters, Sutayta (b. 716/1316, d. 776/1374)⁸¹ and Sāra (b. 734/1334, d. 805/1402)⁸² as well as three sons, Bahā’ al-Dīn Aḥmad (b. 719/1319, d. 773/1371), Jamāl al-Dīn al-Ḥusayn (b. 722/1322, d. 755/1354), and Tāj al-Dīn ‘Abd al-Wahhāb (b. 728/1327, d. 771/1369). While all the three sons held high civil positions as Chief Judges in Cairo and Damascus, preachers at the great mosque in Damascus, and professors of the great madrasas of learning in both cities,⁸³ Tāj al-Dīn, who was the youngest, held the highest reputation in relation to the Shāfi‘ī *madhhab* due to his authorship.⁸⁴

⁷⁹ For more information on Taqī al-Dīn’s father, see al-Subkī, *Ṭabaqāt*, 10:89-94.

⁸⁰ Al-Subkī, *Ṭabaqāt*, 10:139-145.

⁸¹ On Sutayta, see Ibn Ḥajar, *Durar*, 5:285.

⁸² On Sāra, see Muḥammad b. ‘Abd al-Raḥmān Shams al-Dīn al-Sakhāwī, *al-Ḍaw’ al-lāmi’ li-ahl al-qarn al-tāsi’*, 12 vols (Beirut: Dār al-Jīl, 1992), 12:51-52.

⁸³ On Bahā’ al-Dīn Aḥmad, see al-Subkī, *Ṭabaqāt*, 9:124-126; on Jamāl al-Dīn al-Ḥusayn, see al-Subkī, *Ṭabaqāt*, 9:411-425; on Tāj al-Dīn ‘Abd al-Wahhāb, see Ibn Ḥajar, *Durar*, 2:425; al-Ṣafadī, *A’yān*, 3:132, 436-437, 657; al-Ṣafadī, *Wāfi*, 19:315; al-Suyūṭī, *Ḥusn*, 1:282; Ibn Qāḍī Shuhba, *Ṭabaqāt*, 3:140; Ibn Taghrī Birdī, *Nujūm*, 11:86; Ibn Ṭulūn, *Quḍāt Dimashq*, 105.

⁸⁴ The most important work is his biographical dictionary of Shāfi‘īs, *Ṭabaqāt al-Shāfi‘iyya*. On *Ṭabaqāt* see, Kevin Jacques, *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law* (Leiden: Brill, 2006), 1-26; George Makdisi, “Ash‘arī and Ash‘arites in Islamic Religious History,” *Studia Islamica* 17 (1962): 37-80. The other work that further established Tāj al-Dīn’s reputation is his influential survey of *uṣūl al-fiqh*, *Jam‘ al-jawāmi’*, ed. ‘Abd al-Mun‘im Khalīl (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003). ‘Abd Allāh al-Ḥabashī lists 81 commentaries and glosses on *Jam‘* in his *Jāmi’ al-shurūḥ wa al-ḥawāshī*, 3 vols (Abu Dhabi: al-Mujamma’ al-Thaqāfi, 2004), 2:213-128.

The early religious education of Taqī al-Dīn was received directly from his father, and he soon gained the reputation of an enthusiastic and diligent student. At the age of fifteen, Taqī al-Dīn married his cousin, Ṣadr al-Dīn's daughter, but they soon divorced. Tāj al-Dīn indicates that the reason was that the wife impeded Taqī al-Dīn from his quest for religious knowledge. His father then took him to Cairo in order for him to progress in his studies. When he reached the age of maturity, he settled in Cairo to pursue intensive religious training.⁸⁵

Taqī al-Dīn's son reported that he studied the following sciences under the supervision of the most influential religious elite of that era: jurisprudence (*fiqh*) with Muḥammad Ibn al-Rif'a (d.1310); principles of jurisprudence (*uṣūl al-fiqh*) and theological foundations (*uṣūl al-dīn*) with 'Alā' al-Dīn al-Bājī (d.1315); logic (*manṭiq*) and disputation (*khilāf*) with Sayf al-Dīn al-Baghdādī (d.1305); Qur'ānic interpretation (*tafsīr*) with 'Alam al-Dīn al-'Irāqī (d.1304); Qur'ānic readings (*qirā'āt*) with Taqī al-Dīn Ibn al-Ṣā'igh (d.1325); inheritance law (*farā'id*) with 'Abd Allāh al-Ghumārī (n.d.); Prophetic traditions (*ḥadīth*) with Sharaf al-Dīn al-Dumyāṭī (d.1305) and Sa'd al-Dīn al-Hārithī (d.1312); grammar (*nahw*) with Abū Ḥayyān (d.1344); and Sufism (*taṣawwuf*) with Ibn 'Atā' Allāh (d.1309).⁸⁶

⁸⁵ Al-Subkī, *Ṭabaqāt*, 10:144-145.

⁸⁶ According to his son, Taqī al-Dīn's daily schedule when he settled in Cairo at age of maturity is as follows: early in the morning he goes to the mosque to perform *fajr* prayer and then studies in the circles of '*ulamā'*' until noon. He then returns home and has lunch. His lunch is mostly chicken (*farrūj*). He did not eat lamb (*laḥm al-ghanam*) until he turned 20 years old. His son attributes this to the fact that eating meat affects the clarity of the mind. After he finishes lunch, he returns to continue studying. In the evening (*ma'a al-ghurūb*), he returns home to eat sweets (*fa-ya'kul shay'an ḥulwan*). He spends the rest of the night reviewing what he studied during the day. Al-Subkī, *Ṭabaqāt*, 10:144.

In addition, Taqī al-Dīn travelled to study Ḥadīth in Alexandria, Damascus, and Hejaz. He became a transmitter and scholar of Ḥadīth and engaged with al-Mizzī (d.1342) and al-Dhahabī (d.1348).⁸⁷ At this point, circa 1316, Tāj al-Dīn claims that his father became a master of the Shāfi‘ī *madhhab* in Egypt and became a bitter enemy to Ibn Taymiyya (d.1328), clashing with him on controversial issues such as the rules of divorce and the visitation of tombs (*ziyāra*) of Muslim saints. In Cairo, Taqī al-Dīn also compiled many of his greatest legal works, such as *Ibtihāj*, a commentary on al-Nawawī’s *Minhāj*. With the rise of his reputation, Taqī al-Dīn acquired many teaching positions in the major mosques and madrasas in Cairo.⁸⁸

In Cairo, according to al-Şafadī, Sulţān al-Nāşir Muḥammad (d. 741/1341) knew Taqī al-Dīn personally, allowing him to assume senior positions in the most famous madrasas in Cairo. Taqī al-Dīn was also close to the Sulţān’s deputy, the Emir Karīm al-Dīn al-Kabīr (d. 724/1324). Al-Kabīr accepted the intercessions of Taqī al-Dīn for others (*wa yaqbal shafā‘atahu li-l-nās*). Al-Şafadī also listed a number military elites close to Taqī al-Dīn. Amongst them were Sayf al-Dīn Qaljīs, Badr al-Dīn Janklī, al-Jāwī, al-Khaṭīrī, and Uljay al-Dawādār. Al-Şafadī also mentioned that Taqī al-Dīn would sometimes reside in the Sulţān’s palace at night, accompanied by Uljay al-Dawādār. Al-Maqrīzī also added that the Emir Uljay al-Dawādār (d. 732/1332) might have been the one who introduced Taqī al-Dīn to Sulţān al-Nāşir Muḥammad.⁸⁹

⁸⁷ On Taqī al-Dīn as a scholar of Ḥadīth, see Aḥmad b. Aybak al-Dumyāfi, *al-Tarājim al-jalīla al-jaliyya wa al-ashyākh al-‘āliya al-‘aliyya*, ed. Zāhir Balfaqīh (Beirut: Dār al-Bashā‘ir al-Islāmiyya, 2019).

⁸⁸ Al-Subkī, *Ṭabaqāt*, 10:145-154.

⁸⁹ Al-Şafadī, *A‘yān*, 3:426; al-Şafadī, *Wāfi*, 21:166; Aḥmad b. ‘Alī al-Maqrīzī, *al-Muqaffā al-kabīr*, ed. Muḥammad al-Ya‘lāwī, 6 vols (Beirut: Dār al-Gharb al-Islāmī, 1990), 2:277.

Taqī al-Dīn also had close relationships with the Shāfi‘ī judges in Egypt. Among his colleagues was the Shāfi‘ī Chief Judge in Cairo, Taqī al-Dīn Ibn Tāj al-Dīn Ibn bint al-A‘azz (d. 709/1309) and ‘Alam al-Dīn al-Akhnā‘ī (d. 732/1332) the Shāfi‘ī Chief Judge in Alexandria and later in Syria. He was also the one to nominate Taqī al-Dīn for the judiciary in Syria ten years before Taqī al-Dīn was appointed as judge in 739/1338. Badr al-Dīn Ibn Jamā‘a (d. 733/1333) and his son ‘Izz al-Dīn Ibn Jamā‘a (d. 767/1365) were both Shāfi‘ī Chief Judges in Cairo and were also friends with Taqī al-Dīn. He knew the Shāfi‘ī Chief Judge in Cairo Jalāl al-Dīn al-Qazwīnī (d. 739/1338) and Tāj al-Dīn al-Marākishī (d. 741/1341), the deputy of the Shāfi‘ī Chief Judge in Cairo, who was the second companion of Taqī al-Dīn through the aforementioned Emir Uljay al-Dawādār.⁹⁰

By 1338, he was asked by Sultān al-Nāṣir Muḥammad to take the post of Shāfi‘ī Chief Judge in Damascus. This position, which Taqī al-Dīn occupied for sixteen years, represented the peak of his professional career. At the time of his tenure as judge in Damascus, many of the *fatāwā* later collected by his son Tāj al-Dīn were issued. After the death of the famous Ḥadīth scholar al-Mizzī (742/1341), Taqī al-Dīn was chosen to lead Dār al-Ḥadīth, which was the prestigious centre of Ḥadīth studies founded in the Ayyubid period. In addition to weekly sermons at the Umayyad Mosque, Taqī al-Dīn also taught in several major madrasas and mosques in Damascus. He contracted a severe illness in 1354, and after ensuring that his son Tāj al-Dīn would inherit the office of the Shāfi‘ī Chief Judge in Damascus, Taqī al-Dīn returned to his Egyptian homeland where he lived out his remaining days. Tāj al-Dīn said that the crowd around the funeral of his father on 3 Jumada II in the year 756 (14 June, 1355) filled the

⁹⁰ Al-Subkī, *Ṭabaqāt*, 9:27, 139; 10:145, 342; al-Isnawī, *Ṭabaqāt*, 2:261.

streets of Cairo, a scene similar to the funeral of Aḥmad Ibn Ḥanbal in Baghdad five centuries earlier.⁹¹

A striking attribute of Taqī al-Dīn's biography is his multi professional functions. He taught *fiqh* since he was in Cairo and then became a judge and *mufīṭ* in Damascus. In his study of a *fatwā* issued on the endowment (*waqf*) of a madrasa in Damascus, Norman Calder provides insight showing that Taqī al-Dīn was aware of the complexity of those different roles and more importantly aware of the relationship between theory and practice in the formulation of Islamic law.⁹² Taqī al-Dīn describes at least three ways a *faqīh* might relate to the *sharī'a*:

... 'ulamā' are, in relation to *fiqh*, in three ranks.

Knowledge of *fiqh* for itself; this is a matter of universals (*huwa amr kullī*). For the master of *fiqh* in this sense considers universal matters and the rules pertaining to them, as is the habit of writers, teachers, and students.

This rank is the root of the others.

⁹¹ Al-Subkī, *Ṭabaqāt*, 10:154-170, 315-317. Another thing that mentioned by Tāj al-Dīn in his biography on his father is Taqī al-Dīn's great love and admiration for Sufis. Tāj al-Dīn includes a selection of relevant statements that are not found in the written works of his father, indicating that in principle the volumes can be filled with such material. Tāj al-Dīn also records accounts of miraculous occurrence (*karāmāt*), such as Taqī al-Dīn receiving guidance from supernatural sounds or the unexpected death of those who opposed him. Tāj al-Dīn notes that his father was reluctant to discuss these in public, al-Subkī, *Ṭabaqāt*, 10:210-219, 295-303.

⁹² Calder, "Scholars, Muftis, Judges," 116-166; On the relationship between theory and practice in Islamic law in general, see also Shihāb al-Dīn al-Qarāfī, *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*, trans. Mohammad Fadel (New Haven: Yale University Press, 2017).

The [next is the] rank of the *mufṭī*; this relates to the forms of the particular (*ṣūra juz`iyya*), and to the application (*tanzīl*) of what has been established in the first rank. It is the *mufṭī*'s duty to consider what he has been asked about, and the conditions of the event (*aḥwāl tilka al-wāqī`a*). His answer should be related to these conditions. He informs the petitioner that God's ruling (*ḥukm Allāh*) on this event is such-and-such. This is different from the absolute *faqīh*, the writing and teaching *faqīh*, who does not pronounce on 'this event', but rather on 'such-and such an event'. There may well be a difference between the latter and that [particular] event. For this reason, we find that many *fuqahā`* do not know how to give fatwas, do not know that the special function of the *mufṭī* is the application of the universal law to the particular situation (*tanzīl al-fiqh al-kullī `alā al-mawḍi` al-juz`ī*). This task requires insight over and above the memorising of *fiqh* and its proofs. It is also for this reason that we find in the fatwas of some early scholars some factor that requires restraint in accepting them into *fiqh*. This does not arise from any inadequacy in the *mufṭī* – Heaven forbid! – but because there may well be in the event he was asked about something that required that special answer. So it is not dismissed in all its aspects. This may happen in some cases; we have

found, through trial and experience, in some cases but not many, the majority being such that they can be accepted. So be aware of this possibility, for necessity may require it in certain situations, and we will be unable to admit a *fatwā* of this kind to the *madhhab* without much consideration. The [third is the] rank of the *qāḍī*; this is more specialised than the rank of the *muftī*. For the judge considers the particular matters that the *muftī* considers, plus the establishment of their causes, the rejection of opposition, and so on. Matters become evident to the *qāḍī* which are not evident to the *muftī*. Hence the consideration of the *qāḍī* is wider than that of the *muftī*, and that of the *muftī* is wider than that of the *faqīh*. But the *faqīh*'s consideration is the most noble and of most general benefit (*a 'ammu naf'an*).⁹³

The first, and perhaps most theoretical, rank is the rank of the teaching expert (*faqīh*) whose duty is to extract God's Law from its correct sources without consideration of its practical application. Calder describes this as "an academic activity",⁹⁴ in which the jurist seeks to clarify God's Law in its pure form. The second category is the *muftī*, who is entrusted with the task of applying the universality of God's Law to a particular question but without being responsible

⁹³ Translated by Calder and cited in his "Scholars, Muftis, Judges," 120-121; Al-Subkī, *Fatāwā*, 2:122-123.

⁹⁴ Calder, "Scholars, Muftis, Judges," 122.

for making a binding judgement in a specific case. The judge is the one whose judgement is binding due to his awareness of the special circumstances and contextual elements of each particular case.

These multi professional functions show that the *sharī'a*, in Taqī al-Dīn's personal perception, was formulated not only in conversation with sacred texts but also in conversation with the society's needs. As we will discuss in detail in the upcoming three cases, his role as *faqīh* may explain why he took certain positions in his early opinions in Cairo, but his role as *mufīī* and judge in his later opinions in Damascus explain why his stance has evolved.

3.2. His legal writings

Taqī al-Dīn has writings in different fields in Islamic sciences, including theology, Tafsīr, Ḥadīth, and law.⁹⁵ However, the purpose of this thesis is to focus on his legal works only. Perhaps the most famous work associated with Taqī al-Dīn is a collection called *Fatāwā al-Subkī*. The *fatāwā* were collected by his son Tāj al-Dīn and contain religious and legal *fatāwā*, independent treatises (*rasā'il*) of different religious and legal and administrative subjects,⁹⁶ theological questions, interpretative notes of some passages of the Qur'ān,⁹⁷

⁹⁵ For a list of Taqī al-Dīn's writings including non-legal texts, see Iyād al-Ghawj, "Taqī al-Dīn al-Subkī wa athāruhu fī uṣūl al-fiqh," unpublished Ph.D. diss. (Beirut: Beirut University, 2011), 72-155.

⁹⁶ An example of an independent treatise is the one on the direction of the *qibla*, where Taqī al-Dīn legally surveyed the *qibla* of several existing famous mosques of his day in both Cairo and Damascus, *Fatāwā*, 1:149-155; another one is on the Damascus rivers and the related legal rules concerning the monopoly of the use of these rivers, especially from the property overlooking these rivers. Taqī al-Dīn established legal criteria for the public and private use of these rivers, *Fatāwā*, 1:453-461.

⁹⁷ Those interpretative notes of some passages of the Qur'ān are in vol 1 of the *Fatāwā*, from page 17 to 135.

daily memoirs, and personal reflections. A distinguishing factor of the *fatāwā* is that most of them are dated, especially during the times in which Taqī al-Dīn had been occupied with his services as a judge in Damascus. The *fatāwā* reflect the religious and legal diversity of the Mamlūk community, in particular Damascus and the surrounding areas of the Syria.⁹⁸

The rest of Taqī al-Dīn’s legal works were all composed in Cairo before he was appointed as a judge in Damascus. The greatest of these works is *Ibtihāj*, a commentary on al-Nawawī’s *Minhāj*. Taqī al-Dīn could not cover all of *Minhāj*, but he completed six volumes, mostly devoted to issues pertaining to worship (*‘ibādāt*). The six volumes were published in the year 726/1326. *Ibtihāj* was an important step in the life of Taqī al-Dīn, as it confirmed his reputation among the Shāfi‘īs. He depended in *Ibtihāj* on a great number of sources, indicating his wide knowledge of Shāfi‘ī legal history and resources. *Ibtihāj* contains names of books considered rare or lost in the Shāfi‘ī tradition.⁹⁹

Taqī al-Dīn also published four written works between the years 718/1318 and 725/1325 on the issue of divorce in a bid to refute Ibn Taymiyya.¹⁰⁰ In the year 726/1326, Taqī al-Dīn wrote another refutation against Ibn Taymiyya on the subject of the visitation of the tombs (*ziyāra*) of Muslim saints.¹⁰¹ His last legal work was *al-Sayf al-maslūl ‘alā man sabb al-Rasūl* (‘The Brandished Sword upon Those Who Insult The Prophet’), which he had begun to write in Cairo in 734/1334 and finished a few years before his death in

⁹⁸ Calder, “The Social Function of Fatwas,” 167-200.

⁹⁹ Al-Ghawj, “Taqī al-Dīn al-Subkī,” 98-99.

¹⁰⁰ Those four treatises are published all together in al-Subkī, *al-Durra al-muḍī‘a fī al-radd ‘alā Ibn Taymiyya*, ed. Ḥusām al-Maḡdisī (Damascus: Maṭba‘at al-Taraqqī, 1929).

¹⁰¹ Al-Subkī, *Shifā’ al-siqām fī ziyārat khayr al-anām*, ed. Ḥusayn al-Shukrī (Beirut: Dār al-Kutub al-‘Ilmiyya, 2008).

Damascus. The book addresses the issue of cursing the Prophet and his Companions and it contains a description of the good qualities (*maḥāsīn*) of the Prophet Muḥammad. We will address *Sayf* in more detail in Chapter Three.

3.3. His role within the Shāfi‘ī *madhhab*

Before discussing the extent to which Taqī al-Dīn contributed to the *madhhab*’s development, the nature of the Shāfi‘ī *madhhab* should be examined. Muḥammad Ibn Idrīs al-Shāfi‘ī (d. 204/820), to whom the establishment of the *madhhab* was attributed, moved between Baghdad and the Hijaz, eventually settling in Egypt, where his *madhhab* flourished. However, al-Shāfi‘ī had a group of Iraqi students who also promoted and wrote his ideas when he was in Iraq, and those ideas developed and become known as al-Shāfi‘ī’s ‘old *madhhab*’ (*al-madhhab al-qadīm*). In Egypt, al-Shāfi‘ī changed his mind about some legal issues, and his students in Egypt promoted and wrote his new ideas, which would become known as al-Shāfi‘ī’s ‘new *madhhab*’ (*al-madhhab al-jadīd*).¹⁰²

After his death, al-Shāfi‘ī’s works, carrying both his old and new opinions, were discernible already in the works of his two most famous students: Ismā‘īl Ibn Yaḥyā al-Muzanī (d. 858)¹⁰³ and Abū Ya‘qūb al-Buwayṭī (d. 846).¹⁰⁴ His students not only summarise al-Shāfi‘ī’s corpus, but they “digest al-Shāfi‘ī’s

¹⁰² Chaumont, “Al-Shāfi‘īyya,” *EP*; for an assessment of al-Shāfi‘ī’s life and legal thought before moving to Egypt, see the first two chapters of El Shamsy, *Canonization*, 17-68. Chapters three and four of *Canonization* are dedicated to al-Shāfi‘ī’s life and his legal thought in Egypt, 69-117.

¹⁰³ On al-Muzanī see El Shamsy, “Al-Shāfi‘ī’s Written Corpus,” 199-220.

¹⁰⁴ On al-Buwayṭī see El Shamsy, “The First Shāfi‘ī,” 301-341; El Shamsy and Zysow, “Al-Buwayṭī’s Abridgment of al-Shāfi‘ī’s *Risāla*,” 327-355.

positions, juxtapose them with each other and with the evidence, offer additional proofs and examples, analyze al-Shāfi‘ī’s reasoning, extend it to new cases, and on occasion disagree explicitly with the master.”¹⁰⁵ One of the more creative and important techniques employed especially by al-Muzanī alongside other early Shāfi‘ī jurists was *takhrīj*. *Takhrīj* is a legal method seeking to discern al-Shāfi‘ī’s jurisprudential reasoning in an existing case and speculatively apply it to a different, unaddressed issue.¹⁰⁶ This opened a variety of new interpretive choices and trajectories, which become known later as *wujūh al-madhhab*.¹⁰⁷ By the eleventh century, al-Muzanī’s famous legal work *Mukhtaṣar al-Muzanī*¹⁰⁸ became the focus of the Shāfi‘īs of that era. *Al-Ḥāwī* of al-Māwardī (d. 1058),¹⁰⁹ *al-Muhadhdhab* of al-Shīrāzī (d. 1083),¹¹⁰ and *Nihāyat al-maṭlab* of al-Juwaynī

¹⁰⁵ El Shamsy, *Canonization*, 177. Although al-Buwayṭī and al-Muzanī applied similar techniques to solve the tension in al-Shāfi‘ī’s corpus, their conclusions were not always identical. This is because the two had different orientations and intellectual backgrounds, which in turn influenced their choices. Al-Buwayṭī was more traditionalist; the compatibility of al-Shāfi‘ī’s sayings with Ḥadīth is the focal point of his analyses. Al-Muzanī on other hand was an *uṣūlī* with previous Ḥanafī background, which in turn influenced his decision, El Shamsy, *Canonization*, 191.

¹⁰⁶ El Shamsy, *Canonization*, 179. For a discussion of *takhrīj* in general, see Hallaq, *Authority*, 43-56.

¹⁰⁷ *Wajh* (or in its plural form “*wujūh*” or “*awjuh*”) refers to the opinions or the new laws which are derived by way of *takhrīj*. For further information of this term, see Maryam Muḥammad Ṣāliḥ al-Zufayrī, *Muṣṭalahāt al-madhāhib al-fiqhiyya wa asrār al-fiqh al-marmūz fī al-a‘lām wa al-kutub wa al-ārā’ wa al-tarjīḥāt*, (Beirut: Dār Ibn Ḥazm, 2002), 267. *Wujūh* as designation is mostly associated with early Shāfi‘īs in the ninth and tenth centuries, known as *aṣḥāb al-wujūh fī al-madhhab*. For a list of jurists included in *aṣḥāb al-wujūh*, see Muḥammad Ḥasan Haytū, *al-Ijtihād wa ṭabaqāt mujtahidī al-Shāfi‘iyya* (Beirut: Mu‘asasat al-Risāla, 1988), 5-9. The list of *aṣḥāb al-wujūh* is however controversial. Some limited *aṣḥāb al-wujūh* to the direct students of al-Shāfi‘ī only, some include the early generation of the ninth and ten centuries, and others also include the Shāfi‘ī generation in the eleventh century. For a discussion on the *aṣḥāb al-wujūh* controversy, see El Shamsy, *Canonization*, 169-173 and Fachrizal Halim, *Legal Authority in Premodern Islam: Yaḥyā B. Sharaf al-Nawawī in the Shāfi‘ī School of Law* (New York: Routledge, 2015), 207.

¹⁰⁸ Ismā‘īl Ibn Yaḥyā al-Muzanī, *Mukhtaṣar al-Muzanī fī furū‘ al-Shāfi‘iyya*, ed. Muḥammad Shāhīn (Beirut: Dār al-Kutub al-‘Ilmiyya, 1998).

¹⁰⁹ ‘Alī b. Muḥammad al-Māwardī, *al-Ḥāwī al-kabīr*, ed. Maḥmūd Maṭarjī, 22 vols (Beirut: Dār al-Fikr, 1994).

¹¹⁰ Ibrāhīm b. ‘Alī al-Shīrāzī, *al-Muhadhdhab fī fiqh al-imām al-Shāfi‘ī*, 3 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1992).

(d. 1085)¹¹¹ are all commentaries on *Mukhtaṣar al-Muzanī* which appear to have broadly coalesced around *wujūh*.¹¹²

In response to this expanding diversity, there were a series of attempts by leading Shāfi‘ī jurists to synthesise *wujūh*, in terms of both theory and practice, into a coherent and unified tradition – a process known as *tarjīh*, or rule determination.¹¹³ In the thirteenth century, ‘Abd al-Karīm Ibn Muḥammad al-Rāfi‘ī (d. 1266) and Yaḥyā Ibn Sharaf al-Nawawī (d. 1277) engage directly with the vast legal literature produced by the Shāfi‘ī *madhhab* in the first five centuries in order to establish the predominant position (*mashhūr* or *mu‘tamad ‘alayh*) of the *madhhab*.¹¹⁴ Ahmed El Shamsy makes a compelling argument as to why al-Rāfi‘ī and al-Nawawī took this delicate step:

Historically speaking, this was not an arbitrary development. Al-Rāfi‘ī and al-Nawawī were part of an encyclopaedic drive in the Mamlūk era to gather and sift all existing Islamic knowledge, a movement that

¹¹¹ ‘Abd al-Malik b. ‘Abd Allāh al-Juwaynī, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, ed. ‘Abd al-‘Azīm Adīb, 20 vols (Jeddah: Dār al-Minhāj, 2007). On al-Juwaynī, see the new publication of Sohaira Siddiqui, *Law and Politics Under the Abbasids: An Intellectual Portrait of al-Juwaynī* (Cambridge: Cambridge University Press, 2019).

¹¹² Halim, *Legal Authority*, 152-153.

¹¹³ On *tarjīh* in general, see Hallaq, “From Fatwās to *Furū‘*,” 51-53; *Authority*, 133-165.

¹¹⁴ Ahmed El Shamsy “*Hāshiya*,” 289-315; Muḥammad al-Kāf, “al-Mu‘tamad fī al-fiqh al-Shāfi‘ī,” unpublished Ph.D. diss. (Beirut: al-Awzā‘ī University, 2013), 193-242; ‘Alawī b. Ahmad al-Saqqāf, *Mukhtaṣar al-fawā‘id al-makkiyya fīmā yaḥtājuhu ṭalabat al-‘ilm al-Shāfi‘iyya*, ed. Yūsuf Mar‘ashlī (Beirut: Dār al-Bashā‘ir, 2004), 72-74; Muḥammad b. Sulaymān al-Kurdī, *al-Fawā‘id al-madaniyya fī mā yuftā bi-qawlihi min a‘immat al-Shāfi‘iyya*, ed. Bassām al-Jābī (Beirut: Dār al-Jaffān wa al-Jābī, 2011), 28-29, 37-42; On al-Nawawī particularly, see Halim, *Legal Authority*, 105-298. For a brief discussion of the *mashhūr* in general, see Marion Katz, “The Age of Development and Continuity, 12th–15th Centuries CE,” in *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed (Oxford: Oxford University Press, 2018), 437-458.

animated all legal schools and Islamic disciplines. This was particularly important for the Shāfi'īs in the thirteenth century because of the economic and then military destruction of their eastern centers of learning in Transoxania, Khurasan, and Iraq and the accompanying influx of scholars and literature into the Mamlūk realm. Al-Rāfi'ī's and al-Nawawī's achievement was to bring together and fuse into a unitary doctrine the entire known intellectual legacy of the Shāfi'ī school and to publicize and circulate it in works ranging from compact compendia (*mukhtaṣarāt*) to huge commentaries.... The synthesizing function of these two scholars explains why their works....became the authoritative lens through which later Shāfi'īs perceived the doctrinal history of their school.¹¹⁵

Taqī al-Dīn arrived after the era of al-Rāfi'ī and al-Nawawī. Al-Rāfi'ī and al-Nawawī had already achieved a certain canonical status within the *madhhab*. Shāfi'īs dispute where to place Taqī al-Dīn's legal authority in relation to al-Rāfi'ī and al-Nawawī; the dispute is usually included in the discussion of *ijtihād/taqlīd* dichotomy. His son Tāj al-Dīn argues that Taqī al-Dīn was a *mujtahid*; his juristic level was above that of al-Rāfi'ī and al-Nawawī and that his rulings should be preferred when he differs from al-Rāfi'ī or al-Nawawī. Tāj

¹¹⁵ El Shamsy "Hāshiya," 293.

al-Dīn's determination is based on his father mastery of the legal principles employed by al-Rāfi'ī or al-Nawawī as well as his grasp of the original textual sources (*nuṣūṣ al-Shāfi'ī*) and opinions of the Shāfi'ī *madhhab* (*wujūh al-madhhab*).¹¹⁶ Al-Ṣafadī (d. 764/1363), Ibn Naqīb al-Miṣrī (d. 768/1367), al-Suyūṭī (d. 911/1505), al-Ramlī (d. 919/1513), al-Anṣārī (d. 926/1555) al-Dāwūdī (d. 945/1538), and al-Haytamī (d. 974/1567) all view Taqī al-Dīn as a *mujtahid* whose opinions are accepted as long as they do not contradict al-Rāfi'ī and al-Nawawī's conclusions. This means that they consider al-Rāfi'ī and al-Nawawī's juristic level above that of Taqī al-Dīn.¹¹⁷

¹¹⁶ Al-Subkī, *Ṭabaqāt*, 10:226-234.

¹¹⁷ Al-Ghawj, "Taqī al-Dīn al-Subkī," 55-65; al-Suyūṭī, *Taqrīr*, 55; al-Ramlī, *Fatāwā*, 4:21-22; al-Anṣārī, *I'lām*, 278-279; al-Dāwūdī, *Ṭabaqāt*, 1:286; al-Haytamī, *Fatāwā*, 114. A few Shāfi'īs however view Taqī al-Dīn as a *muqallid*, but they excused his choice to be a *muqallid* despite his ability to be a *mujtahid*. The excuse is related to the fact that Taqī al-Dīn was a judge and therefore could not practice *ijtihād*. Abū Zar'a al-'Irāqī (d.826/1422) once asked his teacher, Sirāj al-Dīn al-Balqīnī (d.805/1402), as to why Taqī al-Dīn preferred to be a *muqallid* despite his ability to be a *mujtahid*. When his teacher remained silent, al-'Irāqī then asked whether it was because of the requirement to follow the four Sunnī *madhhabs*, citing the fact that whoever elaborates upon the law independently from those *madhhabs* would not be recognised and could not be appointed as a judge; people would refuse to consult him, and he would be accused as an innovator. Al-Balqīnī then smiled and agreed with his student, Abū Zar'a Aḥmad b. 'Abd al-Raḥīm al-'Irāqī, *al-Ghayth al-hāmi' sharḥ jam' al-jawām'*, ed. Muḥammad Ḥijāzī (Beirut: Dār al-Kutub al-'Ilmiyya, 2004), 720. Al-Isnawī (d. 772/1371) also leaned towards supporting this reasoning. After praising Taqī al-Dīn, he added that the one thing he wanted to question Taqī al-Dīn about was his passion for securing jobs for himself and his family, al-Isnawī, *Ṭabaqāt*, 2:75.

Al-'Irāqī's opinion on Taqī al-Dīn's legal authority drew some attention in modern times. In his *al-Inṣāf fī bayān asbāb al-ikhtilāf* ('The equity in demonstration of the reasons of dispute'), al-Dihlawī (d. 1762) rejected al-'Irāqī's narrative and his teacher and indicated that Taqī al-Dīn was indeed a *mujtahid* and God forbid that Taqī al-Dīn abandoned *ijtihād* due to judgeship, Aḥmad b. 'Abd al-Raḥīm al-Dihlawī, *al-Inṣāf fī bayān asbāb al-ikhtilāf*, ed. 'Abd al-Fattāḥ Abū Ghudda (Beirut: Dār al-Nafā'is, 1983), 47. On the other hand, the Egyptian Sayyid Sābiq (d. 2000) commented on the report of al-'Irāqī and his teacher, and emphasising his strong belief that maintaining livelihood was why Taqī al-Dīn's turned away from exercising *ijtihād*, Sayyid Sābiq, *Fiqh al-sunna* (Beirut: Dār al-Kitāb al-'Arabī, 1977), 103. Al-Ālūsī (d. 1924) goes further, accusing Taqī al-Dīn of bribery to secure an office, further claiming Taqī al-Dīn becoming a *mujtahid* was one of the reasons for Islam's decadence, Maḥmūd Shukrī

Taqī al-Dīn did engage intellectually with al-Rāfi‘ī and al-Nawawī. By reviewing the *mashhūr* and extrapolating and drawing on early authorities on the *madhhab*, I argue that he was perhaps primarily concerned with his society. Al-Rāfi‘ī and al-Nawawī on the other hand focussed mostly on *furū‘* manuals (*mutūn*, *shurūḥ*, and *ḥawāshī*, and so on). Most of Taqī al-Dīn’s views regarding the three upcoming cases in this thesis are located in his *Fatāwā* and a treatise of *Sayf*, indicating that he attempts to respond to problem of his day. As El Shamsy noted, “the primary venue of legal innovation and change post-al-Nawawī era was represented not by *ḥawāshī* but rather by *rasā’il* and *fatāwā*”.¹¹⁸

al-Ālūsī, *Ghāyat al-amānī fī al-radd ‘alā al-Nabhānī*, ed. Abū ‘Abd Allāh b. Munīr al-Zahawī, 2 vols (Riyadh, Maktabt al-Rushd, 2001), 1:451.

¹¹⁸ El Shamsy “*Hāshiya*,” 298-299.

Chapter 2

The determination of the beginning of the month of Dhū al-Ḥijja

1. Introduction

This chapter will analyse al-Subkī's stance regarding the legal methods used to determine the beginning of the month of Dhū al-Ḥijja. Al-Subkī's writings convey two major opinions, composed in 726/1326 and 749/1348 respectively. In the former, he considered the testimony of trusted people in sighting the crescent of the moon. A sighting with the naked eye was held as the legal method to declare the beginning of Dhū al-Ḥijja. The latter opinion saw al-Subkī favour the use of astronomical calculation as a supporting tool to aid sightings of the crescent moon. He also argued for the use of astronomical calculation to exclude sightings that are mathematically impossible. We will discuss and contrast the two opinions while shedding light on the scientific and cultural context of the Early Mamlūk Sultanate. Al-Subkī's two opinions are to be read and understood within the framework of that context.

Al-Subkī draws on, and benefits from, the astronomy of his day, namely the scientific and cultural history of the Early Mamlūk Sultanate. From 648/1250 to 741/1341, the mosques' muezzins were tasked with determining the start of the month. Muezzins were known to use a basic knowledge of astronomy called 'folk astronomy'. They determined the beginning of the month by sighting the crescent moon with the naked eye. After the muezzins had seen the crescent, the Shāfi'ī judges, who controlled the central mosques in the Sultanate, would then

publicly announce the beginning of each month. Al-Subkī's first opinion in 726/1326 was in harmony with these procedures.

After the death of Sulṭān al-Nāṣir Muḥammad in 741/1341, the position of timekeeper, or *mīqātī*, was introduced in mosques alongside the muezzins. The *mīqātī* had knowledge in mathematical astronomy and began to participate in determining the beginning of the month. Although most 'ulamā' continued to use and support folk astronomy and thus did not openly welcome the *mīqātīs*, al-Subkī supported this shift by integrating mathematical astronomy into legal reasoning. I will argue that it was through a scientific and religious communication between the well-known astronomer Ibn al-Shāṭir and al-Subkī, the latter was able to confidently provide a solution to a legal problem of time.

Several modern scholars have written about astronomy in the medieval Islamic period. A leading figure in this field is David King, who has extensively studied the astronomical practice of the Mamlūk era, including the development of the science alongside the subsequent problems encountered and their solutions. One of King's most important findings is that, despite the reservation of the Mamlūk 'ulamā' concerning the activity of astronomers, the Mamlūk period was one of the most prominent historical periods in the development of Islamic astronomy.¹¹⁹ Two other scholars, Edward Kennedy and George Saliba,

¹¹⁹ David A. King, "The Astronomy of the Mamluks," *Isis* 74, no. 4 (1983): 531-555; King, *Mathematical Astronomy in Medieval Yemen* (Malibu: Undena, 1983); King, "The Astronomy of the Mamluks: A Brief Overview," *Muqarnas* 2 (1984): 73-84; King, *Astronomy in the Service of Islam* (Surrey: Ashgate, 1993); King, *In Synchrony with the Heavens* (Leiden: Brill, 2003); King, "Ibn Al-Shāṭir: 'Alā' al-Dīn 'Alī Ibn Ibrāhīm," in *The Biographical Encyclopaedia of Astronomers, Springer Reference*, ed. Thomas Hockey (New York: Springer, 2007), 569-570; King, "Ru'yat al-Hilāl," in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 28 December 2018, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/ruyat-al-hilal>.

along with King, took the initiative of documenting what we now know as the history of astronomy in the Islamic world.¹²⁰ Other recent and promising studies have shed light on the history of astronomy in the Islamic world, from the formation of Islam to our modern times. Their interest revolved around the relationship between religion and science, the challenges that this relationship has had, and its impact on Islamic culture.¹²¹ All these studies will help us investigate the scientific, technological, and cultural history of Islamic medieval societies, especially in the Early Mamlūk Sultanate era, and consequently will enable us to make an informed assessment of al-Subkī's writing.

2. The first opinion in 726/1326

Al-Subkī's first view is found in his *Ibtihāj*. This work is a commentary (*sharḥ*) on al-Nawawī's *Minhāj*, which is a manual of *furū' al-fiqh* in Shāfi'ī law. *Minhāj* is an abbreviation (*mukhtaṣar*) of al-Rāfi'ī's *Muḥarrar*. Al-Nawawī states that his purpose is to elucidate the stance of the *madhhab* (*mashhūr*) according to the opinions of the majority of the Shāfi'ī jurists. In that way, al-Nawawī eliminates any disagreement (*ikhtilāf*). Thus, *Minhāj* is, as al-Nawawī

¹²⁰ For Kennedy's works, see Edward Kennedy, "A Survey of Islamic Astronomical Tables," *Transactions of the American Philosophical Society* 46, no. 2 (1956): 123-177; Kennedy, "Parallax Theory in Islamic Astronomy," *Isis* 47, no. 1 (1956): 33-53; Kennedy, *Studies in the Islamic Exact Sciences* (Beirut: American University of Beirut, 1983); Kennedy, *Astronomy and Astrology in the Medieval Islamic World* (Surrey: Ashgate, 1998). For Saliba's works, see George Saliba, "The Development of Astronomy in Medieval Islamic Society," *Arab Studies Quarterly* (1982): 211-225; Saliba, "Theory and Observation in Islamic Astronomy: The Work of Ibn al-Shāṭir of Damascus," *Journal for the History of Astronomy* 18, no. 1 (1987): 35-43; Saliba, *A History of Arabic Astronomy: Planetary Theories during the Golden Age of Islam* (New York: NYU Press, 1995); Saliba, *Islamic Science and the Making of the European Renaissance* (Cambridge, MA.: MIT Press, 2007).

¹²¹ Ahmad Dallal, *Islam, Science, and the Challenge of History* (New Haven: Yale University Press, 2010); Barbara Stowasser, *The Day Begins at Sunset: Perceptions of Time in the Islamic World* (London: IB Tauris, 2014).

declares, a support for *muftīs* and a memorisation aid for Shāfi‘ī students in madrasas. *Minhāj* consists of an introduction, in which al-Nawawī explains his method, and a main body, in which he covers the usual topics of *furū‘ al-fiqh*, namely worship (*‘ibādāt*) and transactions (*mu‘āmalāt*).¹²²

Al-Subkī structured his commentary based on the text of *Minhāj*. He includes the entirety of *Minhāj* in his *Ibtihāj*. He places the text of *Minhāj* in brackets and then explains it. His method with regard to each of al-Nawawī’s points is to agree, disagree, or refrain from voicing an opinion. *Ibtihāj* has no introduction, starting directly with the *‘ibādāt* section. As a result, al-Subkī’s method remains unexplained. However, he seems to consider *Ibtihāj* to be a commentary (*sharḥ*), which is the category between *mukhtaṣarāt* and *ḥawāshī*. While a *mukhtaṣar* serves to focus on the statement of the *madhhab* (*mashhūr*), a *ḥāshiya* encompasses the revelation as well as the disagreement (*ikhtilāf*) and linguistic preoccupation. For this reason, al-Subkī adds certain contributions to explain al-Nawawī’s text, but omits other issues due to the nature of the *shurūḥ* genre.¹²³ Examples of this are given in the following discussion.

The question of how to determine the beginning of the month of Dhū al-Ḥijja is located in the chapter on *ṣalāt al-‘īd* of *Ibtihāj*. This chapter covers the rulings of *ṣalāt al-‘īd*: its time and place; the things that the Shāfi‘īs should do

¹²² Yaḥyā b. Sharaf al-Nawawī, *Minhāj al-ṭālibīn wa ‘umdat al-muftīn*, ed. Muḥammad Sha‘bān (Jeddah: Dār al-Minhāj, 2005). For a discussion on *Minhāj* and its characteristics, see Calder, “Nawawī and the Typologies of Fiqh Writing,” 99-106; al-Kāf, “Mu‘tamad,” 235-242; al-Ḥabashī lists 230 commentaries and glosses on *Minhāj* in his *Jāmi‘*, 1:1909-1931.

¹²³ On these categories and their purposes, usage and characteristics in Islamic legal writings, see El Shamsy, “*Hāshiya*,” 289-315; Fadel, “The Social Logic of *Taqīd*,” 193-233; for a broad discussion on commentaries in Islamic intellectual history, see L.W.C. (Eric) Van Lit, “Commentary and Commentary Tradition. The Basic Terms for Understanding Islamic Intellectual History,” *MIDÉO* 32 (2017): 3-26.

on that day; the rulings on the *tabbīrāt*; and finally the legal method to be used to determine the beginning of the month of Dhū al-Ḥijja (also known as determining the day of *ʿīd*).¹²⁴ In this issue, al-Subkī follows al-Nawawī and considers the testimony of trusted people in their sightings of the crescent of the moon with their naked eye to be the correct legal method to declare the beginning of Dhū al-Ḥijja. Al-Subkī starts by placing what al-Nawawī said in brackets (If trusted people (*thiqāt*) saw the crescent, then the beginning of the month should be announced and the day of *ʿīd* should be declared).¹²⁵ Al-Subkī then adds a *ḥadīth* from the tradition of the Prophet Muḥammad to support al-Nawawī’s text. The *ḥadīth* states, “The Feast of breaking the fast (*ʿīd al-fīṭr*) is the day on which the people break their fast, while the Feast of the sacrifice (*ʿīd al-aḍḥā*) is the day on which the people sacrifice.”¹²⁶ Al-Subkī then mentions a report by al-Shāfi‘ī from his *Umm*, which says: “that is what we do accordingly, because God has assigned His worshipers to act according to what appears (*li-’anna Allāh kallaḥa ʿibādahu bi-l-zāhir*).”¹²⁷

Al-Subkī cites a *ḥadīth* and quote of al-Shāfi‘ī to support al-Nawawī’s position; he does not elaborate on the criteria required for witnesses. He only reiterates the words of al-Nawawī – that witnesses should be trusted (*thiqāt*). For example, Shāfi‘īs stipulate that reliability (*ʿadāla*) is required with *thiqa*. The difference between them is that *ʿadāla* is mostly religious righteousness (although the Shāfi‘īs differ in the precise meaning of *ʿadāla*). Shāfi‘īs commonly use the phrase “every *ʿadl* is *thiqa*; but not every *thiqa* is necessarily

¹²⁴ Al-Subkī, *Ibtihāj*, 1:427-460.

¹²⁵ Al-Subkī, *Ibtihāj*, 1:456; al-Nawawī, *Minhāj*, 142.

¹²⁶ Al-Tirmidhī, *Jāmi‘*, *Kitāb al-ṣawm* (8), *Bāb mā jā’ fī al-fīṭr wa al-aḍḥā* (78); *ḥadīths* numbers are those used at sunnah.com.

¹²⁷ Al-Subkī, *Ibtihāj*, 1:456-458.

‘*adl*’.¹²⁸ Next, al-Subkī does not discuss the necessity of a judge to investigate the reputation of witnesses in the community, but Shāfi‘īs state that a judge’s investigation is required.¹²⁹ As mentioned, one possible reason for al-Subkī’s omission in addressing these issues is because the *Ibtihāj* has no space to deal with legal issues in detail.

Al-Subkī’s choice for the above *ḥadīth* is noteworthy, mainly because there is nothing mentioned about the sighting of crescent in this *ḥadīth*. There are other more explicit *ḥadīths* that al-Subkī could have cited, such as the *ḥadīth* that says, “If you see the crescent [of Ramaḍān] you should fast, and if you see the crescent [of Shawwāl] you should break your fast”.¹³⁰ Perhaps al-Subkī does not mention this *ḥadīth* because it is related to the month of Ramaḍān and Shawwāl, and he is discussing the sighting of the month of Dhū al-Ḥijja. That being said, it is unclear whether there are differences between the legal procedures required for sighting the crescent of Ramaḍān and Shawwāl compared to Dhū al-Ḥijja. There is no apparent reason for al-Subkī to specifically rely on this particular *ḥadīth*. However, it is possible that al-Subkī interprets the phrase ‘people’ (*al-nās*) as a link to the act of sighting the moon. (*Al-nās*) in Arabic is plural; it is defined as a formula indicating two and more. Therefore, the phrase (*al-nās*) is likely to be used as an evidence that a sighting of the crescent of the moon through the naked eyes of at least two people is a

¹²⁸ Shams al-Dīn Muḥammad b. Aḥmad al-Shirbīnī, *Mughnī al-muḥtāj ilā ma‘rifat al-minhāj*, 6 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1994), 4:427; al-Māwardī, *Hāwī*, 17: 149.

¹²⁹ “Shahāda,” in *al-Mawsū‘a al-fiqhiyya*, 45 vols. (Kuwait: Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya, 1983-2006), 26:223-224; “‘Adāla,” *al-Mawsū‘a al-fiqhiyya*, 30:21-22.

¹³⁰ Muslim, *Ṣaḥīḥ*, *Kitāb al-ṣawm* (13), *Bāb wujūb ṣawm Ramaḍān* (2).

necessity for declaring the beginning of the month and determining the day of the Feast.

In his *Ibtihāj* (1326), Al-Subkī suggests that the correct legal method for determining the beginning of the month of Dhū al-Ḥijja is by sighting the crescent moon with the naked eye. The sighting should rely on the testimony of trusted persons. This opinion is not only compatible with the prevailing view of the Shāfi‘ī *madhhab*, but all the *madhhabs* support it.¹³¹ The issue was not contested within the *madhhabs*, implying that agreement was seen as compulsory.

3. The second opinion in 749/1348

Almost 22 years later, al-Subkī developed another opinion on the legal method for determining the beginning of the month of Dhū al-Ḥijja. He supports the use of astronomical calculations as a tool to aid sighting the crescent moon with the naked eye. He then continues to argue confidently for the use of mathematical astronomy to exclude sightings that are mathematically impossible.

Al-Subkī’s second opinion is found in a treatise within his *Fatāwā*. The title of the treatise is ‘The Book of Fasting (*Kitāb al-Ṣawm*)’. The treatise is known among the later Shāfi‘īs, however, as ‘The Treatise of Calculation (*Risāla*

¹³¹ “Ru’yat al-Hilāl,” *al-Mawsū‘a al-fiqhiyya*, 22:22-40.

fi al-Ḥisāb)'. We will refer to the treatise as *Ḥisāb* in the following discussion. *Ḥisāb* is roughly 11 pages in length in the modern published text.¹³²

The overall structure of *Ḥisāb* is as follows: The first part focuses on the legal rule on the use of astronomical calculation in determining the beginning of the month. Al-Subkī clarifies that there are three ways in which astronomical calculation can be used, detailing the legal rule in each case. The first case is to rely solely on astronomical calculations without considering sightings with the naked eye. The second case is when astronomical calculations assist in the sighting of the crescent and in predicting its movements. Al-Subkī argues that it is not permissible to rely on astronomical calculation in those two cases. The third and final case is when astronomical calculation reveals that sighting the crescent is impossible when otherwise allegedly sighted with the naked eye. Al-Subkī argues that it is legally obligatory to rely on astronomical calculation in this case.

Part Two of the *Ḥisāb* pertains to the third above-mentioned case, which occurred in reality in Damascus in 1348, inspiring him to write his treatise. In this incident, there was a judge who announced the beginning of the month of Dhū al-Ḥijja based on the testimony of witnesses who saw the crescent. Al-Subkī explained that he refused to accept the ruling of this judge based on the opinion of the astronomers who opined that sighting the crescent of moon on that night was impossible. Al-Subkī therefore declared the ruling of the judge to be wrong. Nevertheless, al-Subkī mentions that most of the people of Damascus supported the opinion of the judge, except for al-Subkī himself and a small group of

¹³² Al-Subkī, *Fatāwā*, 1:207-218; al-Subkī dates his writing of *Ḥisāb* in 749/1348 in the page 211.

Damascenes. Part Three of *Hisāb* focuses on those Damascenes who were convinced by al-Subkī's opinion and in turn refused the ruling of the judge. By distinguishing between the public law and the private actions of individuals, al-Subkī provided those who refused the ruling of the judge with legal instructions that would clarify what is legally required in this situation. Part Four of *Hisāb* concerns some of the objections that al-Subkī faced due to his position in the aforementioned incident and how he responded to them.

3.1. Three cases of using astronomical calculation to determine the beginning of the month

Al-Subkī begins *Hisāb* by arguing that the crescent is central in the *sharī'a* due to the fact that many acts of worship in Islam depend entirely on the crescent. It is vital to decipher the times of *'īd* prayers, when to give *zakāt*, and when to begin the fasting of Ramaḍān. Al-Subkī thus maintains the importance of studying the crescent movements to determine the beginning of each month. He quotes a *ḥadīth* of the Prophet Muḥammad confirming the way in which the beginning of the month is determined legally. The *ḥadīth* says, "We are an illiterate community. We do not write or calculate".¹³³ Al-Subkī comments that determining the beginning of the month is legally done either by sighting the crescent or by completing the previous month of 30 days.¹³⁴

Al-Subkī then discusses three cases regarding the legal ruling of using astronomical calculations to determine the beginning of the months. The first

¹³³ Al-Bukhārī, *Ṣaḥīḥ*, *Kitāb al-ṣawm* (30), *Bāb qawluhu lā naktub wa lā naḥsub* (13).

¹³⁴ Al-Subkī, *Fatāwā*, 1:207.

case is to solely rely on astronomical calculations, without considering sightings with the naked eye. He confirms that in this case, it is not legal to rely on astronomical calculation. He adds that there are no disagreements among the *'ulamā'* on this. The evidence for this is the last *ḥadīth*, which says, “We are an illiterate community. We do not write or calculate”.¹³⁵

The second case is when astronomical calculations assist in the sighting of the crescent and in predicting its movements. For example, astronomical calculations are able to suggest the optimal time for sighting the crescent of the moon. The astronomers can inform if the crescent has moved away from the sun's rays and if enough time has elapsed after sunset to allow credible sightings. Al-Subkī opines that it is also not permissible to rely on astronomical calculation in this case based on the *ḥadīth*: “If you see the crescent (of Ramaḍān) you should fast, and if you see the crescent (of Shawwāl) you should break your fast”. Al-Subkī notes that this *ḥadīth* prevents reliance on astronomical calculation in such a case. Nevertheless, al-Subkī maintains that this *ḥadīth* is not an explicit refusal of all forms of astronomical calculation; astronomers only inform us of the possibility of sighting the crescent at a certain time, not the sighting itself. The legal rule still depends on sighting the crescent with the naked eye at that particular time.

The third case, in contrast to the second case, is where astronomical calculation informs us that sighting the crescent is impossible at a time where sightings would otherwise be claimed. For example, astronomers state that when the crescent is very close to the sun, it is impossible to see. In this case, al-Subkī

¹³⁵ Al-Subkī, *Fatāwā*, 1:207-208.

asserts that it is legally obligatory to rely on astronomical calculation instead of sighting with the naked eye. Al-Subkī states that even if some people have witnessed the crescent, their testimony should be refused because they are either mistaken or fabricated.¹³⁶ According to al-Subkī, the reason is because:

The calculation is definitive (*qaṭʿī*) [knowledge]. The testimony of the witnesses is probable (*ẓannī*) [knowledge]. The probable does not contradict the definitive. The condition of evidence (*bayyina*) is that it must be based on what is possible in terms of sensory perception (*ḥiss*), reason (*ʿaql*), and law (*sharʿ*). So, if the calculation is conclusively determining that the sighting is impossible, it is legally impossible (*istahāla*) to accept the sighting, due to the impossibility of attesting what was witnessed. The law does not accept the impossibilities (*wa al-sharʿ lā yaʿtī bi-l-mustaḥīlāt*).¹³⁷

Al-Subkī then emphasises the superiority of astronomical calculations compared to sighting with the naked eye. He argues that the use of astronomical calculations to determine the appearance of the crescent can lead to more accurate results because astronomical calculations are based on an amalgamation

¹³⁶ Al-Subkī, *Fatāwā*, 1:209.

¹³⁷ Al-Subkī, *Fatāwā*, 1:209.

of long observations and experiments, knowledge of solar and moon stages, and knowledge of light formation. Astronomical calculations are also more credible than the naked eye, as people have varying visual acuities. The probability of error when using the naked eye is higher than astronomical calculations because it is impossible to break the cosmic regularity measured by astronomical calculations.¹³⁸

Al-Subkī advises the judges to use astronomical calculation and not to rush in accepting the testimony of those who saw the crescent with the naked eye. According to al-Subkī, the judges must accept the opinion of the astronomers regarding the possibility of sighting the crescent. Remarkably, al-Subkī here directs the judges to use astronomical calculation, not only in the third case, but in the second case too, even though he had been cited as being against it. Al-Subkī continues to advise the judges that the use of astronomical calculation does not contradict *sharī'a*, because *sharī'a* has never abolished the use of calculation. Although al-Subkī does not explain this issue in depth or provide us with extensive examples, it sufficed him to say that the *sharī'a* supports the use of calculation in multiple other sciences, such as the science of inheritance (*mawārīth*).¹³⁹

As the majority of '*ulamā*' tend to reject astronomical calculations, al-Subkī tried to convince the judges that this was a misperception. According to al-Subkī, when the '*ulamā*' prohibited the use of astronomical calculation, they were referring to the sole reliance on astronomical calculation without the sightings, as described in the first case above. If astronomical calculation is used

¹³⁸ Al-Subkī, *Fatāwā*, 1:209-210.

¹³⁹ Al-Subkī, *Fatāwā*, 1:210-211.

to support the sighting, such as in the second and third cases, the *'ulamā'* have not yet discussed the matter.¹⁴⁰

3.2. The third case and the incident of sighting the crescent of Dhū al-Ḥijja in Damascus

As mentioned above, in 749/1348, people saw the crescent of the month of Dhū al-Ḥijja on a Saturday evening in Damascus. When al-Subkī heard about this, he hesitated to comment because astronomical calculation indicated that sighting the crescent at that time was impossible. Al-Subkī found that the first day of the month of Dhū al-Ḥijja must be on Monday, and not on Sunday. Al-Subkī said that his legal justification for this opinion is *istiṣhāb* (continuity). In other words, as long as astronomical calculations state that we cannot see the crescent on Saturday evening, Sunday will continue to be one of the days of the month of Dhū al-Qi'da.¹⁴¹ *Istiṣhāb*, a term known to the legal Shāfi'ī theorists, can be defined as “the keeping of something on what it previously was due to the absence of change”.¹⁴²

Furthermore, al-Subkī says in *Ḥisāb* that he spoke to the judge that recorded the testimony of witnesses who claimed to sight the crescent of the moon. He tried to dissuade the judge from announcing the beginning of the month of Dhū al-Ḥijja and to instead wait to ensure the reliability of the witnesses. However, the judge did not acquiesce, announcing that Sunday is the

¹⁴⁰ Al-Subkī, *Fatāwā*, 1:210.

¹⁴¹ Al-Subkī, *Fatāwā*, 1:211.

¹⁴² For a discussion on *istiṣhāb* in the Shāfi'ī *madhhab* see al-'Irāqī, *Ghayth*, 640-645.

first day of the month of Dhū al-Ḥijja.¹⁴³ There is insufficient information to confirm the identity of the judge; perhaps he was one of the four judges of the canonical Schools; the Ḥanafī judge, the Mālikī judge, the Ḥanbalī judge, or a local Shāfi‘ī judge. The judge’s lenience in ensuring the reliability of the witnesses indicates that he may have been the Ḥanafī judge.¹⁴⁴ A distinguishing trait of the Ḥanafīs is that an opinion in their *madhhab* absolves the judge from the mistaking the veracity of witnesses’ claims. This is not found in any other *madhhab*. In the three other *madhhabs* — Shāfi‘ī, Mālikī, and Ḥanbalī — one of the responsibilities of the judge is to ensure the reputation of the witnesses in court by asking about their reliability and reputation within the community. In contrast, the Ḥanafī *madhhab* does not require the judge to do so, as the witnesses are assumed to have the basic qualities of Muslims and are therefore considered reliable (*‘adāla zāhira*).¹⁴⁵ In any case, there is no mention of the judge’s identity or his legal *madhhab*.

Al-Subkī continues to provide more details about the incident in *Hisāb*. He mentions that in his role as a judge, he refrained from executing the ruling. According to al-Subkī, the reason is that astronomical calculation confirmed the inability to sight the crescent of the moon during that night. He adds that another judge executed the ruling of the first judge but al-Subkī himself insisted on his refusal. When the news broke in Damascus, al-Subkī says that the majority of

¹⁴³ Al-Subkī, *Fatāwā*, 1:211.

¹⁴⁴ During that time (1348), the Ḥanafī judge in Damascus was Najm al-Dīn Ibrāhīm al-Ṭarsūsī (d. 758/1357). On him see, al-Ṣafadī. *A’yān*, 1:100; Ibn Ḥajar, *Durar*, 1:43-44.

¹⁴⁵ “Shahāda,” *al-Mawsū‘a al-fiqhiyya*, 26:223-224; “‘Adāla,” *al-Mawsū‘a al-fiqhiyya*, 30:21-22; we can therefore understand why the Mamlūks and Ottomans in the following era employed judges from the Ḥanafī *madhhab* in the army. One of the reasons is that the Ḥanafī *madhhab* is the only one that considers soldiers reliable and accepts their testimony; the remaining three *madhhabs* regard soldiers as unreliable because they are more prone to corruption (*muttahaḥmūn bi-l-fasād*), see *ibid*.

people followed the judge's announcement. The announcement stated that Sunday is the first day of the month of Dhū al-Ḥijja, the day of 'Arafa will be on Monday (the ninth day) and the day of 'īd will be Tuesday (the tenth day). Al-Subkī conceded that it is not good practice to disagree with the opinion of the majority, and that it is disadvantageous to challenge the ruling of the judge who initiated the declaration at the beginning of the month. Al-Subkī wanted to ensure that people do not question the judges' rulings.¹⁴⁶

3.3. Public law versus the private actions of individuals

After recounting the incident, al-Subkī goes on in *Ḥisāb* to give legal instructions to certain individuals who chose to follow his opinion instead of the opinion of the judge. In other words, al-Subkī makes a distinction between the public law upheld by the judges, and the private actions of individuals who do not agree with the ruling of the judge. In the end, al-Subkī and these individuals saw that they cannot accept the ruling of the judge because it is contrary to the intention of the lawgiver. These instructions assist individuals in not appearing to disagree with majority opinion. As al-Subkī clarifies, *sharī'a* urges Muslims not to publicly oppose the opinion of the majority.¹⁴⁷ As a solution, the instructions enable individuals to outwardly perform a religious ritual while inwardly intending a different religious ritual. Al-Subkī provides procedural details for three rituals: the Feast prayer (*ṣalāt al- 'īd*), the fast of the day of 'Arafa (*ṣawm yawm 'Arafa*), and the Sacrifice (*al-taḍḥīya*).

¹⁴⁶ Al-Subkī, *Fatāwā*, 1:212.

¹⁴⁷ Al-Subkī, *Fatāwā*, 1:212.

Two of these religious practices would need to be simultaneously observed on Tuesday, which was going to be the ninth day of Dhū al-Ḥijja (the day of ‘Arafa) according to al-Subkī, but the tenth day of Dhū al-Ḥijja (the day of Feast) according to majority. For Tuesday, al-Subkī proposed two forms of guidance. The first was related to fasting on the day of ‘Arafa, and the second was about performing the Feast prayer. With regards to the day of ‘Arafa, al-Subkī guides his followers to fast on Tuesday because fasting on the day of ‘Arafa is favoured in Islam. However, because Tuesday was also the day of Feast according to the majority, al-Subkī instructs the individuals to hide the fact that they were fasting on that day. The second guideline was related to outwardly performing the Feast prayer. Al-Subkī ordered his followers to go out to the Feast prayer on Tuesday morning and to pray with the people, but to make the intention of performing the *ḍuḥā* prayer in their hearts.

Although the Feast prayer and *ḍuḥā* prayer are both performed before noon, they differ slightly in the method of performance; the Feast prayer begins with a *takbīra* repeated seven times, whereas it is said only once in the *ḍuḥā* prayer. The method of doing these seven *takbīrāt* is to raise one’s hands and utter the phrase “Allāh is the greatest”. As *ḍuḥā* only requires one *takbīra*, al-Subkī instructs the individuals not to raise their hands as fully as possible for the remaining six *takbīrāt*. On the uttering of the sentence “Allāh is the greatest,” al-Subkī instructed the individuals to utter “Allāh Akbar” in the first *takbīra* only, and in the remaining six *takbīrāt* to utter alternative sentences, such as “Allāh is the Most Majestic” or “Allāh is the Great”. With these instructions, they could perform the *ḍuḥā* prayer and would not violate its legal format. At

the same time, they could still outwardly participate in the Feast prayer without outwardly violating the opinion of the majority.¹⁴⁸

The third guideline discussed how to perform the sacrifice. The time for slaughtering the sacrifice begins on the Feast day and ends on the thirteenth day of the same month. During these four days, a Muslim can slaughter the sacrificial animal. As Tuesday was day nine according to al-Subkī, he instructs the individuals not to offer the sacrifice on this day, but to postpone it to Wednesday or Thursday.¹⁴⁹

There is insufficient information to establish the identity of these individuals. They may be the Shāfi‘īs in Damascus or part of the Shāfi‘īs, such as the followers of al-Subkī. It is worth noting that the Damascene historian Ibn al-Wardī (d. 1348) mentions that the Shāfi‘īs of Damascus in his time were divided between two groups: the followers of Ibn al-Qazwīnī (d. 1338), a former Shāfi‘ī Chief Judge and preacher of the Umayyad Mosque, and al-Subkī loyalists. According to Ibn al-Wardī, there have been occasional legal disputes between these two groups.¹⁵⁰ Although Ibn al-Wardī was a contemporary of al-Subkī in Damascus, this information is not enough to establish the identity of the individuals who chose to follow al-Subkī’s opinion. It is most likely that these individuals followed a different legal *madhhab* to the judge who declared the beginning of the month of Dhū al-Ḥijja.

¹⁴⁸ Al-Subkī, *Fatāwā*, 1:212-213.

¹⁴⁹ Al-Subkī, *Fatāwā*, 1:212-213.

¹⁵⁰ ‘Umar b. Muẓaffar Ibn al-Wardī, *Tārīkh Ibn al-Wardī*, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1996), 1:34.

3.4. The reaction of the objectors and their arguments

In *Ḥisāb* al-Subkī answers some of the objections he received about the above instructions. As mentioned, according to opinion of the majority, the day of 'īd is Tuesday, but according to al-Subkī and the individuals who followed his opinion, the day of 'Arafa is also Tuesday. As noted, fasting is preferable on the day of 'Arafa. For the majority that took Tuesday as the day of the Feast, fasting would be a legal violation, forbidden by consensus. Al-Subkī says that he heard some young people repeat the statement that fasting on the day of 'īd is forbidden, but he ignored them and did not reply because they did not know that he did not consider Tuesday to be the day of 'īd. Al-Subkī then adds that even though these young people may have read the legal manuals (*kutub al-fiqh*), they did not know the meaning of what they have read.¹⁵¹ According to al-Subkī:

It is necessary to distinguish between the particular (*juz 'ī*) and the universal (*kullī*), and between the opinion of the *mufī* and the opinion of the jurist in the books, as the function of the jurists in the books is to mention the universal issues and the function of *mufī* is to apply the universal to the particular (*tanzīl al-kullī 'alā al-juz 'ī*).¹⁵²

According to Al-Subkī, when these young people read the legal manuals and found that fasting on the day of 'īd is forbidden by the consensus, they should

¹⁵¹ Al-Subkī, *Fatāwā*, 1:212-213.

¹⁵² Al-Subkī, *Fatāwā*, 1:213.

have understood that the abovementioned conditions (such as the opinion of the astronomers about the possibility of sighting the crescent) should be fulfilled in the fact that Tuesday was the day of *ʿīd*.

The other objection from these young men was regarding the legal basis for the instructions given by al-Subkī to the individuals who wanted to follow his opinion. Al-Subkī mentions that there is a legal basis for this called ‘apparent execution and hidden execution (*al-tanfīdh al-ẓāhir wa al-tanfīdh al-bāṭin*)’. Individuals who wanted to apply the opinion of al-Subkī may have the apparent execution of accepting the judge’s ruling, but at the same time did not have the intention, as they believed it to be contrary to the intention of the lawgiver.¹⁵³ This is similar to the aforementioned circumstance in which an individual performs *ʿīd* prayer with the majority of people but he intends to perform the prayer of *ḍuḥā*.

Next, al-Subkī elaborates in *Ḥisāb* with a discussion of the ruling by the judge he disagreed with. According to al-Subkī, as the testimony of witnesses was false on the grounds of astronomical calculation proving that the sighting of the crescent could not have been seen that night, the judge’s ruling was wrong. There was a subsequent disagreement among ‘*ulamā*’ about whether the incorrect ruling should be executed or not. Al-Subkī reiterates his discussion about apparent execution and hidden execution, concluding that individuals may execute the ruling of the judge outwardly rather than inwardly. However, he then adds a caveat; he mentions that there are certain individuals who are also excluded from the apparent execution. Based on the custom (*ʿurf*), anyone equal

¹⁵³ Al-Subkī, *Fatāwā*, 1:213.

to the rank of judge or above (such as sultāns and emirs) has the right to refrain from executing the judge's decision, either outwardly or inwardly.¹⁵⁴ As a judge, al-Subkī applied this rule to himself and thus refrained from following the ruling in any capacity.

Notwithstanding the above-mentioned legal justifications, al-Subkī adds that there were some people who still insisted on rejecting astronomical calculations and the rulings derived from them. Instead, they persisted on sighting the crescent with the naked eye, using the testimony of witnesses as the only legal method to determine the beginning of the month.¹⁵⁵ Al-Subkī refrains from participating in discussions with them, as they were thought to be ignorant, less experienced, and without sufficient knowledge.¹⁵⁶ He does not inform us of the identity of these opponents, except that they were young.¹⁵⁷

¹⁵⁴ Al-Subkī, *Fatāwā*, 1:214.

¹⁵⁵ Al-Subkī, *Fatāwā*, 1:217.

¹⁵⁶ Al-Subkī, *Fatāwā*, 1:217. Al-Subkī may not have had any luck convincing his opponents about the feasibility of astronomical calculations. However, if he had argued that the use of astronomical calculations may be permissible based on an analogy of using the sundial or hearing of the cock for prayer timings, he may have been able to convince the objectors. We know that the muezzins of that period had methods of deciphering the time of each prayer, either through the direct sighting of the sun or by observing the shade using the sundial or hearing the cock. The *fuqahā'* do not stipulate the direct sighting of the sun and sunset to know the time of each prayer; they only monitor the shadow on any surface, either by using a sundial or by hearing the cock. They do however require that the cock should not be a beginner and should have been previously tested (see 'Abd al-Rahmān b. al-Ḥasan al-Isnawī, *al-Muhimmāt fī sharḥ al-rawḍa*, ed. Aḥmad b. 'Alī al-Dumyātī, 10 vols (Beirut: Dār Ibn Ḥazm, 2009), 2:405-427; Sirāj al-Dīn 'Umar b. 'Alī Ibn al-Mulaqqin, *Tuḥfat al-muḥtāj fī adillat al-minhāj*, ed. 'Abd Allāh al-Ḥayyānī, 2 vols (Makkah: Dār Ḥirā', 1985), 1:243-245; Aḥmad b. Muḥammad Ibn al-Rif'a, *Kifāyat al-nabīh fī sharḥ al-tanbīh*, ed. Majdī Bāsallūm, 21 vols (Beirut: Dār al-Kutub al-'Ilmiyya, 2009), 2:330-339, especially 333-334). Al-Subkī could have argued that astronomical calculation is a tool that shows the sighting of the crescent similar to the use of the sundial or the cock, both of which indicate the sighting of the sun and sunset. Al-Subkī did not use this argument, perhaps because it may have a flaw unbeknownst to us.

¹⁵⁷ It transpired that these are the same arguments used by those who oppose al-Subkī in later times. The question remains: is the *sharī'a* against astronomical calculation entirely or not? According to al-Subkī, the *fuqahā'* do not realise that astronomical calculations are only unacceptable when solely relied on without reference to sighting

Al-Subkī concludes the *Hisāb* with some astronomical facts and emphasis on the mastery of astronomers in their science. He mentions these facts in passing and does not provide many details about them. Among these facts, he mentions the number of days in the year of 749/1348 to be 354 days. He notes that astronomers also have an effective way of knowing the location of the crescent in the sky, and are aware of whether it is possible to see it or not.¹⁵⁸

Al-Subkī's opinion in *Hisāb* seems to lie between those who depend on astronomical calculations entirely without sightings with the naked eye, and those who completely refuse astronomical calculations and rely only on sightings with the naked eye. This view is a remarkable development in the legal

with the naked eye. If astronomical calculations are used as a supportive tool, it is not legally forbidden. Those who oppose al-Subkī's opinion believe that the *sharī'a* is against astronomical calculation in its entirety, as adopted by the Shāfi'īs of later generations (al-Isnawī, *Muhimmāt*, 4:49-50; Ibn al-Mulaqqin, *Tuḥfat*, 2:76-77; Muḥammad b. 'Umar Ibn 'Ābidīn, *Majmū'at rasā'il Ibn 'Ābidīn*, ed. Muḥammad al-'Azzāzī (Beirut: Dār al-Kutub al-'Ilmiyya, 2014), 101-103). In discussing the opinion of al-Subkī, the well-known Shāfi'ī scholar al-Ramlī (d. 919/1513) argues that the *ḥadīth* "We are an illiterate community. We do not write or calculate" is an explicit evidence (*naṣṣ*) that forbids the use of astronomical calculation, whether to support sighting with the naked eye or not. In other words, al-Ramlī, alongside most other later Shāfi'īs, does not see a legal justification or basis for al-Subkī's division in the three cases above (Ibn 'Ābidīn, *Rasā'il*, 101-103). The use of astronomical calculations to support sightings with the naked eye is the same as using astronomical calculations entirely; in the end, when astronomers inform us of the most suitable time for sighting, it is dependent on the veracity of the astronomical calculation (as indicated in the second case). When the astronomers inform us that we are not able to sight the crescent at a certain time, it is also dependent on astronomical calculations (as clarified in the third case). In other words, there is no evidence to suggest that the second or third case is excepted from the *ḥadīth*, "We are an illiterate community. We do not write or calculate". When the Ḥanafī scholar Ibn 'Ābidīn (d. 1252/1836) says that al-Subkī supports astronomical calculations entirely (Ibn 'Ābidīn, *Rasā'il*, 103), it does not mean that Ibn 'Ābidīn misread or misrepresented al-Subkī's view. Rather, it is likely that Ibn 'Ābidīn does not view al-Subkī's division of the three cases to be legally justifiable. Therefore, Ibn 'Ābidīn views al-Subkī to be in support of the use of astronomical calculations entirely, despite al-Subkī's claims to the contrary. In addition, it can be argued that if astronomical calculations are very accurate and un mistakeable, as opined by al-Subkī, then they should be relied on in all cases. In other words, al-Subkī's openness to astronomical calculations could have led him to support the first case if an incident related to it had occurred.

¹⁵⁸ Al-Subkī, *Fatāwā*, 1:217.

discourse of pre-modern times. Al-Subkī himself admits that his new opinion was not previously discussed by the *fuqahā*’ of the Shāfi‘ī *madhhab* (and perhaps in the rest of the *madhhabs*). For this reason, he faces certain objections. The basis of these objections could be the lack of understanding of the science of astronomy, as al-Subkī claims, but it is most likely that the objectors were sticking to the long-standing tradition of rejecting the use of astronomical calculation in legal matters. It is clear that al-Subkī is well aware of the science of astronomy, which gave him the confidence to bring it into legal discussion. The integration of astronomy with law is considered to be one of al-Subkī’s important contributions. This kind of deep astronomical debate in a legal treatise or *fatwā* in the Shāfi‘ī tradition did not exist before al-Subkī. Some Shāfi‘īs before al-Subkī make brief mention of astronomical calculation or astrology, but it was only in the context of its rejection, and even then, they do not discuss it with any engagement with the subject.¹⁵⁹

¹⁵⁹ Muḥammad b. ‘Alī Ibn Daqīq al-‘Īd, *Iḥkām al-aḥkām sharḥ ‘umdat al-aḥkām*, ed. Aḥmad Shākir (Cairo: Dār al-Kutub, 1987), 76; Ibn al-Rif‘a, *Kifāyat*, 2:432; al-Isnawī, *Muhimmāt*, 4:49-50; Ibn al-Mulaqqin, *Tuhfat*, 2:76-77. One obstacle in the way of al-Subkī and the supporters of astronomical calculation is the *ḥadīth*, “We are an illiterate community. We do not write or calculate.” To this day, this *ḥadīth* remains the evidence most frequently cited by opponents of the use of astronomical calculation as a supportive tool to assist sighting. Al-Subkī does not provide a strong justification for the interpretation of this *ḥadīth*. Bakhīt al-Muṭī‘ī (d.1935), a proponent of astronomical calculations and a supporter of al-Subkī’s opinion, offers an interesting interpretation. Al-Muṭī‘ī argues that this *ḥadīth* is true in the sense that it is against the use of astronomical calculations, but not because of its inherent invalidity. For al-Muṭī‘ī, the *ḥadīth* only rules out the use of astronomical calculation at the time of revelation due to the inability of the people at the time of the Prophet Muḥammad to understand it. When the people are able to understand it, the prohibition no longer applies and astronomical calculations can be used. Al-Muṭī‘ī considers that there is a difference between cancellation (*ilghā*’) and nullity (*ibtāl*). Bakhīt b. Muḥammad al-Muṭī‘ī, *Irshād ahl al-milla ilā ithbāt al-ahilla*, ed. Ḥasan Aḥmad Isbir (Beirut: Dār Ibn Ḥazm, 2000), 247. On al-Muṭī‘ī, see Junaid Quadri, “Transformations of Tradition: Modernity in the Thought of Muḥammad Bakhīt al-Muṭī‘ī,” PhD diss. (Montreal: McGill University, 2013).

4. Comparative contextualisation

Sections 2 and 3 of this chapter analysed al-Subkī's opinions regarding the legal method to determine the beginning of the Dhū al-Ḥijja month. In circa 1326, al-Subkī mentioned that the testimony of trusted persons for the sighting the crescent with the naked eye was the most correct legal method to determine the beginning of the month of Dhū al-Ḥijja. In 1348, he developed an opinion using astronomical calculations to sight the crescent of the moon. He opined that as per law, the opinion of the astronomers should be accepted as correct if they claim a particular sighting to be scientifically impossible.

The most prominent difference between the two opinions is the difference in genre. *Ibtihāj*, as a legal commentary (*sharḥ*), restricted the first opinion of al-Subkī to al-Nawawī's text. *Ḥisāb*, as a treatise, was not restricted to any text. We have seen that the incident mentioned by al-Subkī in the *Ḥisāb* is what triggered the chain of ideas. The space and freedom in the treatise of *Ḥisāb* gave al-Subkī an area to include his opinion consisting of a group of different elements. He was not limited to the legal instructions, arguments, or opinions in the Shāfi'ī *madhhab*, but was able to include the legal history, information on the nature of the legal and judicial system at that time, elaboration of arguments, information outside the law (such as astronomy in our case), and information outside the topic (*istiṭrādāt*). The variation in the genre also affected the length between the two opinions, as the first opinion in *Ibtihāj* consists of one section (6 lines) while the second opinion in *Ḥisāb* spans over 11 pages. Al-Subkī's professional function also contributed to the differences in the two opinions. In *Ibtihāj*, al-Subkī played the role of *faqīh*, whose task is primarily to report the prevailing views in the *madhhab*. In his second opinion, besides being

a *faqīh*, he also played the role of *muftī*, whose task is to review, attempt to challenge, and correct the prevailing opinions of the *madhhab*.¹⁶⁰

These differences in genre have influenced the variation of ideas and arguments between the two opinions. The most important difference between the two opinions is the issue of witness testimony. If the testimony of the witness is reliable and can be confirmed, is the testimony definitive or probabilistic? In other words, how does the Shāfi‘ī *madhhab* evaluate the knowledge resulting from witness testimony? In the second opinion, al-Subkī considers the testimony of witnesses to be probabilistic, but in the first opinion, he does not say if it is probabilistic or definitive. Instead, he maintains that it is sufficient to declare the beginning of the month of Dhū al-Ḥijja, which implies that he believes it to be definitive. This matter is ordinarily undisputed amongst the Shāfi‘īs, who consider the testimony to be tantamount to certainty (*al-shahāda bi-manzilat al-yaqīn*).¹⁶¹ If this issue is understood correctly, al-Subkī is challenging the prevailing opinion in the *madhhab*, namely that the testimony is definitive. He instead considers it to be probabilistic. This may be another one of al-Subkī’s contributions. The fact that he tended to see the testimony as probabilistic means that witnesses are considered prone to mistakes even if they are taken to be reliable. This is one of al-Subkī’s arguments against the aforementioned judge who declared the sighting of the crescent of the month of Dhū al-Ḥijja. It is logical to assume that witnesses are inherently subject to mistakes, as they are

¹⁶⁰ Hallaq, “From Fatwās to *Furū‘*,” 29-65; for a different perspective on the professional function between the *faqīh* and the *muftī*, see Calder, “Al-Nawawī’s Typology of Muftīs,” 137-164.

¹⁶¹ Al-Isnawī, *Muhimmāt*, 9:319-378; Ibn al-Mulaqqin, *Tuḥfat*, 2:579-589; Ibn al-Rif‘a, *Kifāyat*, 19:79-111; Shams al-Dīn b. Shihāb al-Dīn al-Ramlī, *Nihāyat al-muḥtāj fī sharḥ al-minhāj*, 8 vols (Beirut: Dār al-Fikr, 1984), 8:292-327.

indeed human beings. However, the Shāfi‘īs do not address the question of whether a witness was mistaken in such a case, because there is no way to find out; once the reliability of the witnesses has been decided upon and the judge confirms the evidence, he makes the ruling according to what is brought through the testimony.¹⁶² Here, al-Subkī uses the science of astronomical calculation to check for any mistakes relating to witness testimony. In other words, technology may find solutions to legal deficiencies, or science may fill the human gap.¹⁶³

The following section will proceed to the scientific and cultural context of the Early Mamlūk Sultanate. This will help explain the surrounding circumstances which facilitated al-Subkī to adopt his opinions on this issue.

5. Scientific and cultural context: astronomical practice

In this section, I review the history of astronomy, its types, and its formation, from the emergence of Islam to the Early Mamlūk Sultanate. The purpose of this section is to identify how astronomical practices in medieval

¹⁶² Many of the legal rules in Shāfi‘ī law are based on the testimony. In fact, there is a separate chapter called “*shahādāt*” in most of the legal manuals in the Shāfi‘ī *madhhab*. See *ibid*.

¹⁶³ Al-Subkī’s argument may be useful in today’s legal debate regarding the use of scientific evidence in *sharī‘a* courts. Can witnesses be replaced by techniques such as genetic fingerprints and DNA? If a person claimed that he belonged to a certain family or a tribe, the judge will ordinarily ask for witnesses who can confirm whether that litigant is honest or false. Consequently, the judge will confirm the validity or the invalidity of the allegation. However, there is still the possibility of mistakes or lies by witnesses. On the other hand, if genetic fingerprints examination were used in court, it would be more accurate. Moreover, the use of DNA could prove the child’s relationship to its parents more effectively than the testimony of one of the parents. With a testimony, the judge will issue his ruling of the relationship of the son to the litigants, but there remains the possibility of lies from the parents; the use of DNA as evidence will be more accurate in determining the relationship to the child. Proponents to the replacement of witness testimony by technology and scientific progress may find al-Subkī’s opinion about astronomical calculation to be legal precedent. For a discussion on the use of scientific evidences in *sharī‘a* courts see Ḥusnī Maḥmūd, *al-Tiknūlūjyā al-ḥadītha wa madā ḥujjiyyatihā fī al-ithbāt* (Alexandria: Dār al-Fikr, 2007).

Islamic societies had developed and what stage they had reached by the time of the Early Mamlūk Sultanate. This investigation will assist us in observing how al-Subkī used the astronomical culture of his time in his legal reasoning.

5.1. Astronomical practices in Islamic history before the Early Mamlūk Sultanate

When discussing the science of astronomy that circulated in the ancient and medieval Islamic world, contemporary scholars refer to two types of astronomy: folk astronomy and mathematical astronomy. Folk astronomy consists of observations and predictions of the movement of celestial bodies that can be observed with the naked eye. This type of astronomy had existed in the Arabian Peninsula before Islam. The Arabs had an intimate knowledge of the movements of the sun, the moon, and the stars, as well as the monitoring of meteorological phenomena over different months and seasons. An example of folk astronomy instruction is the division of the year into thirteen periods, and the description of time during the day through the length of a person's shadow.¹⁶⁴

The formation of Islam in the seventh century saw the adaptation of folk astronomy to be used in the service of new religious rituals. One important example is the determination of the beginning of religious months, such as Ramaḍān, the month of fasting, and Shawwāl and Dhū al-Ḥijja, the months of Feast and pilgrimage. Another example of the application of folk astronomy is the determination of the times of the five daily prayers according to the sun's

¹⁶⁴ King, *In Synchronicity with the Heavens*, 465, 635, 859; King, *Astronomy in the Service of Islam*, 7; Dallal, *Science*, 10.

position on the local horizon. Its position was confirmed by observing shadows during the day from sunset to sunrise and by marking the onset of twilight. Muslims of the Arabian Peninsula were satisfied with this simplified form of folk astronomy because it was sufficient to meet their religious needs and was consistent with the simple Qur'ānic conception of the universe. The Arabs at that time did not have knowledge of natural sciences or of any complex form of astronomy, especially mathematical astronomy. For this reason, the 'ulamā' supported folk astronomy, which was the only type codified in legal manuals.¹⁶⁵

The second type is mathematical astronomy, based on predicting the movements of celestial bodies through tables based on arithmetic and mathematical equations. It began to spread in the Islamic world in the ninth century as the translation movement in Baghdad gained traction. The foremost work in mathematical astronomy, which has become the focal point of commentary from Muslim and Arab astronomers throughout the ages, is the *Almagest* written by the Greek astronomer, Ptolemy (d.170). The *Almagest* provides a geometrical presentation of the world in a precise and accessible way to predict the motion of celestial bodies.¹⁶⁶

The beginning of mathematical astronomy in the Islamic world has its own history, separate from that of folk astronomy. It is clear that between the ninth and fourteenth centuries, the two types of astronomy co-existed without mutual cooperation or recognition. The 'ulamā' offered solutions through folk astronomy different to the solutions proposed by the Muslim mathematical

¹⁶⁵ King, *In Synchronicity with the Heavens*, 465, 635, 859; King, *Astronomy in the Service of Islam*, 7; Dallal, *Science*, 10.

¹⁶⁶ King, *In Synchronicity with the Heavens*, 465; Dallal, *Science*, 10-16, 29-34, 58.

astronomers. The majority of 'ulamā' in Sunnī Islam had believed that mathematical astronomy was a science associated with astrology, and hence forbade it for conflicting with religion. Mathematical astronomy was also rejected at the time because the 'ulamā' found it difficult to understand its complexities. Muslim mathematical astronomers on the other hand viewed folk astronomy as superficial and simple, ignoring its contributions to the Islamic world.¹⁶⁷

While folk astronomy continued to dominate the practices of the religious elite and Islamic society from the ninth to the fourteenth centuries, there was also patronage of the science of mathematical astronomy, both individually and institutionally. This is evident in the astronomical observatory projects that took place at the time. Perhaps the oldest astronomical observatory was built towards the end of the reign of the Abbasid caliph, al-Ma'mūn (d. 218/833), as the translation movement began. In the eleventh century, a large and organised observatory was built under the patronage of the Seljuk governor Malik Shāh. This observatory lasted eighteen years, eventually closing as a result of the death of its founder, Malik Shāh. In the thirteenth century, the most well-known observatory was built, called Marāgha, took its name from Marāgha city which is located today in the East Azerbaijan Province of Iran. It is under the patronage of the Ilkhanate governor, Hūlākū, and the administration of the astronomer, Nasīr al-Dīn al-Ṭūsī. The Marāgha observatory is considered an important centre for astronomical research, attracting large numbers of astronomers from all over the Islamic world in its time. The Marāgha observatory flourished for a period

¹⁶⁷ King, *In Synchronicity with the Heavens*, 465, 656; King, *Astronomy in the Service of Islam*, 261; Dallal, *Science*, 18-19, 111.

of three centuries, until a *fatwā* was issued by Shaykh al-Islam Qāḍī Zāda for its demolition during the reign of the Ottoman sultān, Murād the third, in the sixteenth century.¹⁶⁸

It is worth noting that there were members of the religious elite that welcomed mathematical astronomy. Around the twelfth and thirteenth centuries, we witness '*ulamā*' welcoming mathematical astronomy, and none appeared to oppose it. Most of these occurrences were in the Ilkhanate and Fatimid dynasties, both of which were of Shī'ī orientation, and the Rasulid dynasty in Yemen, which had a Shāfi'ī Sunnī orientation.¹⁶⁹

The Marāgha observatory flourished under the Ilkhanate and its astronomer director, Nasīr al-Dīn al-Ṭūsī, who was also a religious scholar. In Yemen, astronomy had been active since the beginning of the tenth century. With the advent of the Rasulid dynasty, ruling Yemen from 1229, astronomy evolved until it came to be known as the work of kings (*ṣan'at al-mulūk*). The sultāns of Yemen were not only patrons and enthusiasts of astronomy, but also became practitioners themselves. Al-Ashraf and his brother al-Mū'ayyad were themselves astronomers. Their father, al-Muzaffar, had a strong interest in astronomy, and many astronomical tables produced by astronomers under his reign were in his name. The Shāfi'īs in Yemen, who held the official *madhhab* of the Rasulid dynasty, also welcomed astronomy of all kinds and even welcomed its use to derive knowledge of the times and seasons of religious rites.

¹⁶⁸ Dallal, *Science*, 22-25; Sāmīr 'Akkāsh, *Marṣad Iṣṭanbūl* (Doha: Arab centre for research and policy studies, 2017). 150-179. For more discussion on the astronomical practice in Ottoman era, see Daniel Stolz, *The Lighthouse and the Observatory: Islam, Science, and Empire in Late Ottoman Egypt* (Cambridge: Cambridge University Press, 2018).

¹⁶⁹ King, *Mathematical Astronomy in Medieval Yemen*, 7-9; King, *In Synchronicity with the Heavens*, 635-636; Dallal, *Science*, 47.

In fact, mathematical astronomy was also taught in mosques.¹⁷⁰ In the Fatimid dynasty, al-Maqrīzī notes how the sultāns relied entirely on mathematical astronomy and did not depend on the naked eye. Fatimid astronomers had developed precise calculations and tables to decipher when the months began. In fact, according to al-Maqrīzī, the Fatimid ‘*ulamā*’ did not consider the use of mathematical calculations to identify seasons and times of religious rites to be outside the realm of religion; they claimed that this practice was prevalent with Shī‘ī Imāms, and believed that mathematical astronomy was not a departure from religion, but rather a part of it.¹⁷¹ These historical evidences regarding the position of the ‘*ulamā*’ in welcoming mathematical astronomy all show some kind of shift in the prevailing attitude towards mathematical astronomy.

5.2. Astronomical practice in the Early Mamlūk Sultanate

As mentioned, folk and mathematical astronomy both coexisted before the Mamlūk period. In the Early Mamlūk Sultanate, specifically from 648/1250 to the death of Sultān al-Nāṣir Muḥammad (741/1341), astronomy, both folk and mathematical, continued their activity independently of each other. Folk astronomy was widespread and adopted in religious circles, while mathematical astronomy was widespread only among those who had interest in it. After the death of Sultān al-Nāṣir Muḥammad, there was a shift in astronomical practice. First, the muezzin, who was an expert in folk astronomy, was responsible for determining the times and the beginning of months. Then, a new position

¹⁷⁰ King, *Mathematical Astronomy in Medieval Yemen*, 7-9; King, *In Synchronicity with the Heavens*, 635-636; Dallal, *Science*, 47.

¹⁷¹ Al-Maqrīzī, *Khīṭaṭ*, 2:440.

emerged—the *mīqātī*—elected by those interested in mathematical astronomy. This shift allowed Muslim mathematical astronomers to work within religious institutions.

The following sections investigate the status of the two types of astronomy in detail, focusing on the first two thirds of the Early Mamlūk Sultanate. We then observe how this transformation happened, and why it occurred after the death of Sulṭān al-Nāṣir Muḥammad in 741/1341.

5.2.1. Astronomical practice from 648/1250 to 741/1341

As had been the case since the advent of Islam, the Early Mamlūk Sultanate community was dependent on folk astronomy. Observation of the crescent was carried out with the naked eye for which the muezzins were responsible. Even if other individuals had sighted the crescent, the judge would not rely on the testimony of anyone except the muezzins themselves to announce the beginning of the month.

Legal and *ḥisba* manuals as well as the endowment documents written during the period between 648/1283 and the death of Sulṭān al-Nāṣir Muḥammad in 741/1341, strongly emphasise the muezzin's sole authorisation to determine the beginnings of months and to announce the prayer times. *Ma'ālim al-qurba fī aḥkām al-ḥisba*, written by a Mamlūk inspector, Ibn al-Ukhuwwa (d. 727/1329), confirms that the muezzin should, in addition to his piety and good voice, be knowledgeable of folk astronomy basics. By observing the movements of the moon and the stars in the sky, the muezzin should be able to determine the beginning of each month and the times for prayer. In the document of the

endowments of the Mosque of Sulṭān Qalāwūn (d. 684/1284), there is mention of the numbers of muezzins and their salaries. It included roughly seventy muezzins, but no astronomers. The document of the endowments of the Mosque of Sulṭān al-Nāṣir Muḥammad (d. 741/1341) also included the names of seventy-five muezzins with their salaries. Once again, there was no mention of any *mīqātī*.¹⁷²

The Shāfi‘ī judges at the time were responsible for announcing the beginning of each month based on the assurances of the muezzins.¹⁷³ The monopoly of this task among the Shāfi‘īs, despite the presence of judges from other *madhhabs*, was owing to the power of the Shāfi‘ī judges over the central mosques in the Sultanate. Major mosques such as al-Azhar, Ibn al-‘Āṣ, and Sulṭān Muḥammad in Cairo, and the Umayyad and Sulṭān Muḥammad mosques in Damascus were directly under the responsibility of Shāfi‘ī judges.¹⁷⁴

Meanwhile, Muslim mathematical astronomers practiced their science during the period from 648/1250 to the death of Sulṭān al-Nāṣir Muḥammad in 741/1341. However, they were somewhat independent and did not engage with religious institutions. One reason for this was that the sulṭāns of that era did not patronise them yet.¹⁷⁵ That being said, there were brilliant astronomers present in Cairo, Damascus, and Aleppo. The most prominent mathematical astronomers in the Early Mamlūk Sultanate in Cairo were ‘Alī al-Marākishī (fl. 1280/2), Shihāb al-Dīn al-Maqassī (d. 1293), Najm al-Dīn al-Miṣrī (d. 1350). Damascus

¹⁷² King, *In Synchronicity with the Heavens*, 637, 646-647; King, “The Astronomy of the Mamluks,” 534; King, *Astronomy in the Service of Islam*, 7.

¹⁷³ Jackson, *Islamic Law*, 226.

¹⁷⁴ Al-Maqrīzī, *Khiṭaṭ*, 1:56, 4:3, 55, 137; al-Nu‘aymī, *Dāris*, 2:318, 341; al-Jazarī, *Tārīkh*, 1:25, 57.

¹⁷⁵ King, *In Synchronicity with the Heavens*, 652; King, “The Astronomy of the Mamluks,” 535.

had Amīn al-Dīn al-Abharī (d. 1320), Ibn al-Sirāj (d. 1320), Ibn al-Shāṭir (d. 1375), and al-Khalīlī (d. 1380). Most of their activities contributed to the development of astronomical instruments and handbooks (*zīj*s) as well as the drawing of arithmetic tables to represent the movements of stars and planets. The early period of the Early Mamlūk Sultanate also witnessed the migration of some of these mathematical astronomers to Yemen, where the sultāns of the Rasulid dynasty were known to sponsor this type of astronomical activity, as mentioned above.¹⁷⁶

Another factor that contributed to reduced mathematical astronomy activities in that period was the negative position of the ‘*ulamā*’. They clearly expressed their rejection of mathematical astronomy and consequently rejected the use of astronomical activities in the service of religious needs. These ‘*ulamā*’ included the Shāfi‘ī Mamlūk judge Ibn Daqīq al-‘Īd (d. 702/1302), the inspector *muḥtasib* of Cairo, the Shāfi‘ī Ibn al-Rif‘a (d. 710/1310), and the Damascene Ḥanbalī jurist, Ibn Taymiyya (d. 728/1328). The first argument used by these three, who rejected mathematical astronomy, was its association with astrology.¹⁷⁷ Ibn Taymiyya added another unique argument, namely that the claim that mathematical astronomy is more accurate than the traditional method is incorrect because the tables worked by mathematical astronomers contain frequent errors.¹⁷⁸

¹⁷⁶ King, *In Synchronicity with the Heavens*, 111-198, 465, 650, 711-741; King, *Astronomy in the Service of Islam*, 153-184; King, “The Astronomy of the Mamluks,” 535.

¹⁷⁷ Ibn Daqīq al-‘Īd, *Iḥkām*, 76; Ibn al-Rif‘a, *Kifāyat*, 2:432; Yahya Michot, “Ibn Taymiyya on Astrology: Annotated Translation of Three Fatwas,” *Journal of Islamic Studies* 11 no. 2 (2000): 147-208.

¹⁷⁸ Aḥmad b. ‘Abd al-Ḥalīm Ibn Taymiyya, *Majmū‘ fatāwā Shaykh al-Islām Aḥmad b. Taymiyya*, ed. ‘Abd al-Raḥmān Ibn Qāsim, 37 vols (Riyadh: Maṭābi‘ al-Riyadh, 1961–1967), 25:207-208.

5.2.2. Astronomical practice after 741/1341

For reasons described by contemporary scholars as ambiguous, the Mamlūk sultāns in this period began to warm towards the science of astronomy, even sponsoring their activities. This period also witnessed the integration of mathematical astronomers into religious institutions such as mosques and madrasas. As a result, the task of deciphering prayer times and the beginnings of the months, previously assigned to the muezzin, were also transferred to the *mīqātī*. Mathematical astronomers also developed a new science called timekeeping (*‘ilm al-mīqāt*) and began to teach it in the Mamlūk madrasas.¹⁷⁹

Sultān Ḥasan (r. 1347-1351, 1354-1361) assigned some of these mathematical astronomers to his madrasa, as well as al-Azhar Mosque and some madrasas in Cairo. The aforementioned mathematical astronomer, al-Maḡassī, after having practiced his activities depending on local funding, later went to work in al-Azhar. In Damascus, the mathematical astronomers moved from their homeland to work in official jobs at the Umayyad Mosque after initially practicing their activities in rural areas. Ibn al-Shāṭir, after residing in the countryside of Aleppo and practicing his astronomical activities there, moved to Damascus and was appointed in the Umayyad mosque as a *mīqātī*. Al-Khalīlī also worked at the Yalbughā Mosque in Damascus. Documents from madrasa endowments and mosques after the death of Sultān al-Nāṣir Muḥammad in 741/1341 refer to the position of the *mīqātī* and their numbers and salaries, which

¹⁷⁹ King, *Astronomy in the Service of Islam*, 7; King, “The Astronomy of the Mamluks,” 534; Dallal, *Science*, 69.

was not found in the endowment documents before the death of Sulṭān al-Nāṣir Muḥammad.¹⁸⁰

It is unclear who first instilled the idea of fostering the integration of mathematical astronomers into religious institutions, especially considering the *'ulamā'*'s sustained rejection towards mathematical astronomy. It is more likely that the sulṭāns imposed this issue, but there is still the question of why the mosques and madrasas were specifically targeted. The Mamlūks could employ mathematical astronomers in special observatories built for them, or at least employ them under any name within the bureaucratic system. It is more likely that the experiences of the countries surrounding the Early Mamlūk Sultanate, such as Yemen and the Ilkhanate, in which mathematical astronomy was integrated with religious institutions, pushed them towards this choice.

As mentioned above, there was a convergence between *'ulamā'* and mathematical astronomers, and they worked under one roof in these empires. The aforementioned Nasīr al-Dīn al-Ṭūsī, who ran an observatory in the Ilkhanate, was considered to be one of the *'ulamā'*. In Yemen, an astronomical observatory was built inside a mosque. The Mamlūk astronomers and the Yemeni and Ilkhanate astronomers contacted each other by traveling. The Mamlūk astronomers visited Yemen and the Ilkhanate, saw their observatories, and were aware of the various astronomical cultures. This demonstrable interest on their part lends strength to the argument that the integration of Mamlūk mathematical astronomers into religious institutions was more likely an initiative requested by the Mamlūk mathematical astronomers themselves. In other words,

¹⁸⁰ King, *In Synchronicity with the Heavens*, 647-648; King, *Astronomy in the Service of Islam*, 157-158, 164-169; Dallal, *Science*, 26, 57-60, 69.

they nominated themselves for employment in Mamlūk religious institutions, just as had been seen in Yemen and the Ilkhanate. This perhaps shows that the Mamlūk mathematical astronomers developed a desire to harness astronomy to serve religion. This was especially the case when they faced an unprecedented openness from the Sultāns towards their expertise. In addition, it is worth mentioning that the religious mosques and madrasas were among the largest and wealthiest institutions in the Sultanate, owing to their dependence on the endowments and other allocations of the Sultanate. This wealth inevitably made astronomers eager to belong to these religious institutions, especially after being isolated for a long period of time without resources.

Following the death of Sultān al-Nāṣir Muḥammad, the introduction of mathematical astronomers to religious institutions led to a new literary genre: ‘the science of astronomical timekeeping’ (*‘ilm al-mīqāt*). *‘ilm al-mīqāt* is the adaptation of mathematical astronomy such that it will be valid for use in the religious field. Examples include determining the times for prayer, the beginnings of holy months, and the direction of Mecca. This development is also an adaption of Yemeni and Ilkhanate practices. *‘ilm al-mīqāt* could be found in the works of Yemeni and Ilkhanate mathematical astronomers prior to the fourteenth century. Similarly, the Mamlūk mathematical astronomers began incorporating their works, research and schedules. Their issuance led to the creation of the Mamlūk version of *‘ilm al-mīqāt*. They even incorporated the works of former mathematical astronomers, adding further explanations and some deletions based on the traditional genre of religious manuals. There is no doubt that the purpose of *‘ilm al-mīqāt* was to introduce curricula to be used and taught in Mamlūk madrasas. The creation of *‘ilm al-mīqāt* was presumably a

very delicate process, which involved filtering out all aspects of *tanjīm*, talismans, and ancient Greek theories.¹⁸¹

Despite the openness of the sulṭāns to astronomy and the enthusiasm of the astronomers to serve the religion, the position of the ‘*ulamā*’ during that period remained conservative. We already mentioned the position of the early Mamlūk ‘*ulamā*’, Ibn Daqīq al-‘Īd, Ibn al-Rif‘a, and Ibn Taymiyya, all of whom associated mathematical astronomy with astrology. After the death of Sulṭān al-Nāṣir Muḥammad, the ‘*ulamā*’ continued to reject mathematical astronomy, even if it were used for beneficial purposes, such as determining prayer times; it was still essentially thought to be astrology, which contradicts the principle of religion. In this period, we witness one example of a direct frontal attack on astronomy by Ibn al-Qayyim al-Jawziyya (d.751/1350). In *Miftāḥ dār al-sa‘āda*, Ibn al-Qayyim attempted to refute some of the “false rumours” that support the tolerance of early jurists with the science of stars and astronomy. Ibn al-Qayyim was confident in acquitting early jurists of the accusation that they met with astrologers, or that they themselves acquired astronomical instruments such as the astrolabe.¹⁸² As far as we know, the majority of the Early Mamlūk’s ‘*ulamā*’ rejected mathematical astronomy because of its strong association with astrology.¹⁸³

¹⁸¹ King, *Astronomy in the Service of Islam*, 1-20.

¹⁸² Muḥammad b. Ayyūb Ibn al-Qayyim, *Miftāḥ dār al-sa‘āda wa manshūr wilāyat al-‘ilm wa al-irāda*, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1997), 2:219-226.

¹⁸³ See for example, al-Isnawī, *Muhimmāt* 4:49-50; Ibn al-Mulaqqin, *Tuhfat*, 2:76-77.

6. Interpretation of al-Subkī's opinions in light of the cultural and scientific context of astronomical practice

6.1. The first opinion in 726/1326

We have reviewed al-Subkī's first opinion in *Ibtihāj* regarding the legal method to determine the beginning of the month of Dhū al-Ḥijja. At that time, al-Subkī suggested that sighting the crescent with the naked eye through the testimony of trusted persons is the correct legal method to determine the beginning of the month of Dhū al-Ḥijja. Al-Subkī took this position in *Ibtihāj* because the text was intended to present the prevailing opinions in the *madhhab*, and one of its objectives was to train madrasa students. Also, when al-Subkī wrote *Ibtihāj*, he was playing the role of *faqīh*. He was not yet a *muftī* or a judge in order to observe legal problems. The second possible reason is that al-Subkī's first opinion in *Ibtihāj* reflects the prevailing astronomical practice at that time. We have reviewed the historical evidence between 1250 and 1341, which indicates that the Mamlūk society depends on folk astronomy. The muezzin confirms the testimony of witnesses, and the Shāfi'ī judges are responsible for documenting it and declaring the beginning of the months officially. It is more likely that al-Subkī trusted the procedures of the Shāfi'īs because it was the only method available at that time. Even if we assumed that there were discussions or signs of applying astronomical calculation in the legal field at that time, al-Subkī may not have taken this into consideration because the circumstances were not yet favourable for such a step to be taken. The sultāns may not have been open to the science of astronomy, or al-Subkī may not have had a complete image in his mind regarding astronomical calculation, or perhaps he simply did not have the power to contribute to change.

6.2. The second opinion in 749/1348

Al-Subkī developed a new opinion on the legal method to determine the beginning of the month of Dhū al-Ḥijja of the year 749/1348. We discussed al-Subkī's opinion in *Ḥisāb*, which states that the use of astronomical calculation must be in relation to sighting with the naked eye. If sighting is impossible according to astronomical calculations, it is legally required to submit astronomical calculations to the sighting with the eye. It is likely that al-Subkī's development in his new opinion in *Ḥisāb* was a reflection of the evolution of the astronomy practice at the time. We saw that the sultāns had opened up to astronomers and supported their activities. We have also seen that astronomers were employed as timekeepers in religious institutions such as madrasas and mosques.

It is likely that the communication between al-Subkī and the well-known astronomer Ibn al-Shāṭir was one of the reasons that helped al-Subkī to develop his opinion. Ibn al-Shāṭir was highly regarded in the science of mathematical astronomy. He was born in the year 703/1303 in Damascus. The first half of his life was based in Aleppo, where he practiced astronomy in a modest observatory dating back to the Abbasid era. He also travelled to Cairo, Palestine, Yemen, and other cities to discover more about the science of astronomy and to try to solve the problems of this science. The sources mention that in the year 743/1343, he moved from his hometown to work in the Umayyad Mosque and became head

of the muezzins and timekeeping experts, the *mīqātīs*. A group of his colleagues also joined the staff there to work with him.¹⁸⁴

In Damascus, unlike his peers who focus on the theoretical level of astronomy, Ibn al-Shāṭir demonstrated his enthusiasm for harnessing astronomy in the service of religion. He became responsible for determining prayer times, the beginnings of months, and other matters pertaining to religious rituals and seasons. He also constructed a sundial for the Umayyad Mosque minaret to determine the accurate prayer times. He was credited with developing ideas on the thesis of the Greek Ptolemy (d. 170) to increase the accuracy of determining the beginning of months. As Dallal notes, Ibn al-Shāṭir is closer to being a *mīqātī* than the astronomers; in the same time he was actively practicing mathematical astronomy, his life-long passion.¹⁸⁵

As mentioned, al-Subkī migrated to Damascus as a Shāfi'ī Chief Judge in the year 739/1339. He was also the preacher of the Umayyad Mosque and was fully responsible for the endowments of the mosque, acting as a supervisor of its interests. Al-Subkī was also responsible for the mosque's employees, including Ibn al-Shāṭir. We do not know the nature of the relationship between al-Subkī and Ibn al-Shāṭir, but since the two lived together and worked in the same institution, it is likely that they communicated about both science and religion.

It is also likely that al-Subkī had some knowledge of the works of Ibn al-Shāṭir and his astronomical tables, especially the ephemeris of the Lunar Year

¹⁸⁴ King, *In Synchronicity with the Heavens*, 650; King, *Astronomy in the Service of Islam*, 164-166; Dallal, *Science*, 26; Saliba, *Islamic Science*, 263-269; Ibn Hajar, *Durar*, 1:903; al-Nu'aymī, *Dāris*, 2:298.

¹⁸⁵ King, *Astronomy in the Service of Islam*, 12; Dallal, *Science*, 25; D. Pingree, and M. Rodinson, "al-Ḳamar," in *Encyclopaedia of Islam*, 2nd edition (*EI*²), accessed 01 August 2019, <https://reference.brillonline.com/entries/encyclopaedia-of-islam-2/al-kamar->.

(*al-Taqwīm al-Hijrī*), which was included in his handbook, *al-Zīj al-jadīd*. We know that Ibn al-Shāṭir, like the rest of the astronomers, produced a table for each year in which he would have calculated the movement of the sun, moon, planets, and stars.¹⁸⁶ These tables were divided into full-year days. The history of making these *Hijrī* ephemerides dates back to the ninth century when the well-known Persian astronomer and mathematician, Khawārizmī (d. 235/850), established his first ephemeris.¹⁸⁷ Every avid astronomer had to have a copy of the ephemeris. Although all astronomers relied on one ephemeris each year, each of the astronomers had their own copy of the ephemeris with their own comments and annotations. Ibn al-Shāṭir’s comments indicate the expected times of seeing the crescent at the beginning of each month.¹⁸⁸

Al-Subkī supported his second opinion with a set of mathematical astronomical facts. He was unlikely to have known these facts without the help of someone like Ibn al-Shāṭir. These facts include his mention of the number of days of the year 749/1348, which was 354 days, corresponding to the ephemeris of Ibn al-Shāṭir. Since the early days of the creation of these ephemerides in the ninth century, astronomers, including Khawārizmī, designed their first ephemeris associated with the moon cycle. Each cycle represents approximately one month. The number of days of the year in these ephemerides varied from one year to the other—between 354 and 355 days.¹⁸⁹ In the ephemeris of Ibn al-Shāṭir, the number of days of the year was 354,¹⁹⁰ which corresponded to al-

¹⁸⁶ King, *In Synchronicity with the Heavens*, 111-198, 711-741; King, *Astronomy in the Service of Islam*, 153-184; King, “Ru’yat al-Hilāl,” *EP*².

¹⁸⁷ King, *Astronomy in the Service of Islam*, 249; Stowasser, *The Day*, 21.

¹⁸⁸ King, “Ru’yat al-Hilāl,” *EP*².

¹⁸⁹ Stowasser, *The Day*, 21. Mostly 354 days historically.

¹⁹⁰ King, “Ru’yat al-Hilāl,” *EP*².

Subkī's facts in his second opinion. Although astronomical ephemerides, including Ibn al-Shāṭir's, are considered to be lunar *Hijrī* ephemerides suitable for Islamic religious use, the 'ulamā' did not accept that they were completely reliable.¹⁹¹ They did not believe that the days of the year could be calculated mathematically, and that they should instead be observed according to sightings of the crescent with the naked eye, which then determined the number of days of each month from beginning to end. When supporting his opinion through the *Hijrī* ephemeris, al-Subkī certainly based it on an astronomical reference, which would have likely been Ibn al-Shāṭir's ephemeris.

One other piece of evidence that points towards al-Subkī's reliance on Ibn al-Shāṭir is his indirect mention of the method of mathematical astronomers in determining sightings of the crescent moon. Describing their method as effective and precise, al-Subkī says:

One of the most compelling reasons to challenge the opinion of people who claim that sightings of the crescent of Dhū al-Ḥijja with the naked eye is the only method for determining the beginning of the month, is the knowledge of mathematicians (*ahl al-ḥisāb*), who are religious and trusted. They said that the sightings of the crescent of Dhū al-Ḥijja are impossible. They have three degrees of sightings of the crescent every month:

¹⁹¹ King, "Ru'yat al-Hilāl," *EI*².

1) it is impossible to be seen; 2) it is likely to be seen;
and 3) it can be seen.¹⁹²

Al-Subkī then concludes, “Those who practice this science of ‘mathematical astronomy’ (*‘ilm al-hay’a*) were definitely aware of the crescent’s position in the night sky.”¹⁹³ Al-Subkī’s statement of the three degrees used by astronomers in sightings of the crescent is in fact similar to Ibn al-Shāṭir’s own comments in his handbook, *al-Zīj al-jadīd*. Ibn al-Shāṭir placed a column next to the beginning of each new month. According to his astronomical calculations, he wrote in this column one of three sentences: 1) it will often be seen: 2) it will never be seen; and 3) it will be seen with difficulty.¹⁹⁴ We can confidently surmise that there was substantial communication between al-Subkī and Ibn al-Shāṭir which helped al-Subkī to develop his second opinion.

This connection between al-Subkī, a Muslim jurist, and Ibn al-Shāṭir, an astronomer, is interesting. Perhaps there are reasons that paved the way for this communication to occur. The enthusiasm of astronomers to harness their astronomical research to serve religion was an important factor that may have influenced al-Subkī’s acceptance to astronomy. We saw that Ibn al-Shāṭir was different to his peers, especially in his enthusiasm to the religion. Ibn al-Shāṭir did not only carry out his astronomical activities on the purely theoretical level, as was the case with other astronomers, but he was credited with developing some astronomical instruments and tables that would serve the religion. This

¹⁹² Al-Subkī, *Fatāwā*, 1:217.

¹⁹³ Al-Subkī, *Fatāwā*, 1:217.

¹⁹⁴ King, “Ru’yat al-Hilāl,” *EI*².

may refer to Ibn al-Shāṭir's religious tendencies. Al-Subkī confirms this in the above quote when he said that one of the reasons why we rely on astronomers is to be reliable and religious.

It is also possible that Ibn al-Shāṭir made an effort to convince al-Subkī of the effectiveness of astronomical calculations in determining the times of religious rites and the beginning of the months. As a result of this scientific and religious connection between al-Subkī and Ibn al-Shāṭir, perhaps al-Subkī wanted to negotiate with the religious elite, especially the judges, about the distinction of the astronomers in Damascus or Ibn al-Shāṭir. They were a generation that differed from the rest of the astronomers due to their religious tendencies; they were keen to purify astronomy from anything that violates religion, such as astrology. The inclusion of their science in the religious field will solve some legal problems related to determining the beginning of the months.

It is worth noting that the sighting of the crescent at the beginning of the months is still one of the most discussed legal problems in the Islamic world. In the Mamlūk lands, the fourteenth century saw a number of incidents in which there were discrepancies between witnesses. The crescent was often sighted in an area while unobserved in another.¹⁹⁵ Hoping to find a solution to this legal problem, the *fuqahā* developed what they call 'difference in horizons' (*ikhtilāf al-maṭāli*). Does sighting the crescent in any given area have legal consequences in all lands regardless of distance? Or should it be legal for the people of each region to sight the crescent on their own without following the sighting of other

¹⁹⁵ Some of these events can be found in al-Jazarī, *Tārīkh*, 2:77, 104, 329, 397, 778, 872.

areas? Egypt may have their own sighting, which is different from the sighting of the people of Syria, for example.

The *fuqahā'* differ on this issue; the three other *madhhabs* — Ḥanafī, Mālikī, and Ḥanbalī — held that sighting the crescent in a particular area has legal consequences in all regions. In other words, if the crescent is seen in Egypt, then Syria is obliged to follow this and vice versa. This opinion may have positive effects in our modern era, as the media and means of communication will inform the people of one country about a sighting in another country. In the medieval time however, this opinion could not be implemented; the people of Syria would only be informed of the news that the people of Egypt saw the crescent after a period of time. The Shāfi'īs developed another opinion: each region has its own sighting of the crescent, and there are no legal consequences for other regions. However, the Shāfi'īs remained conflicted in defining the criteria that separates each region from the other. Questions arise, such as: what is the definition of the area? Upon what basis was it decided? What is the legal distance required to separate two areas?¹⁹⁶

7. Conclusion

In this chapter, we studied the development of al-Subkī's opinions on the legal method of determining the beginning of the month of Dhū al-Hijja. We

¹⁹⁶ “*Ikhtilāf al-matāli'*,” *al-Mawsū'a al-fiqhiyya*, 40:115-116; Yahyā b. Sharaf al-Nawawī, *al-Majmū' sharḥ al-muhadhdhab*, ed. Muḥammad Najīb al-Muṭī'ī, 23 vols (Jeddah: Maktabat al-'Irshād, n.d.), 1:273-274; D. King, “*al-matla'*,” in *Encyclopaedia of Islam*, 2nd edition (*EP*), accessed 01 August 2019, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/al-matla->.

found that these views were facilitated by the astronomical practice in the Early Mamlūk Sultanate. From the beginning of the Early Mamlūk Sultanate up until the death of Sulṭān al-Nāṣir Muḥammad in the year 741/1341, the predominant practice of crescent observation was conducted with the naked eye. Muezzins of mosques performed this task and transferred what they saw to the Shāfi‘ī judges, who would in turn announce the beginning of Dhū al-Ḥijja. The Shāfi‘ī judges dominated the central mosques in the Sultanate, so they were responsible for declaring the beginning of the months. Al-Subkī’s first opinion, written in 726/1326, stemmed from the community’s practice of observing the crescent at that time.

After the death of Sulṭān al-Nāṣir Muḥammad in 741/1341, the sulṭāns were more open to astronomical activities, employing mathematical astronomers in the Sultanate. Religious madrasas and mosques were among the places where mathematical astronomers joined as official employees. In Damascus, the famous astronomer Ibn al-Shāṭir was working as a timekeeper in the Umayyad Mosque. Ibn al-Shāṭir devoted a portion of his research to develop ways to decipher the times and the beginning of months as well as other issues related to religious rituals and seasons. Meanwhile, al-Subkī was the preacher for the Umayyad Mosque and was responsible for its staff, including Ibn al-Shāṭir himself. It is likely that a relationship developed between the two, and this relationship led to the development of al-Subkī’s second opinion in 749/1348 about the effectiveness of using astronomical calculation in determining the beginning of the month of Dhū al-Ḥijja. Al-Subkī (and perhaps Ibn al-Shāṭir) tried to negotiate with the religious elite in Damascus, especially the judges, regarding the adoption of astronomical calculation in the legal system in order

to reduce the legal problems related to the traditional method of determining the beginning of the months.

Chapter 3

The legal ruling against non-Muslims who curse the Prophet Muḥammad

1. Introduction

This chapter analyses al-Subkī's stance regarding non-Muslims who curse the Prophet Muḥammad. In his treatise *al-Sayf al-maslūl 'ala man sabb al-Rasūl* (The Brandished Sword upon Those Who Curse the Prophet), al-Subkī conveyed two major opinions, composed in 734/1334 and 751/1350 respectively. In the former, he held that the predominant opinion (*mashhūr*) of the Shāfi'ī *madhhab* is to pardon non-Muslims who curse the Prophet Muḥammad if they repent and convert to Islam. The latter opinion saw al-Subkī favour the other narrative in the Shāfi'ī *madhhab*: to execute non-Muslims who curse the Prophet Muḥammad regardless of their repentance and conversion to Islam. We will discuss and contrast the two opinions while shedding light on the socio-political context of the status of Christian officials in the Early Mamlūk Sultanate. Al-Subkī's two opinions are to be read and understood within the framework of that context.

Al-Subkī reacts to the socio-political context of the status of Christian officials in his day, aiming to preserve the reputation of the Sultanate. During the reign of Sulṭān al-Nāṣir Muḥammad, the regime aspired to ensure stability by developing the bureaucracy and employing skilled Christian staff. As the Sulṭān favoured these important administrators, the anger of some Muslims — mostly Shāfi'īs — led them to object to his inclusiveness. Their discontent

developed into polemic writings, popular mobilisation through Friday sermons, and even physical attacks on certain Christian officials.

Lawsuits were filed against Christian officials for various charges, most notably for cursing the Prophet. Some Shāfi‘ī judges overlooked these cases and ended them in amnesty if the accuser showed regret. This is because firstly, it was the dominant position of the Shāfi‘ī *madhhab*, and secondly, the judges had a desire to maintain the stability of the state under the resistance that threatened that order. In the year 1334, al-Subkī supported the Shāfi‘ī judges because they followed the Shāfi‘ī *madhhab*. It was also perhaps his conviction to preserve the Sultanate’s reputation.

After the death of Sulṭān al-Nāṣir Muḥammad, political, social, and economic conditions deteriorated. This was attributed to several causes: the rapid succession to the throne, the Mamlūk emirs’ rivalry for power, and the lack of economic resources stemming from the plague. As a result, the Mamlūks grew anxious to restore security and maintain stability. On the other hand, because of the prestige that the Christian officials obtained during the time of Sulṭān al-Nāṣir Muḥammad, some of them challenged the new regime by further attaching themselves to their Coptic Christian heritage despite their conversion to Islam. The most notable practice was cursing the Prophet, which may have been understood as an expression of standing against the regime. In the year 1350, al-Subkī supported the execution of a Christian official based on legal reasoning coupled with the desire to preserve the Sultanate’s reputation during that critical time.

Several modern scholars have written about the Christian community in the medieval Islamic period. Georges Anawati and Terry Wilfong focus on the Christian community in Egypt,¹⁹⁷ whereas Nehemia Levtzion focuses on Christian communities in Syria and Palestine.¹⁹⁸ More specifically, there are scholars who focus on the phenomenon of conversion from Christianity to Islam in the Mamlūk era. Levtzion has insightful notes on incidents of Christian conversion that take place in Syria and Palestine. Donald Little and Tamer El-Leithy devote some of their work to examining this cultural practice more broadly.¹⁹⁹ Little and El-Leithy discuss the status of the Christian officials in the fourteenth century and beyond, but Donald Richards and Richard Gottheil were the first to inform us about the participation of Christians in the Mamlūk court.²⁰⁰ All these studies assist us in investigating the socio-political history of the Christian community and the status of Christian officials in the Early Mamlūk Sultanate. In turn, they enable us to make an informed assessment of al-Subkī's writing.

2. *Al-Sayf al-maslūl 'ala man sabb al-Rasūl*

The previous and subsequent chapter both discuss al-Subkī's opinions transmitted in different writings, specifically *Ibtihāj* and *Fatāwā*. In this chapter,

¹⁹⁷ Anawati, "Christian Communities,"; Wilfong, "Christian Communities,".

¹⁹⁸ Levtzion, "Conversion,".

¹⁹⁹ Little, "Coptic conversion,"; Little, "Coptic Converts,"; El-Leithy, "Coptic Culture,".

²⁰⁰ Richards, "The Coptic Bureaucracy,"; Richard Gottheil, "An Answer to the Dhimmi," *Journal of the American Oriental Society* 41 (1921): 383-457. For a broad-ranging discussion on Muslims employing Christian bureaucrats in Islamic history, see the new publication of Luke Yarbrough, *Friends of the Emir: Non-Muslim State Officials in Premodern Islamic Thought* (Cambridge: Cambridge University Press, 2019).

we deal with al-Subkī's opinions on the issue of cursing the Prophet (*sabb al-Rasūl*) via only one book, *Sayf*. In the introduction, al-Subkī states that one of the reasons behind compiling *Sayf* is related to a debate that broke out among the Shāfi'īs in the year 734/1334 regarding the Shāfi'ī position towards a Christian that had committed *sabb*.²⁰¹ Al-Subkī did not supply any further information. As stated in the conclusion, al-Subkī wrote most of *Sayf* in the year 734/1334,²⁰² except for an appendix, which he states was added in the year 751/1350.²⁰³

The treatise is divided into four sections. The first section concerns the laws against a Muslim cursing the Prophet,²⁰⁴ and the second discusses the laws against the same offense committed by a non-Muslim.²⁰⁵ The third section concerns the question of cursing the Companions.²⁰⁶ Finally, the fourth section deals with the character of the Prophet and his fine qualities (*maḥāsīn*).²⁰⁷ The two opinions of al-Subkī pertaining to this discussion are located in the second section: the laws against cursing the Prophet by a non-Muslim. This section contains two chapters: the first is related to the punishment for the non-Muslim who curses the Prophet without repenting or refusing to convert to Islam, which al-Subkī confirmed to be execution.²⁰⁸ The second chapter entitled "If the curser becomes Muslim" (*fīmā idhā aslam*) contains a discussion on the legal ruling about accepting the repentance of the curser, if converted to Islam. In this

²⁰¹ Al-Subkī, *Sayf*, 113.

²⁰² Al-Subkī, *Sayf*, 527.

²⁰³ Al-Subkī, *Sayf*, 390.

²⁰⁴ Al-Subkī, *Sayf*, 117-230.

²⁰⁵ Al-Subkī, *Sayf*, 231-399.

²⁰⁶ Al-Subkī, *Sayf*, 403-434.

²⁰⁷ Al-Subkī, *Sayf*, 444-526.

²⁰⁸ Al-Subkī, *Sayf*, 231-382.

chapter, al-Subkī expressed two opinions: the first opinion (1334) supported forgiving the curser if they converted to Islam. According to al-Subkī, this is the predominant narrative (*riwāya mashhūra*) in the *madhhab*.²⁰⁹ In the second opinion (1350), al-Subkī added an appendix to the second chapter titled *Dhayl mulḥaq*, arguing that forgiveness is not necessarily the predominant narrative in the *madhhab*. Instead, execution is the correct punishment for cursing the Prophet even if the curser converts to Islam. According to al-Subkī, this is the most correct narrative (*al-aṣaḥḥ*) in the *madhhab*, as it relies on consensus (*ijmāʿ*).²¹⁰ The following sections discuss these two opinions in detail.

2.1. The first opinion in 734/1334

In the second chapter of the second section of *Sayf*, al-Subkī begins to discuss the opinions of the four *madhhabs* on the rule of accepting repentance from the non-Muslims who cursed the Prophet and then converted to Islam. According to al-Subkī, the Mālikīs and the Ḥanbalīs have two narratives in their *madhhab*: forgiveness, and execution. Al-Subkī goes on to say that even if the Mālikīs and the Ḥanbalīs accept the repentance of the non-Muslim who curses the Prophet, neither *madhhab* accepts the repentance of the original Muslim (*al-muslim al-aṣlī* – a born Muslim) in such a case. According to al-Subkī, both *madhhabs* consider a curse committed by the original Muslim to be an act of heresy (*zandaqa*), and the repentance of the *zindīq* is not acceptable. Concerning the Ḥanbalīs, al-Subkī comments on *al-Ṣārim al-maslūl ʿalā shātim al-Rasūl*

²⁰⁹ Al-Subkī, *Sayf*, 383-389.

²¹⁰ Al-Subkī, *Sayf*, 390-395.

written by Ibn Taymiyya.²¹¹ Although al-Subkī praises this book, he disagrees with the conclusion reached by Ibn Taymiyya, which is to reject the repentance of the curser if he converted to Islam.²¹²

Al-Subkī said that he already discussed the position of the Shāfi‘īs in the first section of *Sayf* (the laws against a Muslim cursing the Prophet).²¹³ He wants to say that since the curser converted to Islam, he is included under the laws against a Muslim cursing the Prophet. This is because unlike Mālikīs and Ḥanbalīs, the Shāfi‘īs do not differentiate between the newly converted Muslim and the Muslim born Muslim and thus the new converted Muslim should be treated like any other Muslim. In other words, if *Sayf* was authored by a Mālikī or Ḥanbalī, then the abovementioned Mālikī or Ḥanbalī ruling would have been mentioned in the section of the laws against the cursing the Prophet committed by a converted Muslim. While there is debate over the ruling of the newly converted Muslim, the Mālikīs and Ḥanbalīs opine that an original Muslim could not curse the Prophet except if he were a *zindīq* pretending to be a Muslim, and thus his repentance cannot be accepted.²¹⁴

At this point, we turn from the second section of *Sayf* back to the first section in which al-Subkī identifies the position of the Shāfi‘īs on this issue. He discusses two narratives in the Shāfi‘ī *madhhab*. The first narrative is to accept

²¹¹ Aḥmad b. ‘Abd al-Ḥalīm Ibn Taymiyya, *al-Ṣārim al-maslūl ‘alā shātīm al-Rasūl*, ed. Muḥammad b. ‘Abd Allāh al-Ḥalawānī and Muḥammad Kabīr Shawdarī, 3 vols (Dammam: Ramādī li-l-Nashr, 1997). On *Ṣārim*, see Jon Hoover, “Ibn Taymiyya,” in *Christian-Muslim Relations: A Bibliographical History*, Vol. 4 (1200-1350), eds. David Thomas and Alex Mallett (Leiden: Brill, 2012), 824-878.

²¹² Al-Subkī, *Sayf*, 383-387.

²¹³ Al-Subkī, *Sayf*, 384.

²¹⁴ See Ibn Taymiyya, *Ṣārim*, 2:551-563. This reasoning could be argued conversely, namely that when a Muslim commits the curse, it may be the result of ignorance or mistake, but the curse committed by a non-Muslim may be deliberate and the result of [dis]belief.

repentance, and the fate of the curser will be forgiveness; the second is to reject the repentance, and the fate of the curser will be execution. Al-Subkī supports forgiving of cursers who repent as the *mashhūr* of the Shāfi‘ī *madhhab*. Then, he refutes the Shāfi‘ī narrative supporting execution, arguing that it contradicts the *mashhūr* of the *madhhab*.

Al-Subkī supports forgiveness by citing the Qur’ān, several *ḥadīths*, and Shāfi‘ī authorities. From the Qur’ān, al-Subkī cites various sources for accepting the repentance of the cursers. He adds that these verses indeed support the *mashhūr* of the Shāfi‘ī *madhhab* in this matter. To support his claim, he cites these Qur’ānic verses: “Say to those who have disbelieved [that] if they cease, what has previously occurred will be forgiven for them” (Q. 8:38); “Say, O My servants who have transgressed against themselves [by sinning], do not despair of the mercy of Allāh. Indeed, Allāh forgives all sins. Indeed, it is He who is the Forgiving, the Merciful” (Q.39:53); and “Those—their recompense will be that upon them is the curse of Allāh and the angels and the people, all together, abiding eternally therein. The punishment will not be lightened for them, nor will they be reprieved, except for those who repent after that and correct themselves. For indeed, Allāh is Forgiving and Merciful” (Q.3:87-89). Al-Subkī points out that whoever curses the Prophet and subsequently repents would fall under the ruling of these Qur’ānic verses.²¹⁵

As for *ḥadīth*, al-Subkī notes the saying of the Prophet, “Islam erases the sins that occurred before Islam.”²¹⁶ Al-Subkī mentions that this *ḥadīth* is a

²¹⁵ Al-Subkī, *Sayf*, 175; The translation of the Qur’ān is based on M. H. Shakir, *The Qur’ān: Arabic Text and English Translation*, (New York: Tahrike Tarsile Qur’ān, Inc, 1996).

²¹⁶ Muslim, *Ṣaḥīḥ*, *Kitāb al-imān* (1), *Bāb kawn al-islām yahdim mā qablah wa kadhā al-hijra wa al-ḥajj* (54).

general statement about a legal matter, and it should be considered to be general until a particular outcome arises. In other words, this *ḥadīth* points out that all sins are erased through repentance. The second *ḥadīth* that strengthens the Shāfi‘ī stance is the saying of the Prophet, “Adhere to my *Sunna*.”²¹⁷ Al-Subkī explained that the teaching of the Prophet is never to execute a fellow Muslim, and that this teaching is undoubtedly true. If executing a person after repentance were allowed, the Prophet would have indicated it. He adds that there has been no case in which the Prophet executed a person after repentance, and he never avenged a person who had cursed him. Al-Subkī enjoins the emulation of Prophet’s behaviour in this matter.²¹⁸

He then reviews some *ḥadīths* that seem to advocate the Shāfi‘ī execution narrative, including the *ḥadīth* of the Prophet, “Whoever curses the Prophet, execute him.”²¹⁹ However, al-Subkī mentions that this *ḥadīth* is not authentic. Even if it were authentic, the practice of the Prophet in accepting the repentance of those who had cursed him would abrogate the meaning of this *ḥadīth*.²²⁰ Al-Subkī then cites the statements of the Shāfi‘īs in this matter, such as al-Ṣaydalānī (400/1010),²²¹ al-Isfarāyīnī (d. 418/1027), al-Ghazālī (504/1111), and al-Rāfi‘ī (623/1226), all of whom suggest that everyone must accept the repentance of the person who has cursed the Prophet. Not only that, al-Subkī also mentions the

²¹⁷ Abū Dāwūd, *Sunan*, *Kitāb al-sunna* (42), *Bāb fī luzūm al-sunna* (6).

²¹⁸ Al-Subkī, *Sayf*, 176-178, 200- 202.

²¹⁹ I could not find this *ḥadīth* in any of the six Sunnī canonical books of *ḥadīth* (al-Bukhārī, Muslim, Abū Dāwūd, al-Tirmidhī, al-Nasā‘ī, and Ibn Mājah).

²²⁰ Al-Subkī, *Sayf*, 202-212.

²²¹ Al-Ṣaydalānī is also known as Ibn Dāwūd. Both names appeared interchangeably in the Shāfi‘ī legal manuals. The famous jurist Ibn al-Rif‘a (d. 710/1311) was one of those who referred to al-Ṣaydalānī as Ibn Dāwūd in his writings. Because Ibn Dāwūd is also the name of the famous jurist Muḥammed Ibn Dāwūd al-Zāhirī (d. 279/909), one of the Ḥanafīs who showed prejudice against Shāfi‘īs thought that Ibn al-Rif‘a is ignorant and considered al-Zāhirī to be Shāfi‘ī. This note is mentioned by Tāj al-Dīn al-Subkī in his *Ṭabaqāt*, 4:148.

custom of the Shāfi‘ī judges in his time as evidence to support forgiveness as the *mashhūr*.²²²

After supporting the act of forgiving cursers who repented as the *mashhūr* of the Shāfi‘ī *madhhab*, al-Subkī refutes Shāfi‘ī narratives supporting execution on the grounds that those narratives contradict the *mashhūr* of the *madhhab*. Some Shāfi‘īs, such as al-Khaṭṭābī (d. 388/988), supported execution on the grounds that al-Shāfi‘ī upheld execution. Others such as al-Fārisī (d. 305/917) and al-Qaffāl (d. 400/1009) said that al-Shāfi‘ī supported execution only when cursing the Prophet included slander (*sabbun bi-qadhf*). *Sabbun bi-qadhf* is an insult that includes lies such as accusing the Prophet of adultery or attacking his genealogy. Al-Fārisī also claimed *ijmā‘* on the execution in the case of *sabbun bi-qadhf*.²²³

Al-Subkī counters the claim that al-Shāfi‘ī supported execution only if the curser refused to repent. He addresses cursing that includes slander by stating that the Shāfi‘ī *madhhab* does not distinguish between cursing that involves slander and cursing that does not. He also states that it does not consider whether the curser was daring and open, or quiet and hidden, as well as whether the cursing was an act of heresy or not. The Shāfi‘ī *madhhab* always accepted repentance from the curser. As for the *ijmā‘* attributed to al-Fārisī, al-Subkī questioned this, as there are only a few Shāfi‘īs who convey this *ijmā‘* in the books of the *madhhab*.²²⁴

²²² Al-Subkī, *Sayf*, 166-174.

²²³ Al-Subkī, *Sayf*, 166-174.

²²⁴ Al-Subkī, *Sayf*, 166-174.

Al-Subkī then turns to a subsidiary issue in this regard, specifically whether it is possible to invite the person who cursed the Prophet to repent in order to avoid executing him. According to al-Subkī, neither al-Shāfi‘ī nor his associates (*aṣḥāb*) addressed this situation. In this case, al-Subkī applauds calling the person who cursed the Prophet to repent in order to avoid executing him as an act of mercy and compassion. Even though the intention of repentance was the fear of murder, this is acceptable to al-Subkī, saying, “If the *sharī‘a* says execute, we will execute, but if we do not find a legitimate text, we must stop and avoid erecting policies and reforms by ourselves.”²²⁵

2.2. The second opinion in 751/1350

Almost 17 years later, al-Subkī developed a second opinion on the legal ruling concerning non-Muslims who curse the Prophet Muḥammad. Under the title *Dhayl mulḥaq*, al-Subkī adds his second opinion, arguing that the second narrative (*al-riwāya al-ukhrā*) in the Shāfi‘ī *madhhab* (which supports the execution) is the most correct narrative (*al-aṣaḥḥ*) for its reliance on *ijmā‘*.

Al-Subkī begins *Dhayl* with a story on the execution of a Christian in Damascus. In Shawwāl 751/1350, a Christian was caught vociferously cursing and slandering the Prophet Muḥammad. According to al-Subkī, the same man also cursed the Prophet in the year 738/1337 and was almost executed by Muslims,²²⁶ but was spared. However, on the second occasion, he declared his

²²⁵ Al-Subkī, *Sayf*, 209, 211.

²²⁶ By Muslims, al-Subkī means probably Muslim government officials.

conversion to Islam when he was caught. Al-Subkī was not satisfied with his repentance, and ruled that he should be executed.²²⁷

Al-Subkī sees this instance as a unique case (*ḥāla khāṣṣa*) for several reasons. Firstly, it included slander of the Prophet Muḥammad in addition to cursing (*sabbun bi-qadhif*). According to al-Subkī, the curser cannot be forgiven, since he was a slanderer. Slanderers may only be forgiven by the person who was slandered or by the person's heirs. In this case, the Prophet is no longer alive and the Prophet's heirs are difficult to identify. Secondly, the obvious deliberation and boldness of the accused was not a result of anger, but rather malice intent. Thirdly, the repetition of the crime by the accused confirmed his disingenuous intent.²²⁸

Al-Subkī argues that this narrative is the most correct one (*al-aṣaḥḥ*) in the *madhhab* and is therefore not against the *mashhūr* of the Shāfi'ī *madhhab*. This is for two reasons: first, it is based on *ijmā'*, as mentioned by al-Fārisī. According to al-Subkī, this *ijmā'* was not known to the late Shāfi'īs who supported the forgiveness narrative. Second, those who support it among the Shāfi'īs (such as al-Fārisī and al-Qaffāl) were very loving to the Prophet and known for defending him (*nāhīk bihim ḡhayratan li-l-Nabī wa ṣiyānatan li-manṣibihi al-'alī*).²²⁹

Due to all of the above, al-Subkī supports the execution of the accused. However, he maintains the above-mentioned ruling was a unique case and that his opinion should not be used as precedent. In this regard, al-Subkī advises the

²²⁷ Al-Subkī, *Sayf*, 390.

²²⁸ Al-Subkī, *Sayf*, 390, 392.

²²⁹ Al-Subkī, *Sayf*, 391-392.

judges to give each case individual consideration, as this is a sign of skilful jurists (*al-faqīh al-ḥādhiq*). He also indicates that at the beginning of the *Sayf*, he did not take this position (execution and not accepting the repentance) but in this case, he found it to be the correct position.²³⁰

Although he supports the execution of the accuser, al-Subkī could not carry out the sentence. He said: ‘Because I was afraid of the ignorant (*jāhil*) and the hater (*dhī dighn*), I delegated the pronouncing of the sentence to the Ḥanbalī judge who sentenced the Christian to death.’²³¹ According to al-Subkī, the remaining Chief Judges — the Mālikī, Ḥanafī, and al-Subkī himself as the Shāfi‘ī — all acknowledged and agreed on the sentence.²³² This is the conclusion of al-Subkī’s *Dhayl*.

3. Comparative contextualisation

Section 2 of this chapter analysed al-Subkī’s opinions regarding the legal ruling of non-Muslims who curse the Prophet Muḥammad and then subsequently repent and convert to Islam. In 1334, al-Subkī supported the Shāfi‘ī narrative of forgiving the curser if he repents and converts to Islam. In 1350, al-Subkī then supported the contrary Shāfi‘ī narrative of executing the curser regardless of repentance and conversion. While the dominant view of the *madhhab* in 1334

²³⁰ Al-Subkī, *Sayf*, 392.

²³¹ Al-Subkī, *Sayf*, 394. In Arabic: (*falammā rā’aytu dhālika fī hādhihi al-wāqi‘a, wa khiftu min jāhil ‘aw dhī dighn, fawwaḍtu al-‘amra ilā Ḥanbalī ...*). During that time (1350), the Ḥanbalī judge was Jamāl al-Dīn Yūsuf b. Muḥammad al-Mardāwī (d. 769/1376). On him see, Ibn Ḥajar, *Durar*, 5:245.

²³² Al-Subkī, *Sayf*, 394.

was forgiveness, al-Subkī challenged that in 1350 to state that the most correct narrative was execution.

While al-Subkī relied on the Qur’ān, the Sunna, and Shāfi‘ī opinions in 1334, he insisted on the *ijmā’* mentioned by al-Fārisī in 1350. It was acceptable to al-Subkī in 1334 to discard the *ijmā’* of al-Fārisī since not all the Shāfi‘īs mention it. In 1350, al-Subkī discovered that the reason most of them did not mention this *ijmā’* is because they did not know about it. Had they known about it, they would have supported the execution narrative. Even though he argued in 1334 that the Shāfi‘ī *madhhab* does not differentiate between the *sabb* and *qathf*, in 1350 he found that those who committed *sabb*, which includes *qathf*, cannot be forgiven. Accordingly, he argued in 1334 that the Shāfi‘ī *madhhab* always accepts the repentance of the curser regardless of whether the curser was daring and open, or quiet and hidden. In 1350, al-Subkī considered this to be an important difference. While the custom of the Shāfi‘ī judges was considered by al-Subkī in 1334 to support the forgiveness narrative, by 1350, the love of some Shāfi‘īs towards the Prophet Muḥammad was a stronger evidence.²³³

²³³ Both of these two arguments (the custom of the Shāfi‘ī judges and the piety of the jurists) are unique in the Shāfi‘ī *madhhab*. I could not find any Shāfi‘ī who uses the custom of the Shāfi‘ī judges at a specific time as legal reasoning to weigh between opinions. If so, then this would be a new contribution by al-Subkī. I could also not find any Shāfi‘ī who uses the piety of a jurist to add weighting to his legal opinion. Perhaps this is because piety is subjective and difficult to measure, or because piety is an important pre-requisite for all jurists to have. The only thing that I have found in the Shāfi‘ī *madhhab* in this regard concerns a *muqallid* who faces two different *fatwās* without knowing which one to choose. The issue is as follows: if a *muqallid* asks two *mufṭīs* about a legal matter and each *mufṭī* provides a different answer, which *mufṭī* should he follow? Ibn al-Ṣalāḥ (643/1245) instructed the *muqallid* to follow the more knowledgeable *mufṭī*. If they both are equal in that, then the *muqallid* is instructed to follow the more pious one. ‘Uthmān b. ‘Abd al-Raḥmān Ibn al-Ṣalāḥ, *Adab al-mufṭī wa al-mustafṭī*, ed. Muwaffaq ‘Abd al-Qādir (Medina: Maktabat al-‘Ulūm wa al-Ḥikam, 1987), 65. This is indeed theoretical because the *muqallid* must reach a high level of knowledge (and perhaps piety) in order to evaluate that, which would put into question his status as a *muqallid*. In any case, al-Subkī may draw on Ibn al-Ṣalāḥ’s argument.

A question arises as to whether the execution of the Christian was exempted from the general position of the Shāfi'īs (forgiveness) due to certain reasons, such as repeated cursing, deliberate actions, or slander by the accused. Al-Subkī stated that it was a unique case (*ḥāla khāṣṣa*) and that his second opinion should not be generalised and applied towards any other future cases. It is likely that al-Subkī's second opinion is not an exemption from his first opinion; he could have said that the position of the Shāfi'īs is forgiveness for the curser of the Prophet if he converts to Islam. However, because this case involved several factors (repetition of cursing, deliberate, and slander by the accused), it is clear that this is a specific or exempted case from the general position of the Shāfi'īs. In that way, he still believed that the forgiveness is the *mashhūr* even though he supported the execution. The other option that al-Subkī could have opted for is to make both Shāfi'ī narratives equal in strength and available whenever needed. For example, in 1350 he could have said that the first Shāfi'ī narrative (forgiveness) is an authority, as it was indicated at the beginning of *Sayf*, but he relied on the second Shāfi'ī narrative (execution) in that case because it is still a very strong narrative. Instead, al-Subkī moved from supporting one opinion to supporting another. Therefore, as he wrote his second opinion, al-Subkī viewed the execution of the Christian as not only the right thing to do, but that the execution narrative itself is correct, final, and should be treated as the Shāfi'ī position in that issue.

It is understandable why al-Subkī did not exempt the execution of the Christian from the general position of Shāfi'īs (to support forgiveness). The

The problem remains that this is pertaining to the *muqallid*, and al-Subkī is discussing that which is beyond the *muqallid*'s capacity.

reason is that it does not comply with the Shāfi'ī *uṣūlī* principles. In other words, if al-Subkī exempted the execution of the Christian, he would have entered into the subject of *istiḥsān*, which is forbidden by the Shāfi'īs. *Istiḥsān*, which is promoted mostly by Ḥanafīs, can be defined as 'the use of a jurist's own judgment to determine the best solution to a religious problem that cannot be solved by simply citing sacred texts.'²³⁴ One example of a jurist's own judgment is to exempt a particular point from general rule based on special evidence.²³⁵ Shāfi'īs saw that *istiḥsān* may lead to selectivity and arbitrariness distant from the interpretation of the texts. Al-Shāfi'ī embodied this in his famous saying, "Whoever approves of *istiḥsān* is making himself the Lawmaker (*man istaḥsana faqad sharra*')." ²³⁶ Returning back to the issue of *sabb*, al-Subkī could not draw on *istiḥsān* because of the limitation of Shāfi'ī *uṣūlī* tools, which adhere mostly to an explicit text (*naṣṣ*) as opposed to personal opinion (*ra'y*). If al-Subkī was a Ḥanafī, for example, he could have drawn on *istiḥsān* to facilitate the execution, even though Ḥanafīs held the same position of the Shāfi'īs. They all accept the repentance of the curser.²³⁷

²³⁴ R. Paret, "Istiḥsān and Istiṣlāḥ," in *Encyclopaedia of Islam*, 2nd edition (*EI²*), accessed 26 August 2019, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/istihsan-and-istislah->.

²³⁵ Wahba al-Zuhaylī, *Uṣūl al-fiqh*, 2 vols (Damascus: Dār al-Fikr, 1986), 2:739.

²³⁶ Al-Zuhaylī, *Uṣūl*, 2:739; For more on the Shāfi'ī position on *istiḥsān*, see Bernard Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 2010), 663-672. For a discussion of Ḥanafī tradition on *istiḥsān*, see Murteza Bedir, "The Power of Interpretation: Is Istiḥsān Qiyās?" *Islamic Studies* 42, no. 1 (2003): 7-20.

²³⁷ For the Ḥanafī position on *sabb*, see Ibn 'Ābidīn, *Rasā'il*, 313. In fact, the famous Ḥanafī judge, Muḥammad Ibn Qāsim, also known as Akhawayn (d. 904/1498), sentenced a Muslim named Luṭfī to death for the crime of *sabb* despite his repentance. Akhawayn justifies his ruling that there are factors combined in the accused that legalise his death sentence. Akhawayn does not claim to draw on *istiḥsān*, but his reasoning whereby he relies on detailed evidence within the case rather than citing text or authorities indeed indicates *istiḥsān*. For this incident see the introduction of *Ṣārim*, 1:180.

Concerning the arguments used in both opinions, the focal point of al-Subkī's transformation between the two opinions is the *ijmā'* attributed to al-Fārisī. The second narrative in the *madhhab* depends on *ijmā'*; if the cursing includes slander, the penalty will be execution. In 1334, al-Subkī doubted this *ijmā'* because it was not mentioned in most of the Shāfi'ī books. In 1350, al-Subkī turned to support the *ijmā'* and considered that the reason it was not mentioned in the most of the Shāfi'ī books was because they did not know about it. Did the majority of the Shāfi'ī dismiss this *ijmā'* attributed to al-Fārisī? Did *ijmā'* exist at all?

Al-Fārisī has a book called *Ijmā'* in which he supposedly mentioned this case. However, this book has been lost and we cannot know what al-Fārisī had said exactly. That being said, it seems plausible that al-Fārisī claimed *ijmā'*, as some Shāfi'ī mentioned it,²³⁸ including al-Subkī himself. However, this *ijmā'* seems problematic. Ibn Ḥajar al-Haytamī (d. 974/1567) mentions the *ijmā'* but in the context of correcting misconceptions about it. Al-Haytamī states that the Shāfi'īs agreed to accept the repentance of the curser, whether he was a born Muslim, *kāfir*, or new convert to Islam. He then adds that the evidence held by the Shāfi'īs on this stems from the *ijmā'* attributed to al-Fārisī. This differed from what al-Subkī says, which is that the *ijmā'* attributed to al-Fārisī supports the execution if the curse includes slander. Al-Haytamī immediately adds that al-Fārisī has another opinion that has nothing to do with this *ijmā'* - that repentance is not accepted if the curse includes slander.²³⁹

²³⁸ Al-Juwaynī, *Nihāyat*, 18:46-49.

²³⁹ Aḥmad b. Muḥammad al-Haytamī, *al-I'lām bi-qawāṭi' al-Islām*, ed. Muḥammad 'Awwād (Damascus: Dār al-Taqwā, 2008), 145-146.

According to al-Haytamī, al-Fārisī spoke of two different *mas'alas*; the first is to accept the repentance of the curser if he only cursed and the second is to reject the repentance if the cursing included a slander. The *ijmā'* attributed to al-Fārisī is related to the first *mas'ala* and not the second. Al-Subkī quoted the *ijmā'* of al-Fārisī in the second *mas'ala*. We cannot know whether al-Subkī or al-Haytamī was more accurate in this case because everyone claims differently, and this cannot be verified without al-Fārisī's book of *Ijmā'*.²⁴⁰

Assuming what al-Subkī said is true, that there is an *ijmā'* in this case, then the question arises: how can the *ijmā'* (which al-Subkī adhered to in his second opinion) stand in front of the Qur'ān, the Sunna, and the opinion of the Shāfi'īs? Is it not assumed that the evidence of the Qur'ān and Sunna, which indicate the acceptance of repentance of the curser, is stronger and should be prioritised over the *ijmā'*? This makes us wonder whether al-Subkī gave the *ijmā'* priority over the *naṣṣ* (the Qur'ān and Sunna). The Shāfi'ī legal theorists stipulate that *ijmā'* can be given precedence over *naṣṣ* if it was possible to submit a justified interpretation to fit the *naṣṣ* (*tā'wīl al-naṣṣ*). If that cannot be done, the *ijmā'* cannot be prioritised before the *naṣṣ* in any case.²⁴¹ Al-Subkī did not

²⁴⁰ It appears that al-Haytamī's argument is persuasive. I tracked this *ijmā'* before al-Subkī's time and found that al-Juwaynī and Ibn Taymiyya attribute this *ijmā'* to al-Fārisī; it entailed that the curse which includes slander deserves execution (al-Juwaynī, *Nihāyat*, 18:46-49; Ibn Taymiyya, *Ṣārim*, 2:14). Al-Subkī also conveys this in *Sayf*, as noted. While Ibn Taymiyya and al-Subkī (in his second opinion) agree with al-Fārisī, al-Juwaynī's conveyed it in the context of critique. On the other hand, al-Nawawī and al-Rāfi'ī attribute this view (that the curse which includes slander deserves execution) to al-Fārisī, but without mentioning any *ijmā'* (Yaḥya b. Sharaf al-Nawawī, *Rawḍat al-ṭālibīn wa 'umdat al-muftīn*, ed. Zuhayr al-Shāwīsh, 12 vols (Beirut: al-Maktab al-Islāmī, 1991), 10:332; 'Abd al-Karīm b. Muḥammad al-Rāfi'ī, *Fath al-'azīz sharḥ al-wajīz*, ed. 'Alī 'Awaḍ and 'Adil 'Abd al-Mawjūd, 13 vols (Beirut: Dār al-Kutub al-'Ilmiyya, 1997), 11:550-551). If this *ijmā'* did indeed exist, the first to support it before al-Subkī was Ibn Taymiyya. Since al-Subkī mentions that he looked at Ibn Taymiyya's *Ṣārim*, he perhaps drew on him.

²⁴¹ Tāj al-Dīn 'Abd al-Wahhāb b. 'Alī al-Subkī, *al-Ibhāj fī sharḥ al-minhāj*, ed. Aḥmad al-Zamzamī and Nūr al-Dīn Ṣaghīrī, 7 vols (Dubai: Dār al-Buḥūth wa al-Dirāsāt al-

provide answers or interpretations of the evidences of the Qur'ān and Sunna in his *Sayf*.

Another problem with al-Subkī's adherence to this *ijmā'*, particularly over the *naṣṣ*, is that the *ijmā'* is only attributed to al-Fārisī and not transmitted by a group of scholars. The legal theorists dispute the conditions available for *ijmā'* to be able to stand against the *naṣṣ*. Is *tawātur* required to establish *ijmā'* in a certain case, or is the claim of one scholar (*khabar al-āḥād*) sufficient? The majority of the Shāfi'īs believe that *tawātur* is required for the establishment of *ijmā'*. Some of the Shāfi'īs, Ḥanafīs, and the majority of the Ḥanbalīs were satisfied with the claim of only one scholar.²⁴² Al-Subkī may have been of the opinion that did not require *tawātur* in establishing the *ijmā'*. However, he needed to provide answers in light of the evidence cited in the Qur'ān and Sunna in order to justify his use of *ijmā'*.

The distinctiveness of the Shāfi'īs *madhhab* in accepting the repentance of the curser if converted to Islam makes *Sayf* a challenging book in the history of the Shāfi'īs *madhhab*. Before *Sayf*, we do not have an independent treatise from one of the Shāfi'īs on the case of cursing the Prophet or even cursing the Companions. Wiederhold claims that there is also no mention of the case of cursing the Prophet as a crime in legal manuals of the early generation of Shāfi'īs. Wiederhold quotes al-Shāfi'ī's *Umm* as one example with no mention of this issue.²⁴³ However, Wiederhold's claim is not quite accurate. It is true that

Islāmiyya, 2004), 5:2152-2153. Not to confuse *Ibhāj* with *Ibtihāj* of Taqī al-Dīn al-Subkī. Tāj al-Dīn's *Ibhāj* is a commentary on al-Bayḍāwī's (d. 685/1292) *Minhāj* in *uṣūl al-fiqh*; Taqī al-Dīn's *Ibtihāj*, as mentioned before, is a commentary on al-Nawawī's *Minhāj* in *furū' al-fiqh*.

²⁴² Al-Subkī, *Ibhāj*, 5:2150-2151.

²⁴³ Wiederhold, "Blasphemy," 44.

al-Shāfi‘ī does not discuss the issue of cursing the Prophet in the chapter of *ridḍa* or *ḥudūd* in *Umm*, but al-Shāfi‘ī discussed this case in the chapter of *jizya*. In it, he argues that cursing of the Prophet invalidates the covenant of *ahl al-dhimma* and requires punishment, unless the perpetrator of cursing the Prophet declares Islam.²⁴⁴

Nevertheless, we are relatively confident that there are no independent Shāfi‘ī treatises such as *Sayf* that have discussed this case in detail. The existence of independent treatises outside the Shāfi‘ī *madhhab* that focused on the case helped al-Subkī establish *Sayf* as an authority within the *madhhab*. Unsurprisingly, the two most highly quoted treatises in the *Sayf* are not Shāfi‘īs. *Al-Shifā’ bi-ta’rīf ḥuqūq al-muṣṭafā* of al-Qāḍī ‘Iyāḍ al-Yaḥṣubī (d. 544/1149)²⁴⁵ and *Ṣārim* of Ibn Taymiyya (d.728/1328) are the two sources on which al-Subkī relied explicitly and implicitly for the construction of *Sayf*.

Despite the fact that *Shifā’* is somewhat a Mālikī product, chapter 4 of *Shifā’* contains a plethora of legal material produced by all the *madhhabs* in the classical period on the issue of cursing the Prophet.²⁴⁶ Iyāḍ al-Ghawj, the editor

²⁴⁴ Muḥammad b. Idrīs al-Shāfi‘ī, *al-Umm*, ed. Rif‘at Fawzī, 11 vols (Cairo: Dār al-Wafā’, 2001), 4:198.

²⁴⁵ ‘Iyāḍ Ibn Mūsā al-Yaḥṣubī, *al-Shifā’ bi-ta’rīf ḥuqūq al-muṣṭafā*, 2 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.).

²⁴⁶ Al-Yaḥṣubī, *Shifā’*, 2:201-317. In chapter 4 of *Shifā’*, al-Yaḥṣubī shows that the Mālikīs opinions tended to call for execution for the crime of cursing the Prophet, whether committed by a Muslim or non-Muslim regardless of repentance or conversion to Islam. In Mamlūk fourteenth century, the Mālikīs continue to advocate this strict position. The central role of Mālikīs in administering capital punishments has already been noted by Rapoport, “Legal Diversity,” 223. Why were the Mālikīs used to presiding over execution cases? According to Lutz Wiederhold, this privilege (which is the power to judge over execution cases) was seen as a rare opportunity for the Mālikīs to play a role of political importance. The Mālikīs had less access in resources and *waqfs* and posts in madrasas compared to that of the Shāfi‘īs and Ḥanafīs. Therefore, the Mālikīs were keen to adhere to this role in order to guarantee themselves a place in the legal administration, “Some remarks on Mālikī Judges in Mamlūk Egypt and Syria,” in *Die Mamlūken. Studien zu ihrer Geschichte und Kultur: Zum Gedenken an Ulrich Haarmann (1942–1999)*, Vol. 7: *Asien und Afrika*, ed. Stephan Conermann, Anja Pistor

of *Sayf*, counts 49 places from which al-Subkī quoted *Shifā'*, even though al-Subkī does not state that he quoted from *Shifā'* in most of these places. Sometimes, he mentions *Shifā'*, al-Qāḍī 'Iyād, or the al-Qāḍī Abū Muḥammad.²⁴⁷ Ibn Taymiyya's *Ṣārim* is one of the most important sources that al-Subkī also relied on to discuss not only the position of the Ḥanbalī *madhhab* but also many other issues such as *ḥadīths*, some legal justifications, and citations of some scholars from various *madhhabs*. Al-Ghawj states that al-Subkī benefited from *Ṣārim* in six places but al-Subkī stated the name of Ibn Taymiyya in only three of them.²⁴⁸ I also found that al-Subkī benefited from *Ṣārim* in 11 other places without attribution.²⁴⁹ Among these are quotes of entire sections and pages.²⁵⁰

Despite their different historical circumstances, the three books of *Shifā'*, *Ṣārim*, and *Sayf* are the most popular and frequently quoted, especially today, in invoking in accusations of blasphemy towards academics, journalists, thinkers, and poets in the Islamic world.²⁵¹ In today's discourse, the common feature of

Hatam (Berlin: EB-Verlag, 2003), 403-413. Carl Petry observes that, whether or not it was true that the Mālikī *madhhab* was strict in death cases or if their judgement was merely exploited by the political powers at the time, the Mālikī judges were one of the prominent powers that enforced the death penalty in the Mamlūk courts, *The Criminal Underworld in a Medieval Islamic Society: Narratives from Cairo and Damascus under the Mamluks* (Chicago: Middle East Documentation Center, 2012), 199-200.

²⁴⁷ Al-Subkī, *Sayf*, 119, 120, 125, 126, 128, 129, 132, 148, 155, 156, 161, 162, 163, 165, 166, 170, 184, 195, 219, 220, 221, 234, 235, 237, 238, 405, 406, 408, 409, 410, 417, 418, 422, 429, 430, 434, 430, 440, 443, 444, 445, 446, 451, 466, 491, 497, 502, 517, 526.

²⁴⁸ Al-Subkī, *Sayf*, 194, 307, 315, 354, 416, 418.

²⁴⁹ Al-Subkī, *Sayf*, 239, 314, 381, 387, 398, 417, 419, 421, 423, 428-429, 431-433.

²⁵⁰ Al-Subkī, *Sayf*, see page 428 where most of the page (except the first two lines) is quoted from Ibn Taymiyya's *Ṣārim*, 2:995; also see page 431 para 3 to page 433 para 2, quoted from Ibn Taymiyya's *Ṣārim*, 2:1005-1010.

²⁵¹ For *Shifā'* and how it is used in today's Islamic discourse to respond to the rise of insulting Islam, see an online review on *Shifā'* by the two prominent Jordanian Salafīs, Muḥammad al-Maqdisī and Abū Qatāda, al-Islāmiyyūn website, accessed 31 August 2019, <https://islamion.com/news/>.

these three books is the union of their conclusion in seeking the maximum punishment for insulting the Islamic religion and its symbols, such as the Qur'ān and the Prophet Muḥammad. While *Sayf* should not be in line with the *Shifā'* and *Ṣārim*, as it is presumably a product of the Shāfi'ī *madhhab* which is less

The aforementioned editor of *Sayf*, Iyād al-Ghawj, in illustrating the importance of *Sayf*, begins his edition by recounting incidents in the Islamic world of figures accused of blasphemy. According to al-Ghawj, blasphemers take freedom of expression as a license to offend the Prophet Muḥammad. Publishing al-Subkī's *Sayf* can therefore contribute to the combating of blasphemy, according to al-Ghawj. He includes in the list of those accused of blasphemy well-known figures from the Muslim world, such as 'Alā' Ḥāmid, Salmān Rushdī, Ḥasan Ḥanafī, Faraj Fūda, Aḥmed Ṣubḥī Maṣṣūr, and others. 'Alā' Ḥāmid for example, wrote a novel which included disrespectful words against the Prophet according to al-Ghawj. Al-Ghawj mentions that Al-Azhar demanded the punishment of Ḥāmid. The authorities responded and as a result, Ḥāmid's novel was confiscated and he was sentenced to eight years imprisonment. Another incident mentioned by al-Ghawj was the story of a Christian academic who was accused of cursing the Prophet Muḥammad in an English literature course at Cairo University in 1997. This academic was removed from work, and the state promised to take drastic measures. The academic in this case was American, and it is probable that the Egyptian government was careful to handle this case differently than with the Egyptian Ḥāmid. Al-Ghawj concludes his introduction by stating his concerns about the spread of the charge of blasphemy in Muslim societies. *Sayf* is thus a warning for those who are indifferent to the religious consequences of this crime, according to al-Ghawj. Al-Subkī, *Sayf*, 9-16.

Salīm al-Hilālī also used al-Subkī's *Sayf* as advice to the rulers to confront the abusers of the Prophet Muḥammad in the Islamic world. In the introduction of his edition of al-Subkī's *Sayf*, released in 2005, al-Hilālī includes a longer list than al-Ghawj's of those who have been accused of blasphemy in the Muslim world. In addition to the well-known figures mentioned by al-Ghawj, al-Hilālī adds the writer 'Abd al-Jalīl 'Īsa, journalists Sa'īd Ḥabīb and 'Abd al-'Azīz al-Yamānī, and the poets 'Abd al-Wahhāb Bayātī, Maḥmūd Darwīsh, and 'Alī Sa'īd, also known as Adunis. After describing their disdain of Islam and the Prophet, al-Hilālī says that *Sayf* is an impenetrable dam to stop this outpouring of blasphemy. According to al-Hilālī, *Sayf* must serve as a guide for rulers, judges, *mufṭīs*, and other decision-makers in how they respond to blasphemy in Islamic world. Al-Subkī, *Sayf*, ed. Salīm al-Hilālī (Beirut: Dār Ibn Ḥazm, 2005), 5-9.

Similar to the editors of *Sayf*, the editors of *Ṣārim* have their own list with which they begin the book's introduction. This list is titled "the Heretics of this Era" *zanādiqat hādihā al-'aṣr*, which includes a group of names of Arab and Muslim thinkers. After narrating this list, the editors speak about the importance of *Ṣārim* in fighting the heretics who publish their journal articles and books that insult the Prophet Muḥammad and mock the Islamic religion. The editors added that the Muslim world suffered unprecedented decline, disasters, floods, earthquakes, and wars as a result of the tolerance of these cursers and apostates. *Ṣārim* thus came as an attempt to resurrect hope for the Islamic nation and to restore its glory. Ibn Taymiyya, *Ṣārim*, 1:215-222.

strict in the issues of *sabb* and *takfīr*, al-Subkī's second opinion however places *Sayf* and the position of the Shāfi'īs in solidarity with *Shifā'* and *Ṣārim*.

After discussing al-Subkī's opinions, we now turn to a review of the socio-political context regarding the status of Christian officials in the Early Mamlūk Sultanate. Since al-Subkī stated in both his opinions that the purpose of his writing was to address the legal ruling on cursing by Christians, we will see that both al-Subkī's opinions were a reflection of the political and social reality of Christian officials at that time.

4. Socio-political context: the status of Christian officials

The Christian community had a prominent presence in the Early Mamlūk Sultanate. The Copts were regarded as the original inhabitants of Egypt and Syria.²⁵² One of the characteristics of the time of the Early Mamlūk Sultanate is that some members of the Christian community not only held administrative positions in the Mamlūk court but also led the Sultanate administratively. Those are the officials discussed in this section. The next section will investigate the status of Christian officials in the court of Sulṭān al-Nāṣir Muḥammad. We will then discuss the change in their status and the possible reasons for that change after his death.

²⁵² Anawati, "Christian Communities," 237-252; Wilfong, "Christian Communities," 175-197; Levtzion, "Conversion," 289-312.

4.1. Sulṭān al-Nāṣir Muḥammad's third reign 710/1310–741/1341

As noted in the first chapter, the third reign of Sulṭān al-Nāṣir Muḥammad was often described as a period of internal political stability and economic prosperity. This stemmed from the fact that the Sulṭān empowered the civilian elites by giving them important tasks and high positions within the Sultanate, previously restricted to the military Mamlūks. This move neutralised potential plots of the elite military Mamlūks that had ousted Sulṭān al-Nāṣir Muḥammad himself twice, as mentioned in the first chapter.²⁵³

This empowerment included cutting the benefits, in money and property, given to every military Mamlūk. He then established a special office and appointed a civilian as its supervisor, codifying the benefits given to the Mamlūks and putting them at the discretion of the Sulṭān himself. He also restructured the army as he recruited non-Mamlūk personnel, such as Arab nomads and non-slave Turks and Kurds. His aim, as previously noted, was to diminish the power of the military elite and hold sway over the army.²⁵⁴

Among the civilian elite were the Christians who were in control of most parts of the bureaucratic apparatus under Sulṭān al-Nāṣir Muḥammad. The deputy of the Sulṭān, treasury employees, accountants, and the army's finance directors were mostly Christians. Around forty influential figures of Coptic origin were part of the bureaucratic system, and below them were many junior Christian employees. Among the most prominent Christian officials who played a key role in the economic recovery during Sulṭān al-Nāṣir Muḥammad's era

²⁵³ Levanoni, *Turning*, 28-80; Irwin, *Early Mamluk*, 86, 105, 112-113; Northrup, "Baḥrī," 253-254, 259, 263-264.

²⁵⁴ Levanoni, *Turning*, 28-80; Irwin, *Early Mamluk*, 86, 105, 112-113; Northrup, "Baḥrī," 253-254, 259, 264.

were Karīm al-Dīn al-Kabīr (d. 724/1324), Karīm al-Dīn al-Ṣaghīr (d. 726/1326), ‘Abd al-Wahhāb al-Nashw (d. 740/1339), Walī al-Dawla Ibn Kathīr (d. 742/1341), Jamāl al-Dīn al-Kaffāt (d. 745/1344), Shams al-Dīn Gharial (d. 745/1345), and Fakhr al-Dīn al-Qibṭī (d. 753/1352).²⁵⁵

The Sulṭān trusted those Christian officials so much that his personal wealth would sometimes mingle with theirs. He gave them leverage equal to, or surpassing, that of the Mamlūk military elite. Under his rule, Christian officials enjoyed powers that extended to the appointment and dismissal of the four judges. Some of them were given military titles, like emir, or religious titles, like *qāḍī* (judge). Military convoys and Mamlūk soldiers were sometimes under the command of some senior Christian officials. They usually owned property in the most upscale areas of Cairo and Damascus. With the Sulṭān’s permission, they also established their own business and, given their high skills, managed to control economic resources and trade during his era.²⁵⁶

The status of Christian officials in the Sulṭān’s court angered some Muslims, who expressed resentment by publishing anti-Christian religious writings and giving fiery Friday sermons. Some scholars, mostly Shāfi‘īs, voiced their displeasure at the Sulṭān giving Christians authority over the affairs of Muslims. These writings and Friday sermons contained two patterns of criticism: one theoretical, and the other practical. From the theoretical aspect, they point out that the employment of Christians in the Sulṭān’s court is a violation of the well-known covenant of the second caliph and the Prophet Muḥammad’s

²⁵⁵ Little, “Coptic Converts,” 270-281; El-Leithy, “Coptic Culture,” 72, 184, 194, 221-222, 218, 309; Richards, “The Coptic Bureaucracy,” 376.

²⁵⁶ Little, “Coptic Converts,” 270, 272, 273; El-Leithy, “Coptic Culture,” 53, 331; Richards, “The Coptic Bureaucracy,” 374-376.

Companion, ‘Umar Ibn al-Khaṭṭāb (d. 23/644), which stipulated that Christians should not be employed in the administration in Muslim countries. This covenant consists of a number of standards for general conduct, and it was supposedly agreed between ‘Umar and the Christian community upon the conquest of Syria in 637.

As for the practical aspect of criticism, it included a number of accusations against some of those Christian officials in the Sulṭān’s court, such as funding churches out of the Muslim treasury and supporting the demolition of mosques. Some of the Christian officials were indeed supporting the Christian community. Karīm al-Dīn al-Kabīr, the Sulṭān’s deputy, was involved in patronising churches. The accusations extended and reached the Mamlūks, the emirs, and the Sulṭān himself. One of those accusations alleged the collusion of the Mamlūks and the Sulṭān with the Christians officials to overlook their inclination to Christianity and to ease the restrictions (sumptuary laws) against Christians in general.²⁵⁷

²⁵⁷ Little, “Conversion,” 559, 562-567; Richards, “The Coptic Bureaucracy,” 373-378; El-Leithy, “Coptic Culture,” 176, 205; El-Leithy, “Sufis, Copts and the Politics of Piety: Moral Regulation in Fourteenth-Century Upper Egypt,” in *Le développement du soufisme en Égypte à l’époque mamelouke*, ed. R. McGregor and R. Sabra and M. Loubet (Cairo: Institut français d’archéologie orientale, 2006), 75-119, especially 93-112; for the anti-Christian religious writings in the fourteenth century; see ‘Abd al-Raḥmān b. al-Ḥasan al-Isnawī, *al-Kalimāt al-muhimma fī mubāsharat ahl al-dhimma*, (Cairo: Dār al-Kutub, n.d.); for an assessment of al-Isnawī’s *Kalimāt* see Moshe Perlmann, “Asnawī’s Tract against Christian Officials” in *Ignace Goldziher Memorial Volume*, ed. S. Löwinger, A. Scheiber and J. Somogyi (Jerusalem: R. mass, 1958), 172-208; Muḥammad b. ‘Alī Ibn al-Naqqāsh, *al-Madhamma fī isti’māl ahl al-dhimma*, ed. ‘Abd Allāh al-Ṭurayqī (Riyadh, 1995); for an entry to Ibn al-Naqqāsh and an assessment of *Madhamma* see Luke Yarbrough, “Ibn al-Naqqāsh,” in *Christian-Muslim Relations: A Bibliographical History*, Vol. 5 (1350-1500), ed. David Thomas and Alex Mallett (Leiden: Brill, 2013), 123-129; Shihāb al-Dīn Ghāzī b. Aḥmad al-Wāsiṭī, *al-Radd ‘alā ahl al-dhimma*, ed. Turkī Fahad al-Sa‘ūd (Riyadh: Maktabat al-Malik Fahad, 2013); for an assessment of al-Wāsiṭī’s *Radd* see Gottheil, “An Answer to the Dhimmis,” 383-457; ‘Abd al-Ghaffār b. Aḥmad Ibn Nūḥ, *al-Wahīd fī sulūk ahl al-tawḥīd*, (Cairo: Maktabat Ibn Idrīs, n.d.); for a discussion of anti-Christian Friday sermons in fourteenth century

Remarkably, some of those targeted officials were converts to Islam. The anti-Christian writings were aware of this fact, but they asserted that the formerly Christian officials were not sincere in their conversion to Islam. Most religious writings against the Christian officials made no distinction between actual Christians and recent converts to Islam. It seems that the anti-Christian writings were considering the employment of Christians as not only a religious problem, but as a problem that had cultural and social dimensions. A Copt, for example, regardless of religious belief, would be treated as Christian.²⁵⁸

This anger and criticism mobilised the public against the Sulṭān. Crowds gathered and headed to the palace of Sulṭān al-Nāṣir Muḥammad to protest. This mobilisation was led by low-ranking ‘*ulamā*’, again mostly Shāfi‘īs. It is noteworthy that Cairo had a Shāfi‘ī-majority population, and so the opposition, led by Shāfi‘ī scholars, gained popularity.

A famous example is the incident of the Shāfi‘ī shaykh, Nūr al-Dīn al-Bakrī with Sulṭān al-Nāṣir Muḥammad in 715/1315. The incident began over claims that Christians of the old church in Cairo had borrowed candles from a mosque nearby. Al-Bakrī found this act reprehensible and led a mob to the church to reclaim the candles. At the church, al-Bakrī found out that one of Sulṭān al-Nāṣir Muḥammad’s Christian officials commanded the mosque’s *khaṭīb* (preacher) to loan the candles to the Christians. Al-Bakrī led his mob to the Citadel and raised an objection. In the presence of four judges, Sulṭān al-Nāṣir heard al-Bakrī’s demands. Directing his speech to the Sulṭān, al-Bakrī

see Moshe Perlmann, “Notes on Anti-Christian Propaganda in the Mamlūk Empire,” *Bulletin of the School of Oriental and African Studies* 10, no. 4 (1942): 843-61.

²⁵⁸ Little, “Coptic Converts,” 273; Richards, “The Coptic Bureaucracy,” 377. El Shamsy also noted the same tension between the converted Copts and the Muslims in the ninth century in Egypt. *Canonization*, 97-98.

asserted that the Sulṭān had sullied his government by appointing Christians in positions over Muslims. The Sulṭān lost his temper and took hold of his sword, moving to strike. The Chief Shāfiʿī judge, Badr al-Dīn Ibn Jamāʿa, intervened, appealing to the Sulṭān’s mercy. The Sulṭān accepted Ibn Jamāʿa’s intercession.²⁵⁹

The second incident took place in 721/1321. It was a demonstration aimed at attacking the Sulṭān’s Christian officials. They picked Karīm al-Dīn al-Kabīr, the deputy of the Sulṭān, and attacked and stoned him. He did survive, however. Thereafter, the ardent protesters—reportedly numbering around 20,000—headed for the Citadel where the Sulṭān was residing and chanted slogans against him, demanding that he stop protecting Christians. The Sulṭān became angered at this development and cut off the hands of four of the attackers, strangling one of them.²⁶⁰

One of the channels of opposition against official Christians is the courts. Accusations were occasionally levelled against the Christian officials in court for offenses such as drinking alcohol, funding churches, and more commonly cursing the Prophet. The phenomenon of cursing the Prophet was prevalent in the Mamlūk community, especially among employees within the bureaucratic circles, given the intermingling at their workplace. Altercations would sometime occur between bureaucrats, and a Copt bureaucrat might curse the Prophet, in which case the Muslim bureaucrat would submit a complaint to the court.

²⁵⁹ Richards, “The Coptic Bureaucracy,” 378; Michael Cook, *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge: Cambridge University Press, 2001), 511; Petry, *Criminal*, 195.

²⁶⁰ Richards, “The Coptic Bureaucracy,” 378; El-Leithy, “Coptic Culture,” 225, 306.

Other times, Copts bureaucrats would resort to verbal tricks intended as a hidden curse of the Prophet. In one example, a Copt bureaucrat was accused of writing on two pieces of paper containing curses against the Prophet and then putting them in two pieces of wood at his home, calling one “blessing” and the other “happiness.” When he met any of his Muslim bureaucrat colleagues throughout the day, he would greet him, saying: “May Allāh grant you blessing and happiness,” referring to the two pieces of wood. Some Muslim bureaucrats managed to expose those tricks and refer them to the court.²⁶¹ Most Shāfi‘ī judges who handled these cases granted amnesty to the defendant if they showed remorse. By doing this, the Shāfi‘ī judges intended to follow the position of the Shāfi‘ī *madhhab* as well as maintain the stability of the Sultanate. If most prosecuted Christian officials were executed, it would be detrimental to the reputation of the state.

The aforementioned Karīm al-Dīn al-Ṣaghīr, one of the Sulṭān’s Christian officials, was accused of cursing Islam. The Sulṭān intervened and a Shāfi‘ī judge issued a pardon. The Sulṭān’s intervention in this case was due to his fear of not recovering his money from the privy purse that al-Ṣaghīr was in charge of. In the year 737/1337, a Christian official was tried at the court of the Shāfi‘ī Chief Judge, Jalāl al-Dīn al-Qazwīnī, on charges of speaking obscene words against Islam, against the Qur’ān, and against the Prophet Muḥammad. The Sulṭān intervened, and the judge granted forgiveness to the Christian. In the year 738/1338 in Syria, a Christian who worked in the treasury was accused of cursing the Prophet. He sought out one of the Mamlūks to intercede for him. The

²⁶¹ Gottheil, “An Answer to the Dhimmis,” 430-431.

Mamlūk successfully interceded through the Shāfi‘ī Chief Judge, who granted clemency.²⁶²

Similar incidents of high-status Christians saved by the Shāfi‘ī judges had already taken place in the late thirteenth century, perhaps when Sulṭān al-Nāṣir Muḥammad was still young. For example, in the month of Rajab of 693/1294, a Christian scribe who had close ties to the Emir ‘Assāf Ibn Shihāb Ibn Ḥājji was accused of cursing the Prophet. His case was handed over to the governor of Damascus. Due to the relationship between the governor of Damascus and Emir Ibn Ḥājji, the Christian scribe was not punished. Instead, the scribe was advised to convert to Islam in order to escape his death sentence. In this case, the Shāfi‘ī judge in Damascus, Shihāb al-Dīn Ibn al-Khawī, was appointed to judge his innocence.²⁶³

4.2. Post-Sulṭān al-Nāṣir Muḥammad’s reign

We have identified the status of Christian officials in the reign of Sulṭān al-Nāṣir Muḥammad. They were protected by the Sulṭān because they played an important role in the work and continuity of the administration. After the death of Sulṭān al-Nāṣir Muḥammad, the Sultanate saw political, social, and economic changes that contributed to its deterioration. To maintain the security and stability of the state in that time, the Mamlūks’ actions had an impact, not only

²⁶² Al-Jazarī, *Tārīkh*, 3:927; Al-Ṣafadī, *A‘yān*, 3:725; El-Leithy, “Coptic Culture,” 205; Escovitz, *The Office*, 140. Those cases show that the relationship of the Sulṭān or emirs with the Christian officials was, as Petry observed, that of a patron towards his followers; the Muslim patron emir was responsible for his Christian follower’s mistakes. Petry, *Criminal*, 189.

²⁶³ Al-Jazarī, *Tārīkh*, 2:203-204; Ibn Kathīr, *Bidāya*, 13:335-336; for more details on this incident, see Hoover, “Ibn Taymiyya,” 853-856.

on the status of Christian officials, but also on general minorities in the Sultanate. In this section, we will address the political and social changes that affected the conditions of Christian officials.

As mentioned in the first chapter, a dispute arose within the Mamlūk military elite over the throne following Sulṭān al-Nāṣir Muḥammad's death. Although his children and grandchildren were the de jure Sulṭāns during that period, real power and control lay at the hands of the emirs. Due to the formation of differing allegiances within the Mamlūk military elite, a civil war broke out among the emirs. As a result, there was a quick succession of sulṭāns, unlike the reign of Sulṭān al-Nāṣir Muḥammad who had ruled non-stop for over thirty years from 1310 to 1341. Twelve sulṭāns assumed the throne between 1341 and the end of the Early Mamlūk Sultanate in 1382. This rapid succession indicates a period of instability after Sulṭān al-Nāṣir Muḥammad's death.²⁶⁴

It should be noted that this political change to the Mamlūk throne did not come by coincidence. In fact, the policies of Sulṭān al-Nāṣir Muḥammad had negative consequences that gave rise to this period of disorder after his passing. Sulṭān al-Nāṣir Muḥammad, as stated in the first chapter, had bad experiences with the military elite during his first and second reigns. He was ousted twice because of the dominance and power of the military elite and the conflicting allegiances existing therein. When Sulṭān al-Nāṣir Muḥammad assumed the throne a third time in 1310, he marginalised the military elite politically, economically, and administratively. He relied instead on a small group of young

²⁶⁴ Steenbergen, *Order out of Chaos*, 53-122; Irwin, *Early Mamluk*, 125-127, 130, 135-137; Northrup, "Baḥrī," 253, 257.

Mamlūks and on the civilian elite, giving them practically unlimited powers in the management of the Sultanate.²⁶⁵

His marginalisation of a large number of Mamlūks had negative effects on the period following his death; the military elite adamantly involved themselves in political life after they had been denied it. Moreover, the marginalised Mamlūks wanted to take revenge on the other Mamlūks who were influential in Sulṭān al-Nāṣir Muḥammad's reign. After Sulṭān al-Nāṣir Muḥammad's death, most Mamlūks who were close to the Sulṭān during his life and in control of power and wealth were murdered, except for a few who survived after forging new allegiances.²⁶⁶

Human crises coincided with the political instability following Sulṭān al-Nāṣir Muḥammad's death. Plague spread between 1347 and 1348, emerging in Central Asia and spreading as far as the Black Sea. It is likely that the plague reached Egypt via commercial ships that docked at the port of Alexandria in 1347. The Egyptians' resistance to this virus was weak, since famine had hit the country that year as a result of shortage in floodwater of the Nile. By 1348, the plague had spread through the Delta and Upper Egypt and reached Syria. It is hard to count the fatalities, but according to some estimates, a third of the Sultanate's population in Egypt and Syria perished in the plague. Prices also soared during this period and foodstuff became scarce, leading to a rise in violence and theft among people.²⁶⁷

²⁶⁵ Levanoni, *Turning*, 28-80; Irwin, *Early Mamluk*, 86, 105, 112-113; Northrup, "Baḥrī," 253-254, 259, 264.

²⁶⁶ Steenbergen, *Order out of Chaos*, 53-122; Irwin, *Early Mamluk*, 125-127, 130, 135-137; Northrup, "Baḥrī," 253, 257.

²⁶⁷ Irwin, *Early Mamluk*, 134-137.

In the face of this political, social, and economic deterioration after the death of Sulṭān al-Nāṣir Muḥammad, the Mamlūks were more resolute to maintain security and stability. This is evidenced in the high number of arrests and trials of minorities, including Christian officials. Levanoni notes that the number of executions were dramatically higher in that period compared to the reign of Sulṭān al-Nāṣir Muḥammad. The Mamlūks and the religious elite “responded rigorously by monitoring public order and punishing transgressors, wielding authority that strengthened its power”.²⁶⁸ Omar and Winter and Broadbridge agree with Levanoni and add that Damascus held the largest share of these executions, suggesting Damascus’ greater proximity to enemy territory led a higher level of anxiety over internal and external danger.²⁶⁹

As for the Christian officials, the deterioration in politics, economics, and security following the demise of Sulṭān al-Nāṣir Muḥammad had a negative impact on their situation. Little notes that a large number of Christian officials were dismissed from bureaucratic positions. This included both Christians and converts to Islam. Little attributes their downfall to their arrogance, stubbornness and lack of obedience stemming from their former prestige in the court of Sulṭān al-Nāṣir Muḥammad.²⁷⁰ The Mamlūks may have felt that the Christian officials’

²⁶⁸ Amalia Levanoni, “Takfir in Egypt and Syria during the Mamlūk Period,” in *Accusations of Unbelief in Islam*, ed. Camilla Adang et al. (Leiden: Brill, 2016), 156-188. The quote from page 178-179.

²⁶⁹ Winter, “al-Shahīd al-Awwal,” 162-163; Hanaa Omar, “Apostasy in the Mamluk Period: The Politics of Accusations of Unbelief,” unpublished Ph.D. Diss. (Pennsylvania: University of Pennsylvania, 2001), 142; Anne Broadbridge, “Apostasy Trials in Eighth/Fourteenth Century Egypt and Syria: A Case Study,” in *History and Historiography of Post-Mongol Central Asia and the Middle East: Studies in Honor of John E. Woods*, ed. Judith Pfeiffer, Sholeh A. Quinn (Wiesbaden: Harrassowitz Verlag, 2006), 371.

²⁷⁰ Little, “Coptic Conversion,” 552-569.

failure to obey their orders was owing to exploiting the weakness of the Sultanate.

El-Leithy attributes the reason for the change in the Mamlūks' behaviour towards the Christian officials to two reasons. The first is the adherence of the Christian officials to their Coptic culture, which was a challenge to the regime. It is true that this was a characteristic of the Christian officials before and after the period of Sulṭān al-Nāṣir Muḥammad, but under the political and social turmoil, the behaviour of the Christian officials grew unacceptable and was placed under scrutiny. The second reason was the desire of the Mamlūks to revive the treasury in light of the economic collapse through the confiscation of the funds of the Christian officials.²⁷¹

Several Christian officials were executed and others arrested in that critical period, demonstrating a change, not only in the behaviour of the Christian officials in challenging the regime, but even in the behaviour of the Mamlūks, which grew to be more assertive. The aforementioned Walī al-Dawla was one of those executed in 742/1341. As noted, he was an influential bureaucrat in the court of the Sulṭān al-Nāṣir Muḥammad. The charge was that he was publicly sponsoring evenings of vice (*lahw*), including singing and drinking wine. His penalty was execution via crucifixion, and his body was left crucified in Cairo, specifically in the neighbourhood where he sponsored those activities. Before his execution, Walī al-Dawla appealed to the judges and tried to convince them to grant clemency owing to him being a Muslim, but the judges did not acquiesce.²⁷² The punishment of crucifixion as opposed to standard execution

²⁷¹ El-Leithy, "Coptic Culture," passim.

²⁷² Al-Maqrīzī, *Sulūk*, 3:372-373; El-Leithy, "Coptic Culture," 181-182.

was exaggerated beyond the norm; it is likely that his public sponsoring of these activities was viewed as a challenge to the regime. At that politically turbulent time, the Mamlūks wanted him to be executed by crucifixion, perhaps to convey a message and warning to the other Christian officials. El-Leithy also notes that the Mamlūks may have had ambitions to confiscate his wealth.²⁷³

Another story is of Ibn Zanbūr (d.1353), a Christian official who was converted to Islam. He was accused of being an apostate, but was not executed. The allegations were due to his public attachment to Christianity despite his conversion to Islam. This includes wearing the cross, visiting the church of the Holy Sepulchre, and kissing its doorsteps when he visited Jerusalem. In addition, the allegations claim that Ibn Zanbūr publicly donated some of his money to the prayers of the church of the Holy Sepulchre and did not do so in the al-Aqṣā Mosque.²⁷⁴ El-Leithy notes that following these allegations, some of his possessions were confiscated.²⁷⁵ This instance, while not leading to an execution, may indeed indicate an attempt to control the behaviour of the Christian officials. Ibn Zanbūr was affiliated with the government and was supposedly Muslim, thus representing the regime.

Another example of Christian officials purportedly challenging the Mamlūks is the execution of the army controller (*nāzir al-jaysh*) Karīm al-Qibṭī in the year 1354 in Tripoli. The Shāfiʿī judge Shihāb al-Dīn al-Bārizī sentenced al-Qibṭī to death based on allegations of cursing the Prophet Muḥammad. His body was displayed and wandered not only in Tripoli, but even in Damascus,

²⁷³ El-Leithy, “Coptic Culture,” 182.

²⁷⁴ Al-Maqrīzī, *Sulūk*, 4:171; El-Leithy, “Coptic Culture,” 185-186.

²⁷⁵ El-Leithy, “Coptic Culture,” 185-186.

despite the substantial distance between them.²⁷⁶ We do not know the legal reasoning on which al-Bārīzī relied on to execute al-Qibṭī. Rapoport suggests that the legal reasoning of al-Bārīzī was probably based on apostasy law, not heresy (*zandaqa*).²⁷⁷ This is plausible because it is compatible with the Shāfi‘ī *madhhab*, adhered to by al-Bārīzī. If al-Qibṭī was judged on the basis of apostasy law, it would have necessitated that al-Qibṭī been given a chance to repent, as this is specified by the Shāfi‘ī *madhhab*. Al-Qibṭī thus likely insisted on his action and refused to repent. This indicates our prior suggestion of the Christian officials’ growing boldness in challenging the regime.

Significantly, Omar points out that the phrase that the historians used to describe al-Qibṭī’s charge was not cursing the Prophet (*sabb al-Nabī*) or maligning of the Prophet (*al-ta‘arruḍ li-l-Nabī*), but rather maligning the Honoured Excellency (*al-ta‘arruḍ li-l-janāb al-sharīf*). Omar therefore suggests that al-Qibṭī may have not cursed the Prophet but may have instead cursed the Sultān or one of his deputies.²⁷⁸ Although this is possible, we do not know for certain.

5. Interpretation of al-Subkī’s opinions in the light of the socio-political context of Christian officials

5.1. The first opinion in 734/1334

By comparing al-Subkī’s first opinion and the socio-political history of the Christian officials during the reign of Sultān al-Nāṣir Muḥammad, a clear

²⁷⁶ Ibn Qāḍī Shuhba, *Tārīkh*, 2:61.

²⁷⁷ Rapoport, “Legal Diversity,” 223.

²⁷⁸ Omar, “Apostasy,” 214.

correlation can be seen. Sulṭān al-Nāṣir Muḥammad had a strong desire to develop the bureaucracy of his reign. One of the Sulṭān's strategies was to employ a large number of Copts in the court, whether they were Christians or converts to Islam. We saw that the Christians were selected for their excellence in leadership and financial management. Thanks to their skills, Christians helped develop the economic prosperity of the Sultanate, which prompted the Sulṭān to protect them. The status of Christian officials angered a segment of Muslims, as demonstrated above. The Shāfi'īs split into two groups towards the behaviour of the Sulṭān. The first group—the objectors—included scholars, preachers, and pious people who engaged in polemical writing and mobilising the public through Friday sermons, especially in the countryside and villages. They also gathered in numbers in front of the Sulṭān's palace and began attacking some important Christian figures and officials. The second group were Shāfi'ī judges who were tolerant towards the Christian officials, perhaps considering that the majority of them converted to Islam, or that they prioritised the stability of the state, especially before the wave of resistance, which was threatening the rule of Sulṭān al-Nāṣir Muḥammad.

Al-Subkī aligned himself with the position of the Shāfi'ī judges, particularly with regard to their legal position in the court. In addition to his conviction in supporting the Shāfi'ī judges' position in preserving the reputation of the state, al-Subkī's support for the legal position of the judges in this case is perhaps in response to a request by the Shāfi'ī judges to write on this case and to support their position. Ibn 'Abd al-Ḥādī (d. 744/1344) claims that al-Subkī's book, *Shifā' al-siqām*, written in response to Ibn Taymiyya, was requested by

some of the Shāfi‘ī judges.²⁷⁹ Perhaps *Sayf* is also a request from the Shāfi‘ī judges to reflect the position of the Shāfi‘ī *madhhab* in the light of this tense atmosphere among the Shāfi‘īs.

Moreover, the Shāfi‘ī judges who were contemporary to al-Subkī were not as interested in the legal side. Most of them were interested in other sciences such as Arabic, rhetoric, and so on. For example, the Shāfi‘ī judge Badr al-Dīn Ibn Jamā‘a was described by al-Isnawī (d. 772/1370) as being weak in religious sciences.²⁸⁰ He served as the Shāfi‘ī Chief Judge in Cairo during the periods 690/1291 to 693/1294, 702/1302 to 710/1310, and 711/1311 to 727/1327.²⁸¹ Jalāl al-Dīn al-Qazwīnī, who succeeded Ibn Jamā‘a and served the office in 727/1327 to 738/1337,²⁸² was not a jurist.²⁸³ ‘Izz al-Dīn Ibn Jamā‘a, who succeeded al-Qazwīnī and served the office in 738/1337 to 766/1364,²⁸⁴ was criticised for not being proficient in Shāfi‘ī jurisprudence.²⁸⁵ These examples correspond to Escovitz’s observation that Shāfi‘ī Chief Judges in the reign of the Sultān al-Nāṣir Muḥammad were appointed based on patronage. While Escovitz concludes that the appointment of judges from all *madhhabs* could be through merit or patronage or nepotism, merit was not present in the case of Shāfi‘ī Chief Judges.²⁸⁶

²⁷⁹ Shams al-Dīn Muḥammad b. Aḥmad Ibn ‘Abd al-Ḥādī, *al-Ṣārim al-munkī fī al-radd ‘alā al-Subkī*, ed. ‘Aqīl b. Muḥammad al-Yamānī (Beirut: Mu’assasat al-Rayyān, 2003), 15.

²⁸⁰ Al-Isnawī, *Ṭabaqāt*, 2:187.

²⁸¹ Escovitz, *The Office*, 62.

²⁸² Escovitz, *The Office*, 62.

²⁸³ Ibn Ḥajar, *Durar*, 5:250.

²⁸⁴ Escovitz, *The Office*, 62.

²⁸⁵ Ibn Ḥajar, *Durar*, 3:178; Muḥammad b. ‘Alī al-Shawkānī, *al-Badr al-ṭāli‘ bi-maḥāsini al-qarn al-sābi‘*, ed. Ḥusayn al-‘Umarī, 2 vols (Beirut: Dār al-Fikr al-Mu‘āṣir, 1998), 1:360.

²⁸⁶ Escovitz, *The Office*, 75.

5.2. The second opinion in 751/1350

After the death of Sultān al-Nāṣir Muḥammad, we saw a split between the Mamlūks to take the throne. While Sultān al-Nāṣir Muḥammad ruled for 30 years, 12 Sultāns took the throne after his death. Moreover, governing power was in the hands of the emirs, who continued to compete with one another, adding further instability to the era. There was also a decline in economic resources and a destabilisation of social life due to the plague that spread between 1347 and 1348. In this turbulent atmosphere, the Mamlūks were worried about security and stability in the state. The index of executions and arrests increased during that period was probably aimed at maintaining stability. These executions and arrests were towards some Christian officials among others who might have challenged the Mamlūk regime at that time. Due to their former position during the reign of Sultān al-Nāṣir Muḥammad, they gained boldness, stubbornness, and attachment to their Coptic Christian culture. This boldness and attachment led to their cursing of the Prophet, which was perhaps one of the public expressions of challenging the Mamlūk regime.

Although al-Subkī's support of the execution of the Christian in the year 1350 was based on legal reasoning, it may have also been an attempt to maintain stability under these political and social variables. The Christian who was executed was in fact a Christian official. Al-Ṣafadī in *A'yān* named the executed as 'Īsā Ibn Mūsā Ibn al-Zabṭar. He was an accountant (*mustawfi*) in the treasury in Homs. Al-Ṣafadī also provides more information on the case of Ibn al-Zabṭar. He was accused of cursing the Prophet in Homs. The Shāfi'ī judge of Homs took over the case. Although Ibn al-Zabṭar declared his repentance and converted to Islam, the judge did not accept his claim. At the same time, the Shāfi'ī judge of

Homs did not issue any judgment for his case. The Shāfi‘ī judge of Homs instead ordered the transfer of Ibn al-Zabṭar to the Qārrā court (95 kilometres north of the capital of Damascus on the road to the city of Homs), but the Shāfi‘ī judge of Qārrā did not accept the case either, nor did he issue any judgment. Ibn al-Zabṭar was thus transferred to al-Subkī, the Shāfi‘ī Chief Judge in Damascus. The case was brought to the *mazālim* court in the presence of the governor of Damascus and the remaining Chief Judges. There, according to al-Şafadī, al-Subkī authorised the Ḥanbalī judge, al-Mardāwī, to carry out the execution order. Ibn al-Zabṭar was executed by the order of al-Mardāwī in the horse market on a Monday afternoon in the month of Shawwāl in the year 751/1350.²⁸⁷

The movement of Ibn al-Zabṭar between two tribunals, ending in the *mazālim* court in Damascus, and the refusal of local judges to take up his case, indicates the potentially controversial nature of Ibn al-Zabṭar’s behaviour. Al-Subkī tells us that Ibn al-Zabṭar’s cursing was premeditated and deliberate, not spontaneous or out of anger. Also, according to al-Subkī, Ibn al-Zabṭar’s cursing was repeated on more than one occasion, the first in 738/1337 and the second in 751/1350. Ibn al-Zabṭar was not only caught cursing, but also slandering, which in conservative Islamic and Arab societies has significant moral and social implications. In addition to its severe religious implications, the crime of Ibn al-Zabṭar at that time, specifically in Damascus, in such as volatile political environment, threatened stability, especially as Ibn al-Zabṭar worked as official in the state. His behaviour was perhaps understood as a challenge to the existing

²⁸⁷ Al-Şafadī, *A’yān*, 3:725.

system to exploit its weakness. Al-Subkī's support for the execution could perhaps be understood as a product of these circumstances.

6. Conclusion

In this chapter, we studied al-Subkī's opinions on the legal rules relating to non-Muslims who curse the Prophet and subsequently convert to Islam. We found that al-Subkī reacted to the socio-political context of the status of Christian officials in his day, aiming to preserve the reputation of the Sultanate.

During the reign of Sultān al-Nāṣir Muḥammad, the Christians working in the bureaucracy had remarkable power. Their skills in leadership and the financial management qualified them to occupy important and influential positions. The Sultān's deputy, treasury employees, accountants, and the army's finance directors were mostly Christians. This provoked the ire of some Muslims, most of whom were Shāfi'īs. They objected through writings, Friday sermons, and leading gatherings in front of the Sultān's Citadel as well as attacking some Christian officials. In legal matters, some Christian officials were accused of cursing the Prophet. The Shāfi'ī judges had overlooked these cases and often opted for providing amnesty. Although this is consistent with the prevailing view of the Shāfi'ī *madhhab*, it also points to the desire of the Shāfi'ī judges to maintain the stability of the Sultanate and to protect its interests. In the year 1334, al-Subkī wrote his opinion in *Sayf*, in which he argues that the *mashhūr* position of the Shāfi'īs is amnesty for the cursers if they repented.

After the death of Sultān al-Nāṣir Muḥammad, political, social, and economic conditions deteriorated. The Mamlūks competing among themselves

was coupled with humanitarian crises such as the spread of the plague. As a result, economic resources crumbled further, creating a turbulent atmosphere, in turn resulting in political tension and security concerns for the Mamlūks. The rate of executions increased in that period compared to the era of Sulṭān al-Nāṣir Muḥammad. Some of these executions were for Christian officials whose abuses may have been understood as a challenge to the new regime. In the year 1350, a Christian official, Ibn al-Zabṭar, was arrested on charges of cursing the Prophet. Al-Subkī and his three fellow judges supported his execution in Damascus. Al-Subkī wrote his second opinion on this issue and gave his justifications, including the repeated cursing by Ibn al-Zabṭar and his inclusion of slander of the Prophet, which was considered provocative. Although al-Subkī provided ample legal justification for Ibn al-Zabṭar's execution, his support for execution may have also owed to his desire to maintain the stability of the state and to protect its reputation.

Chapter 4

The legal preference of establishing more than one Friday prayer in one city

1. Introduction

This chapter will analyse al-Subkī's stance regarding the legal preference of establishing more than one Friday prayer in one city. This is known as the issue of plurality, or *mas'alat al-ta'addud*. Al-Subkī's writings convey two major opinions composed in 726/1326 and 754/1353 respectively. In the former, he supported *ta'addud* in one city if needed (*li-l-ḥāja*), as this was the prevailing position of the Shāfi'ī *madhhab*. In the latter, he argued that *ta'addud* in one city is not legally allowed even if it is needed. If *ta'addud* occurred in a city, there were legal consequences, as only one Friday prayer would be valid and the rest would be thus deemed invalid. The valid prayer would be the one performed first chronologically (*al-sābiqa* or *al-masbūqa*). Those who happened to pray in congregational mosques²⁸⁸ at later times should perform the noon prayer (*ṣalāt al-zuhr*) after completing their Friday prayer, as their Friday prayer is not considered valid. If the people of the city did not know which Friday prayer is *sābiqa*, all of them should perform *ṣalāt al-zuhr* as a precautionary measure. These legal consequences are known as 'repetition' (*i'āda*).²⁸⁹ We will compare and contrast the two opinions of al-Subkī while shedding light on the socio-

²⁸⁸ Congregational mosques refer to *jāmi'* or *jawāmi'* where both the Friday prayer and the five daily prayers take place. In contrast, the terms *masjid* or *masājid* are mostly associated with places where only the five daily prayers take place. Our discussion in this chapter is related mostly with *jawāmi'*.

²⁸⁹ To perform the prayer of *al-zuhr* after finishing the Friday prayer.

political context of congregational mosques in the first half of the fourteenth century Mamlūk period (700/1300-754/1353) in Cairo and Damascus. We chose this period because it covers the time that al-Subkī spent in both Cairo and Damascus and wrote both his opinions. Al-Subkī arrived in Cairo in the year 1299 and wrote his first opinion in the year 1326. In Damascus, he wrote his second opinion in the year 1353. Al-Subkī's two opinions are to be read and understood within the framework of that context.

Al-Subkī responded to the socio-political development of congregational mosques in the Mamlūk Sultanate during the first half of the fourteenth century. He aimed to control the establishment of congregational mosques in his day and also reduce the legal consequences of *ta'addud*. The first half of the fourteenth century was a turning point in the number of congregational mosques established in both Cairo and Damascus compared to previous centuries. There were 42 new congregational mosques in Cairo and Damascus at that time (700/1300-754/1353), while the number of mosques in the same area prior to the first half of the fourteenth century was 22. Most of these mosques were built on the initiative of Mamlūks for various reasons, including personal piety, attempts to gain legitimacy, and as a response to urban expansion.

Al-Subkī's support of *ta'addud* in the year 1326 was in synchronisation with the beginning of the expansion of mosques in Cairo. There were seven new congregational mosques between the year 1299 (the year al-Subkī arrived in Cairo) and the year 1326 (the time when he wrote his first opinion). This translates to the establishment of nearly one new congregational mosque every four years. As a result, al-Subkī opined that the process of building mosques should be regulated by necessity (*al-ḥāja*). In addition, the supervisory body that

provided legal permission to build mosques in Cairo was run by Shāfi‘īs judges who, by default, assessed the situation through a Shāfi‘ī lens.

In the middle of the fourteenth century, the Mamlūks’ efforts to build congregational mosques reached their peak. The number of mosques in Cairo and Damascus increased by 28 from the year 1326, during which al-Subkī wrote his first opinion, to the year 1353 when al-Subkī wrote his second opinion. This meant that nearly one new congregational mosque was being built every year. Al-Subkī found this to be both superfluous and illegal; in 1353 he argued that the *ta‘addud* of congregational mosques was not legally permissible whether justified by necessity or otherwise. Although al-Subkī included the four *madhhabs* in his discussion, he focused on the Ḥanbalī congregational mosques in Damascus. Unlike others, the Ḥanbalīs of Damascus were the strongest promoters of *ta‘addud* due to the legal flexibility and social solidarity present among themselves. Consequently, they had the greatest impact in creating legal consequences, or *i‘āda*.

The history of congregational mosques with particular emphasis on the Mamlūk era has been a subject of interest for some scholars. Bernard O’Kane’s *The Mosques of Egypt* is ground-breaking, providing a survey of the history of most famous mosques that have survived until today.²⁹⁰ Prominent researchers of the Mamlūk era include Julien Loiseau, who focused on congregational mosques in Cairo.²⁹¹ Hana Taragan focused on the Red Mosque in Şafad, a city

²⁹⁰ Bernard O’Kane, *The Mosques of Egypt* (Cairo: American University Press, 2016).

²⁹¹ Julien Loiseau, “The City of Two Hundred Mosques: Friday Worship and its Spread in the Monuments of Mamluk Cairo,” in *The Arts of the Mamluks in Egypt and Syria: Evolution and Impact*, ed. Doris Behrens-Abouseif (Göttingen: V&R unipress, 2012), 183-202.

situated in the Northern District of modern day Israel.²⁹² Others have aimed to explore the identities of the mosque patrons during the Mamlūk era and explain the motives behind the construction of large numbers of mosques in Cairo and Damascus.²⁹³ Researchers have also shown interest in the information portrayed by the Mamlūk mosques through their architecture.²⁹⁴ The above-mentioned studies will all help us investigate the socio-political context of congregational mosques in the first half of the Mamlūk fourteenth century and will consequently enable us to make an informed assessment of al-Subkī's writing.

A table on the congregational mosques existing in Cairo and Damascus during the first half of the fourteenth century Mamlūk period has been designed to aid further understanding of the subject. Although there are two lists of congregational mosques in the Mamlūk era compiled by O'Kane and Loiseau, they do not serve the purpose of this study. First, they are limited to congregational mosques located in Cairo, whereas the scope of this study encompasses Damascus as well. Even in Cairo, Loiseau has provided a report on his findings but did not provide the data itself with the names of the congregational mosques and the dates of their construction. O'Kane confined his

²⁹² Hana Taragan, "Doors that Open Meanings: Baybars's Red Mosque at Safed," in *The Mamluks in Egyptian and Syrian politics and society*, ed. Amalia Levanoni and Michael Winter (Leiden: Brill, 2004), 4-20.

²⁹³ Luz, "Icons," 237-266; Leonor Fernandes, "Mamluk Architecture and the Question of Patronage," *Mamluk Studies Review* 1 (1997): 107-120; Willem Flinterman, and Jo Van Steenberghe, "Al-Nasir Muhammad and the Formation of the Qalawunid State," in *Pearls on a String. Artists, Patrons, and Poets at the Great Islamic Courts*, ed. Amy Landau (Seattle: Walters Art Museum and University of Washington Press, 2015), 86-113.

²⁹⁴ Stephen Humphreys, "The Expressive Intent of the Mamluk Architecture of Cairo: A Preliminary Essay," *Studia Islamica* 35 (1972): 69-119; Stephen Bierman, "Art and Architecture in the Medieval Period," in *The Cambridge History of Egypt*. Vol. 1: *Islamic Egypt, 640-1517*, ed. Carl F. Petry (Cambridge: Cambridge University Press, 1998), 339-74; Ayman Al-Sayyid, *al-Taṭawwūr al-ʿumrānī li-madīnat al-Qāhira*, (Cairo: Dār al-Kutub al-Miṣriyya al-Lubnāniyya, 1997).

research to the congregational mosques in Cairo that still exist in the present day. However, this investigation includes mosques from fourteenth century Cairo even if they have not survived until now.

Section 5 of this chapter contains a table of the names of the congregational mosques, their locations, and the dates of their construction. The focus is limited to the cities of Cairo and Damascus. The aim is to understand al-Subkī's first opinion when he was in Cairo in 726/1326 and his second opinion when he was in Damascus in 754/1353. For Cairo, we have also sourced studies from two Egyptian historians: al-Maqrīzī in his *Khiṭaṭ*, and al-Dawādārī in his *Kanz*. Both have dedicated a part of their work to counting congregational mosques in Cairo.²⁹⁵ For Damascus' congregational mosques, we depended on the works of two Damascene historians as well as the aforementioned studies. The first is Ibn 'Abd al-Ḥādī (d. 909/1503), author of *Thimār al-maqāṣid fī dhikr al-masājid*, one of the most important and earliest sources dealing with Damascus mosques.²⁹⁶ The other is al-Nu'aymī (d. 927/1521), who devoted part of his *Dāris* to the congregational mosques of Damascus.²⁹⁷ We also referred to the Damascene al-Jazarī (d. 738/1338) in his *Tārīkh*, as he witnessed the establishment of some of the new congregational mosques in Damascus. Finally, as al-Jazarī's *Tārīkh* dates back to 735/1335, we also looked at the *Bidāya* of the Damascene Ibn Kathīr to record the new congregational mosques that he witnessed both before and after 735/1335.

²⁹⁵ Al-Maqrīzī, *Khiṭaṭ*, 4:3-146; Abū Bakr b. Aybak al-Dawādārī, *Kanz al-durar wa jāmi' al-ghurar*, ed. Ṣalāḥ al-Dīn al-Munajjid et al. 9 vols (Cairo: Maṭba'at 'Īsā al-Ḥalabī, 1982), 9:388-390.

²⁹⁶ Yūsuf b. Badr al-Dīn al-Ḥasan Ibn 'Abd al-Ḥādī, *Thimār al-maqāṣid fī dhikr al-masājid* (Damascus: al-Ma'had al-Faransī, 1943).

²⁹⁷ Al-Nu'aymī, *Dāris*, 2:285-343.

2. The first opinion in 726/1326

Al-Subkī's first view is found in his *Ibtihāj*. This work is a commentary (*sharḥ*) on al-Nawawī's *Minhāj*, a manual of *furū' al-fiqh* in Shāfi'ī law.²⁹⁸ Al-Subkī structured his commentary based on the text of *Minhāj* and included the entirety of *Minhāj* in his *Ibtihāj* by placing the text of *Minhāj* in brackets to explain it. He addressed each of al-Nawawī's points and his method was to either agree, disagree, or refrain from voicing an opinion.²⁹⁹

The discussion of the legal rule of the plurality of Friday prayers, or *ta'addud*, in one city (*fī al-balad al-wāḥid*) is located in the chapter on *ṣalāt al-jum'a* of *Ibtihāj*. This chapter covers the rulings of *ṣalāt al-jum'a*, including the time and conditions in which it should be performed (*shurūṭ iqāmatihā*), the Shāfi'ī itinerary on that day, and finally the legal rule of *ta'addud* in one city.³⁰⁰ In this issue, al-Subkī follows al-Nawawī and agrees to the permissibility of *ta'addud* in a city or village in case of need. Al-Subkī starts by placing what al-Nawawī said in brackets:

It is not permissible to have two Friday prayers in one city (*fī al-balad al-wāḥid*) except for a need (*illā li-ḥāja*), such as if the city has grown and become difficult to meet people in one place. Also, it is permissible to have two Friday prayers in each village (*qarya*) if needed even

²⁹⁸ See our discussion on *Minhāj* in Chapter 2 of this thesis.

²⁹⁹ See our discussion on *Ibtihāj* in Chapter 2 of this thesis.

³⁰⁰ Al-Subkī, *Ibtihāj*, 1:326-343.

if the villages are connected to each other (*qurā muttaṣila*).³⁰¹

Al-Subkī then adds evidence to support al-Nawawī’s opinion; when al-Shāfi‘ī entered Baghdad in 184/800, he saw several congregational mosques and did not condemn it (*wa lam yunkir dhālik*).³⁰² This particular piece of information added by al-Subkī to support al-Nawawī’s text is a unique contribution, because it is not the usual argument used by the Shāfi‘īs on this issue. The typical argument used by the Shāfi‘īs is the presence of a need,³⁰³ as pointed out by al-Nawawī above. The existence of a need is in itself evidence in this case, and is a valid argument for any other legal case. This is based on the legal principle, ‘need is considered a necessity’ (*al-ḥāja bi-manzilat al-ḍarūra*).³⁰⁴ Al-Subkī seems to prefer textual evidence (al-Shāfi‘ī’s action in this case) over reasoning (*al-dalīl al-‘aqlī*), which here is the existence of the need. Al-Subkī also adds another narrative (*riwāya ukhrā*) present in the *madhhab*, which is that *ta‘addud* may not be valid even if there is a need, whether in a city or a village. Al-Subkī discusses the legal consequences or *i‘āda* for which this narrative applies when *ta‘addud*

³⁰¹ Al-Subkī, *Ibtihāj*, 1:340-341; also see al-Nawawī, *Minhāj*, 133. This is a typical Shāfi‘ī division of a region (*waṭan* or *khiṭṭat awṭān*), which is divided into a city (*balad* or *madīna* interchangeably), a village that is independent from the city (*qarya mustaqilla*), or a village that is connected to the city (*qarya ghayr mustaqilla* or *qarya muttaṣila* or *qarya tābi‘a* interchangeably), al-Shirbīnī, *Mughnī*, 1:535; al-Māwardī, *Hāwī*, 2:407; Ibn al-Mulaqqin, *Tuhfat*, 1:508; Ibn al-Rif‘a, *Kifāyat*, 4:299-303; al-Ramlī, *Nihāya*, 2:301-302; also see “Ṣalāt al-jum‘a,” *al-Mawsū‘a al-fiqhiyya*, 27:196.

³⁰² Al-Subkī, *Ibtihāj*, 1:341.

³⁰³ Al-Shirbīnī, *Mughnī*, 1:535; al-Māwardī, *Hāwī*, 2:407; Ibn al-Mulaqqin, *Tuhfat*, 1:508; Ibn al-Rif‘a, *Kifāyat*, 4:299-303; al-Ramlī, *Nihāya*, 2:301-302.

³⁰⁴ For a rich discussion on this principle and its applications in the Shāfi‘ī law, see Jalāl al-Dīn ‘Abd al-Raḥmān al-Suyūṭī, *al-Ashbāh wa al-nazā‘ir fī qawā‘id wa furū‘ al-Shāfi‘iyya* (Beirut: Dār al-Kutub al-‘Ilmiyya, 1983), 83-89.

occurs. Despite his discussion, he does not consider this narrative to be the prevailing position in the Shāfi'ī *madhhab* (*qawl ba'īd*).³⁰⁵

Al-Subkī adds evidence supporting al-Nawawī's opinion and refutes another opinion within the *madhhab*; he does not elaborate on the difference between a city and a village. The Shāfi'īs stipulate the existence of 40 free men in the city or village for the legal establishment of Friday prayers. However, the Shāfi'īs focused on mentioning this number in the village, mostly because of the small number of its inhabitants.³⁰⁶ Next, al-Subkī does not discuss the Shāfi'īs' disagreement on the characteristics of the village in which Friday prayers may be held. The Shāfi'īs differentiate an independent village from a connected village. Some Shāfi'īs believe that Friday prayers may only be held in an independent village, while the majority believe that Friday prayers may be held even in connected villages.³⁰⁷ This is also supported by al-Nawawī, as seen above. As mentioned, one possible reason for al-Subkī's omission in addressing these issues is because *Ibtihāj* lacked sufficient space to deal with legal issues in detail.³⁰⁸ In *Ibtihāj* (1326), al-Subkī mentions two views in the Shāfi'ī *madhhab* on *ta'addud* in the city or village. While he considers the opinion that against *ta'addud* even if there is a need is *qawl ba'īd*, he supports the view that *ta'addud* is allowed if needed, as this is the prevailing position of the Shāfi'ī *madhhab*.

³⁰⁵ Al-Subkī, *Ibtihāj*, 1:341-342.

³⁰⁶ Al-Shirbīnī, *Mughnī*, 1:535; al-Māwardī, *Hāwī*, 2:407; Ibn al-Mulaqqin, *Tuhfat*, 1:508; Ibn al-Rif'a, *Kifāyat*, 4:299-303; al-Ramlī, *Nihāya*, 2:301-302.

³⁰⁷ Al-Shirbīnī, *Mughnī*, 1:535; al-Māwardī, *Hāwī*, 2:407; Ibn al-Mulaqqin, *Tuhfat*, 1:508; Ibn al-Rif'a, *Kifāyat*, 4:299-303; al-Ramlī, *Nihāya*, 2:301-302.

³⁰⁸ Al-Subkī will elaborate on these details in his second opinion whenever the genre allows.

3. The second opinion in 754/1353

Almost 27 years later, al-Subkī developed another opinion on the plurality of Friday prayers, or *ta'addud*, in a city. He does two things. First, he supports the Shāfi'ī view that *ta'addud* is prohibited even if it is needed as the most correct view (*al-aṣaḥḥ*) in the *madhhab*. Second, as the rest of the *madhhabs* support *ta'addud* if needed, exactly as the prevailing opinion in the Shāfi'ī *madhhab*, al-Subkī assesses the legal status of a number of congregational mosques in Damascus and argues that the Friday prayers in those mosques were invalid according to the four *madhhabs* because there was no need for them. Al-Subkī combines these two arguments in his second opinion in 1353 because they complement each other. We have pointed out that the Shāfi'ī view that *ta'addud* is prohibited even if it is needed entails legal consequences or *i'āda* when *ta'addud* occurs. To implement this Shāfi'ī view, al-Subkī needs to convince the supporters of *ta'addud* to retract their view and stop performing Friday prayers in other than the main mosque so that there would be no legal consequences.

Al-Subkī's second opinion is found in a treatise within his *Fatāwā*. The title of the treatise is "Holding on to the One God against performing two Friday prayers in one City" (*al-I'tiṣām bi-l-wāḥid al-aḥad min iqāmat jum'atān fi balad*). In the modern published text version, *I'tiṣām* is roughly 17 pages in length.³⁰⁹

The overall structure of *I'tiṣām* is as follows: the first part focuses on a historical review of the practice of Friday prayers since the early Islamic times

³⁰⁹ Al-Subkī, *Fatāwā*, 1:171-187; al-Subkī dates his writing of *I'tiṣām* in 754/1353 on page 187.

until the thirteenth century. This part can be divided into three sections: pre-late eighth century Baghdad, the late eighth century Baghdad, and post-late eighth century Baghdad. Before the late eighth century Baghdad, al-Subkī gathers citations from the teachings of the Companions of the Prophet as well as the Companions' Followers (*tābi'ūn*). He does this to confirm the fact that most of them supported having only one Friday prayer in a city. After that, al-Subkī discusses the historical moment in late eighth century Baghdad which witnessed the establishment of two Friday prayers in one city in the Islamic world. Al-Subkī reviews the discussion of the *fuqahā'* on *ta'addud* during that time. After the late eighth century, al-Subkī focuses on al-Shāfi'ī's visit to Baghdad around 800. As al-Shāfi'ī had a number of conflicting opinions upon his visit to Baghdad, al-Subkī discusses the diverse opinions of the Shāfi'īs on this issue, divided between supporting and prohibiting *ta'addud*. Al-Subkī focuses on the two Shāfi'ī champions involved in the debate, namely al-Ghazālī (d. 1111) and al-Rāfi'ī (d. 1226). While al-Rāfi'ī supported the view that allowed *ta'addud*, al-Subkī stood with al-Ghazālī who was against it. Al-Subkī concludes this part by stating that the view prohibiting *ta'addud* is the most correct view of the Shāfi'ī *madhhab*.³¹⁰

Part Two of *I'tiṣām* contains a legal survey on some of the congregational mosques in al-Subkī's time, with particular focus on congregational mosques in Damascus. While al-Subkī supports the opinion that *ta'addud* of Friday prayers is not allowed, here he even challenges the view that saw the need for allowing *ta'addud*. He clearly argues that there is no need for seven new congregational mosques in Damascus and mentions that those mosques were authorised by the

³¹⁰ Al-Subkī, *Fatāwā*, 1:171-180.

Ḥanbalī judge. Al-Subkī saw that *ta'addud* resulted in legal consequences, such as invalidating all Friday prayers in Damascus except for the one performed first, which is difficult to identify. He concludes this part by advising the rulers to act to prevent *ta'addud* because it is a disputed issue and is against the interest of Muslims.³¹¹

3.1. Al-Subkī's historical review of the practice of the Friday prayer

3.1.1. Pre-late eighth century Baghdad

According to al-Subkī in *I'tiṣām*, there was only one Friday prayer at the time of the Companions. Al-Subkī establishes this by citing 16 quotes from a number of different Companions, including 'Alī Ibn Abī Ṭālib, who said “No Friday prayer except with the ruler (*lā jum'a illā ma'a al-imām*)” and, “No Friday prayer except in a large city (*lā jum'a illā fī al-miṣr al-jāmi'*)”. Al-Subkī also mentions the incident narrated by Abū Hurayra when he asked 'Umar Ibn al-Khaṭṭāb about the place to establish the Friday prayer. 'Umar said “Set it up wherever you are (*aqīmūhā ḥaythu mā kuntum*)”. Al-Subkī comments that there is no indication in 'Umar's saying of *ta'addud* in one city, but all that was said is that it is only permissible to establish Friday prayers in cities and villages.³¹² After citing the teachings of the Companions, al-Subkī asserts:

³¹¹ Al-Subkī, *Fatāwā*, 1:180- 187.

³¹² It should be noted that the remaining Shāfi'īs (and even the remainder of the *madhhabs*) believed that 'Umar's statement is an explicit evidence of the permissibility of *ta'addud*, as will be discussed.

This is what was agreed upon by the Companions and thus we do not ever see a mention of the issue of *ta'addud*. This means that the continuous practice of the Prophet and the Companions is to have one Friday prayer only.³¹³

Al-Subkī also adds that the confinement of the Prophet and his Companions to one Friday prayer corresponds to the purpose for which the Friday prayer is commanded by God; bringing Muslims together in one place. It thus meets their word (*tajtami 'u kalimatahum*) and promotes familiarity among them (*wa taḥṣulu al-ulfa wa al-mawadda baynahum*). Also, according to al-Subkī, the continued limitation of only one Friday prayer since the early times of Islam suggests that this is fully known necessarily in the religion (*ma 'lūm min al-dīn bi-l-ḍarūra*).³¹⁴

Al-Subkī then proceeds to discuss the opinions of the Followers (*tābi 'ūn*). He argues that he does not know anyone among the Followers who advocated *ta'addud* in one city except for one opinion attributed to 'Aṭā' (d. 114/732), a well-known Follower. Al-Subkī acknowledges 'Aṭā's opinion but considers it to be odd (*shādhdh*), stating that the jurists who lived in the same era had responded to 'Aṭā' and countered his opinion.³¹⁵ However, al-Subkī does not reveal the identity of the jurists that opposed 'Aṭā's opinion. Al-Subkī may have assumed that they were well known to his readers. With the exception of

³¹³ Al-Subkī, *Fatāwā*, 1:174.

³¹⁴ Al-Subkī, *Fatāwā*, 1:174-175; The argument that the continuation of limitation of only one Friday prayer should be fully known necessarily in the religion (*ma 'lūm min al-dīn bi-l-ḍarūra*) was used by the Ḥanafīs who opposed *ta'addud* in eleventh century Baghdad. This will be discussed further later.

³¹⁵ Al-Subkī, *Fatāwā*, 1:175.

‘Aṭā’, the rest of the Followers did not permit *ta‘addud* in one city, according to al-Subkī. He cites 25 citations to confirm this.³¹⁶ After mentioning these citations, he concludes, “There is nothing in it [i.e. citations] from which we can understand the permissibility of *ta‘addud*, except for what we have said about ‘Aṭā’ and which people deny it.”³¹⁷

3.1.2. Late eighth century Baghdad

The focal point in the case of *ta‘addud* according to al-Subkī occurred during the late eighth century in Baghdad. During that period, the Ḥanafī judge Ya‘qūb al-Anṣārī (d.182/798) known as Abū Yūsuf, a companion of Abū Ḥanīfa, the founder of the Ḥanafī *madhhab*, permitted this practice, although the Ḥanafī *madhhab* at that time did not allow it. Abū Yūsuf’s argument is somewhat peculiar. He considered Baghdad to be two cities, not one. This view was based on the river that divided the city completely into two separate parts, even though there were bridges linking the two banks of the river. Abū Yūsuf suggested that upon the call for Friday prayer, these bridges must be lifted and that no passage between the two banks should be allowed. By doing this, Baghdad becomes two cities during Friday prayer. From this perspective, the Friday prayers should be valid as there is no *ta‘addud*. Al-Subkī does not oppose the opinion of Abū Yūsuf even though his opinion contradicted the *madhhab* of Abū Ḥanīfa. At the same

³¹⁶ Al-Subkī, *Fatāwā*, 1:175-178.

³¹⁷ Al-Subkī, *Fatāwā*, 1:178; In Arabic: *wa laysa fihā* [i.e. citations] *shay’un yufhamu minhu jawāz al-ta‘addud illā mā dhakarnāhu ‘an ‘Aṭā’ wa ‘ankarahu al-nās.*

time, al-Subkī believes that Abū Yūsuf's opinion should not be generalised and applied to other places, as it is linked to a specific place – Baghdad.³¹⁸

3.1.3. Post-late eighth century Baghdad

Al-Subkī goes on to discuss al-Shāfi'ī's visit to Baghdad circa 184/800. He says that when al-Shāfi'ī entered Baghdad and saw several congregational mosques, he did not deny the practice of *ta'addud*. The Shāfi'īs, according to al-Subkī, dispute the position of al-Shāfi'ī on this issue with regards to his non-denial. The first opinion is that al-Shāfi'ī considered Baghdad to be two independent cities separated by a river, similar to Abū Yūsuf's opinion mentioned above. The second opinion is that al-Shāfi'ī did not deny the practice of *ta'addud* in Baghdad because he felt that it was permissible in case of necessity and hardship. Al-Subkī reports that al-Rāfi'ī held this opinion, adding

³¹⁸ Al-Subkī, *Fatāwā*, 1:179. Some modern as well as medieval historians suggest that Baghdad may indeed be the first city where more than one congregational mosque was established, which corresponds to what al-Subkī said. There is, however, a discrepancy in determining the time of occurrence. Al-Subkī said that it was during the late eighth century, corresponding to what Oleg Grabar noted in "The Architecture of the Middle Eastern City: The Case of the Mosque," in *Middle Eastern Cities: A Symposium on Ancient, Islamic, and Contemporary Middle Eastern Urbanism*, ed. John B. Christopher, Ira M. Lapidus (Berkeley and Los Angeles: University of California Press, 1969), 26-46. In *Tārīkh Baghdād*, al-Khaṭīb al-Baghdādī (d. 1071) considers it to be in the ninth century. This is mentioned by Ibn Ḥajar Shihāb al-Dīn Aḥmad al-'Asqalānī in his *Talkhīṣ al-ḥabīr fī takhrīj aḥādīth al-Rāfi'ī al-kabīr*, 4 vols (Beirut: Dār al-Kutub al-'Ilmiyya, 1989), 2:137. Jacob Lassner also considers that in the late ninth century, "Municipal entities and mosques: An additional note on the imperial center," *Journal of the Economic and Social History of the Orient* 10 no. 1 (1967): 53-63. For a historical and legal discussion on the issue of *ta'addud* in that time in Baghdad especially among Ḥanafīs, see Johansen, *Contingency*, 77-106. Johansen noted that while Abū Yūsuf's opinion was the typical justification for building many congregational mosques in the Islamic world, there was a pious opposition to Abū Yūsuf's opinion. At the head of this pious opposition was the famous Ḥanafī jurist, al-Sarkhasī (d. 1090). He was against *ta'addud* and argued that the limitation to only one Friday prayer should be fully known necessarily in the religion (*ma'lūm min al-dīn bi-l-ḍarūra*). This is the same as al-Subkī's aforementioned argument. According to Johansen, al-Sarkhasī and the opponents of *ta'addud* in general sought to unite the religious and political entity (*umma*) through a single congregational mosque, 98-100.

that al-Rāfi‘ī claims that this opinion is the prevailing opinion in the Shāfi‘ī *madhhab*. However, al-Subkī disagrees, mentioning that the Mālikī and Ḥanbalī *madhhab* hold the same opinion of al-Rāfi‘ī. The third opinion is that al-Shāfi‘ī was against *ta‘addud* at all times, and al-Subkī attributes this opinion to al-Ghazālī. Al-Subkī also mentions al-Ghazālī’s requirement of *i‘āda* in case of *ta‘addud*. Al-Ghazālī’s opinion, according to al-Subkī, is the most correct view (*al-aṣaḥḥ*) of the Shāfi‘ī *madhhab*.³¹⁹

If al-Shāfi‘ī was against *ta‘addud* at all times, how do we explain his non-denial of the *ta‘addud* of the congregational mosques in Baghdad? Al-Subkī suggests that al-Shāfi‘ī’s lack of opposition did not indicate consent, but rather deference to Abū Yūsuf’s opinion in Baghdad. Abū Yūsuf was ranked as a *mujtahid* in his *madhhab*, and al-Shāfi‘ī was obviously a *mujtahid* as well; the Islamic legal principal states that ‘a *mujtahid* shall not deny another *mujtahid*’s view’ (*al-mujtahid lā yunkir ‘alā mujtahid*). From this perspective, al-Subkī gains understanding of al-Shāfi‘ī’s attitude in Baghdad.³²⁰

Al-Subkī then discusses the requirement of the Sulṭān’s presence or permission to establish a Friday prayer. This *mas‘ala* is present in the chapter of ‘Friday Prayer’ in legal manuals before the emergence of the issue of *ta‘addud*. When *ta‘addud* was developed in the legal discourse in post-late eighth century, the *fuqahā’* discussed the issue of requiring the Sulṭān’s permission for the subsequent Friday prayers. Al-Subkī’s discussion regarding the Sulṭān’s permission was in the context of the first Friday prayer, and not *ta‘addud*. He

³¹⁹ Al-Subkī, *Fatāwā*, 1:180; regarding *i‘āda*, unlike al-Ghazālī and al-Subkī, the rest of the Shāfi‘īs such as al-Rāfi‘ī and the remaining *madhhabs* do not require *i‘āda* if there is need; they consider all Friday prayers to be legally valid in the case of *ta‘addud*.

³²⁰ Al-Subkī, *Fatāwā*, 1:180.

wanted to correct the understanding of the *fuqahā'* of his day. In other words, the jurists who used the Sultān's permission to build new congregational mosques other than the already existing mosques were wrong, because the context of the discourse was based on the initial Friday prayer as understood by pious predecessors (*salaf*).³²¹

According to al-Subkī, Abū Ḥanīfa stipulates the presence of the Sultān as necessary, or at least that his permission needed to be obtained. Al-Shāfi'ī had two views on this: one required the presence of the Sultān or his permission, but the second view did not. According to al-Subkī, the second view is the prevailing view of the *madhhab*. Like al-Shāfi'ī, al-Subkī attributes the two views to Aḥmad Ibn Ḥanbal. However, al-Subkī does not indicate which view is more authoritative in the Ḥanbalī *madhhab*. The justification of who stipulates the presence of the Sultān or obtains his permission, as al-Subkī explains, is that the ritual of the Friday prayer is one of the great issues necessitating the Sultān's permission. While al-Subkī appreciates this justification and understands its logic, he does not agree to this view, similar to al-Shāfi'ī. To al-Subkī, the *mas'ala* of the Sultān's permission is only related to the establishment of the first Friday prayer itself, not *ta'addud*.³²²

Al-Subkī then discusses the definition of 'sultān' in this situation, arguing that 'sultān' is either the Sultān himself or the emir appointed by the Sultān in that area. He asks, "Is it possible for the judge to represent the Sultān or emir in giving permission to establish a new Friday prayer?" He argues that the judge can replace the Sultān in giving permission to establish Friday prayers

³²¹ Al-Subkī, *Fatāwā*, 1:180-181.

³²² Al-Subkī, *Fatāwā*, 1:180-181.

on three conditions: the first is that the Sulṭān should give the authority to the judge to do so; the second is that when the judge gives permission to establish Friday prayers, this should be consistent with the opinion of the *madhhab* of the judge himself; the third is that this matter should be conducted with the interest of Muslims in mind (*maṣlahat al-muslimīn*).³²³ It is worth mentioning that the judges of Damascus had the authority to give permission to build new congregational mosques. Therefore, on the authority of these three conditions, al-Subkī attempts to limit the powers of judges in general from expanding the permission to build new congregational mosques. Later, al-Subkī confronts the Ḥanbalī judge in Damascus who failed to meet these three conditions.

3.2. Al-Subkī's legal surveying of the congregational mosques in his time

In Part Two of *I'tiṣām*, al-Subkī surveys mosques that existed during his time in order to give a legal ruling on them with more focus on congregational mosques in Damascus. His assessment was based on the above *madhhabs*' dispute on the issue of *ta'addud* as well as the requirement of the Sulṭān's permission to establish the Friday prayers. In Part One of *I'tiṣām*, al-Subkī shows that the Mālikī and Ḥanbalī *madhhabs* supported *ta'addud* in the case of need, the same prevailing opinion of the Shāfi'ī *madhhab*. The Ḥanafī *madhhab* also stipulates a need but added two further conditions: the presence or permission of the Sulṭān, and for *ta'addud* to be limited to the city and not in the village. The second view of the Shāfi'ī *madhhab* is against *ta'addud* even if supposedly necessary. This was the view of al-Ghazālī and al-Subkī.

³²³ Al-Subkī, *Fatāwā*, 1:181.

In Part Two of *I'tiṣām*, al-Subkī considered cities such as Makkah, Medina, and Jerusalem, opining that Friday prayers established in these cities were legally valid in all *madhhabs* because there was only one Friday prayer in each of those cities. Secondly, they were established with the permission of the Sultān.³²⁴ He then goes on to the scattered villages in Egypt, Syria, and Iraq. Although he does not name those villages, al-Subkī believes that most of these villages were independent villages (*qurā mustaqilla*) with only one Friday prayer taking place in each. The Sultān's permission to establish the Friday prayer in some of those villages was obtained. Either way, al-Subkī argues that the Shāfi'ī legal ruling on these congregational mosques revolved around validity, even if some of these congregational mosques did not seek the permission of the Sultān. Ḥanafīs deemed it invalid, not only because certain mosques did not obtain permission from the Sultān, but also because they are villages; the Ḥanafī *madhhab* limits the permissibility of establishing Friday prayers to cities.³²⁵

Al-Subkī defined the limits of the city of Damascus (*Madīnat Dimashq*) as the area inside the wall (*sūr*).³²⁶ Everything outside the wall was considered as villages (*qurā*). The villages located outside the wall were separated into two kinds: villages connected to Damascus (*qurā tābi'a*), and villages independent of Damascus (*qurā mustaqilla*). He differentiates between *qarya mustaqilla* and *qarya tābi'a* by the distance between the wall and the *qarya*. If the distance was

³²⁴ Al-Subkī, *Fatāwā*, 1:181.

³²⁵ Al-Subkī, *Fatāwā*, 1:181-182.

³²⁶ In al-Subkī's time of writing *I'tiṣām*, there was only one congregational mosque inside the wall of Damascus, namely the Umayyad Mosque. This is clear from the *I'tiṣām*'s context but more explicitly from the testimony of al-Subkī's son, Tāj al-Dīn. He said, "from the time of 'Umar's conquest until today, which is Ramaḍān 765, God protects *Dimashq* from having two Friday prayers inside its wall". This statement of Tāj al-Dīn is found after the end of *I'tiṣām* in his father *Fatāwā*, 1:186.

less than the minimum distance for shortening the prayer in the event of travel in the Shāfi'ī *madhhab* (*masāfat al-qaṣr fī al-madhhab*),³²⁷ then the *qarya* was considered as *tābi'a*. If the distance was more than *masāfat al-qaṣr*, the *qarya* was considered to be *mustaqilla*.³²⁸

Al-Subkī's legal survey of the congregational mosques in Damascus focuses on congregational mosques located in the *qurā tābi'a*. All congregational mosques in *qurā tābi'a* were legally invalid according to al-Subkī because although he considered them to be outside the wall of Damascus, they were close and connected to Damascus. The existing congregational mosque in Damascus, the Umayyad Mosque, sufficed the need and thus the remaining congregational mosques in those *qurā tābi'a* were built unnecessarily.³²⁹ Al-Subkī focuses on two *qaryas tābi'a* in Damascus: al-Shāghūr to the south of the wall, and al-Naṣr area to the west of the wall. He argues that both al-Shāghūr and al-Naṣr are *qurā tābi'a* because of their proximity to the wall of Damascus.³³⁰

According to al-Subkī, al-Shāghūr had five congregational mosques in his time which were not legally valid. He does not provide much detail as to the identity of these mosques and the circumstances of their construction, but he does mention that one of these congregational mosques was named al-Khalīkhānī. He also states that the Ḥanbalī judge is the one who gave permission to build the majority of these congregational mosques. By doing so, the Ḥanbalī

³²⁷ Approximately 15 *farsakhs*, which is approximately 84 kilometers according to modern Shāfi'ī calculations, Ghālib Muḥammad Karīm, *al-Mawāzīn wa al-makā'il wa al-atwāl*, an appendix in al-Nawawī, *Minhāj*, 697.

³²⁸ Al-Subkī, *Fatāwā*, 1:182.

³²⁹ As mentioned, the majority of Shāfi'īs believed that *ta'addud* is permitted if needed, whether in a city, an independent village, or connected village.

³³⁰ Al-Subkī, *Fatāwā*, 1:182-183.

judge violated his own *madhhab*, as there was no need for these mosques according to al-Subkī. Moreover, al-Subkī mentions that these five mosques in al-Shāghūr were legally invalid by *ijmā'* in all four *madhhabs*. As al-Shāghūr was a village, it was not permissible to establish the Friday prayer in accordance with the Ḥanafī *madhhab*. For the Ḥanbalīs, Mālikīs, and Shāfi'īs who support *ta'addud* in times of need, there was no need to build these mosques in al-Shāghūr because of their proximity to the wall of Damascus. Al-Subkī continues to say that even if the necessity was there due to urban expansion and the limited capacity of already existing mosques,³³¹ this is not a sufficient reason to build a new congregational mosque. He argues that while the number of Companions was increasing, there was only one mosque at the time of Prophet Muḥammad. Al-Subkī named two congregational mosques to the west of the wall, namely Yalbughā and Arghūn. He did not view Friday prayers in them as valid, as they were very close to the wall. Legally, there was no need to build them at all.³³² The seven mosques that al-Subkī focused on had legal consequences for the validity of Friday prayers in Damascus in general, namely the issue of *i'āda*. Al-Subkī advises everyone who performed their Friday prayers in Damascus to pray the noon prayer (*ṣalāt al-zuhr*) after completing Friday prayers as a precaution, since there was no way to know which Friday prayer occurred first.³³³

Al-Subkī concludes his *I'tisām* by advising the rulers to act and prevent *ta'addud*. Al-Subkī maintains that the practice of *ta'addud* was something new (*ḥādīth*) in Cairo and Damascus. As it had been introduced recently (*innamā*

³³¹ The proximity of already-existing mosques referred to either the Umayyad Mosque or other mosques in the nearest *qarya mustaqilla*.

³³² Al-Subkī, *Fatāwā*, 1:183-184.

³³³ Al-Subkī, *Fatāwā*, 1:183.

ḥaṣalat fī mudda qarība), the practice of *ta‘addud* should not be viewed as the norm. Al-Subkī advises the Sultān and his deputies to reconsider this case in line with three principles. First, the interest of Muslims (*maṣlaḥat al-muslimīn*) should be the basis on which their decisions are made; the Sultān and his deputies should advance the interests of the hereafter over worldly interests (*taqdīm al-maṣāliḥ al-ukhrawiyya ‘alā al-maṣāliḥ al-dunyawiyya*). Second, they should pay attention to matters agreed upon by scholars (*ijmā‘*) and should not abandon agreed matters for disputed matters except when needed. Third, if the Sultān and his deputies want to obtain advice, they should turn to a trusted scholar of his religion who understands the *sharī‘a* and should not be misled by anomalous (*shādhah*) opinions or ignorant people (*juhḥāl*).³³⁴

4. Comparative contextualisation

Sections 2 and 3 of this chapter analysed al-Subkī’s opinions regarding the plurality of Friday prayers, or *ta‘addud*, in one city. Circa 1326, al-Subkī supported *ta‘addud* in case of need, which is considered to be the dominant opinion of the Shāfi‘ī *madhhab*. In 1353, al-Subkī was against *ta‘addud* even where necessary. Moreover, he assessed the legal status of some of the congregational mosques in Damascus and argued that there was no need to have even built them.

One of the most prominent differences between the two opinions is the difference in genre. *Ibtihāj*, a legal commentary (*sharḥ*), restricted al-Subkī’s first opinion to al-Nawawī’s text. However, *I‘tiṣām* is not restricted to any text,

³³⁴Al-Subkī, *Fatāwā*, 1:183, 185-186.

as it is a treatise. Al-Subkī chose to write on multiple issues related to *ta'addud* in *I'tiṣām*, whereas he was unable to speak in detail in *Ibtihāj*. The space and freedom in the treatise of *I'tiṣām* gave al-Subkī a platform to include his opinions consisting of a group of different elements. This includes endorsing opinions contrary to the prevailing opinion in the *madhhab*, mobilising evidences to support his opinion, mentioning the dispute of scholars on the issue, linking the legal cases to events and dates occurring in his time, and naming cities and mosques. The variation in the genre also affected the length of the two opinions; the first opinion in *Ibtihāj* consists of one section (11 lines) while the second opinion in *I'tiṣām* spans over 17 pages. As mentioned in Chapter Two of this thesis, al-Subkī's professional function also contributed to the differences between the two opinions. He played the role of *faqīh* in *Ibtihāj*, whose task is primarily to report the prevailing views in the *madhhab*. In his second opinion, besides being a *faqīh*, he also played the role of *muftī*, whose task is to review, attempt to challenge, and correct the prevailing opinions of the *madhhab*.

Regarding the arguments utilised in the two opinions, al-Subkī shifted his opinions from one perspective in the Shāfi'ī *madhhab* to another. This shift is understandable, as both views are held by respected authorities within the *madhhab*. While al-Rāfi'ī (d. 1266) and al-Nawawī (d. 1277) chose to support *ta'addud* when needed, al-Ghazālī (1111) was against it entirely.³³⁵

³³⁵ Having said that, al-Ghazālī's position is problematic because it does not provide supporting evidence from the early Shāfi'ī authorities. Al-Ghazālī wrote three legal works in the Shāfi'ī *madhhab*: *Basīṭ*, *Wasīṭ*, and *Wajīz*, are all commentaries on al-Juwaynī's (d. 1085) legal work *Nihāyat al-maṭlab*. While *ta'addud* is not mentioned in al-Juwaynī's *Nihāyat*, or in al-Ghazālī's *Basīṭ* and *Wasīṭ*, al-Ghazālī mentioned *ta'addud* briefly in his *Wajīz*. In it, al-Ghazālī said that *ta'addud* in a city is not permissible, and *i'āda* is required when *ta'addud* occurs. Al-Ghazālī's reasoning is to not allow small groups of people establish the Friday prayer by their own authority (*likaylā yaqdira kullu shirdhimatin 'alā iqāmatihā*). Abū Ḥāmid Muḥammad b.

However, Al-Subkī citing *ijmāʿ* in *Iʿtiṣām* as evidence for the prohibition of *taʿaddud* is a very serious claim. He mentions *ijmāʿ* in two places: as he spoke about the congregational mosques in al-Shāghūr, and when he advised the Sulṭān. These two incidents are perhaps not clear indications of al-Subkī claiming *ijmāʿ* against *taʿaddud*. While this is possible, we have two testimonies from the fourteenth century suggesting that al-Subkī indeed claimed *ijmāʿ* against *taʿaddud*. The first is from his son Tāj al-Dīn al-Subkī, who said:

He [al-Subkī (*al-shaykh al-imām*)³³⁶] wrote five independent treatises on the subject of *taʿaddud*.³³⁷ In all of them, he was against *taʿaddud* whether with need or not. He indicates an existing *ijmāʿ* in this issue unbeknownst to the opposition (*wa yūmiʿu ilā ijmāʿ sābiq taʿadhdhara bulūghuhu li-l-mukhālif*).³³⁸

Muḥammad al-Ghazālī, *al-Wajīz fī fiqh al-imām al-Shāfiʿī*, ed. ʿAlī ʿAwaḍ and ʿAdil ʿAbd al-Mawjūd, 2 vols (Beirut: Dār al-Arqam, 1997), 1:189. In contrast, in supporting *taʿaddud*, al-Rāfiʿī drew on several well-known Shāfiʿī authorities from the early generation. This includes Aḥmad Ibn ʿUmar Ibn Surayj (d. 306/918), al-Ḥusayn Ibn Muḥammad al-Ḥannāfi (d. 400/1009), Yūsuf Ibn Aḥmad Ibn Kaj (d. 405/1014), and Abū Ishāq Ibrāhīm al-Isfarāyīnī (d. 418/1027). Al-Rāfiʿī, *Fatḥ al-ʿazīz*, 2:251-253. Even though al-Ghazālī did not provide supporting evidence for his claim, it does not mean that he was not aware of such evidence. We believe that because al-Rāfiʿī’s list of early generation Shāfiʿī authorities who support *taʿaddud* indicates the existence of the earlier debate. Otherwise, early authorities would have no reason to consider it in the first place. Also, in general, the jurists’ debate on *taʿaddud* had already broken out in Baghdad since the late eighth century, as discussed by al-Subkī. Either way, al-Ghazālī’s position on *taʿaddud* needs further investigation because as far as we know, he is the first one who explicitly opposed *taʿaddud* in the Shāfiʿī *madhhab*.

³³⁶ Tāj al-Dīn always referred to his father as *al-shaykh al-imām* in his writings.

³³⁷ *Iʿtiṣām* seems to be the only surviving one.

³³⁸ This statement of Tāj al-Dīn al-Subkī is found after the end of *Iʿtiṣām*, in his father’s *Fatāwā*, 1:186.

The other indication of al-Subkī holding *ijmā'* is in a treatise written as response to al-Subkī by one of the most famous scholars of the Shāfi'īs, one of al-Subkī's contemporaries, al-Balqīnī (d. 1402). He was very resentful against those who claimed that there is an *ijmā'* against *ta'addud*. Despite his strong support for *ta'addud* in case of need, al-Balqīnī's primary desire was for his opponents to concede that the case is at least disputed. Al-Balqīnī's treatise is entitled "Revealing the Proof in the Issue of *ta'addud* in a City" (*Izhār al-mustanad fī ta'addud al-jum'a fī al-balad*). This treatise is very small, consisting of only 6 pages, and it is printed within a large volume titled *Fatāwā al-Balqīnī*.³³⁹ Al-Balqīnī does not explicitly mention al-Subkī, but there is an indication that al-Balqīnī wrote his opinion as a refutation of al-Subkī's opinion, or at least those who were affected by al-Subkī's opinion. In his entry on al-Balqīnī, the Shāfi'ī historian al-Ghazzī (d. 1459) states that this treatise is in response to al-Subkī.³⁴⁰ Given the style of al-Balqīnī's *Izhār* and the sequence of its ideas, this is a further indication that al-Balqīnī is addressing al-Subkī; the ideas presented in *Izhār* correspond to the order of the ideas presented by al-Subkī in his *I'tiṣām*. In other words, al-Balqīnī mirrored al-Subkī's style, but opposed his arguments. The following segment discusses al-Balqīnī's argument because it highlights how al-Subkī's Shāfi'ī contemporaries responded to him.

Al-Subkī began *I'tiṣām* by reviewing the opinions of the Companions, and so al-Balqīnī adopted the same chronology. Al-Balqīnī argues that some of Al-Subkī's arguments can be used to allow *ta'addud* rather than prohibit it. For

³³⁹ Sirāj al-Dīn 'Umar b. Raslān al-Balqīnī, *Fatāwā al-Balqīnī*, ed. 'Abd al-Raḥmān al-Zawāwī (Jaddah: Dār al-Minhāj, 2014), 196-202.

³⁴⁰ Muḥammad b. Aḥmad al-Ghazzī, *Bahjat al-nāzirīn ilā tarājim al-mutā'akhirīn min al-Shāfi'īyya al-bāri'īn*, ed. 'Abd Allāh al-Kandarī (Beirut: Dār Ibn Ḥazm, 2000), 34.

example, in *I'tiṣām* al-Subkī mentions that Abū Hurayra asked 'Umar Ibn al-Khaṭṭāb about the place to establish the Friday prayer. 'Umar said, "Set it up wherever you are (*aqīmūhā ḥaythu mā kuntum*)". Al-Subkī comments that there is no indication in 'Umar's statement of *ta'addud* in one city. Rather, it only indicates the permissibility of establishing Friday prayers in cities and villages. Al-Balqīnī believes that the same statement demonstrated the permissibility of *ta'addud* for Friday prayers.³⁴¹

As al-Subkī proceeded to discuss the Followers opinions on this issue, al-Balqīnī did the same. While al-Subkī finds the aforementioned quote attributed to the well-known Follower 'Aṭā' as odd (*shādhah*), and that the jurists had responded to 'Aṭā' and countered his opinion, al-Balqīnī finds that the quote attributed to 'Aṭā' was received by the jurists with acceptance (*wa ka-dhālika naqala 'anhu ['Aṭā'] jam 'un mina al-'ulamā'*).³⁴² Moreover, al-Balqīnī provides examples in *Izhār* not found in *I'tiṣām* to further indicate the permissibility of *ta'addud* among the Followers. One of these examples is attributed to 'Umar Ibn Dīnār (d. 126/743), a well-known Follower who said that Friday prayers were held in every mosque.³⁴³

Al-Balqīnī then proceeded to review the opinions of the *madhhabs*, just as al-Subkī did in his *I'tiṣām*. Although al-Balqīnī and al-Subkī reviewed the opinions of *madhhabs* in an identical chronology, al-Balqīnī repeatedly argued that this issue is disputed and that there is no *ijmā'* against *ta'addud*.³⁴⁴ In fact, al-Balqīnī tends to show that the above indications signify an *ijmā'* in the

³⁴¹ Al-Balqīnī, *Fatāwā*, 197.

³⁴² Al-Balqīnī, *Fatāwā*, 197-198.

³⁴³ Al-Balqīnī, *Fatāwā*, 198.

³⁴⁴ Al-Balqīnī, *Fatāwā*, 198-201.

permissibility of *ta'addud* of Friday prayers in case of the need, and not the other way around.³⁴⁵

Al-Balqīnī concludes *Izhār* by noting the psychological and religious damage inflicted on the Muslim community by embracing the anti-*ta'addud* opinion. He focuses on the issue of *i'āda*, which is to oblige the people to perform *ṣalāt al-zuhr* after the Friday prayers in the event of *ta'addud*. As discussed before, this was supported by al-Subkī, and al-Ghazālī before him. Al-Balqīnī describes these consequences as severe with resulting hardship (*mashaqqa*) and doubt (*za'za'a*) to the worshipers. The negative feelings experienced by the worshipers every week, namely that their Friday prayers may be invalid, is contrary to the intention of religion. Al-Balqīnī cites the Qur'ānic verse, “God has not placed upon you in the religion any difficulty” (Q. 22:78). Al-Balqīnī urges people to ignore such opinions, concluding *Izhār* with, “O Muslims, I have good tidings for you. All your Friday prayers are valid (*ayyuhā al-muslimūn abshirū, inna juma'akum kulluhā ṣaḥīḥa*).”³⁴⁶

³⁴⁵ Al-Balqīnī, *Fatāwā*, 201. He does not use word *ijmā'* because it may contradict his appeal to *ikhtilāf*. His statement: ‘*wa istamarra 'amalu al-muslimīn min al-'ulamā' wa ghayruhum 'alā al-ta'addud.*’

³⁴⁶ Al-Balqīnī, *Fatāwā*, 201-202; Al-Balqīnī's observations on the psychological and religious damage to the Muslim community by embracing the anti-*ta'addud* opinion is still relevant today, causing religious and social division within Shāfi'ī communities. The Lebanese Shāfi'ī scholar and judge Muṣṭafā Muḥammad al-Ghalāyīnī (d. 1944) wrote his article in the famous journal, *al-Manār*, titled ‘The innovation of performing noon prayer after Friday prayer (*Bid'at ṣalāt al-zuhr ba'd al-jum'a*)’ in which he condemns the anti- *ta'addud* opinion. Al-Ghalāyīnī states that his motivation to write *Bid'at* was an incident occurred in his day about this issue. When some Shāfi'ī preachers in Beirut instructed the worshipers not to perform noon prayer after Friday prayer, other Shāfi'ī's *fuqahā'* objected. Accordingly, the Shāfi'ī students (*tullāb al-'ilm al-Shāfi'iyya*) were divided on this issue. Months later, an anti- *ta'addud* group in Beirut circulated a treatise attributed to the Egyptian Shāfi'ī jurist al-Shabrāmalsī in which he advocated *i'āda*. (Al-Shabrāmalsī is a well-known scholar in the *madhhab*, his full name, Nūr al-Dīn b. 'Alī al-Shabrāmalsī, died in 1676. He wrote a great 8-volume *hāshiyā* on al-Ramlī's *Nihāyat al-muḥtāj*). When al-Shabrāmalsī's treatise become distributed free of charge in Beirut due to the involvement of some rich publishers who were misled by an anti-*ta'addud* group, al-Ghalāyīnī decided to respond and write his

It is clear that the issue of *ta'addud* caused significant tension among the Shāfi'īs circles in the fourteenth century, especially between al-Subkī and al-Balqīnī. Al-Subkī seemed more idealistic and had a puritan propensity to be against *ta'addud* despite its troublesome legal consequences that were difficult to resolve. On the other hand, al-Balqīnī appeared to be more realistic and

article, *Bid'at*. The main argument of *Bid'at* is that the *i'āda* is mere innovation by late Shāfi'īs against *ta'addud* which has no basis in the opinion of al-imām al-Shāfi'ī himself. When al-Shāfi'ī was in Baghdad, al-Ghalāyīnī continues, he did not pray *zuhr* after Friday prayer. Al-Ghalāyīnī attributes his position in *Bid'at* to several Shāfi'ī senior figures of his day in both Lebanon and Syria. Among them were the *mufīī* of Lebanon, 'Abd al-Bāsiṭ al-Fākhūrī (d. 1905), and 'Īsā al-Kurdī (d. 1931) who was the Shaykh al-Shāfi'īyya in Damascus. "Bid'at ṣalāt al-*zuhr* ba'd al-*jum'a*," in *Majallat al-Manār*, vol. 7:1 (1323/1905), 941-948.

In a different region and as a response to frequent dispute that occurred in his day, the Egyptian Shāfi'ī Shaykh Salāma al-'Azzāmī (d. 1951) wrote his article in the journal *al-Islām* titled "Noon prayer after Friday prayer (*ṣalāt al-*zuhr* ba'd al-*jum'a*)*" to affirm that the practice of *i'āda* is the correct position of the Shāfi'ī *madhhab*. Al-'Azzāmī first clarified that writing the article does not mean that the dispute on this issue is something new. According to al-'Azzāmī, there are several great Shāfi'ī's jurists who respond very well to the objections of the issue of *i'āda*, resulting in no space to add more. However, the writings of those great Shāfi'ī's jurists, according to al-'Azzāmī, are not accessible to everyone. Al-'Azzāmī chose to write about *i'āda* in the journal *al-Islām* because of the journal's reputation and wide reach. Al-'Azzāmī begins with a list of works from the great Shāfi'ī's jurists who have responded to this issue. Among them was al-Shabrāmalsī, who wrote a treatise as a response to the dispute that occurred in seventeenth century in al-Azhar, which led the political authority to intervene and settle the conflict. According to al-'Azzāmī, during the twentieth century in Banī Suweif, a village in Upper Egypt, a Ḥanafī judge decried some Shāfi'īs' practice of *i'āda*. In response, the Shaykh al-Shāfi'īyya of his time, Muḥammad al-Najdī (d. unknown), wrote a treatise defending this practice. The rest of al-'Azzāmī's list are the well-known Palestine Azharī Shāfi'ī scholar and judge Yūsuf al-Nabhānī (d. 1932), Muḥammad al-Shanshawānī (d. unknown), and Azharī Shāfi'ī scholar Yūsuf al-Dajawī (d. 1946). Al-'Azzāmī held that the writings of these responders to the objectors of their day were comprehensive and sophisticated, which left no doubt that the practice of *i'āda* was the correct position in the Shāfi'ī *madhhab*. Building on these writings, al-'Azzāmī's main argument is that we do not know exactly whether al-Shāfi'ī prayed *zuhr* after the Friday prayer in Baghdad or not, because al-Shāfi'ī may have prayed *zuhr* secretly. Due to that, the practice of *i'āda* is performed as a precaution. That precaution derived (*mustanbaṭ*) by Shāfi'īs from the teachings of the Prophet Muḥammad urge one to be cautious in religious matters. He may have used the *ḥadīth* which says: Truly, what is lawful is evident, and what is unlawful is evident, and in between the two are matters which are doubtful which many people do not know. He who guards against doubtful things keeps his religion and honour blameless... al-Tirmidhī, *Jāmi'*, *Kitāb al-buyū'* (14), *Bāb mā jā' fī tark al-shubuhāt* (1). Al-'Azzāmī's article is cited in Muḥammad Amīn al-Kurdī, *Tanwīr al-qulūb fī mu'amalat 'allām al-ghuyūb*, (Beirut: al-Maktaba al-'Aṣriyya, 2004), 243-254.

considerate of human capacities and conditions. The following section will analyse the socio-political context of congregational mosques in the Mamlūk fourteenth century. This will help explain the surrounding circumstances which led al-Subkī to develop his opinions on this issue.

5. Socio-political context: congregational mosques

Most historical and architectural studies indicate that the Mamlūk fourteenth century was a turning point in the building of congregational mosques. In both Cairo and Damascus, the number of congregational mosques increased rapidly.³⁴⁷ According to our survey, the number of congregational mosques in the first half of the Mamlūk fourteenth century (700/1300-754/1353) was 42 (table 1, numbers 23-64), compared to 22 congregational mosques in the same region before the Mamlūk fourteenth century (table 1, numbers 1-22).

³⁴⁷ O'Kane, *Mosques of Egypt*, xxvi; Fernandes, "Mamluk Architecture," 108; Loiseau, "City," 184; Humphreys, "The Expressive Intent," 96; Bierman, "Art," 368; Al-Sayyid, *Tatawwur*, 59-68; Luz, "Icons," 239-240; Berkey, *Transmission*, 51; Jonathan Berkey, *Popular Preaching and Religious Authority in the Medieval Islamic Near East* (Seattle: University of Washington Press, 2001), 13, 38; Johs Pedersen and R. Kern and Ernst Diez, "Masǧid," in *Encyclopaedia of Islam*, First Edition (*EI*), accessed 11 January 2019, <https://reference.brillonline.com/entries/encyclopaedia-of-islam-1/masdjid>.

Table 1

*The number of congregational mosques existing in Cairo and Damascus
during the Mamlūk fourteenth century through 754/1353*

	Year of construction/ establishment (AH)	The name of the mosque	Other names	City	Reference ³⁴⁸
1	Pre-Mamlūk	‘Amr Ibn al-‘Āṣ	Al-Masjid al-‘Atīq	Cairo	M, 4:3
2	Pre-Mamlūk	The Umayyad	Masjid banī Umayya, Jāmi‘ Dimashq	Damascus	N, 2:318; J, 1:25
3	Pre-Mamlūk	Al-Azhar	-	Cairo	M, 1:56; 4:55
4	Pre-Mamlūk	Al-Ḥākīm	Jāmi‘ al-Khuṭba, Al-Jāmi‘ al-Anwar	Cairo	M, 4:61
5	Pre-Mamlūk	Ibn Ṭulūn	-	Cairo	M, 4:44
6	Pre-Mamlūk	Al-Aqmar	-	Cairo	M, 4:79
7	Pre-Mamlūk (Ayyubid)	Al-Muẓaffarī	Jāmi‘ al-Ḥanābila, Masjid al-Jabal	Damascus	N, 2:335; IA, 153
8	Pre-Mamlūk (Ayyubid)	Turbat al-Shāfi‘ī	-	Cairo	M, 4:90
9	Pre-Mamlūk (Ayyubid)	Al-Ṣāliḥ	-	Cairo	M, 4:90
10	Pre-Mamlūk (Ayyubid)	Al-Muṣallā	-	Damascus	N, 2:323
11	Pre-Mamlūk (Ayyubid)	Al-‘Uqayybia	Al-Tawba	Damascus	N, 2:328; J, 1:30
12	652	Jarrāḥ	-	Damascus	N, 2:323
13	654	Al-Naḥḥās	-	Damascus	N, 2:340
14	660	Ghayn	-	Cairo	M, 4:91
15	663	Al-Afram	-	Cairo	M, 4:92
16	665	Al-Zāhir Baybars	-	Cairo	M, 4:95
17	669	Al-Murjānī	-	Damascus	N, 2:340
18	671	Al-Muḥrānī	-	Cairo	M, 4:93
19	672	Dīr al-Ṭīn	-	Cairo	M, 4:93
20	675	Al-Amīr Ḥasan	-	Cairo	M, 4:107; D, 9:388
21	680	Al-Nayrab	-	Damascus	J, 1:267

³⁴⁸ List of Abbreviations:

IK= Ibn Kathīr, *Bidāya*.

M= al-Maqrīzī, *Khīṭaṭ*.

N= al- Nu‘aymī, *Dāris*.

J= al-Jazarī, *Tārīkh*.

IA= Ibn ‘Abd al-Ḥādī, *Thimār*.

D= al-Dawādārī, *Kanz*.

22	683	Ibn ‘Abd al-Zāhir	-	Cairo	M, 4:135
23	700	Ibn al-Labbān	-	Cairo	M, 4:101
24	701	Karāy	-	Cairo	M, 4:136; D, 9:389
25	703	Kafr Baṭnā	-	Damascus	J, 2:325
26	706	Al-Afram	-	Damascus	N, 2:335; IA, 157; D, 9:390
27	707	Al-Ṭaybrasī	-	Cairo	M, 4:102
28	712	Al-Nāṣirī	Al-Jadīd	Cairo	M, 4:102
29	713	Al-Jākī	-	Cairo	M, 4:119
30	714	Al-Mashhad	Al-Nafisī	Cairo	M, 4:106; D, 9:388
31	717	Tinkiz	-	Damascus	N, 2:327; D, 9:390
32	718	Al-Sulṭān Muḥammad	Al-Qal‘a	Cairo	M, 4:137; J, 1:57
33	718	Gabriel	-	Damascus	N, 2:324
34	718	Karīm al-Dīn	Al-Qabībāt, Al-Karīmī	Damascus	N, 2:321; IA, 144; D, 9:390
35	721	Al-Aqṣāb	Al-Qaṣab	Damascus	N, 2:331
36	729	Al-Ḥarrānī	-	Cairo	M, 4:139; D, 9:389
37	730	Almās	-	Cairo	M, 4:107; J, 2:391; D, 9:389
38	730	Maghlaṭāy	Al-Barqiyya	Cairo	M, 4:139
39	730	Qawṣūn	-	Cairo	M, 4:108; J, 2:394; D, 9:389
40	730	Al-Tawba	-	Cairo	J, 2:380; D, 9:389
41	730	Al-Madrassa al- Ṣāliḥiyya	-	Cairo	M, 4:217; J, 2:383; D, 9:389
42	730	Ṣarūjā	Al-‘Arab	Cairo	M, 4:120; D, 9:389
43	731	Karīm al-Dīn	Al-Qābūn, Al-Karīmī	Damascus	N, 2:332; IA, 131; IK, 14:99
44	731	Al-Madrassa al- Ma‘aziyya	-	Cairo	J, 2:466
45	732	Al-Mulk	-	Cairo	M, 4:112; J, 2:520; D, 9:389
46	732	Al-Madrassa al- Shāmiyya al- Barrāniyya	-	Damascus	J, 2:528; N, 2:208

47	733	Al-Rabwa	-	Damascus	J, 2:603; N, 2:339; IA, 123
48	734	Al-Madrasa al-Khātūniyya al-Barrāniyya	-	Damascus	J, 2:665
49	735	Bāb al-Jābiyya	-	Damascus	J, 2:778
50	735	Al-Qal‘a	Al-Sultān Muḥammad	Damascus	N, 2:341
51	736	Al-Khalīkhānī	-	Damascus	J, 2:866; N, 2:324; IA, 133
52	736	Bashtāk	-	Cairo	M, 4:110; J, 2:869; D, 9:389
53	737	Al-Khaṭīrī	-	Cairo	M, 4:115; J, 2:931; D, 9:389
54	737	Al-Sitt Ḥadaq	-	Cairo	M, 4:117; J, 2:931
55	740	Al-Mārdīnī	-	Cairo	M, 4:109
56	740	Aq Sinqr	-	Cairo	M, 4:111
57	741	Al-Sitt Sikka	-	Cairo	M, 4:138
58	746	Aşlam	-	Cairo	M, 4:110
59	747	Yalbughā	Al- Jāmi‘ al-Sayfī	Damascus	N, 2:326; IA, 121
60	748	Al-Mizza al-Fawqānī	-	Damascus	IK, 14:216; IA, 104
61	748	Al-Ismā‘īlī	-	Cairo	M, 4:141
62	749	Arghūn	Sanjaqdār	Damascus	IA, 227
63	751	Manjak	-	Cairo	M, 4:128
64	754	Al-Mazāz	-	Damascus	IK, 14:555; IA, 104

Studies that deal with congregational mosques in the Mamlūk era mention a spectrum of reasons for the rapid increase during that time. Humphreys argues that a primary reason was that the patronage of congregational mosques was no longer limited to the Mamlūks; instead, local individuals could now become patrons.³⁴⁹ Loiseau mentions that one of the

³⁴⁹ Humphreys, “The Expressive Intent,” 93.

reasons for the increase was the addition of rostrums in already existing religious madrasas so that those madrasas could now host Friday noon prayers.³⁵⁰ Loiseau also argues that the urban expansion of the cities of Cairo and Damascus as well as the growth of their population required more congregational mosques to fulfill the need of the new neighborhoods.³⁵¹ Luz argues that the mosques' patrons desired prestige and legitimacy.³⁵² All these reasons contributed to the construction of new congregational mosques in the Mamlūk era, including what I would add to be personal piety and the desire to worship.³⁵³

In order to understand the rapid growth of congregational mosques in the first half of the Mamlūk fourteenth century, we will start with a consideration of congregational mosques prior to this era. This comparison will allow us to identify the first half of the Mamlūk fourteenth century as a turning point in the history of congregational mosques in the Middle Ages.

5.1. Congregational mosques in pre-fourteenth century Mamlūk period

When the Ayyubids came to power, there were six congregational mosques in Cairo and Damascus, most of which dated back to the Fatimid era (table 1, numbers 1-6). In the Ayyubid era, five mosques were built in Cairo and Damascus (table 1, numbers 7-11). One of the mosques built in Damascus was al-Muzaffarī, funded individually by the neighborhood people (table 1, mosque number 7). The other four mosques were built by the Ayyubid sultāns, two of

³⁵⁰ Loiseau, "City," 191.

³⁵¹ Loiseau, "City," 195.

³⁵² Luz, "Icons," 241.

³⁵³ Al-Dawādārī, *Kanz*, 9:384.

which were in Cairo and two in Damascus. When the Mamlūks came to power in 648/1250, they built new congregational mosques. Between 648/1250 and 677/1279, they built nine congregational mosques, six of which were in Cairo and three in Damascus (table 1, numbers 12-20).³⁵⁴

Between 677/1279 and 698/1299, a group of sultāns seized power, namely, Qalāwūn and his two sons Khalīl and al-Nāṣir Muḥammad (first reign 692/1293-693/1294), as well as the two Mamlūk Emirs, Kitbugha and Lājīn. This period was one of instability; it witnessed many coups within the Mamlūk government, as discussed in Chapter One. In addition, the Crusaders and the Mongols had a destabilising effect on the economic situation. This effect was reflected in the number of congregational mosques, where only two new mosques were built: one in Cairo and the other in Damascus (table 1, numbers 21, 22). They were not built by the Mamlūks, but rather through individual initiatives and local communities.³⁵⁵

In summary, the number of congregational mosques before the Mamlūk fourteenth century was twenty-two. Those twenty-two mosques were built from the period of Muslim invasion of Cairo and Damascus to the thirteenth century. Next, we will observe how these twenty-two mosques, built over the course of centuries, equal less than half of the number of mosques that were built in the first half of the fourteenth century.

³⁵⁴ Al-Maqrīzī, *Khīṭaṭ*, 1:56; 4:3, 44, 55, 61, 79, 90-93, 95, 107; al-Nu‘aymī, *Dāris*, 2:318, 323, 328, 335, 340; al-Jazarī, *Tārīkh*, 1:25, 30; Ibn ‘Abd al-Ḥādī, *Thimār*, 153; al-Dawādārī, *Kanz*, 9:388.

³⁵⁵ Al-Maqrīzī, *Khīṭaṭ*, 4:135; al-Jazarī, *Tārīkh*, 1:267.

5.2. Congregational mosques in fourteenth century Mamlūk period

As mentioned, the first half of the fourteenth century was characterised as the most prominent era for the building of congregational mosques in both Cairo and Damascus. Between 700/1300 and 754/1353, the number of congregational mosques reached forty-two. Most of these mosques were built during the third reign of Sulṭān al-Nāṣir Muḥammad (710/1310-741/1341) and were financed by the Sulṭān himself. After his death, his senior emirs continued to construct congregational mosques up to 754/1353. Mamlūk expansion of congregational mosques in the first half of the fourteenth century was the driving force behind al-Subkī's writing on the plurality of congregational mosques.

During the third reign of Sulṭān al-Nāṣir Muḥammad 710/1310-741/1341, thirty new congregational mosques were built in Cairo and Damascus (table 1, numbers 28-57). Only two were individually funded (table 1, numbers 36, 47), while the other twenty-eight mosques were funded by Sulṭān al-Nāṣir himself. Three out of those twenty-eight bore the name of Sulṭān al-Nāṣir himself (table 1, numbers 28, 32, 50). Fourteen of the others bore the names of his emirs (table 1, numbers 29, 31, 33, 34, 37, 38, 39, 42, 43, 45, 51, 52, 53, 55) and two bore the names of his women slaves (*jawārī*) (table 1, numbers 54, 57). The remaining mosques bore the names of the neighborhoods or madrasas where the mosques were built, and these were directly funded by Sulṭān al-Nāṣir, (table 1, numbers 30, 35, 40, 41, 44, 46, 48, 49).³⁵⁶

³⁵⁶ Al-Maqrīzī, *Khīṭaṭ*, 4:102, 106-110, 112, 115, 117, 119-120, 137-139, 217; al-Nu'aymī, *Dāris*, 2:208, 321, 324, 327, 331-332, 339, 341; al-Jazarī, *Tārīkh*, 1:57; 2:380, 383, 391, 394, 466, 520, 528, 603, 665, 778, 866, 869, 931; al-Dawādārī, *Kanz*, 9:388-390; Ibn 'Abd al-Ḥādī, *Thimār*, 123, 131, 133, 144; Ibn Kathīr, *Bidāya*, 14:99.

Sulṭāns funding mosques bearing their name is not particularly surprising. It is however noteworthy that Sulṭān al-Nāṣir funded most of the mosques that bear the names of his emirs. The establishment of these mosques was a gift to his faithful emirs, just like lands and precious clothes. The Sulṭān aimed to strengthen his relationship with his emirs to maintain their loyalty, especially since he was cognizant of the many conspiracies and plots since the very beginning of the Mamlūk era, as discussed in Chapter One. Through these gifts, Sulṭān Muḥammad succeeded in shaping a new elite of Mamlūks credited for sustaining Sulṭān al-Nāṣir's reign as the longest throughout the Mamlūk era. In addition, he strengthened his relationship with these emirs through marriage; he married the daughters of his emirs, and accepted his daughters' marriage to his emirs as well.³⁵⁷

Loyalty and sincerity were not the sole reasons behind Sulṭān al-Nāṣir's gifts to his emirs; close affection and gratitude were also reasons. The Sulṭān preferred the emirs Almās, al-Mārdīnī, and Qawṣūn personally due to the handsomeness of the three.³⁵⁸ The Sulṭān named a congregational mosque to Almās as a gift (table 1, number 37), although the latter did not speak Arabic and was not practicing Islam. In the same vein, the Sulṭān presented another mosque to al-Mārdīnī (table 1, number 55), who was his steward of wine. The Sulṭān also built a mosque for Qawṣūn (table 1, number 39), who was one of the Sulṭān's closest friends.³⁵⁹

³⁵⁷ Flinterman and Steenbergen, "Al-Nasir Muhammad," 93, 99; Mazor, *Manṣūriyya*, 214.

³⁵⁸ Flinterman and Steenbergen, "Al-Nasir Muhammad," 97.

³⁵⁹ Al-Maqrīzī, *Khīṭaṭ*, 4:107-109; al-Jazarī, *Tārīkh*, 2:391, 394; al-Dawādārī, *Kanz*, 9:389.

The Sulṭān's gratitude was also extended to former Christian officials who converted to Islam and served in his court. This gratitude was due to their professional ability in the management of the state and financial accounts, which contributed to the stability of Sulṭān al-Nāṣir's era. We discussed this relationship in some detail in the previous chapter. Three congregational mosques were given to them by the Sulṭān, two of which were given to the Sulṭān's deputy, Karīm al-Dīn al-Kabīr (table 1, numbers 34, 43), both of which are in Damascus and bear the name of Karīm al-Dīn. The Sulṭān also gifted Gabriel Mosque in Damascus (table 1, number 33) to a former Christian official who had converted to Islam by the same name. Gabriel was Sulṭān al-Nāṣir Muḥammad's minister in Damascus, a rank just below the governor of Damascus. Gabriel was also responsible for Sulṭān al-Nāṣir's mosques in Damascus.³⁶⁰

Sulṭān al-Nāṣir spent huge fortunes in establishing these mosques. The Sulṭān brought Iranian craftsmen from the Mongol Ilkhanid state to build his own mosque, Sulṭān al-Nāṣir Mosque, and the mosque of his Emir Qawṣūn in Cairo (table 1, numbers 32, 39). This arrangement was after the Mongol conversion to Sunnīsm in 717/1317. The idea began when Sulṭān al-Nāṣir's ambassador to the Mongols regaled him with descriptions of Iran's mosques, specifically 'Alī Shāh Mosque in Tabriz. Marble was imported from Syria and Anatolia to build the Emir Almās Mosque (table 1, number 37). Sulṭān al-Nāṣir provided lanterns for each emir's mosque (table 1, numbers 29, 31, 33, 34, 37,

³⁶⁰ Al-Maqrīzī, *Khīṭaṭ*, 4:107-109; al-Nu'aymī, *Dāris*, 2:321, 324, 332; al-Jazarī, *Tārīkh*, 2:391, 394; al-Dawādārī, *Kanz*, 9:390; Ibn 'Abd al-Ḥādī, *Thimār*, 131, 144; Ibn Kathīr, *Bidāya*, 14:99. On Gabriel see Ibn Ḥajar, *Durar*, 2:262-264; Mūsā b. Muḥammad al-Yūsufī, *Nuzhat al-nāṣir fī sīrat al-malik al-Nāṣir*, ed. Aḥmad Ḥaṭīṭ (Beirut: 'Ālam al-Kutub, 1986), 277.

38, 39, 42, 43, 45, 51, 52, 53, 55). These lanterns were painted in gold. The Sulṭān ordered, at great cost, the construction of water channels to serve one of the mosques of Karīm al-Dīn al-Kabīr in Damascus (table 1, number 34). Mosques such as Sulṭān al-Nāṣir Mosque in Cairo and the other in Damascus (table 1, numbers 28, 50) required the demolition of a number of existing buildings, which in turn incurred additional costs by way of compensation to the affected people. Sulṭān al-Nāṣir's era witnessed political stability and economic prosperity, so it is not strange that his reign was characterised by an abundance of funds.³⁶¹

From 741/1341 until 754/1353, after the death of Sulṭān al-Nāṣir, the economic situation weakened and civil war between the emirs broke out, as elaborated upon in the previous chapter. In this period, eight sulṭāns seized power. This deterioration led to the lack of new congregational mosques. Only seven new mosques were built in that time (table 1, numbers, 58, 59, 60, 61, 62, 63, 64), five of which were built by five different emirs (table 1, numbers, 58, 59, 61, 62, 63). These were prominent emirs of Sulṭān al-Nāṣir Muḥammad, all of whom inherited great wealth during his reign. These five emirs managed to survive after the death of Sulṭān al-Nāṣir while all the remaining emirs were killed. Two out of seven congregational mosques built at the time were simple, financed by individuals, both of which were in Damascus. The first was a congregational mosque, al-Mizza al-Fawqānī, without much construction cost (table 1, number 60), and the second was al-Mazāz, a small congregational

³⁶¹ Al-Maqrīzī, *Khīṭaṭ*, 4:102, 107-109, 110, 112, 115, 119-120, 137, 139; al-Nu'aymī, *Dāris*, 2:321, 324, 327, 332, 341; al-Jazarī, *Tārīkh*, 1:57; 2:391, 394, 520, 866, 869, 931; al-Dawādārī, *Kanz*, 9:389-390; Ibn 'Abd al-Ḥādī, *Thimār*, 131, 133, 144; Ibn Kathīr, *Bidāya*, 14:99; O'Kane, *Mosques of Egypt*, 87, 94; Flinterman and Steenbergen, "Al-Nasir Muhammad," 107.

mosque in the al-Shāghūr neighborhood built by initiative from a local resident (table 1, number 64).³⁶²

6. Interpretation of al-Subkī's opinions in light of socio-political context of congregational mosques

6.1. The first opinion in 726/1326

We reviewed al-Subkī's first opinion in *Ibtihāj* regarding the plurality or *ta'addud* of Friday prayers in one city. At that time, al-Subkī supported *ta'addud* in case of need, which is the dominant opinion in the Shāfi'ī *madhhab*. Al-Subkī took this position in *Ibtihāj* because the text was intended to present the prevailing opinions in the *madhhab*, and one of its objectives was to train madrasa students. Also, when al-Subkī wrote *Ibtihāj*, he was playing the role of *faqīh*; he was not yet a *mufī* or judge in order to observe legal problems. Al-Subkī's first opinion in *Ibtihāj* also reflects the initial stages of Sulṭān al-Nāṣir Muḥammad's expansion project to build congregational mosques. The process of expansion was regulated by Shāfi'ī judges, and al-Subkī trusted that the determination of need will adhere to a Shāfi'ī standard.

According to our survey, the new congregational mosques built in Cairo between 1299 (the time in which al-Subkī came to Cairo), and 1326 (the time when he wrote his first opinion) are seven (table 1, numbers 23, 24, 27, 28, 29, 30, 32). In other words, al-Subkī witnessed the construction of nearly seven mosques in 27 years; which equates to a new mosque built every four years.

³⁶² Al-Maqrīzī, *Khīṭaṭ*, 4:110, 128, 141; al-Nu'aymī, *Dāris*, 2:326; Ibn 'Abd al-Ḥādī, *Thimār*, 104, 121, 227; Ibn Kathīr, *Bidāya*, 14:216, 555.

Historians note that when he was assigning leadership positions for the new congregational mosques, Sulṭān al-Nāṣir Muḥammad gained the legal support of Shāfi'ī judges during his reign. According to our survey, in 712/1312, Sulṭān al-Nāṣir passed the responsibility for delivering the sermons of his al-Nāṣirī Mosque (table 1, number 28) to Shāfi'ī Chief Judge Badr al-Dīn Ibn Jamā'a. Later, when 'Izz al-Dīn Ibn Jamā'a, son of Badr al-Dīn, took responsibility for the Shāfi'ī judiciary, he inherited the position of delivering sermons from his father under the Sulṭān's permission. The Sulṭān held a competition between the preachers of Cairo for his new congregational mosque, al-Sulṭān Muḥammad's Mosque (known also as the al-Qal'a Mosque) in 718/1318 (table 1, number 32). The winner was one of the most well-known Shāfi'ī preachers of Cairo, Jamāl al-Dīn al-Qaṣṭallānī. Al-Qaṣṭallānī was the preacher at the 'Amr Ibn al-'Āṣ Mosque, the oldest mosque in Cairo (table 1, number 1). However, when al-Qaṣṭallānī won the position at the al-Qal'a Mosque, he was in cooperation with the Shāfi'ī Chief Judge Badr al-Dīn Ibn Jamā'a to share the role as preachers of the al-Qal'a Mosque. It was agreed that Ibn Jamā'a would deliver his sermons in the presence of the Sulṭān, while al-Qaṣṭallānī preached at other times.³⁶³

³⁶³ Al-Maqrīzī, *Khīṭaṭ*, 4:3, 102, 137; al-Jazarī, *Tārīkh*, 1:57. It worth noting that while al-Subkī may have trusted the standard of Shāfi'ī judges to assess the need for constructing new congregational mosques, the Shāfi'ī notion of need became more lenient after al-Subkī's first opinion in 726/1326. They continued to support the Mamlūk expansion of congregational mosques even in areas that already had congregational mosques. Jalāl al-Dīn al-Qazwīnī, who took over the Shāfi'ī judiciary in Cairo (727-738), was entrusted to deliver sermons in two mosques, Qawṣūn (table 1, number 39) in 730/1330 and Bashtāk (table 1, number 52) in 736/1336. Jalāl al-Dīn al-Qazwīnī also was behind the renovation of a madrasa into a congregational mosque. In 730/1330, Emir Aqqūsh al-Ashraf wanted to add a Friday prayer rostrum in the Ṣāliḥiyya Madrasa. This madrasa was originally for the Shāfi'ī's, but because of its strategic location in al-Darb al-Aḥmar—the Mamlūk Center in Cairo, close to the house of Sulṭān al-Nāṣir Muḥammad itself—it had been converted into a residence place for the Sulṭān and emirs, and a permanent center for the four judges and public trials. Emir Aqqūsh asked the Shāfi'ī judge Jalāl al-Dīn al-Qazwīnī to issue a *fatwā* to introduce a rostrum in the madrasa. As a result, historians mention the support of al-Qazwīnī to add the rostrum to

Sulṭān al-Nāṣir Muḥammad was in need of Shāfi‘ī judges’ support to build his mosques, since Cairo, as mentioned in Chapter One, was a predominately Shāfi‘ī environment. It was a psychological, social, and legal requirement of the people in the areas where those mosques were built that the preachers of the congregational mosque were of the same *madhhab*.³⁶⁴

6.2. The second opinion in 754/1353

In 1353 Damascus, al-Subkī wrote his *I‘tiṣām* in which he was against the plurality, or *ta‘addud*, of Friday prayers in one city, whether it was according to a need or not. Al-Subkī’s opinion coincided with the peak of the Mamlūk expansion of congregational mosques. According to our survey, there were 28 congregational mosques built in both Cairo and Damascus between the year 1326 (at the time of al-Subkī’s first opinion) and the year 1353 (at the time of al-Subkī’s second opinion) (table 1, number 36-64). In other words, al-Subkī witnessed the building of 28 mosques in the 27 years since he finished writing his first opinion, which is more than one congregational mosque every year. This

this madrasa, and al-Qazwīnī to be a preacher in it as well (table 1, number 41). All the congregational mosques, Qawṣūn, Bashtāk, and Ṣālihiyya Madrasa were constructed in one area: al-Darb al-Aḥmar, where several new congregational mosques were located (table 1, number 28, 29, 30, 32, 37, 38, 42). Al-Sayyid notes also that most of the fourteenth century Mamlūk congregational mosques in Cairo were concentrated in al-Darb al-Aḥmar area, *Taṭawwūr*, 59-68.

³⁶⁴ Marion Katz, “Friday Prayer,” in *Encyclopaedia of Islam*, THREE, accessed 11 January 2019, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/friday-prayer>; Daniella Talmon Heller, *Islamic Piety in Medieval Syria: Mosques, Cemeteries and Sermons under the Zangids and Ayyūbids (1146-1260)* (Leiden: Brill, 2007), 46; Behnam Sadeghi, *The Logic of Law Making in Islam* (Cambridge: Cambridge University Press, 2005), 40. For a new perspective see Ibn Taymiyya’s *fatwā* in responding to tension in his day on this issue. The *fatwā* is analysed in Bernard Weiss, “Ibn Taymiyya on Leadership in the Ritual Prayer,” in *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, (Cambridge, MA: Harvard University Press, 1996), 63-71.

gives us an indication that al-Subkī's second opinion was a reflection of his reserve in the face of this acceleration in the construction of congregational mosques.

Since al-Subkī's focus in *I'tiṣām* was on Damascus and particularly seven new congregational mosques authorised by the Ḥanbalī judge, it seems that the Ḥanbalīs were those who promote *ta'addud*, mostly due to the exceptional legal and social characteristics of the Ḥanbalīs in fourteenth century Damascus. Before discussing the legal and social characteristic of the Ḥanbalīs of Damascus, I will try to identify the circumstances of the seven new congregational mosques that al-Subkī targeted. I was able to find information about six mosques only. Al-Subkī named and located three of them: al-Khalīkhānī in al-Shāghūr, and Yalbughā and Arghūn in al-Naṣr. However, based on our survey, the others may be Karīm al-Dīn, Bāb al-Jābiyya, and al-Mazāz, all of which were in al-Shāghūr. All six congregational mosques are Ḥanbalī mosques, which corresponds with what al-Subkī mentioned, namely that they were established through legal permission from the Ḥanbalī judge.

Regarding al-Shāghūr, and in chronological order, the first one built was Karīm al-Dīn (table 1, number 34). It was established in 718/1318, and a Ḥanbalī preacher was appointed. The Mosque of Bāb al-Jābiyya (table 1, number 49) was built through a decree issued by Sulṭān al-Nāṣir Muḥammad in 735/1335 with direct funding from him. The governor of Damascus executed the decree after a court order was issued by the Ḥanbalī Chief Judge regarding its establishment. A year later, with help from the Sulṭān al-Nāṣir Muḥammad, Emir Najm al-Dīn al-Khalīkhānī built a new congregational mosque in his name (table 1, number 51). The preacher was Ibn al-Qayyim al-Jawziyya, the well-known Ḥanbalī

scholar. In the year 754/1353, the Ḥanbalī Chief Judge authorised a new congregational mosque in al-Mazāz. Ibn Kathīr provides more information on the incident. It began when a wealthy resident in al-Shāghūr named Ja‘far al-Zaybī wanted to build a congregational mosque near his home. When the building was complete, Ja‘far consulted the people of al-Shāghūr and appointed Jamāl al-Dīn, the son of the well-known Ḥanbalī jurist Ibn al-Qayyim al-Jawziyya. Ibn Kathīr says that some of the judges, most likely including al-Subkī, objected to this act before the governor of Damascus. Thereafter, al-Shāghūr’s residents gathered and went to the governor of Damascus, holding Qur’ānic scripts and asking him to continue the sermon in their mosque, which he allowed according to Ibn Kathīr. As a result, a legal dispute arose between the four judges on the validity of this Friday prayer in the presence of the governor, who referred the case to al-Mardāwī, the Ḥanbalī judge, for a decision. Al-Mardāwī ruled that the case was legally valid.³⁶⁵

The other two congregational mosques are Yalbughā (table 1, number 59) and Arghūn (table 1, number 62), both in al-Naṣr area. Yalbughā and Arghūn are Mamlūks who both assumed the post of governor of Damascus in their respective times. They built their congregational mosques in the same area, al-Naṣr, because of its alignment to the Citadel of Damascus, which was the headquarters of the governors of Damascus at the time. Yalbughā decided to build a very large mosque during his reign and name it after himself. The mosque was vast and was built in a crowded area, requiring the demolition of some buildings. The construction of the mosque was thus not completed until

³⁶⁵ Al-Nu‘aymī, *Dāris*, 2:321, 324; al-Jazarī, *Tārīkh*, 2:778, 866; al-Dawādārī, *Kanz*, 9:390; Ibn ‘Abd al-Ḥādī, *Thimār*, 133, 144; Ibn Kathīr, *Bidāya*, 14:285.

747/1347. Yalbughā then appointed a Ḥanbalī preacher to this mosque. A similar scenario occurred with Yalbughā’s successor, Arghūn, the governor of Damascus. Arghūn also built his congregational mosque in the same area in 749/1348 and gave its leadership to Ḥanbalīs.³⁶⁶

The legal and social characteristics of the Ḥanbalī community in fourteenth century Damascus seems to have contributed to the promotion of *ta‘addud*. Legally, the Ḥanbalī *madhhab* is the most flexible *madhhab* in the provisions of Friday prayer in five aspects. First of all, the Ḥanbalīs claim an *ijmā‘* for the permissibility of *ta‘addud* of the Friday prayer in cases of need. This is a noteworthy point; while the remaining the *madhhabs* support *ta‘addud* in case of need, the Ḥanbalīs believe that this has become a matter of consensus amongst the scholars. This opinion was cited by one of the most prominent Ḥanbalī jurists, ‘Abd Allāh Ibn Qudāma al-Maqdisī (d. 1223).³⁶⁷ Ibn Qudāma’s opinion became indisputable in the successive Ḥanbalī generations due to their dependence on his works.³⁶⁸ Secondly, while the Ḥanbalīs do not differ greatly

³⁶⁶ Al-Nu‘aymī, *Dāris*, 2:326; Ibn ‘Abd al-Hādī, *Thimār*, 121, 227.

³⁶⁷ Muwaffaq al-Dīn b. ‘Abd Allāh Ibn Qudāma al-Maqdisī, *al-Kāfi fī fiqh al-imām Aḥmad*, 4 vols, (Beirut: Dār al-Kutub al-‘Ilmiyya, 1994), 1:223. Ibn Qudāma’s statement: (*fā’in ihtīja ilā akthara min jum‘a; jāz, li-‘annahā* [Friday prayer] *ṣulliyat fī al-amṣār al-‘azīma fī jawāmi‘ min ghayr nakīr, faṣāra dhālika ijmā‘an*). It worth noting that *Kāfi* is a *mukhtaṣar* which serves to focus on the *mashhūr* of the *madhhab*. Mentioning *ijmā‘* in the permissibility of *ta‘addud* by Ibn Qudāma in *Kāfi* means that this is not a contested issue in the Ḥanbalī *madhhab*.

³⁶⁸ The Ḥanbalīs hold the opinions of Ibn Qudāma in high regard. Most of the late authoritative works in Ḥanbalī law are based on Ibn Qudāma’s work. For a list of *shurūḥ*, *ḥawāshī*, and *taqrīrāt* on Ibn Qudāma’s legal works by late generation of Ḥanbalīs, see the introduction of the editor of Ibn Qudāma’s legal theory work, *Rawḍat al-nāzir wa jannat al-manāzir*, ed. Sha‘bān Muḥannad Ismā‘īl, 2 vols (Riyadh: al-Maktaba al-Tadmuriyya, 1998), 1:24-32. For a brief entry on Ibn Qudāma see G. Makdisi, “Ibn Qudāma al-Maqdisī,” in *Encyclopaedia of Islam*, 2nd edition (*EI*), accessed 13 Sep 2019, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/ibn-kudama-al-makdisi->. The reason that Ibn Qudāma’s legal writings were highly regarded in his time and after is his great effort to crystallise the *madhhab*. He wrote four famous legal works which serve Ḥanbalī students depending on their education levels. The aforementioned *Kāfi* as well as *‘Umdat al-fiqh*, ed. Aḥmad ‘Azzūz

from the remaining *madhhabs* in determining the need of an urban expansion, they are unique in their rationale. They cite ‘the fear of sedition’ (*al-khawf min al-fitna*), which is where potential doctrinal differences, which may lead to dispute between two groups in one congregational mosque, allow each group to legally establish and build their own congregational mosque.³⁶⁹

Thirdly, the legal requirement of the Ḥanbalī *madhhab* to start the Friday prayer is a quorum of at least three free men in each mosque. The legal requirement of the other *madhhabs*, including the Shāfi‘ī *madhhab*, is a quorum of at least forty free men in each mosque.³⁷⁰ Although Aḥmad Ibn Ḥanbal stipulated 40 free men to hold Friday prayer in adherence to his master al-Shāfi‘ī,³⁷¹ the fourteenth century Mamlūk Ḥanbalīs supported the opinion of only requiring three free men. The Ḥanbalī judge al-Mardāwī, al-Subkī’s colleague,³⁷² ruled that the establishment of Friday prayer will be valid with at

(Beirut: al-Maktaba al-‘Aṣriyya, 2004) are intended to be *mukhtaṣarāt* for beginners. Ibn Qudāma mentioned this in the introduction of both books, *Kāfi*, 1:14; *Umdat*, 11-12. He also wrote *al-Muqni‘ fī fiqh al-imām Aḥmad*, ed. Maḥmūd al-Arnā‘ūt and Yāsīn al-Khaṭīb (Jeddah: Maktabat al-Sawādī, 2000) where he also mentioned in its introduction that this book was intended for intermediate students (...*fa-hādihā kitāb fī al-fiqh ‘alā madhhab al-imām Aḥmad...wasaṭān bayn al-qaṣīr wa al-ṭawīl...*), *Muqni‘*, 1:21-22. Finally, in *al-Mughnī*, ed. ‘Abd Allāh al-Turkī and ‘Abd al-Fattāḥ al-Ḥulū, 15 vols (Riyadh: Dār ‘Ālam al-Kutub, 1997), Ibn Qudāma mentioned in its introduction that this book focuses on *ikhtilāf*, *Mughnī*, 1:4-5. Today, Ibn Qudāma’s four works are taught in the same order in the curricula for the Bachelor’s degree (four years) in the Fiqh department of the Sharī‘a College at the Imam Mohammed ibn Saud University in Saudi Arabia.

³⁶⁹ Ibn Qudāma, *Mughnī*, 2:248; Shams al-Dīn Muḥammad b. ‘Abd Allāh al-Zarkashī, *Sharḥ al-Zarkashī ‘ala mukhtaṣar al-Khuraqī*, 7 vols (Riyadh: Dār al-‘Ubaykān, 1993), 2:196; Maṅṣūr b. Yūnus al-Bahūtī, *Kashshāf al-qinā‘ ‘an matn al-iqnā‘*, 6 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 1983) 2:42; Muṣṭafā Ibn Sa‘ad al-Ruḥaybānī, *Maṭālib al-nuhā fī sharḥ al-muntahā*, 6 vols (Beirut: al-Maktab al-Islāmī, 1994), 1:780.

³⁷⁰ The requirement of 40 free men is almost undisputed among Shāfi‘īs. Ḥanafīs and Mālīkīs required 40 too but with dispute amongst them, “Ṣalāt al-jum‘a,” *al-Mawsū‘a al-fiqhiyya*, 27:202; for useful discussion on the legal development on the number of worshipers required to start the Friday prayer across the *madhhabs*, see Katz, “Friday Prayer,” *EI*³.

³⁷¹ Katz, “Friday Prayer,” *EI*³.

³⁷² Al-Mardāwī may be the one al-Subkī refers to in his *I‘tiṣām* as being responsible for giving permission to build the new congregational mosques in Damascus.

least three persons. This ruling was also held by the well-known respected jurist Ibn Mufliḥ (d. 1362),³⁷³ al-Mardāwī's deputy in the judiciary and son-in-law.³⁷⁴ Fourthly, while the Ḥanafīs limit Friday prayers to cities and the Shāfi'īs and Mālikīs require a city or village, Ḥanbalīs allow the Friday prayer in any vicinity, including deserts and tents edifices (*maḍārib al-khiyām*).³⁷⁵

Finally, the legal time of the Friday prayer for Ḥanbalīs is earlier than the other *madhhabs*. The remaining *madhhabs* consider the Friday prayer time to be the same as the noon prayer (*ṣalāt al-ẓuhr*) time, whereas the Ḥanbalīs calculate the Friday prayer time to be from the sun's decline in the morning (*ba'd al-zawāl*).³⁷⁶ This may explain al-Subkī's legal hesitation regarding the validity of the other Friday prayers in Damascus, particularly his own at the Umayyad Mosque. We have seen that al-Subkī considers the legal consequences regarding the existence of more than one congregational mosque in Damascus. The occurrence of more than one Friday prayer at the same time in one city will cause the invalidity of the remaining Friday prayers after the one performed first. If the Ḥanbalīs pray earlier, this would in turn cause the Friday prayer at the Umayyad Mosque as well as the remaining mosques to be invalid.

As well as the legal explanations outlined above, the social nature of the Ḥanbalī community in Damascus also contributed in some way to the adoption

³⁷³ Muḥammad b. Muḥammad Ibn Mufliḥ, *Furū' Ibn Mufliḥ*, ed. 'Abd Allāh al-Turkī, 11 vols (Riyadh: Mu'assasat al-Risāla, 2003), 2:99.

³⁷⁴ Daniella Talmon Heller, "Ibn Mufliḥ," in *Encyclopaedia of Islam*, THREE, accessed 15 Sep 2019, <https://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/ibn-muflih->.

³⁷⁵ Ibn Qudāma, *Mughnī*, 2:275; al-Bahūtī, *Kashshāf*, 2:33; al-Ruḥaybānī, *Maṭālib*, 1:759; "Ṣalāt al-jum'a," *al-Mawsū'a al-fiqhiyya*, 27:196.

³⁷⁶ Ibn Qudāma, *Mughnī*, 2:264-265; al-Bahūtī, *Kashshāf*, 2:26; al-Ruḥaybānī, *Maṭālib*, 1:755; "Ṣalāt al-jum'a," *al-Mawsū'a al-fiqhiyya*, 27:197-198. Due to the influence of the Ḥanbalī *madhhab*, Friday sermons begin as early as 10 am in modern-day Riyadh, the capital of Saudi Arabia.

of *ta'addud*. Ḥanbalīs tend to live in their own community in Damascus and consequently build their own congregational mosques in the areas where they are mostly raised. The Ḥanbalī community in Damascus was famously associated with three neighborhoods: Jabal Qāsyūn, al-Ṣālihiyya, and al-Shāghūr.

Jabal Qāsyūn, or the mountain of Qāsyūn, was the first settlement of Ḥanbalī immigrants in Damascus. They arrived in the eleventh century when they fled from the Crusades in Palestine.³⁷⁷ Heller suggests that since the arrival of Ḥanbalīs in Damascus, they favored having their own mosques, whether small mosques for daily prayers or large congregational mosques.³⁷⁸ Concerning congregational mosques, in circa 1201, the Ḥanbalīs built al-Muẓaffarī Mosque, or Jāmi' al-Ḥanābila, in Jabal Qāsyūn (table 1, number, 7). This mosque was built by an initiative of a group of Ḥanbalīs immigrants headed by Aḥmad Ibn Qudāma al-Maqdisī, the brother of the aforementioned famous scholar 'Abd Allāh Ibn Qudāma. Since then, several well-known names from the family of Ibn Qudāma took over the al-Muẓaffarī's preaching.³⁷⁹

Al-Muẓaffarī Mosque was considered a scholarly centre and a gathering point for the Ḥanbalīs, especially after several incidents of dispute occurred in the Ḥanbalī teaching space at Umayyad Mosque. Since the Ayyubid dynasty, while the Friday sermon at the Umayyad Mosque assigned to the Shāfi'īs, each

³⁷⁷ Laoust, "Ḥanābila," *EP*; for a historical account of this, see Shams al-Dīn Muḥammad b. 'Alī Ibn Ṭūlūn, *al-Qalā'id al-jawhariyya fī tārikh al-Ṣālihiyya* (Damascus: Muḥamma' al-Lughā al-'Arabiyya, 1981), 65-82. Ibn Ṭūlūn mentions detailed information on this first settlement, including the reasons behind this immigration, the immigrants' route from Palestine to Damascus, a list of immigrant names, and a description of the immigrants' houses in the Jabal Qāsyūn. For an academic study on this, see Heller, "The Shaykh," 103-120.

³⁷⁸ Heller, *Islamic Piety*, 39-43, 49.

³⁷⁹ Heller, *Islamic Piety*, 93.

madhhab had a niche *mihrāb* where they prayed five daily prayers and held classes.³⁸⁰ Heller states that in the early thirteenth century there were frequent disputes between the Ḥanbalīs and some associates of other *madhhabs* on some religious issues. Following these problems, the political authority removed the *mihrāb* of the Ḥanbalīs for nearly 17 years.³⁸¹ Perhaps those repeated tensions caused the Ḥanbalīs to be more independent, favouring their own mosques and subsequently developing the above-mentioned principle of ‘the fear of sedition’ (*al-khawf min al-fitna*) to legally justify *ta‘addud*.

With the expansion of the Ḥanbalī community in Jabal Qāsyūn, a new neighborhood developed at the foot of the mountain of Qāsyūn (*safḥ al-jabal*). The area became known as al-Ṣāliḥiyya.³⁸² In it, Ḥanbalīs built a congregational mosque (table 1, number 26). In his visit to al-Ṣāliḥiyya in the early fourteenth century, the famous traveler Ibn Baṭṭūṭa (d. 1369) describes the beauty of the *jāmi‘* and market, noting that all the people of al-Ṣāliḥiyya are followers of the *madhhab* of Aḥmad Ibn Ḥanbal.³⁸³

Al-Shāghūr also seems to be associated with Ḥanbalīs, although we do not have concrete evidence of that. However, there are indications; al-Subkī indeed mentioned that the Ḥanbalī judge was the one to authorise the establishment of all five new congregational mosques in al-Shāghūr. Most of the five mosques had a Ḥanbalī preacher; Ibn Kathīr’s account of one of these five

³⁸⁰ Heller, *Islamic Piety*, 46-47; For the exact location of the *mihrāb* of each *madhhab* in early fourteenth century, see Shihāb al-Dīn Aḥmad b. Faḍl al-‘Umarī, *Masālik al-absār fī mamālik al-amṣār*, ed. Kāmil al-Jabbūrī, 27 vols (Beirut: Dār al-Kutub al-‘Ilmiyya, 2010), 2:252-253.

³⁸¹ Heller, *Islamic Piety*, 47.

³⁸² Ibn Ṭūlūn, *Qalā‘id*, 84-87.

³⁸³ Cited in Ibn Ṭūlūn, *Qalā‘id*, 8; Ibn Baṭṭūṭa’s statement ‘*wa aḥluhā* [al-Ṣāliḥiyya] *kulluhum ‘alā madhhab al-imām Aḥmad Ibn Ḥanbal*’. Ibn Baṭṭūṭa perhaps meant that most, not all, of the people of al-Ṣāliḥiyya were Ḥanbalīs.

mosques, al-Mazāz Mosque, indicates that the person who built the mosque, Ja‘far al-Zaybī, consulted the people of al-Shāghūr about choosing the preacher of the al-Mazāz Mosque. Jamāl al-Dīn, the son of the well-known Ḥanbalī jurist Ibn al-Qayyim al-Jawziyya, was chosen. Having a preacher or *imām* from the Ḥanbalī *madhhab* indicates that the worshipers are likely Ḥanbalīs. Another indication that al-Shāghūr associated with Ḥanbalīs is that Ibn Taymiyya took al-Qaṣṣā’īn Madrasa as his residence as well as his teaching seat. Al-Qaṣṣā’īn Madrasa is located in the north of al-Shāghūr, attached to the wall from the south side (*al-Shāghūr al-juwwānī*).³⁸⁴

The Ḥanbalī tendency to reside in close proximity is mostly because Ḥanbalī community was bound together not only by *madhhab* but even more through lineage and marriage, a matter not commonly found among any other followers of the various *madhhabs*. The intermarriage, shared lineage, and interdependence were the most important social links within the Ḥanbalī community,³⁸⁵ which was essentially like a tribe. Among the most famous Ḥanbalī families linked by descent were the families of Ibn Qudāma, Ibn ‘Abd al-Ḥādī, and Ibn ‘Umar, all of whom relate to the grandfather of the great Maqdisī who came from Palestine in the eleventh century. The family of Ibn Rājīḥ, Ibn Muflīḥ, and the family of al-Mardāwī are related to the family of the Maqdisī through marriage.³⁸⁶

It appears that the Ḥanbalīs adapted the provision of Friday prayer, including the issue of *ta‘addud*, to serve their social circumstances. In other

³⁸⁴ Ibn Kathīr, *Bidāya*, 14:216; al-Jazarī, *Tārīkh*, 2:325; al-Ṣafadī, *A‘yān*, 1:70; Ibn ‘Abd al-Ḥādī, *Thimār*, 258.

³⁸⁵ Heller, *Islamic Piety*, 45, 98; Heller, “The Shaykh,” 107-108; Chamberlain, *Knowledge*, 58.

³⁸⁶ Ibn Ṭūlūn, *Qalā‘id*, 12-15.

words, this legal development of promoting *ta'addud* is probably the result of Ḥanbalīs seeking solidarity with their own community, which began forming in eleventh century Damascus.

7. Conclusion

This chapter covered the development of al-Subkī's opinions on the legal preference for having more than one Friday prayer in one city, referred to as *ta'addud*. We found that these opinions were responses to the sociopolitical context of congregational mosques in the Mamlūk Sultanate in the first half of the fourteenth century. This century was a turning point in the history of the congregational mosques in the Muslim world. The Mamlūks initiated the building of several congregational mosques across the Sultanate for several reasons. The most prominent reasons were urban expansion, to gain legitimacy, prestige, and personal piety.

Al-Subkī wrote his first opinion in 1326 in Cairo, supporting *ta'addud* in cases of need. His opinion synchronised with the initial stages of Mamlūk expansion of congregational mosques. Moreover, because Cairo was a Shāfi'ī environment, the Shāfi'īs judges were responsible for the overseeing of the Mamlūks' construction of congregational mosques. Their duty, beside taking over its leadership and handling the mosques' endowments, was to provide the legal permission to build these mosques after assessing the need. Al-Subkī was satisfied that the process of building these mosques fulfilled the Shāfi'ī requirements of establishing a need.

In the middle of the fourteenth century, the number of mosques far outweighed the need in Cairo and Damascus. Al-Subkī thus developed his second opinion in 1353, in which he argued that *ta'addud* of the congregational mosques was not legally acceptable, even with need. In Damascus, the Ḥanbalīs were active in promoting *ta'addud* for several reasons; the flexibility of their *madhhab* in the provision of the Friday prayer in general; their broader definition of need; and their social nature that encourages intra-*madhhab* solidarity. According to al-Subkī, this Ḥanbalī promotion of *ta'addud* in turn exacerbated the legal issue of *i'āda*.

Conclusion

The Shāfi‘ī jurist Taqī al-Dīn al-Subkī (d.756/1355) developed different legal interpretations in three cases: the legal method for determining the beginning of the month of Dhū al-Ḥijja, the legal punishment for non-Muslims who curse the Prophet Muḥammad, and the legal preference of establishing more than one Friday prayer in one city. Al-Subkī held one set of opinions between the periods 698/1299 to 739/1338, but later developed new stances on the same issues from 739/1338 to 756/1355.

A legal and social history approach was adopted to analyse the research problem. In addition to the legal works of al-Subkī, the sources of this thesis fall into two categories: medieval works, such as chronicles, biographical dictionaries, legal manuals, *fatāwā*, and epistles of different *madhhabs*; and modern works related to the political, social, legal, and cultural history of the Early Mamlūk Sultanate. This thesis shows that the change in al-Subkī’s opinions was justified through legal reasoning. In addition, al-Subkī’s change of opinions could be understood through the history of the Early Mamlūk Sultanate, in particular its scientific, cultural, and socio-political development. His writings reflected, and were a response to, the evolution of the Sultanate in his era.

This thesis is comprised of four chapters. We established several foundations in Chapter One, allowing us to understand al-Subkī’s engagement with the three aforementioned legal cases. First, the Mamlūk society was pluralistic in its nature, religiously, and legally, and socially. Although al-Subkī’s legal treatment was centred on the Shāfi‘ī *madhhab*, a discussion of the other *madhhabs*’ views is a notable feature of his legal writings. One reason

behind this is that the other *madhhabs*, particularly their judges, had had an impact on the aggravation of the legal problems in question. Second, in Chapter One we established that al-Subkī was close to the state decision makers throughout most of this life, suggesting that he was close to society affairs and was not disconnected from it. This was most evident in Damascus where he was a member of the judiciary. However even in Cairo we demonstrate that he was close to the political and religious elite. This all contributes to our understanding that his legal writing in the three cases was impacted by the reality of his time. Third, the evolution of al-Subkī's professional functions is one of the most important explanations of our understanding as to why he developed his stance in each of the three legal cases. In Cairo he was a *faqīh*, and in Damascus he became a *mufīī* and a judge. We also learn from Chapter One that he was aware of the complexities of those different roles and was therefore conscious and aware of his evolving views in his legal writings. More importantly, it shows that the *fiqh* employed in al-Subkī's legal thought was in conversation with the society's changing needs.

The next three chapters form the evidential basis for this thesis and focus on al-Subkī's legal development. In most of the cases, I found that al-Subkī uses a pre-existing legal justification to back up the textual arguments for his opinions. In addition, his arguments are found in general to be legitimate according to later Shāfi'īs due to his status as a *mujtahid*, although they may disagree with his conclusion. Their disagreement is based on the fact that al-Subkī's later opinions are seen to be against the prevailing position of the Shāfi'ī *madhhab*. A key focus of this research was analysing the underlying circumstances behind al-Subkī's legal development and intellectual engagement.

The thesis thus engaged in an investigation of the Early Mamlūk Sultanate, with particular focus on its political, social, and cultural development, all of which had a clear impact on al-Subkī's opinions. Despite the discrepancy of al-Subkī's legal rulings in each scenario, they represent al-Subkī's vision of *fiqh* as a response to the social reality and what the society needs.

Chapter Two discussed the new emerging technology in Damascus – astronomy. Al-Subkī worked at the Umayyad Mosque, as did one of the most well-known astronomers of the time, Ibn al-Shāṭir. They most likely engaged in scientific and religious communication. Al-Subkī saw that this technology would help solve one of the long-term problems in Islamic societies, namely determining the beginning of the months. He therefore attempted to bring the science of astronomy into a legal discussion, hoping to solve the problem of inconsistency in determining the beginning of the religious rituals and seasons that occurred in his day. While the traditional method of sighting the crescent moon with the naked eye was the dominant method and was supported by al-Subkī in his early life, it had its limitations. The most significant limitation was that depending on witness testimony can be sometimes misleading or mistaken. Al-Subkī uses the science of astronomical calculation to check for any mistakes relating to witness testimony. In other words, he opined that technology may find solutions to legal deficiencies and contribute to developing *fiqh*.

Chapter Three visited the era of political, social, and economic difficulty following the death of Sultān al-Nāṣir Muḥammad in 1341. Some Christian officials challenged the Sultanate by cursing the Prophet, which may have been understood as an expression of rebellion and exploiting the regime's weaknesses. It also seems to derive from an attachment to their Coptic Christian

heritage despite their conversion to Islam and working within the Sultanate. At that time, the ruling with forgiveness – which served society when al-Subkī advocated maintaining the stability of the Sultanate in the reign of Sulṭān al-Nāṣir Muḥammad – would be not serving the need of the society post-Sulṭān al-Nāṣir Muḥammad’s reign and would not contribute to maintaining its stability. Preserving the Sultanate’s reputation during that critical time post-Sulṭān al-Nāṣir Muḥammad’s reign was a pragmatic adaptation of *fiqh* by al-Subkī.

Chapter Four, dealt with one of the important devotional practices in Islam – the Friday prayer. Al-Subkī sought to ensure that the community was performing the Friday prayer correctly. Having more than one Friday prayer in Damascus would cause the invalidity of the most Friday prayers in the city. He did his best to convince the authorities and the other judges of his point, but ultimately could not, as legal pluralism was the characteristic of that time. Apparently, al-Subkī’s normative sense in this case failed against the legal flexibility of other legal participants, particularly amongst the Ḥanbalīs.

An interesting observation noted in this thesis was that the legal development of al-Subkī’s opinions took place through a legal process, reflecting al-Subkī’s Shāfi‘ī *uṣūlī* education rooted in his theological background. Al-Subkī considering the views of the later opinions to be correct in the Shāfi‘ī *madhhab* and not accepting the possibility of both old and new opinions to be equally valid or available for use by the jurists in the Shāfi‘ī corpus draws our attention to a concept in the Shāfi‘ī *uṣūlī* genre called ‘plurality of the truth’ or *ta‘addud al-ḥaqq*. Shāfi‘ī theorists discuss the controversy over the plurality of the truth in law. Is truth singular, or are there multiple valid truths? Is only one legal opinion correct leaving all the other dissenting opinions

wrong? Is every *mujtahid* in legal matters correct, or is only one *mujtahid* correct? Most of the Shāfi‘ī theorists insist on the singularity of truth and consequently opine that only one *mujtahid* is correct. They are known as *mukhaṭṭi’ā*, because they consider every other *mujtahid* to be mistaken (*mukhṭi’*) in their rulings. Others acknowledge the multiplicity of legal truth, and are known as *muṣawwiba*, because they consider every *mujtahid* to be correct (*muṣīb*).³⁸⁷

A detailed interpretive process conducted by al-Subkī clearly shows that he is among the *mukhaṭṭi’ā*. In the three legal cases, he moved from the old views to the new views and considered the new views to be final, correct, and definitive. Abū Bakr al-Bāqillānī (d. 403/1013) who was among *muṣawwiba* contends that there is no need to judge between the views because all the views are correct, and no single view is closer to the intention of the lawgiver than the other view.³⁸⁸ *Mukhaṭṭi’ā* on the other hand often advocate judging between views because there is only one correct view, and if we do not then this will lead to, as al-Juwaynī argues, the suspension of God’s rulings (*ta’ṭīl ḥukm min aḥkām Allāh*).³⁸⁹

Al-Subkī being among the *mukhaṭṭi’ā* perhaps fits with his theological background as an Ash‘arī.³⁹⁰ His son Tāj al-Dīn holds the *mukhaṭṭi’ā* to be the prevailing position among the Ash‘arīs.³⁹¹ Although Tāj al-Dīn does not

³⁸⁷ Al-‘Irāqī, *Ghayth*, 704-707; Ahmad Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (New York: Syracuse University Press, 2015), 49-62; Mohamed Eissa, *The Jurist and the Theologian: Speculative Theology in Shāfi‘ī Legal Theory* (Piscataway: Gorgias Press, 2017), 239-314.

³⁸⁸ Ibrahim, *Pragmatism*, 52-53.

³⁸⁹ Ibrahim, *Pragmatism*, 53.

³⁹⁰ Al-Subkī being Ash‘arī is already established in ‘Ajlān al-‘Ajlān, *Ārā’ Abī al-Ḥasan al-Subkī al-i’tiqādiyya* (Riyadh: Dār Kunūz Ishbīliyya, 2009).

³⁹¹ Al-‘Irāqī, *Ghayth*, 704.

elaborate more on this matter, a new study on this has revealed a connection between the *muṣawwiba* and the Muʿtazila among Shāfiʿīs. In other words, those Shāfiʿīs who tend to be among *muṣawwiba* were often not Ashʿarīs. In his *The Jurist and the Theologian: Speculative Theology in Shāfiʿī Legal Theory*, Mohamed Eissa traces this *muṣawwiba* – *mukhaṭṭiʿa* controversy to the debate around the determination (*taʿyīn*) of divine law. The debate revolved around the question of whether a jurist’s process of *ijtihād* is preceded by divine law or not. In other words, does the jurist merely discover the law, or does he create it?³⁹²

The *mukhaṭṭiʿa* insist on the singularity of truth. They often hold that divine law is determined by God (*mutaʿayyan* or *muʿayyan*). Every human action is ascribed a particular deontic qualification, and the only correct one is that which matches pre-existing law.³⁹³ The *mujtahid* is obliged to decipher God’s predetermined laws; the goal of *ijtihād* is to discover laws especially the ones not explicitly mentioned in Islam’s normative texts.³⁹⁴ The *muṣawwiba* on the other hand acknowledge the multiplicity of legal truth. They often view divine law to be undetermined. A deontic qualification is not predetermined by God for each human action; rather the *mujtahid* creates the law. Divine law is thus a product of the jurist’s *ijtihād*. The jurist therefore cannot be tasked with discovering a pre-existing deontic qualification because the *muṣawwiba* opine that the jurist himself creates divine law through his *ijtihād*.³⁹⁵

In this debate, Eissa shows that those Shāfiʿīs who support the *muṣawwiba*’s position were often influenced by their theological tendency

³⁹² Eissa, *The Jurist and the Theologian*, 262.

³⁹³ Eissa, *The Jurist and the Theologian*, 262-263.

³⁹⁴ Eissa, *The Jurist and the Theologian*, 262-263.

³⁹⁵ Eissa, *The Jurist and the Theologian*, 263.

towards the Mu'tazilī doctrine. This is because considering divine law as undetermined law fits with Mu'tazilī principle, which is “divine justice”. In other words, it is impossible that God will ask for something that cannot be achieved.³⁹⁶ Al-Subkī's Shāfi'ī *uṣūlī* and Ash'arī influence shows that he legally operated through the capabilities given to him by his traditional training. However, despite the limitation of his training as a typical orthodox, he was able to develop the law in line with the interest of his community.

Impact of the research

This thesis can serve to benefit contemporary Shāfi'ī legal participants. Modern Islamic jurists differ on what the possible solutions are for the development of Islamic law, especially in the light of the challenge of modernity. Some modern Islamic jurists acknowledge the limitation of depending on one single *madhhab*, claiming that such adherence no longer serves the needs of the Islamic societies.³⁹⁷ Hallaq notes that reformers argue that law could be formulated by amalgamated selection (*takhayyur*)³⁹⁸ from several traditional doctrines held by a variety of schools. In the same vein, “The reformers resorted to the so-called *talfīq* according to which part of a doctrine of one school is combined with a part from another.”³⁹⁹ Hallaq, however, sees the method of

³⁹⁶ Eissa, *The Jurist and the Theologian*, 270-275, 286-294, 295-302.

³⁹⁷ Hallaq, *History of Islamic Legal Theories*, 210; Ibrahim, *Pragmatism*, 167-182.

³⁹⁸ *Takhayyur* is “a process in which the doctrines of the four Sunnī schools were drawn upon to select the least stringent juristic opinion”. Ibrahim, *Pragmatism*, 2-3.

³⁹⁹ An example of *talfīq* is when a woman marries with neither the permission of a guardian (*walī*) nor the presence of the two witnesses. This person will combine the Mālikī position (which allows marriage without witnesses) with the opinion of the Ḥanafīs (which does not require the permission of the guardian). Hallaq, *History of Islamic Legal Theories*, 210; Ibrahim, *Pragmatism*, 2-3.

selection (i.e. *takhayyur*, *talfiḡ*) as a serious methodological flaw, though it may serve the needs of modernity:

For such an amalgamated doctrine would rest on a variety of lines of reasoning that are not necessarily compatible, and the rationale for the ruling in a case would be lost in the midst of the often contradictory lines of reasoning. The ramifications of this arbitrary device are grave, since further elaboration of the law on the basis of amalgamated cases can create problems of inconsistency in legal reasoning and hence in the legal system.⁴⁰⁰

Therefore, Hallaq calls for a reform of legal methodology. In other words, Islamic law needs a new mode of *uṣūl al-fiqh*. He shows that the modern ‘*ulamā*’ were already aware of the need of a reform in the level of legal methodology and therefore contributed with different projects. Hallaq discusses the approaches of well-known figures like Muḥammad ‘Abduh (d. 1905), Rashīd Riḍā (d. 1935), ‘Abd al-Wahhāb Khallāf (d. 1956), ‘Allāl al-Fāsī (d. 1973), and Ḥasan Turābī (d. 2016). Their theses revolve around promoting concepts such as interest (*maṣlaḥa*), need (*ḥāja*), and necessity (*ḍarūra*), applying them through a systematic theoretical framework.⁴⁰¹

⁴⁰⁰ Hallaq, *History of Islamic Legal Theories*, 211.

⁴⁰¹ Hallaq, *History of Islamic Legal Theories*, 212-231.

In contrast to Hallaq, Ibrahim argues that Islamic societies need to focus on the contents of Islamic substantive law *furūʿ al-fiqh* as opposed to *uṣūl al-fiqh*.⁴⁰² The focus on *furūʿ al-fiqh*, according to Ibrahim, was already achieved by the method of selection (i.e. *takhayyur, talfīq*).⁴⁰³ Ibrahim discusses plenty of examples of modern *ʿulamāʾ* who continue to apply pragmatic eclecticism, and he shows that pragmatic eclecticism played an important role in providing flexibility and continuity in the modern Egyptian legal system.⁴⁰⁴

In responding to Hallaq, Ibrahim acknowledges the evolution of concepts such as *maṣlaḥa*, *ḥāja*, and *ḍarūra* in the discourse of modern *ʿulamāʾ*. He however argues that those concepts are already severed from pre-modern discourse specifically from al-Ghazālī's theory of the five necessities (*al-ḍarūriyyāt al-khams*).⁴⁰⁵ Moreover, the emphasis on methodology over content will increase the rigidity of Islamic law because it will increase the position of school loyalty (*tamadhub*), which is already preserved in each *madhhab*'s methodology. Conversely, a focus on content will reduce the boundaries across *madhhabs* and therefore shift the tendency from preserving the dominant position of the *madhhab* towards legal pluralism and flexibility.⁴⁰⁶

This debate is relevant to the Shāfiʿī community today. The emphasis on methodology is crucial to Shāfiʿīs, especially the part that governs *furūʿ*, such as the issues of *muʿtamad*, *mashhūr*, or *rājiḥ*. By emphasising issues in *furūʿ*, Shāfiʿīs are keen to maintain consistency and solve contradictions in their corpus. This is not only because such inconsistencies will undermine the

⁴⁰² Ibrahim, *Pragmatism*, 221.

⁴⁰³ Ibrahim called this method of selection 'pragmatic eclecticism', *Pragmatism*, 3.

⁴⁰⁴ Ibrahim, *Pragmatism*, 167-182.

⁴⁰⁵ Ibrahim, *Pragmatism*, 220.

⁴⁰⁶ Ibrahim, *Pragmatism*, 221-222.

authority of the *madhhab*, but they also render the body of laws illogical, lacking in rationale, and therefore unworthy to follow. It is not surprising then that there is no single modern Shāfi‘ī mentioned by either Hallaq or Ibrahim that supports the method of selection or pragmatic eclecticism. In fact, Ibrahim mentioned some modern Shāfi‘īs who were against the practice.⁴⁰⁷

The solid attachment to the methodology that governs *furū‘* is embedded in the history of the Shāfi‘ī *madhhab*. Since the great synthesis and crystallisation of the Shāfi‘ī *madhhab* by al-Rāfi‘ī and al-Nawawī in thirteenth century, as demonstrated in Chapter One, Shāfi‘īs in the following centuries have focused on the works of these two (al-Rāfi‘ī and al-Nawawī). Great names in the *madhhab* such Ibn al-Rif‘a (d. 710/1310), Taj al-Dīn al-Subkī (d. 771/1370) al-Isnawī (d. 772/1370), al-Zarkashī (d. 794/1391), al-Balqīnī (d. 805/1402), Ibn Shuhba (d. 851/1448) not only engage juristically with the work of al-Rāfi‘ī and al-Nawawī but also produced special works on clarification and exploring the methodology of the al-Rāfi‘ī and al-Nawawī.⁴⁰⁸ However, the turning point in the Shāfi‘ī *madhhab* was in the sixteenth century where Shams al-Dīn al-Ramlī (d. 919/1513) and Ibn Ḥajar al-Haytamī (d. 974/1567) established the final word on most legal positions of al-Rāfi‘ī and al-Nawawī. El Shamsy argues that al-Ramlī and al-Haytamī represent the “sole portal to al-Nawawī and al-Rāfi‘ī.”⁴⁰⁹ In other words, the legal tradition can only be accessed through the filters of these two men.⁴¹⁰

⁴⁰⁷ Ibrahim, *Pragmatism*, 172, 173-174.

⁴⁰⁸ Al-Kāf, “Mu‘tamad,” 254-276.

⁴⁰⁹ El Shamsy “*Ḥāshiyā*,” 293.

⁴¹⁰ El Shamsy “*Ḥāshiyā*,” 293.

From the sixteenth century onward, Shāfi'ī law was mostly limited to the works of al-Ramlī and al-Haytamī.⁴¹¹ Since al-Ramlī and al-Haytamī differ sometimes in their understanding of some points of law articulated by al-Rāfi'ī or al-Nawawī,⁴¹² most Shāfi'īs now either follow al-Ramlī and al-Haytamī. Those who follow al-Ramlī are known as Ramliyya and those who follow al-Haytamī are known as Ḥajariyya.⁴¹³ Recently, al-Kāf proposed a solution to unify the Shāfi'īs by applying *takhayyur*, the same method discussed above, however limited to the opinion of al-Ramlī and al-Haytamī. So instead of following al-Ramlī *or* al-Haytamī, al-Kāf suggests that Shāfi'īs can choose either.⁴¹⁴ Al-Kāf's position however is not yet a dominant practice among Shāfi'īs.⁴¹⁵

This thesis cannot suggest a solution to the debate of whether Islamic law needs a reform in methodology or content. This thesis also cannot predicate the legal future of Shāfi'īs with their heavy reliance on al-Ramlī and al-Haytamī. Providing these solutions is outside the scope of the thesis and also beyond my expertise and knowledge. Although the focus on the contents of Islamic law is very important today as Ibrahim emphasises, this approach is unlikely to resonate among Shāfi'ī legal participants, especially with their excessive focus

⁴¹¹ El Shamsy “*Hāshiya*,” 295; al-Kāf, “Mu‘tamad,” 345-369.

⁴¹² There are several modern publications dedicated to identifying the differences between al-Haytamī and al-Ramlī. For example see, ‘Umar Bāfaraj, *Fath al-‘alī fī al-khilāf bayn ibn Ḥajar wa al-Ramlī*, ed. Shifā’ Hītū (Jeddah: Dār al-Minhāj, 2009); ‘Umar Dāghī, *al-Manhal al-naḍḍākh fī ikhtilāf al-ashyākh*, ed. ‘Alī Dāghī (Beirut: Dār al-Bashā’ir al-Islāmiyya, 2008).

⁴¹³ Al-Kāf, “Mu‘tamad,” 345-348; al-Kurdī, *Fawā'id*, 36, 37, 38, 40; ‘Alī Jum‘a, *al-Madkhal li-dirāsāt al-madhāhib al-fiqhiyya* (Cairo: Dār al-Salām, 2001), 66.

⁴¹⁴ Al-Kāf, “Mu‘tamad,” 362.

⁴¹⁵ Al-Kāf's position provoked a heated discussion in an online forum where some Shāfi'īs show some resentment. See for example: al-Shabaka al-fiqhiyya, accessed 20 October 2019, www.feqhweb.com/.

on hierarchy and methodology. Also, it would be too idealistic if I suggested that Shāfi'ī legal practitioners should develop their legal choices in accordance with the requirements of social reality, exactly like al-Subkī's heavy engagement with his society. Considering the need of society as a reason for adapting legal preferences is far from today's practice among most of the Shāfi'īs. In other words, al-Subkī's legal development is radical compared to the legal way of thinking of Shāfi'īs today.

Perhaps there are Shāfi'ī jurists who will draw on early Shāfi'ī authorities but the general practice among the Shāfi'īs today as shown by the famous Shāfi'ī Egyptian *mufīī* 'Alī Jum'a is that giving a *fatwā* in opposition to al-Ramlī and al-Haytamī's opinions is forbidden. After outlining the great achievement of al-Rāfi'ī and al-Nawawī, Jum'a speaks on al-Ramlī and al-Haytamī's role in the *madhhab*:

Then al-Ramlī and Ibn Ḥajar [al-Haytamī] came and revised the *madhhab*. Therefore, the *mu'tamad* is what was according to al-Ramlī and Ibn Ḥajar. And it is not permissible to give a *fatwā* in opposition with their stance. This is what our later 'ulamā' of the [Shāfi'ī] *madhhab* decided, and they followed that [the decision] in their books until our time.⁴¹⁶

⁴¹⁶ In Arabic: *thumma jā' al-Ramlī wa Ibn Ḥajar wa ḥarrarū al-madhhab, lidhā 'alayhim madār al-mu'tamad wa lā tajūz al-fatwā bimā yukhālīfuhumā. hādihā mā qarrarahu al-muta'khirūn min 'ulamā' al-madhhab wa sārū 'alayh bi-l-fi'l fi kutubihim 'ilā 'aşrinā hādihā. Jum'a, Madkhal, 67.*

Notwithstanding the exceptional jurist that may draw on *maṣlaḥa* or *darūra* against an established *madhhab* position, Shāfi'īs tend to analyse their *madhhab* in line with textual transmission (*nuṣūṣ al-madhhab*) preserved by the chain of jurists through the centuries. As the well-known Shāfi'ī Yamani 'Abd Allāh Ḥusayn Balfaqīh put it: "The *madhhab* is transmission (*naql*), and it should be cordoned off the necks of the *muqallidīn* so they cannot go beyond it".⁴¹⁷

What this thesis can suggest however is that considerable attention should be given to history, in particular social history. This thesis suggests the inclusion of history and social history into today's Shāfi'ī madrasa curriculum in order to train future Shāfi'īs students on noticing the link between legal texts and their surrounding history. By doing this, students will be aware that some jurists were indeed responding to their society's need, and that legal texts are not abstract templates or laws disconnected from social reality. This may perhaps in turn lead to the establishment of a new Shāfi'ī generation who play a role in re-prioritising the choice of legal views with consideration of the fast-changing demands of their times. Al-Subkī's legal development will be a great example to present to Shāfi'īs students in an effort to normalise this methodology.

In the city of al-Aḥsā', in the east of Saudi Arabia, the curriculum of al-Madrasa al-Shar'īyya al-Shāfi'īyya, which I have studied, focuses on numerous subjects, but history is not among them. In law, beginning students (usually at age 14) start with *al-Ghāya wa al-taqrīb*, a small legal manual *matn* of the well-known Shāfi'ī jurist Shihāb al-Dīn Aḥmad al-Iṣfahānī (d. 593/ 1196), known as

⁴¹⁷ In Arabic: *al-madhhab naql, yajib an yuṭawwaq bihi 'a 'nāq al-muqallidīn ḥattā lā yakhrujū 'anhu...*, 'Abd Allāh Ḥusayn Balfaqīh, *Maṭlab al-'ayqāz fī al-kalām 'alā shay' min ghurar al-'alfāz* (Kuwait: Dār al-Ḍiyā', 2017), 140.

Abū Shujā'. The students then read various in-depth books every term (four terms a year). By the age of 19, the students expect to graduate if they pass an exam on al-Ramlī's great *ḥāshiya*, the *Nihāyat al-muḥtāj*. Beside *fiqh*, students also study compulsory Arabic sciences such as *naḥw* and *ṣarf*. They will be given an option to choose to study either *tafsīr* or *manṭiq*. Although the Shāfi'īs in al-Aḥsā' are mostly Ash'arīs, there is no class in *kalām* due to the religious tension with the official Saudi religious institution, which does not support Ash'arī doctrine.

By incorporating history as a subject in the curriculum, this will expand the students' awareness of the background of the legal texts that they are studying. They will then be able to have a more accurate understanding to contextualising them. Linking legal texts with their contexts will not only lead to an ability to adjust the legal texts to different contexts but also the ability perhaps to create the context itself, which demands legal creativity. Eventually, the study of law will be worthy of pursuit and will prove its continuity. Medieval books such as the *Bidāya* of Ibn Kathīr and its like can be introduced into curriculums. Biographical dictionaries will also be useful to familiarise students with the jurists whose works they are reading. This thesis is an example of how social history coupled with legal history is a useful approach to understand the background of the legal writings of one of the most influential Shāfi'ī jurists, Taqī al-Dīn al-Subkī.

Bibliography

- ‘Abd al-‘Āl, Maḥmūd. *Al-Mu’assasāt al-dīniyya wa al-tanāfus al-sīyāsī: dirāsa fī ‘alāqat al-Azhar bi-dawlat al-Imārāt ba’d 2011*. Istanbul: Markaz Idrāk li-l-Dirāsāt wa al-Istishārāt, 2017.
- Abū Shāma, Shihāb al-Dīn ‘Abd al-Raḥmān b. Ismā‘īl. *Al-Dhayl ‘alā tarājim rijāl al-qarnayn al-sādis wa al-sābi’*. Ed. Ibrāhīm Shams al-Dīn. Beirut: Dār al-Kutub al-‘Ilmiyya, 2002.
- ‘Akkāsh, Sāmīr. *Marṣad Iṣṭanbūl*. Doha: Arab Centre for Research and Policy Studies, 2017.
- al-‘Ajāmī, Aḥmad b. Ibrāhīm. *Kunūz al-dhahab fī tārikh Ḥalab*. 2 vols. Aleppo: Dār al-Qalam, 1996.
- al-‘Ajlān, ‘Ajlān. *Ārā’ Abī al-Ḥasan al-Subkī al-i’tiqādiyya*. Riyadh: Dār Kunūz Ishbīliyya, 2009.
- al-Ālūsī, Maḥmūd Shukrī. *Ghāyat al-amānī fī al-radd ‘alā al-Nabhānī*. 2 vols. Ed. Abū ‘Abd Allāh b. Munīr al-Zahawī. Riyadh, Maktabt al-Rushd, 2001.
- al-Anṣārī, Zakariyya b. Muḥammad. *Al-I’lām wa al-ihtimām bi-jam‘ fatāwā shaykh al-islām*. Ed. Aḥmad ‘Abīd. Beirut: ‘Ālam al-Kutub, 1984.
- al-‘Arfaj, ‘Abd al-Ilāh. *Iḍṭirāb al-fatāwā al-mu‘āṣira*. Amman: Dār al-Faṭḥ, 2018.
- al-‘Asqalānī, Ibn Ḥajar Shihāb al-Dīn Aḥmad. *Al-Durar al-kāmina fī a’yān al-mi’a al-thāmina*. 5 vols. Ed. Muḥammad Sayyid Jād al-Haqq. Cairo: Dār al-Kutub al-Ḥadītha, 1966-1967.

_____. *Talkhīṣ al-ḥabīr fī takhrīj aḥādīth al-Rāfi‘ī al-kabīr*. 4 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1989.

Al-Azmeh, Aziz. *Islamic Law: Social and Historical Contexts*. New York: Routledge, 2013.

al-Bahūtī, Manṣūr b. Yūnus Ṣalāḥ al-Dīn. *Kashshāf al-qinā‘ ‘an matn al-iqnā‘*. 6 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1983.

al-Balqīnī, Sirāj al-Dīn ‘Umar b. Raslān. *Fatāwā al-Balqīnī*. Ed. ‘Abd al-Raḥmān al-Zawāwī. Jaddah: Dār al-Minhāj, 2014.

al-Bayhaqī, Aḥmad b. Ḥusayn. *Manāqib al-imām al-Shāfi‘ī*. 2 vols. Ed. Aḥmad Ṣaqr. Cairo: Dār al-Turāth, 1970.

al-Dawādārī, Abū Bakr b. Aybak. *Kanz al-durar wa jāmi‘ al-ghurar*. 9 vols. Ed. Ṣalāḥ al-Dīn al-Munajjid et al. Cairo: Maṭba‘at ‘Īsā al-Ḥalabī, 1982.

al-Dāwūdī, Muḥammad b. ‘Alī. *Ṭabaqāt al-mufasssirīn*. 2 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1983.

al-Dhahabī, Aḥmad b. Qīmāz. *Zaḡhal al-‘ilm*. Ed. Muḥammad al-Qūnūwī. Damascus: Dār al-Maymana, 2013.

al-Dihlawī, Aḥmad b. ‘Abd al-Raḥīm. *Al-Inṣāf fī bayān asbāb al-ikhtilāf*. Ed. ‘Abd al-Fattāḥ Abū Ghudda. Beirut: Dār al-Nafā‘is, 1983.

al-Dumyāfī, Aḥmad b. Aybak. *Al-Tarājim al-jalīla al-jaliyya wa al-ashyākh al-‘āliya al-‘aliyya*. Ed. Zāhir Balfaḥīh. Beirut: Dār al-Bashā‘ir al-Islāmiyya, 2019.

- al-Dumyātī, ‘Uthmān b. Muḥammad. *I‘ānat al-ṭālibīn sharḥ fatḥ al-mu‘īn*. 4 vols. Cairo: Dār al-Fikr, 1997.
- al-Futūḥī, Muḥammad b. Aḥmad. *Ma‘ūnat ulī al-nuhā sharḥ al-muntahā*. 12 vols. Ed. ‘Abd al-Malik Ibn Duhaysh. Makkah: Maktabat al-Asdī, 2008.
- al-Ghalāyīnī, Muṣṭafā Muḥammad. “Bid‘at ṣalāt al-zuhr ba‘d al-jum‘a.” In *Majallat al-Manār*, vol. 7:1 (1323/1905), 941-948.
- al-Gharnawī, Sirāj al-Dīn ‘Umar. *Al-Ghurra al-munīfa fī taḥqīq masā’il al-Imām Abī Ḥanīfa*. Ed. Muḥammad Zāhid al-Kawtharī. Cairo: al-Maktaba al-Azhariyya, 2016.
- al-Ghawj Iyād, “Taqī al-Dīn al-Subkī wa athāruhu fī uṣūl al-fiqh.”. Ph.D. diss, Beirut University, 2011.
- al-Ghazālī, Abū Ḥāmid Muḥammad b. Muḥammad. *Al-Wajīz fī fiqh al-imām al-Shāfi‘ī*. 2 vols. Ed. ‘Alī ‘Awaḍ and ‘Ādil ‘Abd al-Mawjūd. Beirut: Dār al-Arqam, 1997.
- al-Ghazzī, Muḥammad b. Aḥmad. *Bahjat al-nāzirīn ilā tarājim al-mutā’akhirīn min al-Shāfi‘iyya al-bāri‘īn*. Ed. ‘Abd Allāh al-Kandarī. Beirut: Dār Ibn Ḥazm, 2000.
- al-Ḥabashī, ‘Abd Allāh. *Jāmi‘ al-shurūḥ wa al-ḥawāshī*. 3 vols. Abu Dhabi: al-Mujamma‘ al-Thaqāfī, 2004.
- al-Haytamī, Aḥmad b. Muḥammad. *Al-Fatāwā al-fiqhiyya al-kubrā*. 2 vols. Cairo: al-Maktaba al-Islāmiyya, n.d.
- _____. *Al-Fatāwā al-ḥadīthiyya*. Beirut: Dār al-Ma‘rifa, 1998.

_____. *Al-I'lām bi-qawāti 'al-Islām*. Ed. Muḥammad 'Awwād. Damascus: Dār al-Taqwā, 2008.

_____. *Al-Şawā'iq al-muḥriqa 'alā ahl al-rafd wa al-zandaqa*. 2 vols. Ed. 'Abd al-Raḥmān al-Turkī. Beirut: Mu'assasat al-Risāla, 1997.

al-Ḥusaynī, Shams al-Dīn Abū al-Maḥāsin Muḥammad. *Dhayl tadhkirat al-ḥuffāz*. Beirut: Dār al-Kutub al-'Ilmiyya, 1998.

al-'Irāqī, Abū Zar'a Aḥmad b. 'Abd al-Raḥīm. *Al-Ghayth al-hāmi 'sharḥ jam 'al-jawām'*. Ed. Muḥammad Ḥijāzī. Beirut: Dār al-Kutub al-'Ilmiyya, 2004.

al-Isnawī, 'Abd al-Raḥmān b. al-Ḥasan. *Al-Kalimāt al-muhimma fī mubāsharat ahl al-dhimma*. Cairo: Dār al-Kutub, n.d.

_____. *Al-Muhimmāt fī sharḥ al-rawḍa*. 10 vols. Ed. Aḥmad b. 'Alī al-Dumyātī. Beirut: Dār Ibn Ḥazm, 2009.

Ṭabaqāt al-Shāfi'iyya. 2 vols. Ed. 'Abd Allāh al-Jubūrī. Baghdad: Ri'āsat Dīwān al-Awqāf, 1970.

al-Jazarī, Muḥammad b. Ibrāhīm b. Abū Bakr. *Tārīkh ḥawādith al-zamān wa anbā'ih wa waḥyiyāt al-akābir wa al-a'yān min abnā'ih*. 3 vols. Ed. 'Umar 'Abd al-Salām Tadmurī. Beirut: al-Maktaba al-'Aşriyya, 1998.

al-Jazarī, Muḥammad b. Muḥammad Shams al-Dīn. *Ghāyat al-nihāya fī ṭabaqāt al-qurrā'*. 2 vols. Ed. Gotthelf Bergsträsser. Beirut: Dār al-Kutub al-'Ilmiyya, 2006.

al-Juwaynī, 'Abd al-Malik b. 'Abd Allāh. *Nihāyat al-maṭlab fī dirāyat al-madḥhab*. Ed. 'Abd al-'Azīm Adīb. 20 vols. Jeddah: Dār al-Minhāj, 2007.

- al-Kāf, Muḥammad. “al-Mu‘tamad fī al-fiqh al-Shāfi‘ī.” Ph.D. diss., Beirut: al-Awzā‘ī University, 2013.
- al-Kurdī, Muḥammad Amīn. *Tanwīr al-qulūb fī mu‘amalat ‘allām al-ghuyūb*. Beirut: al-Maktaba al-‘Aṣriyya, 2004.
- al-Kurdī, Muḥammad b. Sulaymān. *Al-Fawā‘id al-madaniyya fī mā yuftā bi-qawlihi min a‘immat al-Shāfi‘iyya*. Ed. Bassām al-Jābī. Beirut: Dār al-Jaffān wa al-Jābī, 2011.
- al-Maqrīzī, Aḥmad b. ‘Alī. *Al-Mawā‘iz wa al-i‘tibār fī dhikr al-khiṭaṭ wa al-athār*. 4 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1998.
- _____. *Al-Muqaffā al-kabīr*. 6 vols. Ed. Muḥammad al-Ya‘lāwī. Beirut: Dār al-Gharb al-Islāmī, 1990.
- _____. *Al-Sulūk li-ma‘rifat duwal al-mulūk*. 8 vols. Ed. Muḥammad ‘Abd al-Qādir. Beirut: Dār al-Kutub al-‘Ilmiyya, 1997.
- al-Māwardī, ‘Alī b. Muḥammad. *Al-Ḥāwī al-kabīr*. 22 vols. Ed. Maḥmūd Maṭarjī. Beirut: Dār al-Fikr, 1994.
- Al-Mawsū‘a al-fiqhiyya*. 45 vols. Kuwait: Wizārat al-Awqāf wa al-Shu‘ūn al-Islāmiyya, 1983-2006.
- al-Muṭī‘ī, Bakhīt b. Muḥammad. *Irshād ahl al-milla ilā ithbāt al-ahilla*. Ed. Ḥasan Aḥmad Isbir. Beirut: Dār Ibn Ḥazm, 2000.
- al-Muzanī, Ismā‘īl b. Yaḥyā. *Mukhtaṣar al-Muzanī fī furū‘ al-Shāfi‘iyya*. Ed. Muḥammad Shāhīn. Beirut: Dār al-Kutub al-‘Ilmiyya, 1998.

- al-Na‘im, Abdullah. *Islam and the Secular State: Negotiating the Future of Sharia*. Cambridge, MA.: Harvard University Press, 2008.
- al-Nashshār, al-Sayyid. *Tārīkh al-maktabāt fī Miṣr fī al-‘aṣr al-Mamlūkī*. Cairo: al-Dār al-Miṣriyya al-Lubnāniyya, 1993.
- al-Nawawī, Yaḥyā b. Sharaf. *Al-Majmū‘ sharḥ al-muhadhdhab*. 23 vols. Ed. Muḥammad Najīb al-Muṭī‘ī. Jeddah: Maktabat al-Irshād, n.d.
- _____. *Minhāj al-ṭālibīn wa ‘umdat al-muḥtāḥ*. Ed. Muḥammad Sha‘bān. Jeddah: Dār al-Minhāj, 2005.
- _____. *Rawḍat al-ṭālibīn wa ‘umdat al-muḥtāḥ*. 12 vols. Ed. Zuhayr al-Shāwīsh. Beirut: al-Maktab al-Islāmī, 1991.
- al-Nu‘aymī, ‘Abd al-Qādir b. Muḥammad. *Al-Dāris fī tārikh al-madāris*. 2 vols. Ed. Ibrāhīm Shams al-Dīn. Beirut: Dār al-Kutub al-‘Ilmiyya, 1990.
- al-Nuwayrī, Aḥmad b. ‘Abd al-Wahhāb. *Nihāyat al-arab fī funūn al-adab*. 33 vols. Cairo: Dār al-Kutub wa al-Wathā’iq al-Qawmiyyia, 2002.
- al-Qarāfī, Shihāb al-Dīn. *The Criterion for Distinguishing Legal Opinions from Judicial Rulings and the Administrative Acts of Judges and Rulers*. Trans. Mohammad Fadel. New Haven: Yale University Press, 2017.
- al-Qawāsīmī, Akram. *Al-Madkhal ilā al-madhdhab al-Shāfi‘ī*. Amman: Dār al-Nafā‘is, 2003.
- al-Qūnūwī, Muḥammad. *Al-Ṣūfiyya al-Qalandariyya wa tārikhuhā*. Beirut: al-Maktaba al-Waqfiyya: 2002.

- al-Rāfi‘ī, ‘Abd al-Karīm b. Muḥammad. *Fath al-‘azīz sharḥ al-wajīz*. 13 vols. Ed. ‘Alī ‘Awaḍ and ‘Ādil ‘Abd al-Mawjūd. Beirut: Dār al-Kutub al-‘Ilmiyya, 1997.
- al-Ramlī, Shams al-Dīn b. Shihāb al-Dīn. *Fatāwā al-Ramlī*. 4 vols. Cairo: al-Maktaba al-Islāmiyya, n.d.
- _____. *Nihāyat al-muḥtāj fī sharḥ al-minhāj*. 8 vols. Beirut: Dār al-Fikr, 1984.
- al-Ruḥaybānī, Muṣṭafā Ibn Sa‘ad. *Maṭālib al-nuhā fī sharḥ al-muntahā*. 6 vols. Beirut: al-Maktab al-Islāmī, 1994.
- al-Ṣafadī, Ṣalāḥ al-Dīn Khalīl b. Aybak. *Al-Wāfi bi-l-wafīyyāt*. 29 vols. Ed. Turkī Muṣṭafa and Aḥmad al-Arnā‘ūt. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 2000.
- _____. *A’yān al-‘aṣr wa a’wān al-naṣr*. 6 vols. Ed. ‘Alī Abū Zayd. Beirut: Dār al-Fikr al-Mu‘āṣir, 1998.
- al-Sakhāwī, Muḥammad b. ‘Abd al-Raḥmān Shams al-Dīn. *Al-Ḍaw’ al-lāmi‘ li-ahl al-qarn al-tāsi‘*. 12 vols. Beirut: Dār al-Jīl, 1992.
- _____. *Al-Tibr al-masbūk fī dhayl al-sulūk*. 4 vols. Ed. Najwā Kāmil and Labība Muṣṭafa. Cairo: Dār al-Kutub wa al-Wathā’iq al-Qawmiyya, 2002.
- al-Saqqāf, ‘Alawī b. Aḥmad. *Mukhtaṣar al-fawā’id al-makkiyya fīmā yaḥtājuh ṭalabat al-‘ilm al-Shāfi‘iyya*. Ed. Yūsuf Mar‘ashlī. Beirut: Dār al-Bashā’ir, 2004.
- al-Sayyid, Ayman. *Al-Taṭawwur al-‘umrānī li-madīnat al-Qāhira*. Cairo: Dār al-Kutub al-Miṣriyya al-Lubnāniyya, 1997.

- al-Shabrāmalsī, Nūr al-Dīn b. ‘Alī. *Hāshiyat ‘alā nihāyat al-muhtāj*. 8 vols. Beirut: Dār al-Fikr, 1984.
- al-Shāfi‘ī, Muḥammad b. Idrīs. *Al-Umm*. 11 vols. Ed. Rif‘at Fawzī. Cairo: Dār al-Wafā’, 2001.
- al-Shawkānī, Muḥammad b. ‘Alī. *Al-Badr al-ṭāli‘ bi-mahāsini al-qarn al-sābi‘*. 2 vols. Ed. Ḥusayn al-‘Umarī. Beirut: Dār al-Fikr al-Mu‘āshir, 1998.
- al-Shīrāzī, Ibrāhīm b. ‘Alī. *Al-Muhadhdhab fī fiqh al-imām al-Shāfi‘ī*. 3 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1992.
- _____. *Ṭabaqāt al-fuqahā’*. Ed. Iḥsān ‘Abbās. Beirut: Dār al-Rā‘id al-‘Arabī, 1970.
- al-Shirbīnī, Shams al-Dīn Muḥammad b. Aḥmad. *Mughnī al-muhtāj ilā ma‘rifat al-minhāj*. 6 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1994.
- al-Subkī, Tāj al-Dīn ‘Abd al-Wahhāb b. ‘Alī. *Al-Ibhāj fī sharḥ al-minhāj*. 7 vols. Ed. Aḥmad al-Zamzamī and Nūr al-Dīn Ṣaghīrī. Dubai: Dār al-Buḥūth wa al-Dirāsāt al-Islāmiyya, 2004.
- _____. *Jam‘ al-jawāmi‘*. Ed. ‘Abd al-Mun‘im Khalīl. Beirut: Dār al-Kutub al-‘Ilmiyya, 2003.
- _____. *Mu‘īd al-ni‘am wa mubīd al-niqam*. Ed. Muḥammad al-Najjār et al. Cairo: Maktabat al-Khānjī, 1993.
- _____. *Ṭabaqāt al-Shāfi‘iyya* 10 vols. Ed. Muḥammad al-Ṭanāḥī and ‘Abd al-Fattāḥ al-Ḥulw. Cairo: Dār Hajar, 1992.

- al-Subkī, Taqī al-Dīn ‘Alī b ‘Abd al-Kāfī. *Al-Durra al-muḍī‘a fī al-radd ‘alā Ibn Taymiyya*. Ed. Ḥusām al-Maqdisī. Damascus: Maṭba‘at al-Taraqqī, 1929.
- _____. *Al-Ibtihāj fī sharḥ al-minhāj*. 6 vols. Makkah: Maktabat al-Malik ‘Abd Allāh al-Jāmi‘iyya, 2007-2010.
- _____. *Al-Sayf al-maslūl ‘alā man sabb al-Rasūl*. Ed. Iyād al-Ghawj. Amman: Dār al-Faṭḥ, 2000.
- _____. *Fatāwā al-Subkī fī furū‘ al-fiqh al-Shāfi‘ī*. 2 vols. Ed. Muḥammad Shāhīn. Beirut: Dār al-Kutub al-‘Ilmiyya, 2004.
- _____. *Fatāwā al-Subkī*. 2 vols. Ed. Ḥusām al-Qudsī. Cairo: Maktabat al-Quds, 1936-1938.
- _____. *Shifā’ al-siqām fī ziyārat khayr al-anām*. Ed. Ḥusayn al-Shukrī. Beirut: Dar al-Kutub al-‘Ilmiyya, 2008.
- al-Suyūfī, Jalāl al-Dīn ‘Abd al-Raḥmān. *Al-Ashbāh wa al-nazā‘ir fī qawā‘id wa furū‘ al-Shāfi‘iyya*. Beirut: Dār al-Kutub al-‘Ilmiyya, 1983.
- _____. *Ḥusn al-muḥāḍara fī tārikh Miṣr wa al-Qāhira*. 2 vols. Ed. Muḥammad Abū al-Faḍl Ibrāhīm. Cairo: ‘Īsā al-Bābī al-Ḥalabī, 1967-1968.
- _____. *Taqrīr al-istinād fī tafsīr al-ijtihād*. Ed. ‘Abd al-Mun‘im Aḥmad. Alexandria: Dār al-Da‘wa, 1982.
- al-Ṭarṭūsī, Najm al-Dīn Ibrāhīm. *Tuḥfat al-turk fīmā yajibu an yu‘mala fī al-mulk*. Ed. Riḍwān al-Sayyid. Beirut: Dār al-Ṭalī‘a, 1992.

- al-Udfūwī, Ja‘far b. Tha‘lab. *Al-Ṭāli‘ al-sa‘īd fī tarājim ahl al-ša‘īd*. Ed. ‘Abd al-Raḥmān Qarīṭ. Cairo: al-Maṭba‘a al-Jamāliyya, 1914.
- al-‘Umarī, Shihāb al-Dīn Aḥmad b. Faḍl. *Masālik al-absār fī mamālik al-amṣār*. 27 vols. Ed. Kāmil al-Jabbūrī. Beirut: Dār al-Kutub al-‘Ilmiyya, 2010.
- al-Waqqād, Maḥāsīn. *Al-Yahūd fī Miṣr al-Mamlūkiyya*. Cairo: al-Hay’a al-Miṣriyya al-‘Aamma li-l-Kitāb, 1999.
- al-Wāsiṭī, Shihāb al-Dīn Ghāzī b. Aḥmad. *Al-Radd ‘alā ahl al-dhimma*. Ed. Turkī Fahad al-Sa‘ūd. Riyadh: Maktabat al-Malik Fahad, 2013.
- al-Yaḥsubī, ‘Iyād b. Mūsā. *Al-Shifā’ bi-ta’rīf ḥuqūq al-muṣṭafā*. 2 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, n.d.
- al-Yūsufī, Mūsā b. Muḥammad. *Nuzhat al-nāzir fī sīrat al-malik al-Nāṣir*. Ed. Aḥmad Ḥaṭīṭ. Beirut: ‘Ālam al-Kutub, 1986.
- al-Zarkashī, Shams al-Dīn Muḥammad b. ‘Abd Allāh. *Sharḥ al-Zarkashī ‘ala mukhtaṣar al-Khuraqī*. 7 vols. Riyadh: Dār al-‘Ubaykān, 1993.
- al-Ziriklī, Khayr al-Dīn. *Al-A‘lām*. 8 vols. Beirut: Dār al-‘Ilm li-l-Malāyīn, 1986.
- al-Zufayrī, Maryam Muḥammad Ṣāliḥ. *Muṣṭalaḥāt al-madhāhib al-fiḥiyya wa asrār al-fiḥ al-marmūz fī al-a‘lām wa al-kutub wa al-ārā’ wa al-tarjīḥāt*. Beirut: Dār Ibn Ḥazm, 2002.
- al-Zuḥaylī, Wahba. *Al-Fiḥ al-islāmī wa adillatauh*. 11 vols. Damascus: Dār al-Fikr, 1997.
- _____. *Uṣūl al-fiḥ*. 2 vols. Damascus: Dār al-Fikr, 1986.

- ‘Amāra, Muḥammad. *Al-Khiṭāb al-dīnī bayn al-tajdīd al-islāmī wa al-tabdīd al-amrīkānī*. Cairo: Maktabat al-Shurūq, 2004.
- Amitai, Reuven, “Mamluks of Mongol Origin and Their Role in Early Mamluk Political life.” *Mamluk Studies Review* 12, no. 1 (2008): 119-138.
- Anawati, Georges C. “The Christian Communities in Egypt in the Middle Ages.” In *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi, 237-252. Toronto: Pontifical Institute of Mediaeval Studies, 1990.
- Armanios, Febe. *Coptic Christianity in Ottoman Egypt*. New York: Oxford University Press, 2011.
- Bāfaraj, ‘Umar. *Fatḥ al-‘alī fī al-khilāf bayn ibn Ḥajar wa al-Ramlī*. Ed. Shifā’ Hītū. Jeddah: Dār al-Minhāj, 2009.
- Balfaqīh, ‘Abd Allāh Ḥusayn. *Maṭlab al-‘ayqāz fī al-kalām ‘alā shay’ min ghurar al-‘alfāz*. Kuwait: Dār al-Ḍiyā’, 2017.
- Bārūt, Muḥammad. *Ḥamlāt Kisrawān fī al-tārīkh al-sīyāsī li-fatāwā Ibn Taymiyya*. Doha: Arab Centre for Research and Policy Studies, 2017.
- Bedir, Murteza. “The Power of Interpretation: Is Istiḥsān Qiyās?” *Islamic Studies* 42, no. 1 (2003): 7-20.
- Behrens, Abouseif. *Islamic Architecture in Cairo: An Introduction*. Leiden: E. J. Brill, 1989.

- Berkey, Jonathan. "Culture and Society during the late Middle Ages." In *The Cambridge History of Egypt*, vol.1, *Islamic Egypt, 640-1517*, ed. Carl Petry, 375- 411. Cambridge: Cambridge University Press, 1998.
- _____. "Mamluk religious policy." *Mamluk Studies Review* 13, no. 2 (2009): 7-22.
- _____. *Popular Preaching and Religious Authority in the Medieval Islamic Near East*. Seattle: University of Washington Press, 2001.
- _____. "The Mamluks as Muslim: The Military Elite and the Construction of Islam in Medieval Egypt." In *The Mamluks in Egyptian Politics and Society*, ed. Thomas Philipp and Ulrich Haarmann, 163-173. Cambridge: Cambridge University Press, 1998
- _____. "The *Muhtasibs* of Cairo under the Mamluks: Toward an Understanding of an Islamic Institution." In *The Mamluks in Egyptian and Syrian Politics and Society*, ed. Michael Winter and Amalia Levanoni, 245-276. Leiden: E. J. Brill, 2004.
- _____. *The Transmission of Knowledge in Medieval Cairo: A Social History of Islamic Education*. Princeton: Princeton University Press, 1992
- _____. "Women and Islamic Education in the Mamluk Period." In *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*, ed. Nikki R. Keddie and Beth Baron, 143-157. New Haven: Yale University Press, 1991.

- Bierman, Stephen. "Art and architecture in the medieval period." In *The Cambridge History of Egypt. Vol. 1: Islamic Egypt, 640-1517*, ed. Carl F. Petry, 339-374. Cambridge: Cambridge University Press, 1998.
- Blecher, Joel. *Said the Prophet of God: Hadith Commentary Across a Millennium*. Oakland: University of California Press, 2017.
- Broadbridge, Anne. "Academic Rivalry and the Patronage System in Fifteenth-Century Egypt: Al-‘Aynī, al-Maqrīzī, and Ibn Ḥajar al-‘Asqalānī." *Mamlūk Studies Review* 3 (1999): 85-107.
- _____. "Apostasy Trials in Eighth/Fourteenth Century Egypt and Syria: A Case Study." In *History and Historiography of Post-Mongol Central Asia and the Middle East: Studies in Honor of John E. Woods*, eds. Judith Pfeiffer, Sholeh A. Quinn, 363-376. Wiesbaden: Harrassowitz Verlag, 2006.
- _____. *Kingship and Ideology in the Islamic and Mongol Worlds*. New York: Cambridge University Press, 2008.
- Calder, Norman. "Al-Nawawī's Typology of Muftīs and its Significance for a General Theory of Islamic Law." *Islamic Law and Society* 3 (1996): 137-164.
- _____. "Friday Prayer and the juristic theory of government: Sarakhsī, Shīrāzī, Māwardī." *Bulletin of the School of Oriental and African Studies* 49, no. 1 (1986): 35-47.
- _____. "Nawawī and the Typologies of Fiqh Writing." In *Islamic Jurisprudence in the Classical Era* ed. Colin Ember, 99-106. Cambridge: Cambridge University Press, 2010.

- _____. “Scholars, Muftis, Judges and Secular Power: The Need for Distinction.”
 In *Islamic Jurisprudence in the Classical Era*, ed. Colin Ember, 116-166.
 Cambridge: Cambridge University Press, 2010.
- _____. “The Social Function of Fatwas.” In *Islamic Jurisprudence in the
 Classical Era*, ed. Colin Ember, 167-200. Cambridge: Cambridge
 University Press, 2010.
- Chamberlain, Michael. *Knowledge and Social Practice in Medieval Damascus,
 1190-1350*. Cambridge: Cambridge University Press, 1994.
- Clifford, W. Review of Tuḥfat al-turk fīmā yajibū an yu‘mala fī al-mulk of al-
 Ṭarṭūsī, ed. by Riḍwān al-Sayyid. *Mamluk Studies Review* 2 (1998): 249.
- Cohen, Mark. “What Was the Pact of ‘Umar? A Literary-Historical Study.”
Jerusalem Studies in Arabic and Islam 23 (1999): 100-157.
- Commins, David. *Islamic Reform: Politics and Social Change in Late Ottoman
 Syria*. New York: Oxford University Press, 1990.
- Cook, Michael. *Commanding right and forbidding wrong in Islamic thought*.
 Cambridge: Cambridge University Press, 2000.
- Coulson, Noel. *A History of Islamic Law*. New York: Routledge, 2017.
- Dāghī, ‘Umar. *Al-Manhal al-naḍḍākh fī ikhtilāf al-ashyākh*. Ed. ‘Alī Dāghī.
 Beirut: Dār al-Bashā’ir al-Islāmiyya, 2008.
- Dallal, Ahmad. *Islam, Science, and the Challenge of History*. New Haven:
 Yale University Press, 2010.

- Degeorge, Gérard. *Damas: des origines aux Mamluks*. Paris: Editions L'Harmattan, 1997.
- Eissa, Mohamed. *The Jurist and the Theologian: Speculative Theology in Shāfi'ī Legal Theory*. Piscataway: Gorgias Press, 2017.
- El-Leithy, Tamer. "Coptic Culture and Conversion in Medieval Cairo, 1293-1524 A.D." Ph.D. diss., Princeton University, 2005.
- _____. "Sufis, Copts and the Politics of Piety: Moral Regulation in Fourteenth-Century Upper Egypt." In *Le développement du soufisme en Égypte à l'époque mamelouke*, eds. R. McGregor and R. Sabra and M. Loubet, 75-119. Cairo: Institut français d'archéologie orientale, 2006.
- El Shamsy, Ahmed and Aron Zysow. "Al-Buwayṭī's Abridgment of al-Shāfi'ī's *Risāla*: Edition and Translation." In *Islamic Law and Society* 19 (2012): 327-355.
- _____. "Al-Shāfi'ī's Written Corpus: A Source-Critical Study." *Journal of the American Oriental Society* 132 (2012): 199-220.
- _____. *The Canonization of Islamic Law: A Social and Intellectual History*. Cambridge: Cambridge University Press, 2013.
- _____. "The First Shāfi'ī: The Traditionalist Legal Thought of Abū Ya'qūb al-Buwayṭī (d. 231/846)." In *Islamic Law and Society* 14 (2007): 301-341.
- _____. "The *Ḥāshiya* in Islamic Law: A Sketch of the Shāfi'ī Literature." *Oriens* 41, no. 3/4 (2013): 289-315.

- Emon, Anver M. "Huqūq Allāh and Huqūq al- 'Ibād: A Legal Heuristic for a Natural Rights Regime." *Islamic Law and Society* 13, no. 3 (2006): 325-391.
- _____. "Ijtihad." In *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumea Ahmed, 181-206. Oxford: Oxford University Press, 2018.
- Encyclopaedia of Islam*, First Edition (EI¹). Leiden: E. J. Brill, 1913-1936
- Encyclopaedia of Islam*, second edition (EI²). Leiden: E. J. Brill, 1960-2004.
- Encyclopaedia of Islam*, Three edition (EI³). Leiden: E. J. Brill.
- Escovitz, Joseph H. *The office of Qāḍī al-Quḍāt in Cairo under the Bahṛī Mamlūks*. Berlin: Klaus Schwartz, 1984.
- Fadel, Mohammad. "The Social Logic of *Taqīd* and the Rise of the *Mukhtaṣar*." *Islamic Law and Society* 3 (1996): 193-233.
- Fernandes, Leonor. "Between Qadis and Muftis: To whom does the Mamluk Sultan listen?." *Mamlūk Studies Review* 6 (2002): 95-108.
- _____. "Mamluk Architecture and the Question of Patronage." *Mamluk Studies Review* 1 (1997): 107-120.
- Flinterman, Willem. Steenbergen, Jo Van. "Al-Nasir Muhammad and the Formation of the Qalawunid State." In *Pearls on a String. Artists, Patrons, and Poets at the Great Islamic Courts*, ed. Amy Landau, 86–113. Seattle: Walters Art Museum and University of Washington Press, 2015.

- Frenkel, Yehoshua. "Public Projection of Power in Mamluk Bilād al-Shām." *Mamluk Studies Review* 11 no.1 (2007): 39-53.
- Fuess Albrecht. "Mamluk Politics." In *Ubi sumus? Quo vademus: Mamluk Studies—State of the Art*, ed. Stephan Conermann, 95-117. Göttingen: Vandenhoeck & Ruprecht, 2013.
- _____. "Zulm by Mazālim? The Political Implications of the Use of Mazālim Jurisdiction by the Mamluk Sultans." *Mamlūk Studies Review* 13, no. 1 (2009): 122- 147.
- Gerber, Haim. "Rigidity Versus Openness in Late Classical Islamic Law: The Case of the Seventeenth-Century Palestinian Muftī Khayr al-Dīn al-Ramlī." *Islamic Law and Society* 5, no. 2 (1998): 165-195.
- Giddens, Anthony. *Sociology*. Cambridge: Polity, 2009.
- Gottheil, Richard. "An Answer to the Dhimmis." *Journal of the American Oriental Society* 41 (1921): 383-457.
- Grabar, Oleg. "The Architecture of the Middle Eastern City: The Case of the Mosque." In *Middle Eastern Cities: A Symposium on Ancient, Islamic, and Contemporary Middle Eastern Urbanism*. Ed. John B. Christopher, Ira M. Lapidus, 26-46. Berkeley and Los Angeles: University of California Press, 1969.
- Haarmann, Ulrich. "Arabic in speech, Turkish in lineage. Mamluks and their sons in the intellectual life of fourteenth-century Egypt and Syria." *Journal of Semitic Studies* 33, no. 1 (1988): 81-114.

- Halim, Fachrizal. *Legal Authority in Premodern Islam: Yaḥyā B. Sharaf al-Nawawī in the Shāfiʿī School of Law*. New York: Routledge, 2015.
- Hallaq, Wael B. *A History of Islamic Legal Theories*. Cambridge: Cambridge University Press, 1997.
- _____. *Authority, Continuity and Change in Islamic Law*. Cambridge: Cambridge University Press, 2001.
- _____. “From *Fatwās* to *Furūʿ*: Growth and Change in Islamic Substantive Law.” *Islamic Law and Society* 1 (1994): 29-65.
- _____. “From Regional to Personal Schools of Law? A Reevaluation.” *Islamic Law and Society* 8, no. 1 (2001): 1-26.
- _____. *Sharīʿa: Theory, Practice, Transformations*. Cambridge: Cambridge University Press, 2009.
- _____. *The Origins and Evolution of Islamic Law*. Cambridge: Cambridge University Press, 2005.
- _____. “Was the gate of *ijtihād* closed?.” *International Journal of Middle East Studies* 16 (1984): 3-41.
- Haram, Nisreen. “Use and Abuse of the Law: A *Muftī*’s Response.” In *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, 72-86. Cambridge, MA: Harvard University Press, 1996.
- Haytū, Muḥammad Ḥasan. *Al-Ijtihād wa ṭabaqāt mujtahidī al-Shāfiʿiyya*. Beirut: Muʿasasat al-Risāla, 1988.

- Heller, Daniella Talmon. *Islamic Piety in Medieval Syria: Mosques, Cemeteries and Sermons under the Zangids and Ayyūbids (1146-1260)*. Leiden: E. J. Brill, 2007.
- _____. “The Shaykh and the Community: Popular Hanbalite Islam in 12th-13th Century Jabal Nablus and Jabal Qāsyūn.” *Studia Islamica*, 79 (1994): 103-120.
- Hernandez, Rebecca Skreslet. *The Legal Thought of Jalal al-Dīn al-Suyūfī: Authority and Legacy*. Oxford: Oxford University Press, 2017.
- Hoexter, Miriam. “Qadi, Mufti and Ruler: Their Roles in the Development of Islamic Law,” in *Law, Custom, and Statute in the Muslim World: Studies in Honor of Aharon Layish*, ed. R. Shaham. Leiden: E. J. Brill, 2006.
- Homerin, Emil. “Sufism in Mamluk Studies: A Review of Scholarship in the Field.” In *Ubi sumus? Quo vademus: Mamluk Studies-State of the Art*, ed. Stephan Conermann, 187-209. Göttingen: Vandenhoeck & Ruprecht, 2013.
- _____. “The Study of Islam within Mamluk Domains.” *Mamluk Studies Review* 9, no. 1 (2005): 1- 30.
- Hoover, Jon. “Ibn Taymiyya.” In *Christian-Muslim Relations: A Bibliographical History*, Vol. 4 (1200-1350), ed. David Thomas and Alex Mallett, 824-878. Leiden: E. J. Brill, 2012.
- Humphreys Steven. *Islamic History: A Framework for Inquiry*. Princeton: Princeton University Press, 1991.

_____. “The Expressive Intent of the Mamluk Architecture of Cairo: A Preliminary Essay.” *Studia Islamica* 35 (1972): 69-119.

Ibn ‘Abd al-Ḥādī, Yūsuf b. Badr al-Dīn al-Ḥasan. *Thimār al-maqāṣid fī dhikr al-masājid*. Damascus: al-Ma‘had al-Faransī, 1943.

Ibn ‘Abd al-Ḥādī, Shams al-Dīn Muḥammad b. Aḥmad. *Al-Ṣārim al-munkī fī al-radd ‘alā al-Subkī*. Ed. ‘Aqīl b. Muḥammad al-Yamānī. Beirut: Mu’assasat al-Rayyān, 2003.

Ibn ‘Abd al-Zāhir, Muḥyī al-Dīn. *Al-Rawḍa al-bahiyya al-zāhira fī khiṭaṭ al-Ma‘aziyya al-Qāhira*. Ed. Ayman Sayyid. Cairo: Maktabat al-Dār al-‘Arabiyya li-l-Kitāb, 1996.

_____. *Al-Rawḍ al-zāhir fī sīrat al-malik al-Zāhir*. Ed. ‘Abd al-‘Azīz al-Khuwayṭir. Riyadh: 1976.

Ibn ‘Ābidīn, Muḥammad b. ‘Umar. *Majmū‘at rasā’il Ibn ‘Ābidīn*. Ed. Muḥammad al-‘Azzāzī. Beirut: Dār al-Kutub al-‘Ilmiyya, 2014.

Ibn al-Ḥājib, ‘Uthmān b. ‘Umar. *Mukhtaṣar Ibn al-Ḥājib*. Cairo: Maktabat Kurdistān, 1908.

Ibn al-Mulaqqin, Sirāj al-Dīn ‘Umar b. ‘Alī. *Tuḥfat al-muḥtāj fī adillat al-minhāj*. 2 vols. Ed. ‘Abd Allāh al-Ḥayyānī. Makkah: Dār Ḥirā’, 1985.

Ibn al-Naqqāsh, Muḥammad b. ‘Alī. *Al-Madhamma fī isti‘māl ahl al-dhimma*. Ed. ‘Abd Allāh al-Ṭurayqī. Riyadh: 1995.

Ibn al-Ṣalāḥ, ‘Uthmān b. ‘Abd al-Raḥmān. *Adab al-muftī wa al-mustaftī*. Ed. Muwaffaq ‘Abd al-Qādir. Medina: Maktabat al-‘Ulūm wa al-Ḥikam, 1987.

- Ibn Qayyim al-Jawziyya, Muḥammad b. Ayyūb. *Miftāḥ dār al-sa‘āda wa manshūr wilāyat al-‘ilm wa al-irāda*. 2 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1997.
- Ibn Qudāma al-Maqdisī, Muwaffaq al-Dīn b. ‘Abd Allāh. *Al-Kāfi fī fiqh al-imām Aḥmad*. 4 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1994.
- _____. *Al-Mughnī*. 15 vols. Ed. ‘Abd Allāh al-Turkī and ‘Abd al-Fattāḥ al-Ḥulū. Riyadh: Dār ‘Ālam al-Kutub, 1997.
- _____. *Al-Muqni ‘ fī fiqh al-imām Aḥmad*. Ed. Maḥmūd al-Arnā‘ūt and Yāsīn al-Khaṭīb. Jeddah: Maktabat al-Sawādī, 2000.
- _____. *Rawḍat al-nāzir wa jannat al-manāzir*. 2 vols. Ed. Sha‘bān Muḥannad Ismā‘īl. Riyadh: al-Maktaba al-Tadmuriyya, 1998.
- _____. *‘Umdat al-fiqh*. Ed. Aḥmad ‘Azzūz. Beirut: al-Maktaba al-‘Aṣriyya, 2004.
- Ibn al-Rif‘a, Aḥmad b. Muḥammad. *Kifāyat al-nabīh fī sharḥ al-tanbīh*. 21 vols. Ed. Majdī Bāsallūm. Beirut: Dār al-Kutub al-‘Ilmiyya, 2009.
- Ibn al-Shiḥna, Abū al-Faḍl Muḥammad. *Al-Durr al-muntakhab fī tārikh Ḥalab*. Ed. Muḥammad al-Darwīsh. Damascus: Dār al-Kitāb al-‘Arabī, 1948.
- Ibn al-Wardī, ‘Umar b. Muẓaffar, *Tārikh Ibn al-Wardī*. 2 vols. Beirut: Dār al-Kutub al-‘Ilmiyya, 1996.
- Ibn Daqīq al-‘Īd, Muḥammad b. ‘Alī. *Iḥkām al-aḥkām sharḥ ‘umdat al-aḥkām*. Ed. Aḥmad Shākīr. Cairo: Dār al-Kutub, 1987.

- Ibn Ḥabīb, Badr al-Dīn Ḥasan Ibn ‘Umar. *Tadhkirat al-nabīh fī ayyām al-Mansūr wa banīh*. 3 vols. Cairo: Maṭba‘at Dār al-Kutub, 1976.
- Ibn Iyās, Muḥammed b. Aḥmad. *Badā’i‘ al-zuhūr fī waqā’i‘ al-duhūr*. 5 vols. Ed. Muḥammed Muṣṭafa. Cairo: al-Hay’a al-Miṣriyya al-‘Āmma li-l-Kitāb, 1984.
- Ibn Kathīr, Ismā‘īl b. ‘Umar. *Al-Bidāya wa al-nihāya*. 14 vols. Ed. ‘Alī Shayrī. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1988.
- Ibn Khaldūn, ‘Abd al-Raḥmān b. Muḥammad. *Muqaddimat Ibn Khaldūn*. 2 vols. Abū ‘Abd Allāh al-Sa‘īd al-Mandūh. Beirut: Mu’assasat al-Kutub al-Thaqāfiyya, 1994.
- Ibn Mufliḥ, Muḥammad b. Muḥammad. *Furū‘ Ibn Mufliḥ*. 11 vols. Ed. ‘Abd Allāh al-Turkī. Riyadh: Mu’assasat al-Risāla, 2003.
- Ibn Nūḥ, ‘Abd al-Ghaffār b. Aḥmad. *Al-Wahīd fī sulūk ahl al-tawḥīd*. Cairo: Maktabat Ibn Idrīs, n.d.
- Ibn Qāḍī Shuhba, Abū Bakr b. Muḥammed. *Ṭabaqāt al-Shāfi‘iyya*. 4 vols. Ed. al-Ḥāfīz ‘Abd al-‘Alīm Khān. Beirut: ‘Ālam al-Kutub, 1986.
- _____. *Tārīkh Ibn Shuhba*. 3 vols. Ed. ‘Adnān Darwīsh. Damascus: al-Ma‘had al-Faransī, 1994.
- Ibn Qudāma, Muwaffaq al-Dīn b. ‘Abd Allāh. *Al-Mughnī*. 15 vols. Ed. ‘Abd Allāh al-Turkī and ‘Abd al-Fattāḥ al-Ḥulū. Riyadh: Dār ‘Ālam al-Kutub, 1997.

- Ibn Rajab, Zayn al-Dīn ‘Abd al-Raḥmān b. Aḥmad. *Dhayl ṭabaqāt al-Ḥanābila*. 5 vols. Ed. ‘Abd al-Raḥmān al-‘Uthaymīn. Riyadh: Maktabat al-‘Ubaykān, 2005.
- Ibn Taghrī Birdī, Abū al-Maḥāsin Yūsuf. *Al-Nujūm al-zāhira fī mulūk Miṣr wa al-Qāhira*. 10 vols. Cairo: al-Mu’assasa al-Miṣriyya al-‘Āmma li-l-Ta’līf wa al-Ṭibā‘a wa al-Nashr, 1963-1971.
- Ibn Taymiyya, Aḥmad b. ‘Abd al-Ḥalīm. *Al-Ṣārim al-maslūl ‘alā shātim al-Rasūl*. 3 vols. Ed. Muḥammad b. ‘Abd Allāh al-Ḥalawānī and Muḥammad Kabīr Shawdarī. Dammam: Ramādī li-l-Nashr, 1997.
- _____. *Majmū‘ fatāwā Shaykh al-Islām Aḥmad b. Taymiyya*. 37 vols. Ed. ‘Abd al-Raḥmān Ibn Qāsim. Riyadh: Maṭābi‘ al-Riyadh, 1961-1967.
- Ibn Ṭulūn, Shams al-Dīn Muḥammed b. ‘Alī. *Al-Qalā‘id al-jawhariyya fī tārikh al-Ṣālihiyya*. Damascus: Mujamma‘ al-Lugha al-‘Arabiyya, 1981.
- _____. *Quḍāt Dimashq*. Ed. Ṣalāḥ al-Dīn al-Munajjid. Damascus: Dār al-Nawādir, 2006.
- Ibrahim, Ahmad Fekry. *Pragmatism in Islamic Law: A Social and Intellectual History*. New York: Syracuse University Press, 2015.
- Irwin, Robert. *Mamlūks and Crusaders. Men of the Sword and Men of the Pen*. Farnham: Ashgate, 2010.
- _____. *The Middle East in the Middle Ages: The Early Mamluk Sultanate, 1250-1382*. London: Croom Helm, 1986.
- Jackson, Sherman. *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfi*. Leiden: E. J. Brill, 1996.

- Jacques, Kevin. *Authority, Conflict, and the Transmission of Diversity in Medieval Islamic Law*. Leiden: E. J. Brill, 2006.
- Johansen, Baber. *Contingency in a Sacred law: Legal and Ethical Norms in the Muslim Fiqh*. Leiden: E. J. Brill, 1999.
- Jones, Linda. *The Power of Oratory in the Medieval Muslim world*. Cambridge: Cambridge University Press, 2012.
- Jum‘a, ‘Alī. *Al-Madkhal li-dirāsat al-madhāhib al-fiqhiyya*. Cairo: Dār al-Salām, 2001.
- Jūrj, Jirād Dī. *Dimashq ‘abr al-‘uṣūr*. Trans. Muḥammad ‘Awaḍ. Damascus: Dār Ibn Qutayba, 2007.
- Katz, Marion. *Prayer in Islamic Thought and Practice*. Cambridge: Cambridge University Press, 2013.
- _____. “The Age of Development and Continuity, 12th-15th Centuries CE.” In *The Oxford Handbook of Islamic Law*, eds. Anver M. Emon and Rumea Ahmed, 437-458. Oxford: Oxford University Press, 2018.
- Kennedy, Edward. “A Survey of Islamic Astronomical Tables.” *Transactions of the American Philosophical Society* 46, no. 2 (1956): 123-177.
- _____. *Astronomy and Astrology in the Medieval Islamic World*. Surrey: Ashgate, 1998.
- _____. “Parallax Theory in Islamic Astronomy.” *Isis* 47, no. 1 (1956): 33-53.
- _____. *Studies in the Islamic Exact Sciences*. Beirut: American University of Beirut, 1983.

- King, David A. *Astronomy in the Service of Islam*. Surrey: Ashgate, 1993.
- _____. "Ibn al-Shāṭir: 'Alā' al-Dīn 'Alī Ibn Ibrāhīm." In *The Biographical Encyclopedia of Astronomers, Springer Reference*, ed. Thomas Hockey, 569-570. New York: Springer, 2007.
- _____. *In Synchrony with the Heavens*. Leiden: E. J. Brill, 2003.
- _____. *Mathematical Astronomy in Medieval Yemen*. Malibu: Undena, 1983.
- _____. "The Astronomy of the Mamluks: A Brief Overview." *Muqarnas* 2 (1984): 73-84.
- _____. "The Astronomy of the Mamluks." *Isis* 74, no. 4 (1983): 531-555.
- Lambton, Ann K. S. *State and Government in Medieval Islam: An Introduction to the Study of Islamic Political Theory; The Jurists*. Oxford: Oxford University Press, 1981.
- Laoust, Henri. "Remarques sur les expéditions du Kasrawan sous les premiers Mamluks." *Bulletin du Musée de Beyrouth* 4 (1940): 93-115.
- Lapidus, Ira M. *Muslim Cities in the Later Middle Ages*. Cambridge: Cambridge University Press, 1984.
- Lassner, Jacob. "Municipal entities and mosques: An additional note on the imperial center." *Journal of the Economic and Social History of the Orient* 10 no. 1 (1967): 53-63.
- Lev, Yaacov. "Symbiotic Relations: Ulama and the Mamluk sultans." *Mamlūk Studies Review* 13, 1 (2009): 1-26.

- Levanoni, Amalia, and Michael, Winter (eds). *The Mamluks in Egyptian and Syrian Politics and Society*. Leiden: E. J. Brill, 2004.
- _____. *A Turning Point in Mamluk History: The Third Reign of al-Nāṣir Muḥammad Ibn Qalāwūn, 1310-1341*. Leiden: E. J. Brill, 1995.
- _____. “Takfir in Egypt and Syria during the Mamlūk Period.” In *Accusations of Unbelief in Islam*, ed. Camilla Adang et al. 156-178. Leiden: E. J. Brill, 2016.
- Levtzion, Nehemia. “Conversion to Islam in Syria and Palestine and Survival of Christian Communities.” In *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi, 289-312. Toronto: Pontifical Institute of Mediaeval Studies, 1990.
- Lewis, Bernard. “Some Observations on the Significance of Heresy in the History of Islam.” *Studia Islamica* 1 (1953): 43-63.
- Libson, Gideon. “On the Development of Custom as a Source of Law in Islamic Law.” *Islamic Law and Society* 1 (1994): 131– 55.
- Lit, L.W.C. (Eric) Van. “Commentary and Commentary Tradition. The Basic Terms for Understanding Islamic Intellectual History.” *MIDÉO* 32 (2017): 3-26.
- Little, Donald. *A Catalogue of the Islamic Documents from al-Ḥaram aš-Šarīf in Jerusalem*. Beirut: Orient-Institut der Deutschen Morgenländischen Gesellschaft, 1984.

- _____. “Coptic Conversion to Islam under the Baḥrī Mamlūks, 692-755/1293-1354.” *Bulletin of the School of Oriental and African Studies* 39, 3 (1976): 552-569.
- _____. “Coptic Converts to Islam during the Baḥrī Mamluk Period.” In *Conversion and Continuity: Indigenous Christian Communities in Islamic lands, Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi, 263-288. Toronto: Pontifical Institute of Mediaeval Studies, 1990.
- _____. “Documents Related to the Estates of a Merchant and His Wife in Late Fourteenth-Century Jerusalem.” *Mamlūk Studies Review* 2 (1998): 93-193.
- _____. “Notes on the Early *nazar al-khāṣṣ*.” In *The Mamluks in Egyptian Politics and Society*, ed. Thomas Philipp and Ulrich Haarmann, 235-253. Cambridge: Cambridge University Press, 1998.
- _____. “Religion under the Mamluks.” *The Muslim World* 73 (1983): 165-181.
- Loiseau, Julien. “The City of Two Hundred Mosques: Friday Worship and its Spread in the Monuments of Mamluk Cairo.” In *The Arts of the Mamluks in Egypt and Syria: Evolution and Impact*, ed. Behrens Abouseif, 183-202. Göttingen: V&R unipress GmbH, 2012.
- Luz, Nimrod. “Icons of Power and Religious Piety: The Politics of Mamlūk Patronage.” In *Material Evidence and Narrative Sources: Interdisciplinary Studies of the History of the Muslim Middle East*, ed. Daniella Talmon Heller, Katia Cytryn Silverman, 239-266. Leiden: E. J. Brill, 2014.

- Maḥmūd, Ḥusnī. *Al-Tiknūlūjyā al-ḥadītha wa madā ḥujjiyyatihā fī al-ithbāt*.
Alexandria: Dār al-Fikr: 2007.
- Makdisi, George. “Ash‘arī and Ash‘arites in Islamic Religious History.” *Studia Islamica* 17 (1962): 37-80.
- _____. “Notes on Ḥilla and the Mazyadids in Medieval Islam.” *Journal of the American Oriental Society* (1954): 249-262.
- _____. *The Rise of Colleges. Institutions of Learning in Islam and the West*. New York: Columbia University Press, 1981.
- Masud, Muhammad Khalid, Brinkley Morris Messick, and David Powers (eds.). *Dispensing Justice in Islam: Qadis and Their Judgements*. Leiden: E. J. Brill, 2006.
- _____. *Islamic Legal Interpretation: Muftīs and their Fatwas*. Cambridge, MA: Harvard University Press, 1996.
- Mazor, Amir. *The Rise and Fall of a Muslim Regiment: The Maṣṣūriyya in the First Mamluk Sultanate, 678/1279-741/1341*. Bonn: Bonn University Press at V&R Unipress, 2015.
- Melcak, Miroslav. “Reconstruction of the Lost Ayyubid Waqf. Madrasa al-Shāmīya al-Juwwānīya in Damascus as Depicted in the Fatāwā of Taqī al-Dīn al-Subkī (d.756/1355).” *Oriental Archive* 80 (2012): 1-39.
- Michot, Yahya. “Ibn Taymiyya on Astrology: Annotated Translation of Three Fatwas.” *Journal of Islamic Studies* 11 no.2 (2000): 147-208.

- Miura, Toru. *Dynamism in the Urban Society of Damascus: The Şālihiyya Quarter from the Twelfth to the Twentieth Centuries*. Leiden: E. J. Brill, 2015.
- Momen, Moojan. *An Introduction to Shi‘i Islam: the history and Doctrines of Twelver Shi‘ism*. New Haven: Yale University Press, 1985.
- Moosa, Ebrahim. “Shaykh Aḥmad Shākir and the Adoption of a Scientifically-Based Lunar Calendar.” *Islamic Law and Society* 5, no. 1 (1998): 57-89.
- Muhanna, Elias. *The World in a Book: Al-Nuwayri and the Islamic Encyclopedic Tradition*. Princeton: Princeton University Press, 2017.
- Müller, Christian. “A Legal Instrument in the Service of People and Institutions: Endowments in Mamluk Jerusalem as Mirrored in the Ḥaram Documents.” *Mamlūk Studies Review* 12, no. 1 (2008): 173-91.
- _____. “Settling Litigation Without Judgment: The Importance of the Ḥukm in Qāḍī Cases of Mamlūk Jerusalem.” In *Dispensing Justice in Islam: Qadis and Their Judgements*, ed. Muhammad Khalid Masud, Rudolph Peters, and David Powers, 47-69. Leiden: E. J. Brill, 2006.
- Nasr, Seyyed Hossein. *Introduction to Islamic Cosmological Doctrines*. Albany: SUNY Press, 1993).
- Nielsen, Jørgen. *Secular Justice in an Islamic State: Mazālim under the Baḥrī Mamlūks, 662/1264-789/1387*. Leiden: Nederlands Historisch-Archaeologisch Instituut te Istanbul, 1985.
- _____. “Sultan al-Zāhir Baybars and the appointment of four chief qāḍīs, 663/1265.” *Studia Islamica*, 60 (1984):167-176.

- Northrup, Linda. *From Slave to Sultan: The Career of Al-Manṣūr Qalāwūn and the Consolidation of Mamluk Rule in Egypt and Syria (678-689 A.H./1279-1290 A.D.)*. Stuttgart: Franz Steiner, 1998.
- _____. "Muslim-Christian Relations During the Reign of the Mamluk Sultan al-Manṣūr Qalāwūn, A.D. 1278-1290." In *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands, Eighth to Eighteenth Centuries*, ed. Michael Gervers and Ramzi Jibran Bikhazi, 253-261. Toronto: Pontifical Institute of Mediaeval Studies, 1990.
- _____. "The Baḥrī Mamlūk Sultanate, 1250-1390." In *The Cambridge History of Egypt*, vol.1, *Islamic Egypt, 640-1517*, ed. Carl Petry, 242-289. Cambridge: Cambridge University Press, 1998.
- O'Kane, Bernard. *The Mosques of Egypt*. Cairo: American University Press, 2016.
- Omar Hanaa. "Apostasy in the Mamluk Period: The Politics of Accusations of Unbelief." Ph.D. Diss., University of Pennsylvania, 2001.
- Perlmann, Moshe. "Asnawī's Tract against Christian Officials." In *Ignace Goldziher Memorial Volume*, ed. S. Löwinger, A. Scheiber and J. Somogyi, 172-208. Jerusalem: R. mass, 1958.
- _____. "Notes on Anti-Christian Propaganda in the Mamlūk Empire." *Bulletin of the School of Oriental and African Studies* 10 (1942): 843-861.
- Petry, Carl F. (ed.). *The Cambridge History of Egypt*, vol.1, *Islamic Egypt, 640-1517*. Cambridge: Cambridge University Press, 1998.

- _____. *The Civilian Elite of Cairo in the Later Middle Ages*. Princeton: Princeton University Press, 1981.
- _____. *The Criminal Underworld in a Medieval Islamic Society: Narratives from Cairo and Damascus under the Mamluks*. Chicago: Middle East Documentation Center, 2012.
- Pouzet, Louis. *Damas Au VII/XIIIe Siècle: Vie Structures Religieuses d'une Métropole Islamique*. 2nd ed. Beirut: Dar el-Machreq, 1991.
- Powers, David. *Law, Society, and Culture in the Maghrib, 1300-1500*. Cambridge: Cambridge University Press, 2002.
- _____. "The Mālikī Family Endowment: Legal Norms and Social Practices." *International Journal of Middle East Studies* 25 (1993): 379- 406.
- Quadr, Junaid. "Transformations of Tradition: Modernity in the Thought of Muḥammad Bakhīt al-Muḥī'ī." PhD diss., McGill University, 2013.
- Qureshi, Omar. "Badr al-Dīn Ibn Jamā'ah and the Highest Good of Islamic Education." Ph.D. Diss., Loyola University Chicago, 2016.
- Rabb, Intisar A. "Islamic Legal Maxims as Substantive Canons of Construction: *Ḥudūd*-Avoidance in Cases of Doubt." *Islamic Law and Society* 17, (2010): 63-125.
- Rapoport, Yossef and Shahab Ahmed (eds.) *Ibn Taymiyya and His Times*. Karachi: Oxford University Press, 2010.
- _____. "Ibn Taymiyya on Divorce Oaths." In *The Mamluks in Egyptian and Syrian Politics and Society*, ed. Amalia Levanoni and Michael Winter, 191-217. Leiden: E. J. Brill, 2004.

- _____. "Ibn Taymiyya's Radical Thought." In *Ibn Taymiyya and His Times*, ed. Yossef Rapoport and Shahab Ahmed, 191-226. Karachi: Oxford University Press, 2010.
- _____. "Legal Diversity in the Age of *Taqīd*: The Four Chief *Qāḍīs* under the Mamluks." *Islamic Law and Society* 10 (2003): 210-228.
- _____. *Marriage, Money and Divorce in Medieval Islamic Society*. Cambridge: Cambridge University Press, 2005.
- _____. "Royal Justice and Religious law: *Siyāsah* and Shari'ah under the Mamluks." *Mamluk Studies Review* 16, (2012): 71- 102.
- Reid, Megan. *Law and Piety in Medieval Islam*. Cambridge: Cambridge University Press, 2013.
- Reinhart, Kevin. "Transcendence and Social Practice: Muftis and Qadis as Religious Interpreters," *Annales Islamologiques*, 27 (1993): 5- 28.
- Richards Donald. "Mamluk Amirs and Their Families and Households." In *The Mamluks in Egyptian Politics and Society*, ed. Thomas Philipp and Ulrich Haarmann, 32-54. Cambridge: Cambridge University Press, 1998.
- _____. "The Coptic Bureaucracy under the Mamlūks." In *Colloque international sur l'histoire du Caire*, ed. André Raymond, Michael Rogers, Magdi Wahba, 373-381. Cairo: Dominican Institute for Oriental Studies, 1969.
- Rosenthal, Franz. *Muslim Intellectual and Social History: A Collection of Essays (Variorum Collected Studies)*. New York: Routledge, 1990.
- Sābiq, Sayyid. *Fiqh al-sunna*. Beirut: Dār al-Kitāb al-'Arabī, 1977.

- Sabra, Adam. *Poverty and Charity in Medieval Islam: Mamluk Egypt, 1250-1517*. Cambridge: Cambridge University Press, 2000.
- Sadeghi, Behnam. *The Logic of Law Making in Islam*. Cambridge: Cambridge University Press, 2005.
- Saliba, George. *A History of Arabic Astronomy: Planetary Theories During the Golden Age of Islam*. New York: NYU Press, 1995.
- _____. "Astronomy and Astrology in Medieval Arabic Thought." In *Les Doctrines de la Science de l'Antiquité à l'Âge Classique*, ed. Joël Biard and Roshdi Rashed, 131-164. Leuven: Peeters, 1999.
- _____. *Islamic Science and the Making of the European Renaissance*. Cambridge, MA.: MIT Press, 2007.
- _____. "The Development of Astronomy in Medieval Islamic Society." *Arab Studies Quarterly* (1982): 211-225.
- _____. "Theory and Observation in Islamic Astronomy: The Work of Ibn al-Shāṭir of Damascus." *Journal for the History of Astronomy* 18, no. 1 (1987): 35-43.
- Schacht, Joseph. *An Introduction to Islamic Law*. Oxford: Clarendon Press, 1964.
- Shakir, M. H. *The Qur'ān: Arabic Text and English Translation*. New York: Tahrike Tarsile Qur'ān, Inc, 1996.
- Shinqīfī, Mohamed. "The Crusaders' Impact on Sunnī Shī'ī Relations," Ph.D. Diss., Texas Tech University, 2011.

- Shoshan, Boaz. *Popular Culture in Medieval Cairo*. New York: Cambridge University Press, 1993.
- Siddiqui, Sohaira. *Law and Politics Under the Abbasids: An Intellectual Portrait of al-Juwaynī*. Cambridge: Cambridge University Press, 2019.
- Steenbergen, Jo Van. "On the Brink of New Era? Yalbughā al-Khaṣṣākī (d. 1366) and Yalbughāwīyyah." *Mamluk Studies Review* 15 no. 1 (2011): 117-152.
- _____. *Order Out of Chaos: Patronage, Conflict and Mamluk Socio-Political Culture 1341-1382*. Leiden: E. J. Brill, 2006.
- Stewart Devin J. *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System*. Salt Lake: University of Utah Press, 1998.
- _____. "Popular Shiism in Medieval Egypt: Vestiges of Islamic Sectarian Polemics in Egyptian Arabic." *Studia Islamica* 84 (1996): 35-66.
- _____. "The Students' Representatives in the Law Colleges of 14th Century Damascus." *Islamic Law and Society* 15 (2008): 185-218.
- Stillman, Norman A. "The Non-Muslim Communities: The Jewish Community." In *The Cambridge History of Egypt, vol.1, Islamic Egypt, 640-1517*, ed. Carl Petry, 198-210. Cambridge: Cambridge University Press, 1998.
- Stilt, Kristen. *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt*. New York: Oxford University Press, 2011.

- Stolz, Daniel. *The Lighthouse and the Observatory: Islam, Science, and Empire in Late Ottoman Egypt*. Cambridge: Cambridge University Press, 2018.
- Stowasser, Barbara. *The Day Begins at Sunset: Perceptions of Time in the Islamic World*. London: IB Tauris, 2014.
- Taragan, Hana. "Doors that Open Meanings: Baybars's Red Mosque at Safed." In *The Mamluks in Egyptian and Syrian politics and society*, ed. Amalia Levanoni and Michael Winter, 4-20. Leiden: E. J. Brill, 2004.
- Tillier, Mathieu. "The Mazalim in Historiography." In *The Oxford Handbook of Islamic Law*, ed. Anver M. Emon and Rumees Ahmed, 375- 384. Oxford: Oxford University Press, 2018.
- Toru, Miura. "Urban Society in Damascus as the Mamluk Era was ending." *Mamluk Studies Review* 10 no.1 (2006): 157-193.
- Vikør, Knut. *Between God and the Sultan: A History of Islamic Law*. New York: Oxford University Press, 2005.
- Vogel, Frank E. *Islamic Law and the Legal System: Studies of Saudi Arabia*. Leiden: E. J. Brill, 2000.
- Ward, Seth. "Construction and Repair of Churches and Synagogues under Islam: A Treatise by Taqī al-Dīn 'Alī b. 'Abd al-Kāfī al-Subkī." Ph.D. Diss., Yale University, 1984.
- _____. "Dhimmi Women and Mourning." In *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, 87-97. Cambridge, MA: Harvard University Press, 1996.

- _____. “Ibn al-Rif‘a on the Churches and Synagogues of Cairo.” *Medieval Encounters* 5 (1999): 70-84.
- _____. “Sabbath Observance and Conversion to Islam in the 14th Century—A Fatwā by Taqī al-Dīn al-Subkī.” In *Proceedings of the Ninth World Congress of Jewish Studies*, Division B, vol. 1, *The History of the Jewish People from the Second Temple Period until the Middle Ages*, 47-54. Jerusalem, 1986.
- _____. “Taqī al-Dīn al-Subkī on Construction, Continuance, and Repair of Churches and Synagogues in Islamic Law.” In *Studies in Islamic and Jewish Traditions II*, ed. William M. Brinner and Stephen D. Ricks, 169-188. Atlanta: Scholars Press, 1989.
- Weiss, Bernard. “Ibn Taymiyya on Leadership in the Ritual Prayer.” In *Islamic Legal Interpretation: Muftīs and Their Fatwas*, ed. Muhammad Khalid Masud, Brinkley Messick, and David Powers, 63-71. Cambridge, MA: Harvard University Press, 1996).
- _____. *The Search for God’s Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī*. Salt Lake City: University of Utah Press, 2010.
- Wiederhold, Lutz. “Blasphemy against the Prophet and His Companions (*Sabb al-Rasūl*, *Sabb al-Ṣaḥābah*): The Introduction of the Topic into Shāfi‘ī Legal Literature and its Relevance for Legal Practice under Mamluk Rule.” *Journal of Semitic Studies* XLII/1 (1997): 39-70.
- _____. “Some Remarks on Mālikī Judges in Mamlūk Egypt and Syria.” In *Die Mamlūken. Studien zu ihrer Geschichte und Kultur: Zum Gedenken an*

Ulrich Haarmann (1942–1999), Vol. 7: *Asien und Afrika*, eds. Stephan Conermann, Anja Pistor Hatam, 403-413. Berlin: EB-Verlag, 2003.

Wilfong, Terry G. “The non-Muslim Communities: Christian communities.” In *The Cambridge History of Egypt*. Vol. 1: *Islamic Egypt, 640-1517*, ed. Carl F. Petry, 175-197. Cambridge: Cambridge University Press, 1998.

Williams, Caroline. “The Mosque of Sitt Hadaq.” *Muqarnas* 11, (1994): 55-64.

Winter Stefan. “Shams al-Dīn Muḥammad Ibn Makkī “al-Shahīd al-Awwal” (d. 1384) and the Shī‘ah of Syria.” *Mamluk Studies Review* 3 (1999): 162-163.

Winter, Michael. “‘Ulama’ Between the State and the Society in Pre-Modern Sunni Islam.” In *Guardians of Faith in Modern Times: ‘Ulama’ in the Middle East*, ed. Meir Hatina, 19-46. Leiden: E. J. Brill, 2008.

Yarbrough, Luke. *Friends of the Emir: Non-Muslim State Officials in Premodern Islamic Thought*. Cambridge: Cambridge University Press, 2019.

_____. “Ibn al-Naqqāsh,” in *Christian-Muslim Relations: A Bibliographical History*, Vol. 5 (1350-1500), ed. David Thomas and Alex Mallett, 123-129. Leiden: E. J. Brill, 2013.