



ASK Working Paper 05

Michael Winter

**The judiciary of late
Mamluk and early**

Ottoman Damascus

**The administrative, social and cultural
transformation of the system**

ASK Working Paper, ISSN 2193-925X
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History and Society during the
Mamluk Era (1250-1517)
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The judiciary of late Mamluk and early Ottoman Damascus: the administrative, social and cultural transformation of the system

by Michael Winter (Tel Aviv, Bonn)

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Michael Winter is a professor emeritus of the History of the Middle East at Tel University. He earned his PhD in Islamic Studies at UCLA (1972). The focus of his research is on social, cultural and religious themes (such as 'ulama', Sufis and Sufism, qadis and *ashrāf*) in Egypt and Syria under the Mamluks and the Ottomans, and the political thought in Islam. He published *Society and Religion in Early Ottoman Egypt: Studies in the Writings of 'Abd al-Wahhab al-Sh'arani*, (1982, first paperback printing, 2007), and *Egyptian Society under Ottoman Rule, 1517-1798* (1992, Arabic translation, 2001). Winter has co-edited four books and published numerous articles.

For a few years he has been working on the social history of late Mamluk and early Ottoman Damascus. He is interested in the transition of Egypt and Syria from the Mamluk to Ottoman rule, with a special emphasis on the qadis and the judicial system.

Three recent articles show Winter's current research interests:

- "The Ottoman conquest and Egyptian culture," in: *Conquête ottomane de l'Égypte (1517): Arrière-plan, impact, échos*, eds. Benjamin Lellouch and Nicolas Michel, Leiden: Brill 2012, pp. 287-302.
- "The *ashrāf* and the *naqīb al-ashrāf* in Ottoman Egypt and Syria: a comparative analysis," in: *Sayyids and Sharifs in Muslim Societies: The living links to the Prophet*, ed. Morimoto Kazuo, London/New York: Routledge 2012, pp. 138-157.
- "'Ulama' of Damascus and Ottoman 'Ulama': Career Patterns and Types of Authority," in: *Religious Knowledge, Authority and Charisma: Islamic and Jewish Perspectives*, eds. Daphna Ephrat and Meir Hatina, The University of Utah Press. (In the press)

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Abstract

The study compares the profiles of judges (*qāḍīs*), deputy qadis (*nāʾibs*), and the personnel of the courts in Damascus mainly in the fifteenth through the seventeenth centuries. Although both the Mamluks and the Ottomans were committed to the *Sharīʿah* law, their legal and administrative practices and policies were quite different. This was the result of the obvious political realities and the status of Damascus within the Mamluk and the Ottoman states. Damascus in the transition period is a good test case, owing to the many excellent sources in sixteenth century Damascus, that were even richer than the sources of Cairo during the same period. The involvement of the qadis with the local population under both rules and their relations with the center (Cairo and then Istanbul) are recorded in the chronicles, biographical dictionaries and other literary and documentary sources of Damascus. The social and cultural differences between the local (Arabic speaking) qadis and the Turkish speaking nominees from Istanbul call for an extensive comparative study.

1. Introductory remarks

1.1. Research

The transition period between Mamluk and Ottoman rule is a fascinating topic. This is the story of two Muslim Sunni empires, both ruled by Turkish-speaking military elites. They were very different from each other, however. At this point of history, the Ottomans were a dynamic and expanding force, with an offensive strategy, while the Mamluks were a static and basically a defensive empire. The clash between these empires was a struggle for the dominance of Sunni Islam; not that Selim, the Ottoman sultan, and Qānṣawh al-Ghawrī, the Mamluk sultan whom Selim defeated, were aware at the time of the long-term significance of the Ottoman conquest of Syria and Egypt in late 1516 and early 1517. Thanks to the excellent contemporary sources, the historian can follow in detail how a new regime enters into the shoes of the defeated one. This kind of documentation is quite unique.

I have used my time at the ASK mainly to concentrate on the judiciary (mainly the qadis and deputy qadis) during late Mamluk Damascus, approximately 1450-1516. This I have done for two reasons. First, I have worked quite extensively on the situation following the Ottoman conquest, and I intended to do more and deeper research on the Mamluk part of this study. Secondly, the ASK offered unique conditions to study the Mamluk judiciary owing to the library resources in the Kolleg and at the University library, all easily available. Also, the colleagues here are Mamlukists, and their background and expertise as shown in presentations and discussions were relevant to my research.

1.2. Why Damascus?

In the first place, because the quality and quantity of the sources. Unlike Egypt, whose great historiography stopped almost totally for almost a century after Ibn Iyās's diary of the first five years of Ottoman rule in Egypt, Damascus has detailed and fortunately uninterrupted descriptions of events: chronicles, biographical collections, and centennial biographical dictionaries. The sources on Damascus are richer and better than those available about Aleppo, and even Cairo at the same time, sixteenth and seventeenth centuries.

The Arabic literary writings of Mamluk Damascus, the main sources for the present study, are chronicles and biographical collections, whose authors were 'ulamā' with good knowledge of their society, and particularly of the milieu of Islamic religious life and scholarship. The principal ones are: Ibn Kathīr for the fourteenth century, Taqī al-Dīn b. Qādī Shuhbah for the fourteenth and fifteenth centuries, 'Abd al-Raḥmān al-Sakhāwī, the great biographer of 'ulamā', for the fourteenth and fifteenth centuries, 'Abd al-Qādir al-Nu'aymī, and Shams al-Dīn Muḥammad b. Ṭūlūn for the fifteenth and early sixteenth centuries. Ibn Ṭūlūn, an extremely prolific and reliable chronicler and biographer, compiled an important book entitled *al-Thaḡhr al-Bassām fī Dhikr Man Wulliya Qadā' al-Shām*, the biographies of the chief qadis of Damascus during the Mamluk and early Ottoman periods.¹

¹ *Qudat Dimashq*, or *al-Thaḡhr al-bassām* is a very useful volume where Ibn Ṭūlūn and his teacher al-Nu'aymī compiled the biographies of the qadis of Damascus from earlier historians, and added the biographies of their own contemporaries, including the Ottoman qadis during the first decades after the Ottoman conquest of 1516. Al-Nu'aymī, who was a Shāfi'ī, wrote the long chapter about the qadis of his *madhhab*, while Ibn Ṭūlūn, a Ḥanafī scholar, wrote the biographies of the qadis of the other three *madhhabs*.

The works of Damascene historians make a very interesting reading, trustworthy and unbiased, as far as we can judge. Their deep identification with their religion, culture and society is impressive. The way they report events and describe their subjects is nuanced and critical, without clichés of praises, and is generally endowed with a humanistic touch.

Damascus as a major city had to adjust to the Ottoman rule. Cairo as an Ottoman city was a special case. Because of its immense strategic and financial importance for the empire, Egypt was treated differently. For example, the *timar* system (the Ottoman version of the *iqṭāʿ*) was not applied in Egypt. The Ottomans did not interfere with Cairo's higher education (al-Azhar remained fully independent). The Ottoman qadis did not have the same impact on the local cultural and religious life, as they had in Damascus.

1.3. Why qadis?

Qadis are the quintessential civilian elite. The qadis were '*ulamā*' by their training, but richer and more powerful than the majority of the '*ulamā*'. They were near to the rulers, but without political power of their own. There was the ambiguity of the attitude toward the position of qadi. It was morally problematic; the example of Abū Ḥanīfah, who preferred being flogged to becoming a qadi, was remembered. The pious were reluctant to accept the appointment of a judge, or even as of a deputy, *nāʿib qadi*, but many wanted the power, the social position and the wealth that went with it. The office involved politics, scholarship, teaching and administrative positions and responsibilities, some very high, but without any connection to the *Shariʿah* courts.

2. Qadis under the Mamluks

The Mamluk Empire was a centralized state, and Cairo was its center, which had absolute political and religious supremacy. In the Syrian provinces, Damascus dwarfed all other cities (including Aleppo) as a cultural and religious center. This is reflected also in the local historiography that was more developed in Damascus than in any other Mamluk city except Cairo. All the important appointments to the political, administrative and religious positions were made in Cairo. The religious policy was decided in the capital, and was dictated in edicts issued in the name of the sultan, obviously at the advice of his '*ulamā*'. Yet the religious atmosphere in Damascus differed from Cairo in subtle ways. Egyptian Islam was more homogeneous; after two hundred years of Fatimid rule, Shīʿism was wiped out of the land. Syria had some Shīʿī and heterodox enclaves, and therefore its religiosity was more rigid. The Syrians regarded themselves as a bastion of faith and the Sunna. There are several indications in the writings of the Damascene chroniclers and biographers accusing the Egyptian jurisconsults (*fuqahā*) of greed and the tendency to flatter the Turks, the Mamluk rulers.²

The qadis wore distinctive dress and headgear. They fulfilled many important functions that could enrich them far beyond what the '*ulamā*', who made their living by teaching and issuing legal opinions, could hope for. The chief qadis routinely received appointments to some of the highest and most lucrative administrative positions in religious institutions and

² Expressions critical of the Egyptian legists can be found mostly in the writings Ibn Ṭūlūn's writings. See, for example, *Al-Thaghr*, 171, 303.

the civil financial administration. These positions were their *ex-officio* rights, and included also professorships and supervision functions in the most prestigious *madrasahs* of Damascus.

Sultan al-Malik al-Zāhir Baybars, the founder of the state, introduced a reform in the judicial system whereby the chief judges of the four Sunni *madhhabs* would be equal in status, thus ending the superiority of the Shāfi'ī qadi over his three colleagues. Yet, the fact that both in Cairo and Damascus the Shāfi'īs had a majority over the other *madhhabs*, in the numbers of adherents and institutions, could not be ignored.

2.1. The Shāfi'ī qadis

Despite this apparent ceremonial equality, the Shāfi'ī chief justice was not a *primus inter pares*, but the richest and the most influential man of religion in Damascus. One can describe him as the head of the religious establishment in the city. The Shāfi'ī chief justices attained this position by the strength of their community and their families.

The Shāfi'ī *qāḍī al-quḍāt* had a few privileges that his colleagues did not share. Only he had the authority to appoint deputies throughout the province, not just in Damascus. The deputy qadis who served in the small provincial towns were called *quḍāt al-barr*, qadis of the countryside or the provinces. The biographers mention the manner in which the chief qadis of Damascus treated these officials. Several qadis exploited them, but others were honest and did not take any illegal money from them.

It seems that the Shāfi'ī judge alone had a *dawadār* (adjutant) and a major-domo (*ustadār*). He had a few prestigious positions that he held *ex-officio*: He was the preacher (*khaṭīb*) of the Umayyad Mosque; *shaykh al-shuyūkh*, a position of inspector over the Sufis of the Sumaysatiya *khanqāh* (Sufi cloister)³; the financial supervisor of the great hospital (*nāẓir al-maristān*); and the financial supervisor of the *awqāf* for the maintenance of Mecca and Medina (*nāẓir al-haramayn al-sharīfayn*). All these positions increased the qadi's income considerably, the *nāẓir al-haramayn* in particular. As the *awqāf* documents show, the two Noble Sanctuaries surpassed all other charitable objectives, both in terms of the number of benefactors and the sums dedicated for Mecca and Medina. In addition to the positions that were assigned to the Shāfi'ī chief justices, they were given almost invariably several of the province's top administrative jobs, such as *nāẓir al-jaysh*, *nāẓir al-qal'ah*, *wakīl al-sultan*, and *wakīl bayt al-māl*. Once the Shāfi'ī chief judge was also appointed as *kātib al-sirr*, secretary of the province, but the 'ulamā' felt that holding both positions was a conflict of interest.⁴ The chief Shāfi'ī qadi had a leading role in purely religious matters. For example, only he approved of a prayer for a deceased person (*ṣalāt al-gharā'ib*) whose burial was not in the town at the Umayyad mosque. He alone decided the date of the end of Ramadan.

The Shāfi'ī qadi alone was granted *iqṭā'āt* holdings. The Ḥanafī qadi may also have some *iqṭā'āt*. Even if that was the case, these must have been much smaller than what was at the disposal of his Shāfi'ī counterpart. The chronicler tells us that Ibn al-Farfūr, the Shāfi'ī qadi in the late Mamluk period, was absent from Damascus for fifty days, touring his villages. As was the policy under the Mamluks, the *iqṭā'āt* were spread out. The qadis of the minority

³ It is the same title that was given to the head of the important *Khanqāh* Sa'īd al-Su'adā' in Cairo.

⁴ *Al-Thaḡhr*, 162.

madhhabs supported themselves and their dependents primarily with *awqāf* that were very substantial, but the Shāfi‘ī had income from *awqāf*, in addition to the *iqṭā‘āt*. The qadi could conduct his various multiple duties through assistants and agents who replaced him when he was out of town, or even out of the country; very often the chief qadis were in Cairo for long periods, one whole year and even longer.

To get an impression about the wealth of the qadis in general, and the Shāfi‘ī chief justice in particular, we must note that the sultan expected a high advance payment for all appointments. In Cairo, the chief justices of all four *madhhabs* had to pay to the sultan 5,000 dinars at each appointment. In Damascus, the sum was usually 3,000 dinars. If we consider that an average monthly salary of a Mamluk soldier was about 5 dinars, and that many Damascene families had to subsist on 25 dinars per year, one can grasp the wealth of the chief qadis and other high-ranking officeholders. In the year 886/1481 Shihāb al-Dīn b. al-Farfūr was appointed as the Shāfi‘ī qadi and the attached administrative positions by outbidding his rival, al-‘Adawī, a former chief qadi. Ibn al-Farfūr offered the sultan the fantastic sum of 32,000 dinars against 10,000 by his rival. Often high-ranking bureaucrats and qadis were imprisoned in the Citadel for owing the sultan or one of the amirs sums around the 10,000 dinar figure. The Shāfi‘ī chief qadis alone are mentioned as those who bailed out of prison state officials and qadis; this involved a payment of a few thousand dinars.

In 919/1513 Sultan al-Ghawrī convened the four chief judges and other distinguished ‘*ulamā*’ in order to receive a legal opinion for a death sentence on a man and a woman who had admitted to an adulterous relationship, but subsequently withdrew their confession. The qadis insisted that in such a case the *ḥadd* punishment cannot be carried out. The infuriated Sultan dismissed the four qadis on the spot, and had the man and a woman hanged at the window of the scholar who had led the argument against him. Soon afterwards, the Sultan appointed four new chief judges without demanding the customary down payment. Thus, the greedy sultan forfeited a sum of 12,000 dinars, as each newly appointed judge was expected to pay 3,000 dinars.⁵

The *waqf* and *milk* records of the Ottoman archives reveal the extent of the qadis’ wealth during the fifteenth and early sixteenth centuries.⁶ The leading ‘*ulamā*’ houses of Damascus and the qadis in particular, enjoyed abundant revenues of *awqāf*, as directors, trustees, beneficiaries, administrators, and the like. A *waqf* deed could be charitable (*khayrī*), or family endowment *waqf* (*dhurrī*). The terms were not used in the period under discussion, but the concepts were already well developed. Often the *waqf* was a combination of both kinds. The picture that emerges is that ‘*ulamā*’ were usually recipients and beneficiaries of *awqāf* revenues rather than founders of *khayrī* ones. The men and women who founded *khayrī awqāf* were in most cases sultans, governors of the Province of Damascus, amirs, rich merchants and members of prosperous families, including qadis. The ‘*ulamā*’ enjoyed the revenues of the *dhurrī* (family) *awqāf*, which they had founded for themselves and for their families, in many cases they benefited from *awqāf* that were created by others specifically to support them. Qadis who were business minded acted as entrepreneurs. For example, *qāḍī al-quḍāt* Walī al-Dīn b. al-Farfūr purchased shops in a Damascus market and rented them out. Similar reports

⁵ Ingalls, *Innovation*, 115 ff.; Ibn Iyās, *Badā‘i*, 4:344-345, 345.

⁶ *Defter*. Also in the *tapu tahrir defterleri* in the Prime Minister’s archives, Istanbul. Early Ottoman Damascus.

about Syrian qadis abound in the archives. Many qadis owned urban and rural real estate units, which consisted of amazing variety: houses and shops (the land and the building, *arḍan wa-‘imāratan*), water mills, dye houses, tanneries, orchards, plantations (land and the plantations: *arḍan wa-ghurāsan*), and warehouses. About some of the installations it says in the document: “The founder built it himself.”

The chief qadiship and other important positions were the monopoly of several strong families in Damascus. No Shāfi‘ī house of ‘*ulamā*’ was as successful as the Banū al-Farfūr, who gave the city two powerful chief judges, and even a Ḥanafī *qāḍī al-quḍāt*, besides several other high-ranking officials. Shihāb al-Dīn Aḥmad b. al-Farfūr was the *qāḍī al-quḍāt* from 886/1481 until his death in 7th Jumada II, 911/6th October 1505. The judges were frequently dismissed and reappointed, sometimes at short intervals, and often without apparent reason. This policy can be explained, among other things, by the sultans’ wish to collect the appointment fees from the candidates. These changes reflected the power struggles and the intrigues among the ‘*ulamā*’ themselves and the rulers’ wish to play a hand in them. At any rate, although Shihāb al-Dīn’s tenure of office could not be uninterrupted, he was for a quarter of a century the central figure in the judicial and administrative system of Damascus. He held the most important administrative positions in Damascus, at times simultaneously with the qadiship. He spent long periods in Cairo and won the distinction of being the only judge who was appointed by the Sultan (Qānṣawh al-Gawrī) as the Shāfi‘ī *qāḍī al-quḍāt* both in Cairo and Damascus, simultaneously. He was permitted to pick his deputy in Damascus, and he chose his son, Walī al-Dīn b. al-Farfūr, who had not yet reached the age of sixteen. He used his influence in Cairo to arrange the appointment of a certain Mālikī jurist as the Mālikī *qāḍī al-quḍāt* of Damascus. His nephew, Badr al-Dīn b. al-Farfūr, was appointed as the Ḥanafī (!) *qāḍī al-quḍāt*.

Shihāb al-Dīn’s status and his Cairo connections gave him protection from ill treatment of the kind that was sometimes the lot of high-ranking bureaucrats in Cairo and Damascus.

Walī al-Dīn b. al-Farfūr, Shihāb al-Dīn’s son and successor, cuts an even more imposing figure. Upon the death in Cairo of the chief Shāfi‘ī qadi, his son was immediately named to inherit his father’s qadiship of Damascus with all its positions, honors, and benefits. His entrance into Damascus was in grand style, and after the customary reading of the *tawqī‘* in the Umayyad Mosque, he gave an eloquent sermon. Totally undeterred by his youth and lack of experience, he quickly increased the number of his deputies to 16, to the amazement of the chronicler. The usual number of deputies were 6 for the Shāfi‘ī, 4 for the Ḥanafī, 2 for the Mālikī, and 4 for the Ḥanbalī chief qadis. It should be noted that, as was the case with regard to all other positions, the candidate was expected to reward the man who appointed him with appropriate sum of money. Walī al-Dīn was a talented and clever builder and developer of building, gardens, and water systems.

After the Ottoman conquest of Syria in August 1516, Walī al-Dīn adjusted skillfully to the new regime. He proved himself a true “man for all seasons”. He gave an eloquent *khuṭba* in the presence of *Yavuz* Sultan Selim, the Ottoman ruler. In his sermon he called Selim “the Sultan of the Two Noble Sanctuaries” (*sultān al-haramayn al-sharīfayn*), thus being the first to honor the Ottoman sultan with that title, even before the Hijaz accepted Ottoman suzerainty. (This happened only after the Ottoman conquest of Egypt in the next year). In the

next *īd al-fiṭr* prayer, the chronicler Ibn Ṭūlūn observed that the chief Shāfi‘ī qadi performed the service according to the Ḥanafī rite. He served the Ottomans for fifteen years in various capacities. At some point he fell afoul of the governor of Damascus, and was arrested and interrogated for fraudulent practices - an ordeal that he had never undergone under the Mamluks. He died in the Citadel in 937/1531.

In a register (*defter*) documenting a survey of *awqāf* and *amlāk* prepared in Damascus about thirty years after the Ottoman conquest,⁷ we come across a listing of a family *waqf* made in 909/1503 or 1504 that gives us an idea about the character of the chief qadi. The final beneficiary of the *waqf*'s revenues after following the deaths of all members of that family was a mosque in al-Şāliḥīyah quarter. After the conquest, the Ottomans carried out an inspection of all pious endowments and private properties in the province, and summarized them in an official register. It says in the *defter* that qadi Ibn al-Farfūr seized by force (*jabran*) the owner's documents. Then he blackened a few places in the papers, and registered the property as his own *milk*. The clerk who wrote the *defter* adds that witnesses testified concerning *waq‘ al-yad* (*de facto* possession).

The same *defter* mentions other cases in which members of the al-Farfūr family claimed rights on *waqf* properties where there were strong suspicions of fraud. One concerns a case of a *waqf* whose trustee had lost his rights because he had been in the Hijaz (for the *hajj*) during the *defterdar*'s survey. Nuh Çelebi, the *defterdar*, registered several possessions as Ibn al-Farfūr's *milk* and the rest as *timar*. The clerk adds: "Now it is *timar*, but there is no doubt that it is *waqf*. Everybody knows it."

2.2. The Ḥanafī qadis

The Ḥanafī qadis were a major community in Damascus, as elsewhere in the Mamluk Empire. The Ḥanafī *madhhab* was the traditional "Turkish *madhhab*." The Ḥanafīs' influence on the life of the city, especially in the field of the bureaucracy was smaller than that of their Shāfi‘ī colleagues, but they were reasonably well represented in the bureaucracy. The list of the Ḥanafī *quḍat al-quḍat* does not include figures of a similar stature and influence as the Shāfi‘īs. It is indicative of the smaller importance attributed by the Cairo authorities to his position that the choice of a new Ḥanafī *qāḍī al-quḍāt* was left to the Ḥanafī community in Damascus.⁸

The Ḥanafīs' resentment of the Mamluk policy of preferring the Shāfi‘īs is expressed in a treatise entitled *Tuḥfat al-Turk fīmā yajibu an yu‘mala fī al-mulk* ("a gift for the Turks about how rule should be practiced") written in the mid-fourteenth century by Najm al-Dīn al-Ṭarsūsī, the Ḥanafī chief qadi of Damascus. The author presents his work as belonging to the genre of "counsel for kings" (*naṣīḥat al-mulūk*), but its real purpose was trying to convince the Mamluk sultans, who at that time were predominantly Kipchaq Turks, that it is in their interest to appoint Ḥanafī 'ulamā' to positions of qadis and supervisors of public religious institutions, thereby changing the policy of favoring the Shāfi‘īs. The recurring theme throughout the treatise is that the Ḥanafī *madhhab* is more suitable and more profitable to the Turkish rulers. Al-Ṭarsūsī uses several arguments, some of which are mistaken or misleading.

⁷ *Defter*.

⁸ The event took place in Damascus in 895/1490. See Ibn Ṭūlūn, *Mufākahāt*, 1:108-109, 130.

He opens with the *hadith* calling for obedience to the ruler, even if he is a slave, hinting at the status the Mamluks as former slaves. He also says that al-Imām al-Shāfi‘ī believed that the *imāms* must be of Qurashī descent, implying that the Mamluks are disqualified to govern. Yet, as it is well known, the term *imām* in the Sunnī legal terminology is the caliph, not the sultan. Al-Ṭarsūsī mentions that Abū Ḥanīfah believed that the ruler does not have to belong to the tribe of Quraysh, and does not have to be a *mujtahid*, a *faqīh* qualified to interpret the sources of the *Sharī‘ah*, implying that according to the Shāfi‘īs, the Mamluks are not legitimate rulers. The author argues that the Ḥanafī *madhhab* gives the ruler wider powers in financial and legal matters. Even if the sultans were aware of al-Ṭarsūsī’s treatise, they did not follow his advice, and maintained the dominance of the Shāfi‘īs in the top bureaucratic-religious positions until the end of their reign.

Moreover, the accusation that the Shāfi‘ī legal doctrine does not accept the legitimacy of Mamluk rule is proven wrong by Badr al-Dīn b. Jamā‘ah, a chief qadī of Damascus, and al-Ṭarsūsī’s contemporary. He died in 733/1333 at the age of 94 years, after a distinguished career as the qadī of Jerusalem, Damascus and Egypt.⁹ He was a pillar of the religious establishment, just as Ibn Taymīyah was its *enfant terrible*. In the history of Islamic political thought, he is remembered for the following passage in which he dismisses all the theories of the caliphate that by his time had become irrelevant:

“The sovereign has a right to govern until another and stronger one will oust him from power and rule in his stead. The latter will rule by the same title and has to be acknowledged on the same grounds; for a government, however, objectionable is better than none at all; and between two evils we must choose the lesser.”¹⁰

Clearly, Ibn Jamā‘ah was referring to the Mamluk regime of his day.

2.3. The Ḥanbalī qadis

The Ḥanbalī qadis in Damascus were far stronger than in any other town of the Empire. The community owed its origins and stability to the establishment of the al-Ṣāliḥīyah quarter by the Banū Qudāmah, Palestinian refugees who escaped the Crusaders’ rule in the twelfth century. The Ḥanbalīs had considerable *awqāf*, which supported their institutions and which employed large administrative personnel. Because of the Ḥanbalīs’ strong sense of community, many *awqāf* were established for the benefit of mosques, *madrasahs* and other institutions, primarily in al-Ṣāliḥīyah. Interestingly, the Ottomans appointed Sharaf al-Dīn b. Muflīḥ, a chief Ḥanbalī qadī under the Mamluks, as the chief justice of Damascus, a promotion that would have been unthinkable under the previous regime. This, however, was an episode, before Istanbul adopted the practice of invariably sending Ḥanafī, Turkish-speaking, judges as their chief qadis in all the empire’s towns.

2.4. The Mālikī qadis

The Mālikī qadis in Damascus headed a *madhhab* that was the smallest in number of followers and institutions. Moreover, it was characterized by an image of rigidity,

⁹ See his biography in Ibn Ḥajar, *Raf‘*, 342-346; *al-Thaghr*, 80-82.

¹⁰ Quoted in Grunebaum, *Medieval Islam*, 169.

marginality, and a foreign nature. Socially, it was less acceptable. A chief Mālikī qadi associated more with prominent men and with Shāfi'īs than with his fellow Mālikīs.¹¹

There were not enough qualified local candidates for the post of the chief Mālikī qadi. It happened that the community remained without a qadi for more than three years. In 897/1492, Shams al-Dīn al-Ṭulqī was appointed as the new Mālikī chief qadi, owing to the influence of Ibn al-Farfūr, the Shāfi'ī qadi. Al-Ṭulqī was a merchant who had a shop in a Damascus market, an unusual background for a chief justice.¹²

The Mālikī qadis had the justified reputation of being more merciless than qadis of the other three *madhhabs*. The above-mentioned al-Tarsūsī, has a section about typical failings of qadis of each *madhhab*. He warns that the Mālikīs should be more careful in issuing death sentences (*wa-lā yatasāhal fī al-dimā*).¹³

Subīnī, a Shāfi'ī chief qadi of Damascus, was dismissed by the Sultan and was imprisoned in the Damascus Citadel for sparing the life of Abū al-Fatī al-Ṭībī, a man whom the Sultan wanted to be put to death. After his removal, an edict arrived from Cairo ordering that the only the Mālikī qadi was to pass judgment in that particular case. Amīn al-Dīn al-Tūnusī was now appointed as the chief Mālikī qadi of Damascus. “He sentenced Abū al-Fatḥ al-Ṭībī to death. As soon as the Egyptians attained their goal through this verdict, they dismissed the qadi in the year 854/1450”.¹⁴

Even when there was no capital punishment case, Mālikī qadis – more than others – punished people severely for *fisq*, sinfulness, or for uttering something that could be interpreted as irreligious.

Speaking of qadis who sentenced people to death, it should be noted that in most cases in which people were executed in the Mamluk state, qadis were not involved. The majority of those who were put to death were killed by the orders of the rulers – sultans, governors (*nūwwāb*), or even lower-rank amirs, like deputy governors. The qadis had the monopoly on the cases where the issue was purely religious, like infidelity, or uttering words that were regarded as insulting the Prophet or his descendants. In some cases, the qadis were asked to give their opinions about adultery that carried the death penalty. Even then, the sultans and the emirs did not always accept their decisions.

Ibn Ṭulūn reports of several cases in the late fifteenth and the early sixteenth centuries in which the governors of Damascus condemned men and women for crimes by drowning, impalement, beheading, cutting into two halves (*tawsīt*), amputation of the hands, and beating to death. The chronicler writes often that the sentences were unjust. In all the cases, qadis are not mentioned at all. For example, a man was executed because of a murder occurred in his town quarter, a few people were killed because they were toughs (*zu'ār*), several of them were *Ashrāf*. A governor raided a village that belonged to the Shāfi'ī qadi and killed a few villagers.¹⁵

¹¹ *Al-Thaghr*, 251

¹² *Ibid.*, 264.

¹³ Al-Tarsūsī, *Tuḥfat al-Turk*, 82.

¹⁴ *Al-Thaghr*, 259.

¹⁵ Ibn Ṭulūn, *Mufaḥḥāt*, 1:109, 106-7, 110, 172, 197, 227, 258, 280.

2.5. *Qadis as 'ulamā'*

The qadis of Damascus represent a great variety of levels of Islamic scholarship. Many are described as dedicated and talented scholars. Besides the required knowledge of *fiqh* that was the basis of this office (but in many cases was found lacking), qadis were interested in the various branches of *'ilm*, of the religious disciplines. *Hadith* was the most popular of these. Like other *'ulamā'*, many qadis, received, transmitted and wrote about this major source of Islam. Almost all the chief qadis taught at the *madrasahs* of Damascus, each at the institutions of his *madhhab*. Most taught at several *madrasahs*. Several qadis had a *ḥalqah*, circle, a private seminar. Others attended or conducted lessons called *mī'ād* (pl. *mawā'id*) at the Umayyad mosque, usually at Saturday mornings.

For many qadis, the *madrasah* served not only as a teaching institution, but as their main court, where they heard cases, and also as a home for themselves and their families. They had an apartment (referred to as “a house”, *bayt*) within the *madrasah* complex. With the frequent appointments, dismissals and transfers, inevitable problems could emerge. It seems that once a week or so the chief qadis went to *dār al-'adl* (the Hall of justice) to decide legal matters in the presence of the *nā'ib*, the governor.

Quite a few qadis are described in our sources as ignorant, wholly or partially. There is an interesting notice about Jamāl al-Dīn al-Zur'ī, a Shāfi'ī qadi (d. 734/1333): “He was respectable, of representative appearance, with little knowledge, yet he was active as qadi” (*qalīl al-'ilm lakinnahu ḥakkām*).¹⁶

The chief qadis, the Shāfi'īs in particular, had the authority to control religious life in the town in various ways, such as forbidding certain preachers from speaking to the public. A good demonstration of this are events that happened in the year 827/1424, relating to heated disputes about dogmas (*'aqā'id*). A certain preacher went to the Ḥanbalī mosque in al-Ṣāliḥīyah quarter of Damascus to speak about religious dogmas. The congregation attacked him and his followers. The preacher went to the seat of the governor. There the Shāfi'ī qadi humiliated him. It was proclaimed that he would not be allowed to speak on dogmatic matters. Shaykh al-Ḥisnī, another popular preacher, who used to preach on Fridays at the Umayyad mosque, started to speak about dogmatic issues, calling Ibn Taymīyah an infidel. The audience, the Ḥanbalīs in particular, reacted angrily, and violence seemed imminent. The Shāfi'ī qadi had some people who attacked Ibn Taymīyah beaten, and—for the balance – also beat people who said that those who did *not* accept Ibn Taymīyah's dogma were infidels. Later, the qadi beat a Ḥanbalī who was guilty of *tashbīh*, attributing human characteristics to God, and of denial of the Messengers, and had him paraded in the streets.

Later that year, the sultan's edict to the effect that speaking about dogmatic matters and cursing Ibn Taymīyah are prohibited, was read out in the presence of the governor and the qadis. The edict was proclaimed in town; no one should speak about dogmas and oppose the Book, the Sunna and the ways of the worthy ancestors (*salaf*). Nobody is allowed to attack Ibn Taymīyah

¹⁶ *Al-Thaghr*, 86.

and other Muslim *'ulamā'*. Clearly, the issue was not Islamic dogma, but law and order. The qadi had the authority to set the limits of speech, and the state enforced them.¹⁷

The limits between the jurisdiction of the qadis' courts and those of the *hujjāb* (singular *hājib*, a senior chamberlain, one of the most powerful emirs) were one of the issues between the military and the religious courts. In an article published forty years ago "the Mongol Yasa law and the civilian population of Cairo",¹⁸ David Ayalon, studied a passage from al-Maqrīzī's *Khīṭaṭ* about the Yasa and its impact on the Mamluk Sultanate. Al-Maqrīzī tells about an incident that took place in Cairo in the years 752 and 753 (1351-52) concerning Iranian merchants who arrived in Cairo to escape injustice in their country. They complained to the Sultan against local merchants who did not pay them for goods they had purchased from them. The Sultan appointed the *al-hājib al-kabīr* to remove the Egyptian merchants from the qadi's custody where they were hiding. He had them flogged and forced them to pay their dues to the Iranians. According to al-Maqrīzī, the *hujjāb* had the power to dispense justice to the civilian population in cases that had been previously within the jurisdiction of the qadis. Following al-Maqrīzī, Ayalon arrives at the conclusion that the Yasa pagan law (under the Islamic legitimate term of *siyāsah*, administrative law) by the military *hujjāb* to the people of Cairo was in fact applied through the whole empire, Syria as well as Egypt. Ayalon sees in the case a proof of the humiliation of the *sharī'ah* law by the Mamluk regime.

A passage from Ibn Ṭūlūn's *al-Thaḡhr al-bassam* casts doubts on al-Maqrīzī's judgment of the regime's lack of respect of the *sharī'ah*. In the year 853/1449, Shihāb al-Dīn al-Tilimsānī, the Mālikī chief qadi of Damascus, got into a clash with the second *hājib* over a debtor whom the *hājib* refused to extradite to him. The qadi summoned the *hājib* and humiliated him. The emirs became angry, and complained to Cairo. According to the Sultan's decree, the qadis were not allowed to take a person from the custody of the *siyāsah* judge, and must not put on trial anyone who had already been indicted [by the *siyāsah* tribunal]. Likewise, the *siyāsah* judges should not take anyone away from the *Sharī'ah* courts, and must not put him on trial. The decree was publicly proclaimed in Damascus. Qadi al-Tilimsānī was dismissed because of his quarrel with the *hājib*. A new Mālikī qadi, arrived from Cairo. He brought another sultanic decree ordering that "the *siyāsah* judges should not take a debtor from the qadi's custody. Conversely, in case that anyone appeals the qadi for justice, and the opposing party is at the *siyāsah* tribunal, the qadi can request him from the *siyāsah* and pass judgment according to the requirements of his noble [Mālikī] *madhhab*".¹⁹

Al-Ṭarsūsī, the Ḥanafī chief qadi of Damascus whom we have mentioned, warns that the *hājib* must not interfere with matters related to the *sharī'ah*; since he may not be knowledgeable about them; it is to be feared that he may rule according to the *siyāsah*.²⁰

To conclude this point: It is obvious that Maqrīzī's assessment of the Mamluk government as disregarding the *sharī'ah* and the qadis is exaggerated, if not entirely wrong. The emirs in Damascus were understandably hurt by the rough treatment of their colleague by the Mālikī qadi, but the commitment of the Mamluk state to the *sharī'ah* seems beyond doubt. There was

¹⁷ Ibid., 152-153.

¹⁸ Ayalon, *Mongol Yasa*.

¹⁹ *Al-Thaḡhr*, 259.

²⁰ Al-Ṭarsūsī, *Tuḡfat al-Turk*, 88.

no symmetry between the *sharī'ah* and the *siyāsah*, not even in the degree that will be seen in the Ottoman Empire between the *sharī'ah* and the *qānūn* that may be regarded as a version of the classical *siyāsah sharī'iyah*.

2.6. Relations between rulers and qadis

The historians tell that in late 663/1265, in the early days of the Mamluk state, the judicial reform was introduced. Each *madhhab* had now a chief qadi. The candidates were reluctant to become qadis. When they accepted under pressure, they did not want to accept salaries.²¹

For qadis or aspirants for that position, closeness to the Mamluk rulers, the sultan in particular, had obvious advantages, but as some qadis learned – there were also grave dangers. This was true particularly during political upheavals and power struggles within the Mamluk ruling caste, ..when a qadi's loyalty to an emir or a sultan could endanger or hurt the qadi. Generally, the qadis – like other distinguished '*ulamā*' – enjoyed certain immunity against execution or torture. This was neither absolute nor guaranteed, however.

The tragic fate of Shihāb al-Dīn al-Malḥī, a Shāfi'ī qadi, demonstrates the precarious condition of an '*ālim* who was foolhardy enough to get involved in Mamluk violent politics. He was a respected '*ālim* in Damascus. Later he went to Cairo and became popular with common people. He also associated with a group of Mamluks, among them Yalbughā al-Nāṣirī, who was to play an important role in the conspiracy against Sultan Barqūq. Yalbughā arranged for al-Malḥī the chief qadiship of Damascus with the customary additional jobs. The civil strife among the Mamluks went on, and the qadi took an active role in the fighting against the Sultan during the siege of Damascus. When the revolt was put down, the qadi was dismissed, arrested and accused of being a *Baṭīnī*, of the Shī'ī Ismā'īlī sect. When Barquq started his second reign in 792/1390, al-Malḥī was brought to Cairo and boldly confronted the Sultan, expressing his reservations about him. A Persian claimed that he owed him money and fabrics. At the Sultan's order, al-Malḥī was beaten and tortured to force him to give the money. It seems that he died in prison.²²

Here is a case that shows the qadi's way to his fall. His worst mistake was taking an active part in a rebellion against the ruler. Then he was accused of associating with a heretical sect. Finally, he spoke up against the Sultan in his face. The accusation of stealing from the Persian merchant was probably another excuse to destroy him.

The career of a Shams al-Dīn al-Tabbānī, a Ḥanafī chief qadi, is an untypical case of a qadi who went a long way to be close to the Mamluk rulers. He was a scholar, but unlike the other Arab '*ulamā*' at the time, he was also fluent in Turkish. His dress and turban were those of bureaucrats, not of qadis. He was acquainted with Mu'ayyad Shaykh before he rose to the sultanate. When Shaykh was in Damascus, al-Tabbānī followed him and received from him important posts there. In the year 813/1410, he and his brother, who also held important religious positions in Syria, were arrested and held in the Damascus Citadel, and all their property was confiscated at the order of Sultan al-Nayr Faraj, because of his association with Shaykh. He and his brother returned to Cairo. When Shaykh became sultan, he reappointed al-Tabbānī in Damascus. In 817/1414, as the Sultan left for Syria to fight his enemy amir

²¹ *Al-Thaghr*, 187.

²² *Ibid.*, 116-1.

Nawruz, he appointed al-Tabbānī as the Ḥanafī qadi of Damascus. He left the business of the courts to his deputies (*nuwwāb*) who helped him keep the façade of the office. When another amir rebelled against the sultan, the qadi took over the management of the Citadel. The Sultan marched with the army toward Aleppo, and al-Tabbānī joined him. At this point, the Sultan wanted him to go to the Qarāmān principality on a diplomatic mission, but the qadi asked to be excused. The angry Sultan sent him back to Damascus, but on the way he fell ill; there were rumors of poisoning. Al-Tabbānī died in Damascus with many debts and a tiny inheritance.²³

A Ḥanbalī *faqīh*, Muḥammad b. Mālik b. Muslim, is an example of an ascetic qadi. He grew up as a poor orphan, and became famous for his learning and his asceticism. He was needed as a qadi and as supervisor as the Ḥanbalī *awqāf*. After hesitating and seeking God’s guidance (*istikhārah*), he agreed on condition that he would not wear a silk robe, would not ride in processions, and would not buy a mount. He put on the robe of office and walked to the Umayyad mosque followed by the notables. He was a just judge, and was active in transmitting and studying *hadith*. He died in 726/1326 during his fourth *ḥajj*, as he had wished for himself.²⁴ A few qadis did not take money for their work as judges. Some qadis who were dismissed expressed their gratitude to God that they would not die in that office.

Husām al-Dīn al-Rāzī, a Ḥanafī chief qadi from Anatolia, arrived in Damascus. He was appointed by Sultan Lājīn as the chief qadi of Cairo. Later he returned to Damascus to carry on as a judge and a teacher. In 1299, he participated in the battle in Syria against the Mongols under Ghāzān (1299) and lost his life in that battle.

Another Ḥanafī qadi of Damascus, Muhy al-Dīn b. al-Kishk, did not show this spirit. During the occupation of Damascus by Timur Lenk, “he joined them in reprehensible things. He accepted the qadiship from them, and was called ‘the qadi of the kingdom’. All the other qadis became his deputies.” The people hated him for it. Timur found out that he had committed fraud and confiscated his money and had him tortured. The qadi succeeded in escaping from Tabriz and arrived in Cairo. He died in obscurity.²⁵ It is worth mentioning that Ibn Khaldūn, a much greater scholar, also did not show courage in the presence of Timur. It is reported that the great philosopher was holding a learned conversation with the world conqueror, while his soldiers were committing atrocities in the streets of Damascus.²⁶

There were courageous qadis who stood up to the rulers, determined to defend the rights of the people. The earliest instance in our period is ‘Abd Allāh b. ‘Aṭā’ al-Adhra‘ī, the first independent Ḥanafī qadi of Damascus. He was appointed by Sultan Baybars. When the emirs seized the gardens of Damascus, and the Sultan arrived in the hall of justice (*dār al-‘adl*) to attend a discussion about this, the qadi spoke up: “These gardens belong to the property owners (*arbāb al-amlāk*). No one is allowed to attempt taking them away from them. Whoever regards as permissible that which God declared unlawful, is an unbeliever (*fa-qad kafara*).” The Sultan changed colors and cried: “Am I unbeliever? Go look for another sultan!” The qadi relied on a Qur’anic verse which forbids such practices. The session dispersed. That night the Sultan summoned the qadi. Al-Adhra‘ī wrote his will and bid his

²³ Ibid., 207-9.

²⁴ *Al-Thaghr*, 278-9, following Ibn Kathīr, *Al-Bidayah*, 14: 126.

²⁵ *Al-Thaghr*, 204.

²⁶ Fischel, Ibn Khaldūn.

family farewell. But when he came to Baybars, the Sultan stood up for him. The qadi explained that he had not meant him specifically, but insisted on his view. Baybars told his retinue. “This qadi declares us infidels!” and sent him away with respect.²⁷

Another case, which also illustrates the quasi-immunity of the Shāfi‘ī chief justice, is the refusal of qadi Shams al-Dīn b. al-Muzalliq (d. 902/ 1497), who was known as honest and incorruptible, to give the governor (*nā’ib*) money for raising forty infantrymen. The qadi retorted: “our *awqāf* are mostly for the poor and relatives, not for these matters.” The infuriated *nā’ib* was about to hit him, but only sent to the Citadel. He soon regretted his decision, and ordered his release. The qadi refused to leave until the arrival of the Sultan’s order to free him. Only after several important men implored him, he agreed to go home.

The number of corrupt men who held the office of qadis is higher. In order to obtain this appointment they used bribes (*sa‘ā*, a verb meaning, he tried or ran, but in our context stood for using money illegally to reach the desired appointment). They relied heavily on relatives and influential people. They took bribes for court rulings. Some stole books from a *waqf* library. One of the most tempting ways to make illegal money was supervising *awqāf*. There are cases of conscientious qadis who agreed to accept the post, under certain conditions. One was refusal to deal with *waqfs*. A widespread practice was trading with *awqāf* properties. Another was exchanging one *waqf* property for another. Such a transaction, called *istibdāl al-awqāf*, selling the property for another, is considered legal if done for the benefit of the *waqf*. However, the *istibdāl* was often abused and done under the pressure of strong men, or by seeking illicit gains. Zakarīyā al-Anṣārī (died in 926/1520, at the age of 100 years), the great scholar and qadi who was wary of accepting the qadiship in the first place, but yielded to the pressure of the sultan, found out that his popularity declined because of the *awqāf*. There was no way to be honest, to respect the letter of the *waqfiya* document, and at the same time to satisfy the vested interests of the beneficiaries.

3. Qadis in Ottoman Damascus

3.1. Beginnings of Ottoman ‘ulamā’ and the emergence of the Ottoman ‘ilmiye

The beginnings of the Ottomans started as a Gazi emirate in north-western Anatolia in the early fourteenth century. The Ottomans were determined to establish a Muslim Sunni state, but lacked trained ‘ulamā’ to fulfill the functions of imams, teachers and jurists. It was natural that these ‘ulamā’ had to learn the basics of Islam from scholars outside their region. Initially, they looked east to the Persian lands, where there was a rich tradition of Islamic scholarship with which the early Ottoman ‘ulamā’ had acquaintance. In addition, as the Ottoman emirate expanded and progressed, many Persian ‘ulamā’ arrived in Anatolia, as they were escaping from the upheavals in the eastern domains. Other Turkish-speaking ‘ulamā’ traveled west to the Arab lands to seek knowledge there.

The Ottoman Empire was a Sunni Muslim state and inherited much from older Islamic traditions. Since the Ottomans decided to implement the principles of the *sharī‘ah*, much care was invested in the training of scholars in Islamic law, who were to serve as *madrasah* (*medrese* in Turkish) teachers, muftis, and qadis. The empire developed a rigid bureaucratic and hierarchical structure of government, and this included the ‘ilmiye, the learned

²⁷ *Al-Thaghr*, 187-9.

establishment. Never before in Islam had the *madrasahs* been formally graded into several categories. As in other Muslim states, members of the Ottoman legal profession—qadis, muftis, and bureaucrats, were trained in *medreses*. The Ottoman innovation was that the training and teaching in the various ranks of the *medreses* determined the exact rank of the judicial position to which the graduate or the former *müderriş* (professor) would be entitled. Moreover, in classical Islam, higher education was mainly individualistic, between a student and a teacher, who awarded a personal license to teach (*ijāzah*). Under the Ottomans, it was the *medrese* that awarded the license after the student passed formal examinations.²⁸

3.2. The Ottoman conquest: First encounters

With the Ottoman conquest of Syria and Egypt, the central Arab lands became Ottoman provinces, and the relations between Arabic-speaking and Turkish-speaking '*ulamā*' assumed a new shape. Now the Turkish '*ulamā*' represented the rulers. The senior scholars were called *mollas*, (*māwālī* in Arabic). Those who were appointed as chief judges in the cities of Syria and Egypt were all Ḥanafīs and Turkish-speaking, and were superior to the local Arabic-speaking, qadis, who could hold only the lower positions in the provincial judicial hierarchy. The Ottoman occupation of Syria in August 1516, and of Egypt in January 1517, was a traumatic experience for the people of these countries. The fallen Mamluks were thoroughly familiar. Their rule was at times oppressive and extortive. Nevertheless, with all their failings, they maintained an orthodox Sunni state, and applied the *sharī'ah* law under the guidance of the local, Arabic-speaking '*ulamā*'.

The first impressions by the native population of the Ottomans were negative. The occupation itself is directly and fully described by two excellent chroniclers who were eye-witnesses to the events. They are Muḥammad b. Iyās of Cairo and Shams al-Dīn b. Ṭūlūn of Damascus. Ibn Iyās's chronicle reaches to the year 1522, namely, the first five years of Ottoman rule in Egypt. Ibn Ṭūlūn's work covers the events until 955/1548. Both chroniclers wrote in great detail, sometimes day-by-day, the history of their countries and societies during the last decades prior to the Ottoman occupation and after that event.

Ibn Iyās's attitude towards the Ottomans is extremely hostile. He had much to criticize: Sultan Selim, his troops, his qadis, and the legal and administrative innovations that they were introducing. Sultan Selim is presented as uncivilized and a drunkard. Ibn Iyās describes the Ottoman army as a rabble, men who did not pray and were drinking. The qadi whom Selim appointed is described as an old man, "more ignorant than a donkey, who understands nothing in *sharī'ah* matters." Ibn Iyās regarded the Ottomans as barbarians, in short, as bad Muslims. In Damascus, Ibn Ṭūlūn was also critical of the Ottomans, although not to the extreme degree as Ibn Iyās. The Egyptian chronicler was a descendent of a Mamluk amir, and Selim was killing the Mamluks. On the other hand, Ibn Ṭūlūn was a moderate man, an accomplished '*ālim*' whose judgment was more balanced. For example, he was impressed by the orderliness of the Ottoman camp. He praised Sultan Selim for several just decisions which he made that reflected consideration of the interests of the people of Damascus.²⁹

²⁸ See, İnalçık, *Ottoman Empire*, chap. XVI, 165-72.

²⁹ The best source for Sultan Selim's policy in Damascus is the second volume of Ibn Ṭūlūn, *Mufākahāt*, Passim.

Certain variations in reading of religious texts and in performing the ritual, while not theologically controversial in most cases, created criticism and even ridicule among the Damascene *'ulamā'*. Ibn Ṭūlūn also complains that the Ottomans took books that had been consecrated by *waqf* for students of religion for the use of their own people.

Another criticism at the Ottoman qadi was about the qadis' behavior during the plague that hit Damascus during their stay there. The qadi escaped from the city to the suburbs to avoid infection. Ibn Ṭūlūn reports that the Arabs regarded this behavior contrary to Islam, and also it did not save the qadi's family.³⁰

Yet nothing met with so much resentment as a new tax on marriage contracts, which was double in case of a virgin than on a woman who had been married before. This tax, besides being unjust, was seen as a violation of the Prophet's *Sunna*. One of the *'ulamā'* in Syria where the same tax was applied cried in anger: "This state [The Ottomans] came and has imposed illegal taxes on women's genitalia. What outrage can be worse than this? (*dakhalat hādhihi al-dawlah al- 'uthmanīyah wa-ḍarabat al-maks 'alā furuj al-nisa' ayyu fitnah a'zam min dhālika*)."³¹ Also the Ottoman administrative law, the *qānūn* (Turkish spelling: *Kanun*) was misunderstood as anti-Islamic, or at least un-Islamic. There were many expressions of disapproval of the *qānūn* in the Arab lands in the years following the Ottoman conquest.

A permanent disagreement on a religious issue between Arabs and Turks was the monistic doctrine of the Muhyi al-Dīn b. 'Arabī, the famous mystic who was born in Mursia in 1165 and died in Damascus in 1240. Both Arabs and Turks generally accepted Sufis and Sufism. Scholars, including qadis in the Mamluk empire, supported Sufis and the chief qadi of Damascus was entitled *shaykh al-shuyūkh*, inspector of al-Samaysatīya *khanqāh*. However, the ideas of Ibn 'Arabī were anathema to most of them. On the other hand, the Ottomans officially adopted the teachings of Ibn 'Arabī, by a *fatwah* issued by Kemalpaşazade, Sultan Süleyman's *şeyhülislām*. After conquering Damascus, Sultan Selim ordered erecting a copula on Ibn 'Arabī's tomb, and started to build a Sufi complex at the place. The people of Damascus did not like the project, and the work had to be done at night. When Janbardi al-Ghazālī, the governor of Damascus, rebelled against the Ottomans after Selim's death, he closed down Ibn 'Arabī's complex to win popularity.

3.3. The improvement of Ottoman image in the Arab lands

Later, during Sultan Süleyman's long reign (1520-1566), the image of the Empire greatly improved as can be seen in the writings of several Egyptian chroniclers and other Arab writers. It was realized that the Ottomans were committed to rule as a model Muslim state, implementing the *sharī'ah*, supporting Islamic institutions and *'ulamā'*, and taking care of the hajj better than had been done before. Most importantly, they were successfully fighting against Christian infidels in the west and Shī'ī heretics in the east. At the beginning, observers in Cairo and Damascus were impressed that the qadis who were appointed over them were ignorant and could not speak Arabic. This too changed for the better.³²

³⁰ *Al-Thaghr*, 311.

³¹ Al-Ghazzī, *Al-Kawakib*, 2:193. On the marriage tax, see Ibn Iyās, *Badā'i'*, 5:417-18.

³² See Winter, *Attitudes*.

It must be added, however, that while the loyalty to the dynasty seems genuine in most cases, negative stereotypes of the Turks persisted. It was quite possible those days for an Arabic-speaking writer, or an ordinary person, to praise the sultan, and at the same time to dislike the pasha who governed the province, or the Istanbul-appointed qadi, or to hate the local Janissaries. Some Turks also held to negative stereotypes of Arabs.

Arab *'ulamā'* continued to officiate as qadis, muftis and teachers of *madrasahs*. The Ottomans respected the traditions of Islamic learning and piety that they found, particularly in Cairo. Nevertheless, the chief qadis were appointed annually from Istanbul, graduates of the top Ottoman *medreses* of Istanbul, Bursa and Edirne, with the Ottoman capital gaining over time the monopoly over all the senior positions. The Ottoman system was more centralized and hierarchical than anything known in Islam until then, and was geared toward preparing graduates to serve as *madrasah* professors, judges, and legists. It was a system of career lines, connecting the scholarly degrees in the top *medreses* to appointments in the Ottoman judiciary. So the Egyptian *'ulamā'* could pursue their careers and become successful scholars and teachers and could reach the position of *Shaykh al-Azhar* (which was created only toward the end of the seventeenth century), without any government intervention. This is truer with regard to Cairo than for Damascus and Aleppo, where Ottoman governors and chief qadis did interfere in appointments. The reason was not racial discrimination, but the state policy to closely control the training and promoting from the center the senior imperial judicial and administrative personnel.

In contrast to the rigid and hierarchical system of Ottoman higher education, Berkey describes the merits of the important *madrasahs* of Mamluk Cairo, the best in the Arab Sunni world. Yet throughout his work he shows clearly the chaotic nature of higher education in terms of formal structures and the lack of a unified system. In a study about the situation of higher education in Damascus at the same period, Michael Chamberlain notes: "In Damascus it is difficult to speak of specialized education at all, much less of a 'system' of education, formal or otherwise."³³

3.4. The problem of Language

Ibn Ṭūlūn tells that when going to see the Ottoman camp, he tried to talk to his Ottoman colleagues, but language barriers made that impossible; they could not speak Arabic and he did not understand Turkish. This is noteworthy, since as Muslim *'ulamā'*, the Ottomans had to study Arabic in order to be able to read the sources, but did not have the practice to speak the language. This problem improved with time, but never disappeared entirely. Many Turkish *'ulamā'* who came to the Arab lands for official business, such as qadis or bureaucrats, learned to speak Arabic. Conversely, many Arab *'ulamā'* (more from Syria than Egypt) spent time in the Ottoman center with the purpose of arranging matters with the Ottoman authorities, and had to learn Turkish. Najm al-Dīn al-Ghazzī, the important seventeenth biographer of Damascus, praises a few qadis who were sent from Istanbul to serve in his city for their perfect Arabic. He names those of them whose Arabic was as perfect as native speakers. Even this compliment proves that they were the exceptions, however. In his biographical collections about the sixteenth century and the first third of the seventeenth

³³ See Berkey, *Transmission*; Chamberlain, *Knowledge*, 177.

century, al-Ghazzī includes also Ottoman personalities. It is interesting to note that his only source for these is Taşköprüzâde's *al-Shaqā'iq al-Nu'mānīyah* that was written in Arabic. There is clear evidence that in time several educated 'ulamā' became more knowledgeable of Ottoman culture.

The status of Persian was indicative to cultural change. In Istanbul, educated persons from the sultan down knew at least some Persian. That language was important in poetry. The Persian language played also a significant role in the writings of 'ulamā' whose influence extended also into the Ottoman Islamic scholarship. Turkish Sufi literature has much Persian in it. Ottoman-Turkish historical writing included Persian verse, and even titles of treatises and chapters. Many Ottoman administrative terms were in Persian. Yet, little of the admiration of the Persian language and literature existed in the Arab culture.

3.5. The status of the Arab 'ulamā' after the conquest

The fears the 'ulamā' and other segments of the population in Egypt and Syria had about the future of Islam under the Ottomans turned out to be exaggerated. For example, there were false rumors shortly after the occupation that the new rulers would abolish all *madhhabs* except the Ḥanafī. Yet the Arab 'ulamā' found themselves in inferior status compared to the Ottoman 'ulamā', in particular if these held a position of power, such as qadis. After the Ottoman occupation, many scholars were converted from the Shāfi'ī *madhhab* to the Ḥanafī one; never the other way around. Joining the official legal school of the empire carried obvious benefits for acceptance and promotion in the Ottoman scholarly system.

In some cases, the writers felt the need to state the ethnicity of their subject, like: "With him died the last Arab qadi (*shaykh al-islām*)" (*wa-kana ākhir al-quḍat* – or: *shuyukh al-islam – min awlād al-'arab inqiraḍan*)." The meaning is that the next ones to occupy the post will be Turks.³⁴ The same term, *evlād-ı 'arab*, is used in the Ottoman-Turkish sources, both chronicles and official documents.

Another term that reflects the inbuilt tensions that existed between the Arab and Turkish 'ulamā' (admittedly, these are anachronistic terms) is *mawālī*, used by Arab writers when referring to Ottoman 'ulamā'. This term has a long history of ambiguity. In the early periods of Arab history, the word *mawlā* (client) was used for a person who joined a tribe without having blood relationship with the original members. In early Islam, it was used for new converts who were not Arabs. A *mawlā* could be also a lord, or master. In the Ottoman religious hierarchy, the title *molla* or *mevla* (from the Arabic *mawlā*, master) was given to the highest order of the 'ulamā', starting with the *ṣeyhülislām*. So, by referring to the Ottoman 'ulamā' as *mawālī*, no direct disrespect is implied, but the ambiguity of the term to the Turks as recent converts is still there.

3.6. The profile of the Ottoman qadis

The Damascene historians provide information about the qadis who were sent by the Ottomans.³⁵ The historians and biographers assess the qadis and describe their personalities

³⁴ Al-Ghazzī, *al-Kawakib*, 2:22, 113.

³⁵ The status of the qadis in the Ottoman Empire is a broad subject and cannot be discussed here in detail. For the perspective of the present paper, it should be pointed out that the power of the Ottoman senior judges was much

and actions. Other sources are the Turkish volumes of continuations (*zeyller*) of Aḥmad b. Muṣṭafā Taṣköprüzâde, *al-Shaqā'iq al-Nu'mānīyah fī 'Ulamā' al-Dawlah al-'Uthmānīyah*. These biographical notices usually lack the direct observations of the Damascus biographers, but they describe the routine of how Istanbul appointed, dismissed, and transferred the scholars and the qadis. To give a probable example: The man who was appointed as qadi was a professor in an elite *medrese*, often one of the famous eight colleges which Mehmet the Conqueror had established in Istanbul. After a term as a qadi in a town in Anatolia or the Balkans, he would be appointed as the chief qadi of Aleppo, and then of Damascus, after a service of roughly one year he would be transferred to serve as the qadi of Egypt, then perhaps he may be sent to Mecca. The next appointment is *kadiasker* of Anatolia, then a promotion to the *kadiasker* of Rumeli. If he makes it to the top, he will be named *ṣeyhülislâm*. Overall, although several Ottoman qadis were assessed as grasping and unjust taking bribes and cruel, the majority were described as learned and reasonable. On the whole, they were not worse than the Arab qadis under the Mamluks. There were qadis who were very popular for their personality and fairness in office.

Mehmet ibn Ilyas Çivizade could be a representative of the just and honest judge. He came to Damascus in early 976/1568. He did not take money from the people unlawfully. He reduced the fee (*yasaq*) for a legal document (*ḥujja*) from 14 to 11 akçe, and a copy of a document from 8 to 6. He also liked and respected '*ulamā'*'. He read *hadith* with Shaykh Badr al-Dīn al-Ghazzī, the father of the important historian Najm al-Dīn al-Ghazzī, who gave him an *ijāzah*. After serving less of one year he was transferred to Cairo. He was perhaps the best, but not the only one, who left a very favorable impression in Damascus.³⁶

It is worth mentioning other three impressive Ottoman qadis of Damascus in the sixteenth century who came from different backgrounds. Hasan Bek ibn 'Abd al-Muhsin was an imposing figure. He had been an officer before that he was a slave of Grand Vizier Rustom Pasha. Mehmed Çelebi ibn Abusuud al-'Imadi, son of Süleyman's *ṣeyhülislâm*. He built a palace and a *bustān* in Damascus. He had a serious clash with the governor, because of a quarrel between soldiers and the qadi's guards. He was popular and was generous to the poor. 'Ali Çelebi b Amrallah Qilizade was an '*ālim, faqih, and adib*. He knew history and other sciences. He too met Shaykh Badr al-Dīn al-Ghazzī and received from him the *ijazah*. The *hadith* scholar told him that he was the best of the Turkish '*ulamā'*' who came to Damascus. After his dismissal, the qadi was appointed as the chief qadi of Egypt.³⁷

It is noteworthy that the Ottoman qadis in Cairo did not take part in such a way in the cultural and social life of Cairo. As we have seen, these could be the same people. The explanation is that as already indicated, the Ottoman policy was minimal intervention in the scholarly and religious

stronger than that of the qadis under Mamluk rule, both in theory and in practice. The Ottoman qadi was the head of the administration of his district in a way that the qadi under the Mamluks had never been. See, for example, Gerber, *State*.

³⁶ *Al-Thaghr*, 330-331; al-Ghazzī, *al-Kawakib*, 3:27-29.

Many of the biographies in Ibn Ṭūlūn's collection can also be found in the works of al-Ghazzī and al-Muḥibbī that are mentioned in the Bibliography below.

³⁷ *Al-Thaghr*, 327-8, 327, 329.

of the Egyptians. Moreover, in Cairo there were enclaves of Turks; several congregations consisted only of Turks. This situation did not encourage high Ottoman officials to associate with the locals as they did in Damascus, a large city, but nothing like Cairo.

3.7. Seeking a career in Istanbul

The usual course undertaken in the Ottoman period by many Arab *'ulamā'*, particularly in Syria, was studying in Damascus or Aleppo. Several students went later to extend their studies and connections in Cairo. The great city offered illustrious teachers who gave the ambitious students *ijāzahs*, written permits to teach to students what they had taught them, or even to issue *fatwāhs*. As usual in the Muslim scholarly tradition, these certificates were personal, and were not issued by a *madrasah*. The student returned to his native town, to teach or to hold a certain post. After a short while, he would go to study in Rūm, the Turkish central parts of the Ottoman Empire, almost always to the Ottoman capital. By then, he was already a mature *'ālim*, and his mastery in Arabic was certain to impress his Turkish-speaking peers, and thus his success was assured.

A common strategy used by Arabic-speaking and native *'ulamā'* was choosing a famous *'ālim* in the Ottoman capital as their scholarly mentor. The practice of *mulāzamah* was always common among students and their teachers. Again, in the Ottoman usage it became a term. *Mülâzim*, a novice, or an adherent, devoted student, was a technical term governed by formal rules and supervised by the *'ilmiye* system. In some cases, the mentor was no less than *şeyhülislâm*, the Mufti of Istanbul. It is important to point out that it was *şeyhülislâm* who made the major decisions regarding appointments and dismissals of *'ulamā'*. He did not have a parallel in the Mamluk where the sultan himself was directly involved with high level appointments. Of course, the Ottoman sultan too could interfere as *deus ex machina*.

A few Syrians stayed in Istanbul for long periods, but almost all of them came with the intent to return home. They used their stay in the capital in order to gain the favor of influential people there, so that they would be able to return provided with appointments to desired positions, such as the office of *Naqīb al-Ashrāf* (if the aspirant was a *sharīf*), or additional positions in the judicial and educational systems of their native town, as deputy qadis, or another office in that system, or as an administrator (*nāzir*), or a professor of a *madrasah*.

3.8. The risks of closeness to the imperial power

Under Ottoman rule, the supreme Ottoman religious leader, the Mufti of Istanbul, represented the ultimate formal authority for the *'ulamā'* in a way that had been unknown before the Ottoman conquest of the Arab lands. Fully aware of the situation, ambitious *'ulamā'* from Syria traveled often to Istanbul to seek t

he patronage of powerful Ottoman officials hoping to receive from them appointments in Damascus or Aleppo. Many Syrian scholars made multiple trips to the Ottoman capital, some staying there for long periods for the purpose of achieving their goals. It is true that also during the Mamluk period Syrian *'ulamā'* traveled to the Cairo for the same purposes, attempting to achieve appointments, or preventing rivals from getting them. The difference was that in Cairo they were in a familiar physical, social and linguistic milieu, unlike their Istanbul experience. Also, the structure of the top Ottoman learned hierarchy, the *'ilmiye*, was

much more rigid than in Mamluk Cairo, and the Ottoman rules were stricter and more formal. The proximity to the center of Ottoman power could be dangerous, as some *'ulamā'* learned the hard way.

An early event proves how vulnerable Ottoman *'ulamā'* could be. During an examination for a prestigious teaching position, Çivizade, a promising aspirant, and a future *şeyhülislâm* himself, had to write a treatise (*risâle*). There he introduced an argument advanced by Kemalpaşazade, Sultan Süleyman's *şeyhülislâm* at that time, simply by *qıla*, "it was said", without acknowledging or flattering him. Kemalpaşazade felt insulted, and complained to the Sultan, demanding Çivizade's death. It took many efforts by viziers' intercessions and presents to the Mufti to save his life.³⁸

Although there was a popular assumption that the Ottomans did not put *'ulamā'* to death, the historical record tells a different reality. The most famous case of a *şeyhülislâm* who lost his life in a political upheaval was Feyzullah Efendi, who held the post from 1695 to 1703. He became a

victim to mob violence, because of his nepotism and corruption, however. More typical was the fate of the qadi of Iznik. Sultan Murad IV was going to Iznik. The news about his arrival did not reach the qadi in time, and the roads were not well prepared during the harsh winter. The Sultan accused the qadi of negligence, and ordered to put him to death. The qadi explained that the message had come late, and that he did his best. He tried to plead for mercy, but to no avail. He was hanged on the town wall, and his body remained there for three days. The people of Iznik were understandably shocked. So were qadis elsewhere.

Since the Sultan was in Bursa at the time, the Mufti of Istanbul, *şeyhülislâm* Molla Akhizade Hüseyin, wrote a letter to his mother, the *Valide Sultan*, gently reminding that according to the Ottoman practice *'ulamā'* were not put to death; even those who were unjust were only banished. The Mufti had powerful enemies in the capital, and the times were full of political upheavals and soldiers' uprisings. He was involved in the political struggles. The *Valide* suspected that the Mufti was convening secret meetings, and was plotting against the Sultan. She urged her son to return at once. So he did. The Mufti tried to escape, but was caught at the sea shore, put to death and buried at that place. (1633-34).³⁹

The tragic death of a brilliant Persian *'ālim*, poet, and intellectual, shows the dangerous situation that awaited a talented, but insufficiently cautious, man who came too near to the center of power in the imperial capital. Molla Ahmad al-ʿAjami al-Nakhjawani, known as Mantiqi, was born in Damascus to a Persian Sunni family. He was educated as an *'ālim*, and taught in *madrāsahs* in Damascus and later in Istanbul. His lessons in Damascus attracted Kurdish and Persian students, a proof of his unusual upbringing for a Damascene *'ālim*. He went to Aleppo to meet a vizier, who helped him get back his teaching position in Damascus. Later he traveled to Istanbul, and started the usual career of *mulāzamah*, finding a mentor for his scholarly career. He taught in Istanbul and was successful, thanks to his Islamic learning, and his fluency in Turkish. He knew Arabic, Persian and Turkish, and wrote fine Turkish poetry. Besides, he had social charm, and people of the elite found him witty and entertaining with his historical anecdotes and his wide knowledge. Sultan Murad IV invited him to his company. Inevitably, other favorites of the Sultan became envious. Political troubles broke

³⁸ See, Repp, *Muifti*, 248-9.

³⁹ See, *Tarih-Naima*, 6 vols. (Istanbul, 1866), 3:179-180.

out in Istanbul, and a grand vizier was killed. Mantiqi withdrew from the imperial court. He sought the company of other influential people, among them *ṣeyhūlislām*. Mantiqi had the fatal habit of lampooning and imitating his enemies. He often showed lack of respect to powerful men in the Ottoman capital.

Finally, Mantiqi left Istanbul and was appointed by the Mufti as the chief qadi of Aleppo. He carried out his duties with justice, and was praised by the local poets. Afterwards, he was appointed to the qadiship of Damascus, and tried to abolish oppressive measures that had been introduced by the local governor. He fell afoul of the acting governor, who was looking for an excuse to destroy him. A ceremony was set in the governor's palace to celebrate an Ottoman victory against Shah 'Abbas of Persia at Erivan, and Mantiqi was late to come down from his place in al-Ṣāliḥiyah. The governor asked for an imperial order to put the qadi to death. Mantiqi was strangled at the citadel of his native town in 1635, at the age of 41, and his property was confiscated by the Treasury. The chroniclers agree that it was his disrespectful talk toward the powerful men in the capital that caused his execution.⁴⁰

4. *Concluding notes*

Despite the harsh beginnings, the 'ulamā' in the Arab provinces of the empire adjusted to the Ottoman system. One has to keep in mind that from approximately the mid-sixteenth century, the Ottoman Empire was moving towards more orthodoxy and stricter religiosity. This development narrowed the gap between the two sides. Still, some differences and even serious tensions persisted.

The attitudes of Syrian 'ulamā' toward the Ottomans, even in later periods when the empire tried to maintain Muslim orthodoxy, were far from positive. In his article about identity and belonging in Ottoman Syria, Abdul-Karim Rafeq shows that the 'ulamā' in Ottoman Syria wrote petitions, issued *fatwahs*, and spoke vehemently against the injustice and oppression of the Ottoman rulers. Some of the leading 'ulamā' of the period justified disobedience to imperial edicts and regulation, if these contradicted the *Shari'ah*. The 'ulamā' cited by Rafeq include 'Abd al-Ghanī al-Nābulusī (d. 1731), arguably the greatest Sufi of the period. Among the advice given to the oppressed fellahs, they are urged to leave their villages in order to escape oppression and extortion, and even to kill their oppressors.⁴¹

Finally, it is important to note that the Arabs and the Turks (again, the same useful anachronism),

had one empire, one religion, but were divided by two cultures.

⁴⁰ Al-Muḥibbī, *Khulāsat*, 1:227-32; Sheyhi Mehmet Efendi, *waqaii al-fudala'*, 2:23-4, 30, 77, 79, 192.

⁴¹ Rafeq, *Syrian 'Ulamā'*, 9-32.

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