Introduction

Fine distinctions among groups attain an importance that appears exaggerated to observers outside a particular time and place but reflects participants’ certain knowledge that they are struggling not just over symbolic markets but over the very structure of rule.

– Lauren Benton, Law and Colonial Cultures

In 1535, soon after the Safavid army evacuated the city, Ottoman troops, led by Sultan Süleyman (r. 1520–66), marched into Baghdad. The Ottoman excitement about this military achievement is understandable: within a time period of twenty years, all the major cities and the most important learning centers of the eastern part of the Arabic-speaking world had come under Ottoman rule. Baghdad was a prestigious addition to the expanding Ottoman Empire for another reason – it was there that the eponymous founder of the Hanafî school, Abu Hanîfa (d. 767), was buried. Sixteenth- and seventeenth-century chroniclers did not fail to recognize the symbolic significance of the seizure of the tomb of the Greatest Imam (al-Imâm al-Aʿzam). Some describe in detail how the sultan himself visited the tomb upon its conquest and ordered its purification, for, in Sunnî Ottoman eyes, it was contaminated by the heretical Safavids.


This symbolic reconstruction of the tomb of Abū Ḥanīfa was the third of its kind within less than a century. During the siege on Constantinople, Mehmet the Conqueror is said to have discovered the grave of Abū Ayyūb al-Anṣārī, one of the companions of the Prophet Muhammad who died when he tried to conquer Constantinople in the seventh century. Later, in 1516, the Ottoman seizure of another tomb, that of the famous yet controversial Sufi master Muhīyī al-Dīn b. al-ʿArabī, in the Şalihîyya suburb of Damascus, was celebrated with great pomp, and Sultan Selîm I, the conqueror of Syria and Egypt, ordered the restoration of the tomb and the construction of the mausoleum complex. These ceremonial reconstructions of important tombs, as real acts and narrative tropes, are intriguing not only because members of the Ottoman dynasty play an important role but also because each of the three figures whose tombs were discovered and reconstructed represent a pillar of what some modern scholars have called “Ottoman Islam.” Abū Ayyūb al-Anṣārī embodies the Ottoman dynasty’s ideal of holy war against the infidels; Ibn al-ʿArabī was one of the most prominent figures in the Ottoman pantheon of Sufi masters; and Abū Ḥanīfa was the founder of the school of law (madhhab) that the Ottoman dynasty adopted as its official school. In other words, the discovery-reconstruction of their tombs was an act of appropriation. In this book, I am particularly interested in the third pillar – the Ottoman Ḥanafī school of law.

(Damascus: Dār al-Nasīr, 1985), 45; Gülru Necipoğlu, The Age of Sinan: Architectural Culture in the Ottoman Empire (Princeton, NJ: Princeton University Press, 2005), 60–64; Zeynep Yurekli, Architecture and Hagiography in the Ottoman Empire: The Politics of Bektashi Shrines in the Classical Age (Farnham, Surrey, UK: Ashgate, 2012), 17–18. The seizure and reconstruction of the tomb is also mentioned in other genres and documents. See, for example, the preamble of the endowment deed of Sultan’s wife: Waqfiyyat Khāsaki Khiram (Hurrem) Sultan ‘alā al-Ḥaramayn al-Sharīfayn Makka al-Mukarrama wa’l-Madina al-Munawwara (al-Karak: Mu’assasat Rām lil-Tiknülüjyā wa’l-Kumbiyütar, 2007), 39. In addition to Abū Ḥanīfa’s grave, the new Ottoman rulers became the custodians of numerous other tombs of great significance, both for Sunnis and Shiites.


See, for example, Tijana Krstić’s recent study: Tijana Krstić, Contested Conversions to Islam: Narratives of Religious Change in the Early Modern Ottoman Empire (Stanford, CA: Stanford University Press, 2011).
Süleyman’s seizure and reconstruction of Abū Ḥanīfa’s grave captures broader developments that predate the conquest of Baghdad. Since the early fifteenth century (and possibly even earlier), the Ottoman dynasty had gradually developed a distinctive branch within the Sunnī Ḥanafī school of law, one of the four legal schools of Sunnī Islam. The development of a distinctive branch that was exclusively associated with the dynasty was coupled by another important development: the rise of an imperial learned hierarchy. Although the institutional aspects of the development of an imperial hierarchy have been studied in detail, the doctrinal dimensions of this development have received considerably less attention. Furthermore, despite the fact that the Ottoman adoption of the Sunnī Ḥanafī school is almost a scholarly truism among students of Islamic societies, the implications of this adoption – a radical innovation in Islamic legal history – remain fairly understudied.

One of the few exceptions is Rudolph Peters’s short yet thought-provoking article, in which he raises the question that guides my inquiry: “What does it mean to be an official madhhab?” In this article, Peters points to the instrumental role the Ottoman state played in the emergence of the Ḥanafi school as the official and dominant school in the Ottoman domains and to its intervention in regulating, to some extent, the school’s doctrines. Following some of Peters’s insights concerning the pivotal role the Ottoman dynasty played in the emergence of the official madhhab, the present study pursues his investigation further by looking at multiple sites, discourses, and practices that formed the Ottoman Ḥanafī school over the course of the fifteenth through the eighteenth centuries.

The rise of an Ottoman official legal school may be also seen as a new chapter in the history of canonization of Islamic law. In recent years, several studies have looked at Islamic legal history, especially at its earlier


7 Peters, “What Does It Mean to Be an Official Madhhab?”
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centuries, through this lens. But while canonization is pivotal to the emergence of any tradition, legal or otherwise, it may assume different forms. The Second Formation of Islamic Law focuses on the particular features of the canonization practices that the Ottoman dynasty and its learned hierarchy employed to shape an Ottoman madhhab and compares them with other canonization mechanisms and perceptions of legal canons that prevailed in earlier centuries, as well as in various scholarly circles throughout the Ottoman Empire.

My investigation of the history of the Ottoman official madhhab oscillates between the provincial and the imperial levels. At the provincial level, this study examines the encounter between the followers of different branches and traditions within the Hanafi school of law in the Ottoman province of Damascus (Bilad al-Sham, or Greater Syria, roughly modern day’s south and central Syria, Lebanon, Palestine/Israel, and parts of Jordan) in particular, although much of what will be said in the following chapters may be applied to other Arab provinces as well. At the imperial level, it seeks to draw attention to how the conquest and subsequent incorporation of the Arab lands into the empire produced a clearer articulation of the boundaries of the learned hierarchy and, more generally, of the branch within the Hanafi school that members of the dynasty were expected to follow.

I have chosen the Ottoman province of Damascus for three reasons. First, although the Arab provinces were conquered over the course of the sixteenth century, their incorporation assumed different forms. Moreover, sixteenth- to eighteenth-century sources often differentiate between the various districts that constituted the “Arab lands” of the

9 Haghnahr Zeitlian Watenpaugh, The Image of an Ottoman City: Imperial Architecture and Urban Experience in the 16th and 17th Centuries (Leiden: Brill, 2004); Doris Behrens-Abouseif, Egypt’s Adjustment to Ottoman Rule: Institutions, Waqf, and Architecture in Cairo, 16th and 17th Centuries (Leiden: Brill, 1994). This was even the case in later centuries as various Arab provinces were integrated differently into the empire, some significant similarities notwithstanding. See, for example, Amy Singer, Palestinian Peasants and Ottoman Officials: Rural Administration around Sixteenth-Century Jerusalem (Cambridge: Cambridge University Press, 1994); Jane Hathaway, The Politics of Household in Ottoman Egypt: The Rise of the Qazdağlıs (Cambridge: Cambridge University Press, 1997); Dina Rizk Khoury, State and Provincial Society in the Ottoman Empire: Mosul, 1540–1834 (Cambridge: Cambridge University Press, 1997); Charles L. Wilkins, Forging Urban Solidarities: Ottoman Aleppo 1640–1700 (Leiden: Brill, 2010).
empire. Therefore, it is necessary to pay attention to the particularities of each province. Second, since a major concern of this study is the organization of the Ottoman legal administration, it is convenient to preserve the provincial setting. Third, as Kenneth Cuno has demonstrated, there were, at times, significant doctrinal differences between the Hanafî jurists of each province.¹⁰

That said, this study seeks to undermine the rigidity that the focus on the imperial administration implies. Accordingly, the term “the Ottoman province of Damascus” – and, more generally, the term “Arab lands” – is used to demarcate a territory in which the encounters and exchanges between people, ideas, and traditions occurred. To be sure, certain traditions and practices were rooted in these regions, as many sixteenth- to eighteenth-century jurists and chroniclers observed. Yet it is necessary to differentiate between the territory and certain cultural practices, albeit for analytical ends. This approach also enables us to account for the multiple contacts and ties between the disparate parts of the empire and between certain provinces and other parts of the Islamic world. For example, one has to account for the fact that some of the Greater Syrian jurisconsults received questions from neighboring provinces as well as from the central lands of the empire. Moreover, many jurists traveled to and from other learning centers across the Arab lands (namely, Cairo and the holy cities in the Hijaz) and the imperial capital. In addition, the circulation of texts and students tied Greater Syrian jurists to other provinces across the empire and beyond.

The book’s chronological framework is from the second half of the fifteenth century though the late eighteenth century. The relatively long time frame enables us to trace the gradual incorporation of Greater Syria into the empire and to examine the impact of this incorporation on different perceptions of the legal school.¹¹ Furthermore, examining the history


¹¹ Dror Ze’evi has suggested considering the seventeenth century as the “Ottoman century.” In his words, “The second century of Ottoman rule, forming the time frame for this study, is perhaps the clearest manifestation in this region of the ‘Ottoman way’ – the distinct set of norms and methods that represents the empire’s rule in all realms.” Dror Ze’evi, *An Ottoman Century: The District of Jerusalem in the 1600s* (Albany: State University of New York Press, 1996), 4–5. For the purposes of this study, Ze’evi’s periodization is somewhat rigid and essentialist. Instead, I seek to draw attention to the complex dynamics that characterized the incorporation of the Arab lands into the empire, processes that are, to some extent at least, open-ended, yet equally “Ottoman.” Other studies of the incorporation into the empire of the Arab provinces in general and of Greater Syria in
of the official madhhab up to the late eighteenth century may provide a better understanding of the more widely studied developments of the nineteenth century.

The Madhhab

In order to appreciate the novelty of the rise of the official school of law, the main development this book aims to describe, it would be helpful to introduce – admittedly, in very broad strokes – the notion and features of the pre-Mongol Sunnī madhhab. As I have suggested above, this notion of the school did not disappear in the post-Mongol period, and jurists in certain circles adhered to this understanding of the school of law.

The pre-Mongol madhhab (plural madhāḥib, mezheb in Turkish) was a fairly loose social organization whose main function was to regulate the legal interpretation of divine revelation and to determine the authority of a given interpreter to do so. The word “madhhab” is derived from the Arabic root ḏẖ-h-b (generally associated with walking or following a path) and means “a way, course, or manner, of acting or conduct.” More generally, the term is used to denote a doctrine, tenet, or an opinion concerning a certain issue. In certain cases “madhhab” may refer to the opinion of a leading jurist on a specific issue, but it may also denote, as is more commonly the case, a general hermeneutic approach.  


particular have tended to focus on the sixteenth-century consolidation and organization of Ottoman rule in the newly conquered territories. Among these studies are Muhammad ‘Adnan Bakhit, The Province of Damascus in the Sixteenth Century (Beirut: Librarie du Liban, 1982); Leslie Feiere, Morality Tales: Law and Gender in the Ottoman Court of Aintab (Berkeley: University of California Press, 2003); Astrid Meier, “Perceptions of a New Era? Historical Writing in Early Ottoman Damascus,” Arabica 51, no. 4 (2004): 419–34; Timothy J. Fitzgerald, “Ottoman Methods of Conquest: Legal Imperialism and the City of Aleppo, 1480–1570” (PhD diss., Harvard University, 2009). Nevertheless, as this study intends to show, an examination of the last decades of the sixteenth century and the seventeenth century highlights significant dimensions of the incorporation that are not easily discernable in the sixteenth century.
During the late ninth and tenth centuries, the madhhab emerged as a legal discourse, or canon, around which a community of jurists galvanized. Moreover, much greater efforts were invested in regulating the range of permissible opinions within each school, and, perhaps more importantly, in limiting the authority of later followers of the schools to employ independent discretion or reasoning (ijtihād) and new hermeneutic approaches to derive new rules. This does not mean that jurists of later centuries did not employ independent reasoning to solve new problems they encountered, but that, discursively, followers of the schools emphasized their commitment to the doctrines of their schools’ respective founders and leading authorities. Later jurists affiliated with a school were expected to derive new rules on the basis of the rulings and doctrines of the school’s founder, the hermeneutic principles he set, and those developed by his disciples and later authorities within the school. The commitment to these hermeneutic and doctrinal principles is what made a jurist a follower (or an imitator, muqallid, the performer of taqlīd) within a school.13

As part of the evolution of the madhhab as a communal legal discourse, since the late tenth and eleventh centuries, and even more so in the following centuries, all four Sunni schools of law developed a hierarchy of authorities. This hierarchy of authorities was often reflected in a growing textual body of chronological typologies of the jurists who were affiliated with the different schools. Generally, in most typologies, jurists of later centuries were limited in their authority to exercise independent discretion, although many of them, in practice, did. By establishing a hierarchy of authorities, the schools emerged as a corpus of doctrines and arguments that their followers had to study and memorize. These typologies drew on, and were accompanied by, an extensive biographical literature (known as the tabaqāt literature) whose main purpose was to serve as reference works for the schools’ followers by documenting the intellectual genealogies of the schools (most commonly starting with the eponym), mapping out the schools’ leading authorities, and reconstructing the genealogies of authoritative opinions and doctrines within the schools.

The typologies, as we shall see in Chapters 2 and 3, vary in structure and scope. Some are quite comprehensive, while others only outline general principles. Moreover, some typologies begin with the highest

rank of mujtahids. The utmost mujtahid may derive new rules when he encounters new cases by resorting to the revealed texts. The eponymous founder of the school and often his immediate companions are included in this category. Other typologies start from the perspective of the follower least qualified to employ independent discretion, the utmost imitator, the muqallid. In any case, the typologies reflect a fairly wide and complex range of juristic activity in terms of the authority to employ independent reasoning, which is not limited to the dichotomy of independent reasoning versus imitation. Between the utmost mujtabid and the utmost muqallid are jurists who are allowed to use limited forms of ijtihađ (known as takhrıj) as long as they conform to the hermeneutic principles set by their schools’ eponym and his immediate followers. In most typologies, this form of judicial activity was performed by the jurists who studied with the founder and his immediate successors, but jurists of this category can be found, albeit to a lesser extent, in later centuries. Later jurists, who usually lived in the fourth and fifth Islamic centuries (tenth and eleventh centuries CE), were mostly concerned with weeding out weaker and less authoritative opinions and arguments while making other opinions preponderant (hence this activity is termed tarjih, literally meaning to prefer). They did so on the basis of their understanding of their interpretation of the teaching of their predecessors. All the jurists who followed a school, except the founder of the school, performed taqlid to varying degrees, as they followed hermeneutic and legal principles that already existed. Jurists of later centuries, for the most part, were considered utmost muqallids, although they, too, practiced at times different forms of takbrīj and tarjih.\(^\text{14}\)

Despite the consolidation of the legal schools around specific legal discourses and hermeneutic principles, at what Wael Hallaq calls the microlevel of the school, there were multiple opinions. Over the centuries, the Sunnī schools of law developed discursive conventions and other institutional practices to guide their followers through the different opinions of the schools and to point out what opinions and doctrines were considered more authoritative. These conventions were instrumental in articulating the schools’ canons. While many of the less authoritative opinions, or the minority opinions, were preserved in the schools’ texts and manuals, the authoritative opinions served as pedagogical tools that guided followers of the school to extrapolate and derive new rules on the

\(^{14}\) Hallaq, Authority, chaps. 1 and 2.
basis of the hermeneutic principles that their more authoritative predecessors developed. For our purposes here, it is important to stress that, doctrinally, the evolution of the schools of law and the regulation of their jurisprudential content were not a state-sponsored enterprise. This is not to say that states and sovereigns did not contribute to the dissemination of the schools by extending support, employment, and patronage to specific jurists or did not in practice shape doctrine. As early as the seventh and the eighth centuries, the Umayyad (661–750) and the ‘Abbasid (750–1258) dynasties supported eminent jurists and appointed jurists to different positions in their realms.

In other cases, while not intervening directly in the content of the law, rulers and sovereigns adopted a school (and sometimes several schools) to provide authoritative legal counsel. In the Ayyubid and the Mamluk sultanates, for example, it was fairly common that the sultan was a follower of the Shafi‘i school of law, the most popular school in Egypt at the time. In the Mamluk sultanate during the reign of Sultan al-Zahir Baybars (d. 1277), the state constituted a legal system in which all four schools were represented and specific cases were directed to judges of different schools, according to the relative advantage of the most common...
view of the school for the Mamluk ruling elite. Although the Mamluk state regulated the adjudication procedures of cases dealing with specific issues, it did not intervene doctrinally in the regulation of the structure of the school, its authorities, and the content of the law, and it accepted the opinion of eminent jurists as to what the preponderant opinion of the school was. Furthermore, although the Mamluk (like many other contemporary and early Islamic dynasties) employed jurists, for the most part there was no institutionally identifiable group of jurists that were affiliated with the ruling dynasty. In Sherman Jackson’s words, “The idea, thus, of state sovereignty entailing the exclusive right to determine what is and what is not law, or even what is and what is not an acceptable legal interpretation, is at best, in the context of classical Islam, a very violent one.”

The Official Madhhab

How the Ottomans (and, it appears, other contemporary polities) understood the madhhab diverges markedly from the classical, pre-Mongol understanding, for the Ottoman sultan and ruling dynasty assumed the right to intervene doctrinally in regulating and structuring the school. One should allow some room for contingency in the development of the official school of law, but it is fairly clear that at least from the second half of the fifteenth century the Ottoman ruling and judicial elite sought to single out a particular branch within the school.

The present study follows four major, closely interlocking developments that contributed to the evolution of the state madhhab: (1) the rise of the imperial learned hierarchy, (2) the emergence of the practice

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