SAYI • ISSUE
55

YIL • YEAR
2026

ISSN 1301-3289
E-ISSN 2822-2903

İSLAM ARAŞTIRMALARI DERGİSİ

İSAM
TÜRKİYE DİYANET VAKFI
İSLAM ARAŞTIRMALARI MERKEZİ
مركز البحوث الإسلامية
CENTRE FOR ISLAMIC STUDIES

29 İSTANBUL MAYIS ÜNİVERSİTESİ

İSLAM ARAŞTIRMALARI DERGİSİ
TURKISH JOURNAL OF ISLAMIC STUDIES

SAYI / ISSUE 55 · YIL / YEAR 2026

Yayıncı / Publisher — TDV İslam Araştırmaları Merkezi ve İstanbul 29 Mayıs Üniversitesi adına
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Baskı / Printed by — TDV Yayın Matbaacılık ve Ticaret İşletmesi
Ostim OSB Mah. 1256 Cadde No. 11 Yenimahalle / Ankara
Tel. 0312. 354 91 31 Faks. 0312. 354 91 32
Sertifika No. 48058

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ISSN 1301-3289

İSLAM ARAŞTIRMALARI DERGİSİ
TURKISH JOURNAL OF ISLAMIC STUDIES

Sayı / Issue 55 • Yıl / Year 2026

MAKALELER / RESEARCH ARTICLES

ÖZEL DOSYA / **SPECIAL DOSSIER**

ARAŞTIRMA NOTU / **RESEARCH NOTE**

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The Role of Personal Bias in Historical Narratives: ʿImād al-Dīn al-Iṣfahānī's Portrayal of ʿImād al-Dīn Zangī

ISSAM MUSTAFA OKLEH*
ALMAHDI ALRAWADIEH**

Abstract

The article examines the role of personal bias in historical narratives, focusing on the portrayal of ʿImād al-Dīn Zangī by the historian ʿImād al-Dīn al-Iṣfahānī in his work *Nuṣrat al-fatra*. Al-Iṣfahānī's depiction of Zangī is notably hostile, attributing various negative traits and actions to him, such as alliances with the Nizārī Ismāʿīlī Assassins and tyrannical behavior. The study suggests that al-Iṣfahānī's bias stems from personal animosity and Ayyubid propaganda, which aimed to undermine the Zangids. This view is contrasted with other contemporary sources, including Muslim, Christian, and Syriac accounts, which often portray Zangī in a more favorable light as a just and capable ruler, particularly in his efforts to secure and develop his territories. The article highlights the importance of critically assessing historical sources, especially when personal biases may influence the accuracy of the narrative.
Keywords: ʿImād al-Dīn Zangī, ʿImād al-Dīn al-Iṣfahānī, Zangids, Ayyubid propaganda, Historiography.

Tarihsel Anlatılarda Kişisel Önyargının Rolü: ʿİmād al-Dīn el-İsfahānī'nin ʿİmād al-Dīn Zengī'yi Tasviri

Öz

Bu makale tarihsel anlatılarda kişisel ön yargının rolünü incelemekte ve tarihçi *İmâdüddin el-İsfahânî'nin Nuṣretü'l-fetre* adlı eserinde İmâdüddin Zengî'yi nasıl tasvir ettiğine odaklanmaktadır. İsfahânî'nin Zengî'yi betimlemesi dikkate değer derecede olumsuzdur;

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DOI: 10.26570/isad.1688519 • Geliş/Received 01.05.2025 • Kabul/Accepted 02.08.2025
Atıf/Citation Issam Mustafa Okleh – Almahdi, Alrawadieh, "The Role of Personal Bias in Historical Narratives: ʿImād al-Dīn al-Iṣfahānī's Portrayal of ʿImād al-Dīn Zangī", *İslam Araştırmaları Dergisi*, 55 (2026): 9-31.

onu Nizârî İsmâilî Haşhaşîler'le ittifak yapmak ve zalimce davranışlar sergilemek gibi çeşitli olumsuz özelliklerle ilişkilendirir. Çalışma İsfahânî'nin ön yargısının kişisel husumet ile Eyyûbîler tarafından Zengîliler'i itibarsızlaştırmayı amaçlayan propaganda etkisinden kaynaklandığını ileri sürmektedir. Bu bakış açısı, Zengî'yi âdil ve yetenekli bir hükümdar olarak tasvir eden müslüman, hıristiyan ve Süryânî kaynakları dahil olmak üzere diğer çağdaş anlatılarla karşılaştırılmaktadır; özellikle onun topraklarını güvence altına alma ve geliştirme çabaları vurgulanmaktadır. Makale tarihsel kaynakların eleştirel bir yaklaşımla değerlendirilmesinin, özellikle kişisel ön yargıların anlatının doğruluğunu etkileyebileceği durumlarda, önemine dikkat çekmektedir.

Anahtar Kelimeler: ʿİmâd al-Dîn Zengî, ʿİmâd al-Dîn el-İsfahânî, Zengîler, Eyyûbî propagandası, Tarih yazımı.

Introduction

This study examines the antagonistic stance that ʿImād al-Dīn al-Iṣfahānī (d. 597/1201) took toward the Atabek ʿImād al-Dīn Zangī ibn Āq Sunqur (d. 541/1146) in his book *Nuṣrat al-fatra wa-ʿUṣrat al-fiṭra*, the complete edition of which has only recently been published.[1] After scrutinizing the careers of both ʿImād al-Dīn and Zangī, the study assesses the accuracy of the information and judgements that ʿImād al-Dīn recorded and compares them with other contemporary Muslim Arabic, Syriac and Latin Christian sources. In doing so, the study attempts to understand what motivated ʿImād al-Dīn to adopt such a hostile stance.

The significance of this study derives in part from ʿImād al-Dīn's exceptionally detailed awareness of the history of the period. He was descended from an Iṣfahānī family, whose members served in high administrative posts of the Seljuk state, and he himself served in the Zangid and Ayyubid administrations. He was fluent in both Persian and Arabic and had wide contacts with the rulers, administrators, scholars, and men of letters of the region. He is considered the foremost author and historian of the Islamic world in the second half of the sixth century (second half of the twelfth) century. Lastly, ʿImād al-Dīn was a fundamental source for later historians and was one of those who influenced Arab Islamic culture in his time.[2]

ʿImād Al-Dīn Al-Iṣfahānī's Life, Education and Career

ʿImād al-Dīn Muḥammad ibn Muḥammad ibn Ḥāmid ibn Muḥammad ibn ʿAbd Allāh al-Ḥamawīnī al-Qurashī al-Iṣfahānī[3] was born in 519/1125 in the city of Isfahan into a family of secretaries and administrators working for

1 al-Iṣfahānī, *Nuṣrat al-Fatra wa-ʿUṣrat al-fiṭra*, ed. ʿIssām Oqleh, London: Mu'assasat al-Furqān lil-turāth al-Islāmī, 2019.

2 Massé, "ʿImād al-Din", III, 1157-1158.

3 al-Iṣfahānī, *Kharīdat al-qaṣr*, (Tehran, 2000), 21, 60.

the Seljuk state.[4] His uncle al-ʿAzīz Aḥmad ibn Ḥāmid (d. 528/1132) was a prominent member of the family and occupied the post of chief financial officer for the Sultan Maḥmūd ibn Muḥammad ibn Malikshah (d. 527/1131) and so had great power in the Seljuk state until his rivalry with the vizier al-Darquzīnī (d. 528/1132) led to his arrest and execution in 525/1129.[5]

The arrest of al-ʿAzīz in 525/1129, along with that of ʿImād al-Dīn’s father, other uncles and the confiscation of their property was a catastrophe for the family. After his father’s release from prison, ʿImād al-Dīn departed with his family for Baghdad in 534/1139, where they lived until his father’s death in 560/1164.[6] ʿImād al-Dīn was first educated in Isfahan and then in Baghdad’s schools and academic seminaries, in addition to learning at the hands of his father. He became famous in Baghdad, known by the name of the son of the brother of al-ʿAzīz.[7] In Baghdad, he continued his education in Arabic grammar, language, literature, and the art of narrating poetry, as well as in the religious sciences of hadīth, the Shafiʿi legal tradition, and the sciences of the Qurʾān and its recitation. ʿImād al-Dīn also cultivated his connections with scholars in Baghdad who had had good relations with his uncle al-ʿAzīz. He also came into contact with administrators of the Seljuk state who were subordinates of his uncle al-ʿAzīz, or had good relations with him, among them Jamāl al-Dīn al-Iṣfahānī, the vizier of Zangid Mosul (d. 559/1164), and Raḍī al-Dīn the chief financial officer of the Sultan Masʿūd ibn Muḥammad (d. 547/1152).[8]

ʿImād al-Dīn’s first administrative job was in the administration of the Abbasid caliphate, where he served as an administrative assistant of the vizier ʿAwn al-Dīn ibn Hubayrah in Wāsiṭ and then in Basra. His work there continued until Ibn Hubayrah’s death in 560/1164, which resulted in the dismissal of his entire staff, including ʿImād al-Dīn, who was briefly placed under arrest. After his release, ʿImād al-Dīn went to Bilād al-Shām and, in 562/1167, he served in the *Dīwān al-Inšāʾ* (the office of official correspondence) in the government of Nūr al-Dīn Maḥmūd ibn Zangī (d. 569/1174), where he was soon placed in charge, remaining in that position until Nūr al-Dīn’s death.[9]

4 al-Iṣfahānī, *Kharīdat al-qaṣr*, (Baghdad, 1959), II, 330.

5 al-Iṣfahānī, *Kharīdat al-qaṣr* (Tehran, 2000), 43-45.

6 al-Iṣfahānī, *Kharīdat al-qaṣr* (Baghdad,1959), II, 53-54; al-Iṣfahānī, *Nuṣrat al-fatra*, II, 143-144, 215.

7 Massé, “Imād al-Din” III, 1157; al-Iṣfahānī, *Kharīdat al-qaṣr*, (2000) 67; al-Iṣfahānī, *Kharīdat al-qaṣr* (1959) II, 53; al-Iṣfahānī, *Nuṣrat al-fatra,* II, 245; Sibt Ibn al-Jawzī, *Mirāt al-zaman*, XXII, 199.

8 al-Iṣfahānī, *Kharīdat al-qaṣr* (1959), I, 44, II, 53; al-Iṣfahānī, *Nuṣrat al-fatra,* II, 251-253, 289-290.

9 al-Bundārī, *Sanā al-barq al-Shāmī* 16, 18, 22, 49-50, 63, 69; Massé, “ʿImād al-Din”, III, 1157.

It is clear from indications given by ʿImād al-Dīn that upon his arrival in Damascus, he contacted Najm al-Dīn Ayyūb ibn Shādhī (d. 568/1172), the father of Ṣalāḥ al-Dīn, and his brother Asad al-Dīn Shīrkūh (d. 564/1168), as well as the *qāḍī* Kamāl al-Dīn Muḥammad ibn ʿAbd Allāh al-Shaharzūrī (d. 572/1176), all of whom were acquaintances with his uncle al-ʿAzīz.[10] In this period, his relationship strengthened with Ṣalāḥ al-Dīn Yūsuf al-Ayyūbī (d. 589/1193)..[11] This group of members of Nūr al-Dīn's government are who introduced ʿImād al-Dīn to Nūr al-Dīn, who employed him in the *Dīwān al-Inšāʾ* and placed him in charge.[12] After Nūr al-Dīn died and his son al-Malik al-Ṣāliḥ Ismāʿīl (d. 577/1181) came to power as a child, the group of administrators hostile to ʿImād al-Dīn and Ṣalāḥ al-Dīn succeeded in forcing him to leave his post and go to Mosul. However, he returned to Damascus after Ṣalāḥ al-Dīn took over in 570/1175, where he served in the *Dīwān al-Inšāʾ* as the second man in Ṣalāḥ al-Dīn's administration, second to al-Qāḍī al-Fāḍil (d. 596/1994), the first administrator in Bilād al-Shām.[13] During this period, ʿImād al-Dīn became identified with Ṣalāḥ al-Dīn's political and military policies. He became a spokesman for Ṣalāḥ al-Dīn in his poetry, letters, and books, most of which were written in this period.[14] After Ṣalāḥ al-Dīn's death, when conflict broke out among his sons, ʿImād al-Dīn was removed from his administrative positions, and he dedicated most of his time to teaching in Damascus and writing historical works until his death in 597/1201.[15] ʿImād al-Dīn wrote a number of books that were of fundamental importance for all Arab and Muslim historians concerned with the history of the sixth/twelfth century. The most important ones were *al-Barq al-Shāmī*, *Kharīdat al-qaṣr*, *Nuṣrat al-fatrah, al-Fatḥ al-qussī*, *Kitāb ʿUtabi al-zamān*, and the collections of his letters and poetry.[16]

The Atabek Zangī and ʿImād Al-Dīn's View of Him

ʿImād al-Dīn Zangī ibn Qasīm al-Dawlah Āq Sunqur was born and brought up in Aleppo. His father served as a military commander under Sultan Malik Shāh. After Sultan Malik Shāh captured Aleppo from Tāj al-Dawlah

10 al-Bundārī, *Sanā al-barq al-Shāmī,* 16-17, 21.

11 al-Bundārī, *Sanā al-barq al-Shāmī,* 21.

12 Yāqūt, *Muʿjam al-udabāʾ,* VI, 2624.

13 Yāqūt, *Muʿjam al-udabāʾ,* VI, 2624; al-Bundārī, *Sanā al-barq al-Shāmī,* 84, 90; Ibn Khallikān, *Wafīyāt al-aʿyān*, V, 149.

14 Yāqūt, *Muʿjam al-udabāʾ,* VI, 2626; Ibn Khallikān, *Wafīyāt al-aʾyān*, V, 149.

15 Yāqūt, *Muʿjam al-udabāʾ,* VI, 2626; Ibn Khallikān, *Wafīyāt al-aʾyān*, V, 152; Abū Shamah, *al-Rawḍatayn*, IV, 419.

16 Yāqūt, *Muʿjam al-udabāʾ,* VI, 2627.

Tutuš in 480/1087, he appointed Āq Sunqur as governor of the city. Zangī received the title "Atabek" for his role in educating the Seljuk sultan Maḥmūd's two sons in Mosul. He played a prominent role as one of the leading figures of the Seljuk state from 516/1122 onward and served as assistant to Āq Sunqur al-Bursuqī (d. 520/1126), who was in charge of the police in Baghdad, and later as his deputy in Basra. He then was in charge of Mosul and fought Dubays ibn Ṣaḍaqah, who was threatening Baghdad with wreckage and destruction, and was able to arrest him. Zangī also ruled Aleppo, Ḥamāh, Ḥimṣ, and Baʿalbak, and continued fighting the enemies of the Seljuks, occupying some Kurdish castles. He led the military campaigns against the Crusaders, during which he was noted for bravery, courage and good conduct, and was able to recover numerous major cities from their hands, such as Maʿarat al-Nuʿmān, al-Athārib, Sarūj and al-Ruhā (Edessa) until he was killed during the siege of Jaʿbir Castle in 541/1146; his body was transported to al-Raqqa and buried there.[17] Many Arab and non-Arab sources recorded his biography and recognized his achievements, commending his policies in all the posts that he occupied. ʿImād al-Dīn, however, contradicted all the others who dealt with his biography. Our study is mainly interested in explaining the reasons behind ʿImād al-Dīn's hostility toward Zangī.

ʿImād al-Dīn, as previously mentioned, wrote a number of books that became the basic sources for all subsequent historians of the Seljuks, Zangids, and Ayyubids, and the history of Arabic literature and poetry in the fifth/eleventh and the sixth/twelfth centuries. However, his books that cover limited topics or periods cannot convey his stance towards Zangī. *Al-Barq al-Shāmī* was the longest of his historical books, but only the third and fifth parts, along with a summary by al-Bundārī (d. 643/1245) under the name of *Sanā al-barq al-Shāmī*, are extant. ʿImād al-Dīn wrote about Bilād al-Shām after he arrived there in 562/1167, and so *al-Barq al-Shāmī* does not cover Zangī, who had died twenty years earlier. Likewise, ʿImād al-Dīn's book *al-Fatḥ al-gussī,* in which he chronicles the history of Ṣalāḥ al-Dīn from before the Battle of Ḥiṭṭīn until his death (582-589/1186-1193), does not reveal his stance toward Zangī. His books *ʿUtbā al-zamān*, *Khuṭfat al-bāriq* and *Niḥlat al-riḥlah* cover Ayyubid history after Saladin's death and the conflict among his successors. His books *Kharīdat al-Qaṣr* and *Ḍhayl al-Kharīdah* are also devoted to writers, scholars and poets of the Islamic world, and so it was difficult for ʿImād al-Dīn to show his stance toward Zangī, because the Shām poets and men of letters admired Zangī and his

17 Heidemann, "Zangī", II, 451-452; Ibn al-ʿAdīm, *Bughyat al-ṭalab,* VIII, 404-421; Ibn al-Athīr, *al-Tārīkh al-bāhir,* 15-84; Ibn al-Qalānisī, *Ḍhayl tārīkh Dimashq*, 284-288; Ibn al-Jawzī, *al-Muntaẓam,* XVIII, 51.

successor Nūr al-Dīn and praised the efforts of both of them in fighting the Crusaders, and politically unifying Bilād al-Shām.[18]

In sum, ʿImād al-Dīn's stance toward Zangī can only be found in his book *Nuṣrat al-fatrah wa-ʿUṣrat al-fiṭrah*, which is devoted to the history of the Seljuks from their rise until the fall of their state in Iraq and Persia. Al-Iṣfahānī composed this work in 579/1183,[19] and it was natural for him to address the figure of Zangī in it, since Zangī had served as atabek for the Seljuqs in Mosul and Aleppo.

Those who have studied *Nuṣrat al-fatrah wa-ʿUṣrat al-fiṭrah* have relied on al-Bundārī's abridgement *Zubdat al-Nuṣrah wa-nukhbat al-ʿuṣrah*.[20] Among those are Carole Hillenbrand in her study on the Crusades,[21] Henri Massé in his article about ʿImād al-Dīn,[22] Bernard Lewis in his work on the Assassins,[23] and Lutz Richter-Bernburg in his works on ʿImād al-Dīn.[24] The latter has been among the most prominent European scholars to study ʿImād al-Dīn and edited part of his work *al-Barq al-Shamī,* which documents the year 573/1177. However, unlike the full text of *Nuṣrat al-fatrah* upon which the current study draws, Bundārī's abridgement represents around half of the original text and thus does not clearly show ʿImād al-Dīn's attitudes towards those who conspired to kill his uncle al-ʿAzīz. Therefore, the current study responds to a question raised by Richter-Bernburg over two decades ago on the effect of the murder of al-ʿAzīz on the then seven-year-old ʿImād al-Dīn.[25] In sum, the above-mentioned studies have little to offer regarding ʿImād al-Dīn's stance toward Zangī, which is the focus of the present study. Moreover, the present study makes use of the original book, recently published in London[26] and not the abridgement.

18 Gibb, "Saladin al-Ayyubid", 71-96; Gibb, "al-Barq al-Shamî: The History of Saladin", 52, 93-110; Aḥmad, "Some Notes on Arabic Historiography during the Zengid and Ayyubid Periods", 79-80.

19 al-Iṣfahānī, *Nuṣrat al-fatra,* I, 72; Barthold, *Turkestan down to the Mongol Invasion*, 27, Peacock, "'Imād al-Dīn al-Iṣfahānī's Nuṣrat al-fatra", 88, Massé, 'Imad Al-Din III, 1157.

20 Peacock, "'Imād al-Dīn al-Iṣfahānī's Nuṣrat al-fatra", 79-85; Cahen, "The Historiography of the Seljuqid period", 68-72.

21 Hillenbrand, *The Crusades: Islamic Perspectives*, 262.

22 Massé, "Imād al-Din", III, 1157-1158.

23 Lewis, *The Assassins: A radical Sect in Islam*, 68.

24 See for example: Richter-Bernburg, *Der syrische Blitz*; Richter-Bernburg, *Funken aus dem kalten Flint*.

25 Richter-Bernburg, *Der syrische Blitz*, 32; Richter-Bernburg, *Funken aus dem kalten Flint*, 126.

26 Edited by ʿIssām Oqleh, London: Mu'assasat al-Furqān lil-turāth al-Islāmī, 2019.

ʿImād al-Dīn recorded his stance toward Zangī in *Nuṣrat al-fatrah* on three occasions: first, his stance toward the Abbasid caliph, al-Rāshid (529-530/1135-1136),[27] second, when he was accused of killing the Seljuk Dāwūd ibn Maḥmūd in 538/1143,[28] and third, in his speech about Zangī's death.[29] The image he drew can be summarized as follows. First, Zangī was allied with the Nizāri Ismāʿīlis (Assassins), who killed Dāwūd, the son of Sultan Maḥmūd II, for him. Zangī feared that Dāwūd would come with an appointment from Sultan Maḥmūd II's younger brother and successor, Sultan Masʿūd ibn Muḥammad (527-547/1133-1152), to rule in Mosul and al-Shām. Second, in his general description of Zangī at his death, ʿImād al-Dīn wrote that he was a haughty man, a tyrant, distinguished for intense violence, who did not recognize the good and did not come with anything good, oppressed his people and did not aid them during his rule in Aleppo and Mosul. But all these bad traits and deeds were made good by his conquest of the city of al-Ruhā (Edessa). By doing that, ʿImād al-Dīn was attempting to strike a blow against the legitimacy of the Zengids, attacking in particular the personality of the founder of the Zengid state. The states in the Islamic east based their legitimacy to rule on establishing justice, supporting their subjects and building a strong state and opposing the Crusader enemies of the Muslims. ʿImād al-Dīn also threatened that if Zangī were angry with his commanders, he would kill them, castrate their sons, and then enslave them and make them his private guard. They belonged to numerous groups of Turks, Armenians, and Rūm, and they hated him, so when they had an opportunity, they killed him in his bed.

This is a summary of the rather dark image that ʿImād al-Dīn attempted to draw of Zangī in *Nuṣrat al-fatrah*. If we compare this view with that found in ʿImād al-Dīn's last book *Kharīdat al-qaṣr*, the only one to mention Zangī a few times in a general form, ʿImād al-Dīn reconfirms his hostile position and attempts to minimize Zangī's status. The former does not describe Zangī as the contemporary and later historians did, referring to him with the honorific title of "martyr," which the majority of kings, sultans, and rulers wished to bear. Indeed,ʿImād al-Dīn does not glorify Zangī with honorific titles or note poems that praise Zangī from his biography, with the exception of some verses that mention his conquest of al-Rahā.[30] All of this strengthens his negative portrait. Nevertheless, numerous aspects need to be clarified to understand ʿImād al-Dīn's view of Zangī. It is necessary to clarify whether these charges align with the image of Zangī presented

27 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 208.

28 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 248.

29 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 269-287.

30 al-Iṣfahānī, *Kharīdat al-qaṣr* (*Qism al-ʿIrāq)* II, 267, III, 2, *(Qism al-Shām)* I, 35, 130, 329, III, 102, 108, 128, 158.

in other contemporary sources. Additionaly, it must be emphasized that ʿImād al-Dīn himself was not a contemporary of Zangī. He only entered Bilād al-Shām in 562/1167 and Mosul in 542/1147, well after Zangī's death in 541/1146.

The first accusation put forth by ʿImād al-Dīn concerns Zangī's alleged alliance with the *Nizārī Ismāʿīlī Assassins*, whom he purportedly commissioned to assassinate Dāwūd ibn Maḥmūd. However, ʿImād al-Dīn stands alone among contemporary sources in making such a claim. Ibn al-Qalānisī simply recorded that Dāwūd was killed in 538/1143 by three unnamed individuals, whose identities remained unknown—an account that aligns closely with those of his contemporaries al-ʿAẓīmī (d. 562/1167), al-Fāriqī (d.577/1181), and Ṣadr al-Dīn al-Ḥusaynī (d. 622/1225).[31] No other historical authority made reference to this particular accusation except Ibn Abī Ṭayy al-Ḥalabī (d. after 621/1224)[32] and Ibn Shākir al-Kutubī (d. 764/1363), both of whom clearly derived their accounts from ʿImād al-Dīn.[33] This highlights the isolated and uncorroborated nature of ʿImād al-Dīn's report.

Moreover, ʿImād al-Dīn's presentation of this information adopts the stylistic form of *riwāyah* (reported speech), notably through the use of the expression "it was said" (*qīla*), which casts further doubt on the certainty of the account. According to this narrative, Zangī allegedly resolved to eliminate Dāwūd after Sultan Masʿūd had resolved to bestow upon him the governorship of Bilād al-Shām. This development, it is claimed, aroused Zangī's fears regarding the security of his own position, prompting him to plot Dāwūd's assassination via the *Nizārīs* of Bilād al-Shām.[34] However, contemporary Arabic sources dealing with Zangī's life and rule do not record any alliance, cooperation, or even favourable contact between Zangī and the *Nizārī Ismāʿīlīs* in that region.

Even within ʿImād al-Dīn's own writings, a degree of narrative inconsistency emerges. Prior to levelling this accusation, he had stated that Dāwūd lived as a fugitive after his conflict with his uncle, Sultan Masʿūd—a struggle rooted in Dāwūd's claim to what he perceived as his rightful inheritance, which he believed had been usurped by Masʿūd. Following Zangī's defeat,

31 Sibt Ibn al-Jawzī, *Mirāt al-zaman,* XX, 339; al-Fāriqī, *Tārīkh al-Fāriqī*, 13; al-Husaynī, *Zubdat al-tawārīkh*, 313; al-Qalānisī, *Ḍhayl Tārīkh Dimashq,* 43; al-ʿAzīmī, *Kitab al-Tārīkh al-ʿAzīmī,* 491.

32 See: al-ʿAshmāwī, *Kitābāt Ibn Abī Ṭay' fī al-maṣādir al-Islāmīyah*, 48-126.

33 Ibn Shakir al-Kutubī, *ʿUyūn al-tāwarīkh*, XII, 277; Ibn al-Furāt, *Tārīkh al-duwal wa-al-mulūk*, the National Library, Vienna No. A.F 814.

34 For Nizārīs, see: Daftari, *The Ismaʿilis Their History and Beliefs*, 607-617; Alrawadieh, "The History of the Baṭaniyyah in Aleppo", 31-47.

Sultan Masʿūd, still apprehensive about Zangī’s ambitions, sought to secure his loyalty by marrying him to one of his daughters. Furthermore, he named Zangī as crown prince and granted him dominion over the region of Tabrīz in Ādharbāyjān in an effort to deter him from pressing any future claims to the throne.[35]

It appears that the growing influence of the Emir Khaṣ Ibn Balunkarī (d. 547/1152) over Sultan Masʿūd provoked the ire of the leading military commanders within the Seljuk state. These commanders began threatening the Sultan, intervening in governance, removing ministers, and conspiring to eliminate Emir Khaṣ. Sultan Masʿūd, fearing an insurrection and the possibility that the commanders might exploit the presence of minor royal princes — the sons of previous sultans — as rival claimants to the throne, acquiesced to their demands. In practice, the commanders did indeed attempt to leverage these princes, and it is therefore likely that either Sultan Masʿūd, Emir Khaṣ, or both acted to eliminate Dāwūd, who represented the most significant remaining Seljuk rival. Dāwūd maintained considerable support among the military elite, and both Masʿūd and Emir Khaṣ feared he would seize the opportunity to lay claim to the sultanate.[36]

In light of this, Sultan Masʿūd, wary of Dāwūd’s aspirations, was unable to dispatch him to al-Shām as a replacement for Zangī, for doing so would have placed Dāwūd in close proximity to ʿIrāq. This would have allowed him to gain the support of the caliph and other leading Seljuk dignitaries, thereby strengthening his claim to power. Consequently, the assertion of ʿImād al-Dīn that Zangī was involved in a conspiracy to eliminate Dāwūd appears unfounded. Furthermore, the extant sources make no mention of any alliance between Zangī and the *Nizāris* of Bilād al-Shām, which would have facilitated the orchestration of such an assassination.

Zangī’s previous alliance with Dāwūd against Sultan Masʿūd in 530/1135—during which Zangī had advocated for Dāwūd to assume the sultanate in place of Masʿūd—was eventually abandoned. This withdrawal likely stemmed from the increasing strength of Masʿūd and the waning influence of both Dāwūd and the caliph al-Rashīd. Despite this, Zangī maintained cordial relations with Dāwūd.[37] This fact casts serious doubt on Zangī’s purported involvement in Dāwūd’s murder, particularly since Zangī

35 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 248. See: Issam Okleh -Nadjib Benkheira, “The Saljuq al-Malik Dā’ūd ibn Maḥmūd ibn Muḥammad”, 147-151.

36 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 248.

37 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 201. For the relationship between Zangī and Dāwūd, see Belotto, *Power and Legitimacy in the Medieval Muslim World*. Interestingly, however, the study does not refer to ʿImād al-Dīn al-Iṣfahānī nor uses any of his works. The study also does not refer to the accusation against Zangī.

himself distrusted Sultan Masʿūd and therefore preserved his connections with Seljuk princes and military commanders as a strategic counterweight.[38] It is important to note that ʿImād al-Dīn was neither present in Tabrīz, where Dāwūd was killed, nor residing within Zangī's domain in a position to reliably transmit such a report. He was thus neither an eyewitness nor did he cite any identifiable source. The account, therefore, remains unsupported, stemming from an anonymous origin and contradicted by more credible testimonies which favour an alternative narrative.

This account was transmitted through two later historians: Ibn Abī Ṭayy and Ibn Shākir al-Kutubī. The former, a well-known Shiʿite historian, was notably hostile to the Zangid dynasty, owing to their severe treatment of Shiʿites, especially in Aleppo, which Zangī governed for two decades and which later passed to his son Nūr al-Dīn. Ibn Abī Ṭayy's father was himself a prominent Shiʿite figure, exiled from Aleppo by Nūr al-Dīn ibn Zangī.[39] Consequently, Ibn Abī Ṭayy compiled numerous accounts hostile to the Zangids in his works, contributing to the negative portrayal of their legacy.[40] As for Ibn Shākir al-Kutubī, he was a copyist and bookseller who compiled his works from earlier sources, including al-Ṣafadī (d. 764/1363) and Ibn Kathīr (d.774/1372).[41] However, his transmission of ʿImād al-Dīn's report appears to have been uncritical and imprecise.

In fact, Bernard Lewis refutes the accusation against Zangī, noting that "it is certainly curious that a murder in North Western Persia should have been arranged from Syria and not from nearby Alamut".[42] Likewise, Peacock, reporting the murder, does not attribute it to the Assassins supported by Zangī.[43] While Lewis does not back his view with any written source, Peacock had only access to al-Bundārī's abridgement and not al-Iṣfahānī's original book *Nuṣrat al-fatrah*.

The second charge advanced by ʿImād al-Dīn was that Zangī was a tyrannical ruler (*jabbār*) — an accusation frequently repeated in his writings and presented as a defining characteristic. This depiction appears

38 Ibn al-Athīr, *al-Tārīkh al-bāhir,* 65.

39 Abū Shamah, *al-Rawḍatayn*, II, 77, Khaÿat, "The Šite rebellions in Aleppo", 181-182; Alrawadieh - Okleh, "Shi'ites in Aleppo during the Seljuq, Zangid and Ayyūbid Periods", (479–658 AH/1086–1260 CE)", *Journal of Shi'a Islamic Studies*, 14/3 (2021). 165-166.

40 For Ibn Abī Ṭayy, see: al-ʿAshmāwī, *Kitābāt Ibn Abī Ṭayy fī al-maṣādir al-Islāmīyah*, 36-40.

41 For an evaluation of the writings of Ibn Shākir al- Kutubī and their level, see: Rosenthal, "al-Kutubī", V, 570-571.

42 Lewis, *The Assassins: A radical Sect in Islam*, 68.

43 Peacock, "'Imād al-Dīn al-Iṣfahānī's Nuṣrat al-fatra", 78.

to have been deliberately utilised to reinforce the claim that Zangī ruled unjustly and committed acts of aggression against the populations under his control. However, such claims find no support in other contemporary or near-contemporary sources.

A closer textual analysis of *Nuṣrat al-fatrah* reveals that ʿImād al-Dīn's characterisation of Zangī departs significantly in tone, method, and narrative focus from the rest of the work. Notably, he devotes an entire chapter to Zangī, in a manner not paralleled in his treatment of any other *atabek*. Furthermore, ʿImād al-Dīn states that he began writing the work in 579/1183 — the very year in which Ṣalāḥ al-Dīn al-Ayyūbī captured Aleppo and initiated his campaign against Mosul, seeking to dismantle the Zangid state. It is within this political and ideological context that ʿImād al-Dīn's portrayal must be situated, particularly given that Ṣalāḥ al-Dīn launched a broad propaganda campaign aimed at justifying his actions and securing both popular and Abbasid support.

Significantly, ʿImād al-Dīn employed especially severe and polemical language in describing Zangī—language typically reserved in Islamic historiography for non-Muslim rulers or Muslim leaders deemed to have violated Islamic norms. The term *jabbār*, from the root *j-b-r*, signifies a tyrannical ruler whose oppressive nature provokes rebellion, as in the Qurʾānic depiction of Pharaoh.[44] When applied by ʿImād al-Dīn to Zangī, it served less as description than as ideological condemnation. He also referred to Zangī as *qaysarī al-kibr*, likening him to arrogant Roman emperors, whose haughtiness is censured in Islamic tradition. Additionally, ʿImād al-Dīn portrayed Zangī as one who transgressed established custom, denied the normative social order, and exhibited excessive pride — features he associated with tyrannical rule.[45] Through these characterizations and others, he crafted a portrait of Zangī that stood in stark contrast to how the latter was perceived by his contemporaries — a perception that will be discussed in detail below.

By contrast, Ibn al-Qalānisī al-Dimashqī (d. 555/1160), who lived during Zangī's lifetime and served under the Damascene regime (which was politically opposed to Zangī), describes the aftermath of his death as a time

44 For different uses of the word *jabbār* in the Qurʾān, see: Q. 11:59, where it denotes the oppressive pride of ʿĀd; Q. 14:15, referring to those who act arrogantly and unjustly; Q. 26:130, describing tyrannical builders among Pharaoh's people; and Q. 40:35, highlighting those who dispute God's signs with arrogance. In each instance, *jabbār* conveys an image of defiance, coercion, and illegitimate authority, invariably linked to divine condemnation. McAuliffe (Eds.), *Encyclopaedia of the Qur'ān*, I: 160[a], 161[a]; II: 320[b], 432[b], 484[b], 541[b]; III: 504[b]; IV: 137[b], 264[a], 264[b]; V: 455[b].

45 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 271-272.

of instability, and composes verse praising Zangī's wisdom and confirming his justice.[46] Though recognizing his severity and strict enforcement of law, Ibn al-Qalānisī acknowledged that this discipline had led to flourishing economic conditions and improved public security.

Ibn ʿAsākir (d. 571/ 1175), another eminent Damascene historian, similarly referred to Zangī as "magnanimous and strict," a description implying firm but just governance, particularly in his attention to public order and the protection of his subjects.[47] Al-ʿAẓīmī, historian of Aleppo and a direct contemporary of Zangī, offered no suggestion of injustice or oppression by Zangī in either his *Tārīkh Ḥalab*[48] or the preserved fragments of his larger chronicle, cited in Ibn al-ʿAdīm's (d. 660/1262) *Bughyat al-ṭalab*.[49] Likewise, al-Fāriqī (d.577/1181), another contemporary source, does not report any acts of oppression by Zangī toward his subjects.[50]

The distinguished Aleppine historian Ibn al-ʿAdīm characterizes Zangī as "a great, brave, and tyrannical king, possessed of glory and pride, yet observant of the *sharīʿah* and honouring scholars."[51] He adds that Zangī rehabilitated devastated lands, eliminated corruption, abolished unjust levies and fines, and enforced the rule of law. However, he later explains that some rural inhabitants of Aleppo had complained of Zangī's severity, specifically his conscription of peasant men into military service during times of siege. Yet Ibn al-ʿAdīm justified this action within the framework of *jihād*, especially in the face of overwhelming Crusader threats, and thus saw it as sanctioned by Islamic law.[52]

Taken together, these sources present a unified picture that diverges sharply from ʿImād al-Dīn's portrayal. None of Zangī's Muslim contemporaries echoed ʿImād al-Dīn's severe allegations.[53] Indeed, his claims contradict

46 Heidemann, "Zangī", II, 451-452; al-Qalānisī, *Ḍhayl tārīkh Dimashq,* 446-449.

47 Ibn ʿAsākir, *Tārīkh madīnat Dimashq*, XIX, 85.

48 al-ʿAzīmī, *Tārīkh Ḥalab.*

49 Ibn al-ʿAdīm, *Bughyat al-ṭalab,* VIII, 407-410.

50 al-Fāriqī, *Tārīkh al-Fāriqī.*

51 Ibn al-ʿAdīm, *Bughyat al-ṭalab,* VIII, 406.

52 Ibn al-ʿAdīm, *Bughyat al-ṭalab,* VIII, 414.

53 Hillenbrand quoted two historical sources when discussing Zangī's control over the city of Edessa, one of them by Ibn al-Athīr, and the other by ʿImād al-Dīn. These two sources overall praise Zangī as a brave fighter and a commander against the Crusaders. Hillenbrand argued that this was the image of Zangī in the Arabic sources (as also highlighted in our study). While this conclusion derives from Hillenbrand's reference to al-Bundārī's abridgement *Zubdat al-nuṣrah,* it is curious to find that ʿImād al-Dīn insults Zangī and describes him with the worst descriptions, but he redresses that by saying that his conquest of the city of Edessa and his death as a

reports that the people of Aleppo, under threat from a severe Crusader siege, had themselves sought Zangī’s assistance, sending a delegation to Mosul to request his aid. Zangī responded by defeating the besieging Franks, taking control of Aleppo, and restoring order.[54]

Even the Latin chronicler William of Tyre (d. 582/1186), a contemporary Crusader, noted only Zangī’s severity and hatred toward the Crusaders; not any injustice toward his Muslim subjects.[55] Similarly, Syriac Christian sources portray Zangī as a powerful and experienced military commander, lauding his leadership without attributing acts of tyranny or oppression to his rule. They emphasize his fair treatment of the population of al-Ruhā (Edessa) following its conquest, his efforts to repair damage, promote agriculture (including the introduction of new grape varieties), and expand trade. These sources also characterize him as ascetic, harsh with criminals, yet equitable irrespective of ethnicity or faith.[56]

The renowned historian Ibn al-Athīr (d. 630/1233), closely associated with the Zangid dynasty, extolled Zangī’s virtues. Drawing on his father’s firsthand experience in Mosul and al-Jazīrah, Ibn al-Athīr praised Zangī’s statecraft, noting how he restored devastated regions, imposed justice, promoted agriculture and commerce, and ensured the security of the weak against the strong. He cited examples of Zangī’s firm treatment of military commanders who acted unjustly and his consistent severity toward wrongdoers.[57] While Ibn al-Athīr’s account may be biased in favour of the Zangids, it remains largely consistent with other contemporary sources, and stands in marked opposition to the bleak portrayal crafted by ʿImād al-Dīn.[58] The latter’s perspective, shaped by his personal loyalty to al-ʿAzīz, appears as politically motivated as Ibn al-Athīr’s allegiance to the Zangids.[59]

martyr is perhaps the only good thing in his life! See: Hillenbrand, *The Crusades: Islamic Perspectives*, 112-113 and al-Iṣfahānī, *Nuṣrat al-fatra,* II, 271-272.

54 Yāqūt, *Muʿjam al-udabā’*, V, 2079, Ibn al-ʿAdīm, *Bughyat al-ṭalab,* IV, 553-558, VII, 630, Ibn al-ʿAdīm, *Zubdat al-Ḥalab,* I, 421, Ibn al-Athīr, *al-Tārīkh al-bāhir,* 34, al-Dhahabī, *Tārīkh al-Islām* XI, 314, and see also: Alrawadieh, - Okleh, “Shiʿites in Aleppo during the Seljuq, Zangid and Ayyūbid Periods”, 165-166, 168.

55 Wilyam al-Ṣūrī (William of Tyre), *al-Aʿmāl al-Munjazah*, III, 242.

56 Mīkhā’īl al-Siryānī (Michael the Syrian). *Tārīkh Mār Mīkha’īl al-Kabīr*, III, 242; al-Ruhāwī al-Majhūl, *Tārīkh al-Ruhāwī al-Majhūl*, II, 144-154; Ibn al-ʿIbrī, *Tārīkh al-zamān*, 160.

57 Heidemann, “Zangī”, XI, 451-452; Ibn al-Athīr, *al-Tārīkh al-bāhir,* 76-84; Ibn al-Athīr, *al-Kāmil fī al-tārīkh,* XI, 110-112.

58 Abū Hudhūd, *Ibn al-Athīr wa-Dawruhu*, 404-418.

59 Richter-Bernburg, “ʿImād al-Dīn al-Iṣfahānī”, al-Iṣfahānī, *Nuṣrat al-fatra,* II, 286-287.

Interestingly, ʿImād al-Dīn, in his *Nuṣrat al-fatrah*, relates that the vizier Jamāl al-Dīn al-Iṣfahānī (d. 559/1164) displayed no outward signs of wealth during Zangī's rule and contributed generously only after Zangī's death, when his sons inherited power.[60] This anecdote, likely unintended as praise, demonstrates Zangī's vigilance in safeguarding state finances and his control over public officials, deterring embezzlement or misappropriation of state funds.

Modern economic analysis by Henry Khayyāṭ, comparing inflation rates and commodity prices in Aleppo during Zangī's reign, has further shown that the city experienced notable commercial and economic growth.[61]

The broader context of ʿImād al-Dīn's account becomes more intelligible when situated within Ṣalāḥ al-Dīn al-Ayyūbī's campaign between 570–581 / 1174–1185 to displace the Zangids in Syria and Mosul. This campaign, aimed at legitimising Ṣalāḥ al-Dīn's claim to Zangid lands, mobilised all those who had grievances against Zangid rule. Among these was Ibn Abī Ṭayy, who vilified the Zangids even more vigorously than ʿImād al-Dīn, albeit for different reasons. Yet both narratives stand in contrast to other contemporary and later historical sources, which cast doubt on the objectivity and veracity of ʿImād al-Dīn's account and raise questions about the political and personal motives underlying his singularly negative depiction of Zangī and his legacy.

The third accusation leveled by ʿImād al-Dīn al-Iṣfahānī against Zangī is that whenever he became irritated with one of his military commanders, he would execute them, enslave and castrate their children, and assign the latter as his personal guards and servants. According to al-Iṣfahānī, these commanders were of various ethnic backgrounds, including Turks, Armenians, and Rūm. However, this claim is entirely unsupported by any other contemporary or later Islamic historical sources. None of the Arab-Islamic historians who documented Zangī's life and rule, whether contemporaries or later writers, repeat such an account. ʿImād al-Dīn was not a contemporary of Zangī; he entered Bilād al-Shām in 562/1167 and Mosul in 542/1147, after Zangī's death in 541/1146.As mentioned above, As noted above, ʿImād al-Dīn himself was not a contemporary of Zangī. Moreover, he fails to cite any source for this account, just as he does for his previous two accusations, casting serious doubt on the credibility of his narrative.

60 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 286-287.

61 Khayat, "The Šite rebellions in Aleppo", 175-176, Alrawadieh, - Okleh. "Shi'ites in Aleppo during the Seljuq, Zangid and Ayyūbid Periods", 165.

From a historical and logistical standpoint, the claim also lacks plausibility. If Zangī truly sought slaves for his guard, why would he risk alienating his commanders and provoking discontent by enslaving their children, especially when the Islamic markets of the period abounded with slaves available for legal purchase? Additionally, the claim that Zangī’s elite guard consisted of enslaved sons of Turkish, Armenian, or Rūm commanders finds no corroboration in contemporary accounts, which do not mention such an ethnically diverse or internally targeted group within his military hierarchy. Even those historians known for their criticism of Zangī—such as Ibn Khallikān and Abū Shāmah (d. 665/1267)—never repeat this allegation,[62] despite their familiarity with ʿImād al-Dīn’s *Nuṣrat al-fatrah* and their use of it in other contexts. This silence suggests that they did not find the account credible and deliberately chose to disregard it, further highlighting its dubious origin.

It is especially telling that Abū Shāmah, a well-respected historian who was geographically and temporally closer to the Zangid period, quoted from *Nuṣrat al-fatrah* in his *al-Rawḍatayn fī akhbār al-dawlatayn al-nūriyyah wa-al-ṣalāḥiyyah*, yet refrained from citing or engaging with any of ʿImād al-Dīn’s derogatory remarks about Zangī. Instead, he selected passages related to the latter’s campaigns and achievements, particularly the liberation of al-Ruhā, and omitted any mention of the alleged cruelty.[63] This silence, rather than mere oversight, likely reflects a conscious decision not to propagate unsubstantiated or slanderous material. Given Abū Shāmah’s otherwise balanced tone and lack of overt bias, it seems he deemed it more prudent to ignore such claims than to give them visibility by refuting them directly.

In this respect, ʿImād al-Dīn’s method can be better understood not as a deviation from the historiographical norms of his era, but as part of a broader tradition of blending literary expression with historical narrative, especially when directed by political alignment, personal experience, or institutional patronage. His depiction of Zangī, marked by strong emotional language and morally charged vocabulary, should thus be viewed within the continuum of Islamic historiography, where history was often not merely a record of facts, but also a commentary shaped by the historian’s values and affiliations.

It becomes apparent that *Nuṣrat al-fatrah*, though formally a historical chronicle, also functions as a vehicle for rhetorical and political engagement. The use of embellished language, personal judgments, and

62 Ibn Khallikān, *Wafiyāt al-ʿayān* II, 327-329; and note his taking it from the book *Nuṣrat al-fatrah* II,189, IV, 67; Abū Shāmah, *al-Rawḍatayn*, I, 164.

63 Abū Shāmah, *al-Rawḍatayn*, I, 164.

selective sourcing places it closer to the genre of *adab*-informed historical writing than to strictly empirical annalistic traditions.[64] His admiration for Ṣalāḥ al-Dīn and hostility towards the Zangids appear to guide not only the content of his reports, but also the tone and structure of his narrative.[65]

Moreover, the selective reception of his works by later historians, such as Abū Shāmah, who accepted some elements while consciously omitting others, highlights the contested value of his reports.[66] It also illustrates the evolution of critical historical methodology in later Islamic historiography. Rather than accepting earlier texts wholesale, scholars like Abū Shāmah engaged with them critically, recognising the need to filter literary embellishment from factual substance.

This pattern of personal critique and polemical tone, therefore, has deep roots in Arabic historiographical and literary traditions.[67] What distinguishes ʿImād al-Dīn is not the invention of such a style, but his sophisticated appropriation of it to serve his political and ideological objectives.

By incorporating and translating texts such as *Nafthat al-maṣdūr* into *Nuṣrat al-fatrah*, ʿImād al-Dīn reinforced a literary-historical framework already predisposed to moral judgement and character assassination. His selection and adaptation of Anūsharwān's vitriolic portrayals of Saljūq officials suggests a conscious effort to align with and perpetuate a genre that blurred the line between historiography and invective.[68] This further underscores the interpretative challenge his writings pose: while they contain valuable data, they must be subjected to rigorous source criticism and contextual analysis.

The case of Ibn al-Athīr, who responded to Ṣalāḥ al-Dīn with his own critique driven by Zangid loyalties, exemplifies the extent to which political and dynastic allegiance shaped historical narratives in the period. Thus, the hostility expressed in ʿImād al-Dīn's account of Zangī should not be isolated as an anomaly, but rather seen as part of a contested historiographical landscape in which authors positioned themselves as ideological partisans within broader power struggles.

In sum, ʿImād al-Dīn's portrayal of Zangī is not to be dismissed outright, but must be read as a product of its author's milieu, shaped by literary

64 Richter-Bernburg, *Der syrische Blitz*, 9-16.

65 Gibb, "al-Barq al-Shamî: The History of Saladin", 97-98, 102.

66 Abū Shamah, *al-Rawḍatayn*, I, 30-31.

67 Abū Ḥayyān al-Tawḥīdī, *Akhlāq al-wazīrayn*.

68 See: al-Iṣfahānī, *Nuṣrat al-fatrah*, (Editor's introduction) I, 34-66, Barthold, *Turkestan down to the Mongol Invasion*, 27; Lambton, "Anūshirwān b. Khālid", I, 522-523.

tradition, ideological inclination, and personal allegiance. The task of the modern historian is to unpack these layers carefully, distinguishing between historical core and rhetorical flourish, and situating each within its appropriate cultural and intellectual context.[69]

Memory, Loyalty, and Political Alignment: Personal Trauma and Dynastic Legitimacy in ʿImād al-Dīn’s Portrayal of Zangī

1. ʿImād al-Dīn’s Hostility Toward the Adversaries of His Uncle al-ʿAzīz

This praise of Najm al-Dīn Ayyūb and Asad al-Dīn Shīrkūh, figures foundational to the Ayyūbid dynasty, may also signal ʿImād al-Dīn’s strategic alignment with the emerging Ayyūbid political order. His literary and administrative career flourished under Ṣalāḥ al-Dīn al-Ayyūbī, and he may have sought to reinforce the moral legitimacy of his patrons by affirming their loyalty to justice and honour during the earlier Seljuk period.[70] In doing so, he contrasted their virtue with the betrayal and corruption he associated with the figures responsible for the demise of al-ʿAzīz.[71]

This dichotomy permeates *Nuṣrat al-fatrah*, and helps to explain the deeply personalised, emotive, and morally charged tone that characterises ʿImād al-Dīn’s narrative of Zangī. His condemnation was not driven by impartial historical analysis, but by inherited grievance, familial loyalty, and political alignment. In this context, his work may be viewed as both a vindication of the victims of Seljuk political purges—especially his uncle—and a rhetorical condemnation of those he perceived as complicit in their downfall.[72]

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69 Most studies about the history of feelings concentrate on the emotions connected with practice, such as religion, love and sex. Those who carry out such studes are usually sociologists and anthropologists and there are institutions specialized in research on the history of emotions. In the case of ʿImād al-Dīn, it is possible to consider him as an example the feelings of hate connected with revenge that accompanied him for a long period of his life until he found the appropriate available space to express his hostility. For more about the study of emotions and desires see the articles: Plamper, “The History of Emotions”, 237-265. This article presents the ideas of three researchers about the study of the history of feelings. and also the article: Scheer, Are Emotions a Kind of Practice, 193-220. In each of the two articles are references to a number of studies related to the topic.

70 al-Iṣfahānī, *Kharīdat al-qaṣr* (2000) X, 15; Ibn Khallikān, *Wafīyāt al-aʿyān*, I, 189.

71 Richter-Bernburg, “ʿImād al-Dīn al-Iṣfahānī”, 30.

72 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 15; Sibt Ibn al-Jawzī, *Mirāt al-zaman,* XX, 335; Ibn Khallikān, *Wafīyāt al-a’yān*, V, 141-142; Ibn al-Jawzī, *al-Muntaẓam,* VIII, 18; Ibn

Thus, the construction of Zangī's negative image emerges not merely from a dispassionate historiographical enterprise, but from a complex intersection of personal trauma, dynastic rivalry, and ideological affiliation.[73] It underscores how *Nuṣrat al-fatrah*—far from being a neutral chronicle—should be read as a literary act of remembrance and retribution, one that simultaneously records and reshapes historical memory in favour of its author's lineage and loyalties.

2. ʿImād Al-Dīn's Adoption of the Narrative of the Victors

The second reason that likely influenced ʿImād al-Dīn's depiction of Zangī lies in a broader historiographical trend: the adoption of the perspective of the dominant political faction. In medieval Islamic historiography, especially that composed within courtly environments, authors often aligned their narratives with the views and interests of those in power.[74] ʿImād al-Dīn's loyalty to the victorious faction within the Zangid polity — represented by figures such as Jamāl al-Dīn al-Iṣfahānī and the Ayyūbid household — meant that his historical construction naturally reflected their interpretation of events.

By vilifying the figures of the opposing (and defeated) alliance, and by extension their primary patron, Zangī himself, ʿImād al-Dīn not only fulfilled a political obligation but also contributed to shaping a new collective memory, one that justified the ascendancy of the Ayyūbid state. This method of writing, in which the vanquished are erased or disparaged and the victors glorified, is consistent with the practice of *tārīkh al-mansūbīn*, or the "history of the affiliated," where political allegiance and factional loyalty colour the representation of past events.

ʿImād al-Dīn's selective praise and omission of key actors from the earlier Zangid alliance, particularly those like Sayf al-Dīn Siwār and Ṣalāḥ al-Dīn al-Yāghisyānī,[75] underscore his historiographical alignment.[76] His focus on personalities such as Jamāl al-Dīn and Shīrkūh, accompanied by hyperbolic praise, appears to be more than a literary flourish. Rather, it constitutes a form of narrative recompense to those who had triumphed politically and materially.[77]

al-Dubaythī, *Ḍhayl Tārīkh Baghdād*, III, 26; for Anushirwan's narration: Ibn al-Athīr, *al-Kāmil fī al-tārīkh,* XI, 106; Ibn al-Athīr, *al-Tārīkh al-bāhir,* 24.

73 al-Iṣfahānī, *Kharīdat al-qaṣr* (2000) I, 8, XVI, 291.

74 Okleh, "Emir Sewar Bracelt", 687-691.

75 al-Iṣfahānī, *Nuṣrat al-fatra,* II, 275-282; Okleh, "Emir Sewar Bracelt", 692-693.

76 See about this conflict: al-Iṣfahānī, *Nuṣrat al-fatra,* II, 278, 278, 284, 287; Ibn al-Athīr, *al-Tārīkh al-bāhir,* 84, 72.

77 al-Iṣfahānī, *Nuṣrat al-Fatra,* II, 278, 282-284, 285-287.

3. ʿImād Al-Dīn and Ayyubid Propaganda against Zangī

As mentioned earlier, ʿImād al-Dīn was among the civilian elites in the Ayyubid administration who served as a principal agent of Ayyubid propaganda during their contestation of Zangid legitimacy. This role is clearly reflected in his official correspondence and poetic compositions, in which he articulated and defended the Ayyubid cause against their political rivals.

The Ayyubid state emerged from the remnants of the Zangid polity and, beginning in 570/1175, was engaged in protracted, at times violent, conflict with the heirs of Nūr al-Dīn in Aleppo and Mosul—a struggle that persisted until 581/1185.[78] This intra-Muslim conflict extended beyond the battlefield into the realm of ideological and political discourse, in which the Ayyubid leadership—headed by Ṣalāḥ al-Dīn—sought to dismantle the residual legitimacy of the Zangids, especially their claim over Bilād al-Shām. Within this context, ʿImād al-Dīn's writings formed part of a discursive strategy to undermine the memory of Zangī and elevate the Ayyubid narrative.

Ṣalāḥ al-Dīn, in particular, aimed to reinterpret the legacy of Nūr al-Dīn Maḥmūd ibn Zangī by attributing his military successes against the Crusaders to his own family—namely his father, his uncle Asad al-Dīn Shīrkūh, and himself. In official correspondence with the Abbasid caliph, Ṣalāḥ al-Dīn argued for the legitimacy of his rule over Syria by claiming that it was his kin who had realised the victories formerly credited to Nūr al-Dīn.[79] In such a framework, vilifying Zangī became an effective tool of delegitimisation—discrediting not just his rule but the entire foundation of the Zangid legacy.

ʿImād al-Dīn's *Nuṣrat al-fatrah*, composed in 579/1183 at the height of this conflict, fits seamlessly into this broader campaign. Rather than being an impartial historical account, it functions as a sophisticated textual instrument of Ayyubid statecraft. Through selective memory, literary embellishment, and the suppression of favourable narratives surrounding Zangī, the work contributed to a rewriting of history that favoured the political interests of Ṣalāḥ al-Dīn and his court. This antagonistic portrayal was neither incidental nor merely personal, but deliberately crafted to serve the Ayyubid narrative strategy, which sought to minimize Zangī's legacy and reassign the honor of resisting the Crusaders to the Ayyubid line.

78 About the conflict see: al-Bundārī, *Sanā al-barq al-Shāmī,* 26; Telfah, "The Abbasid caliphate Recognition of the Ayyubid State", 44-69; Ibn al-Athīr, *al-Tārīkh al-bāhir*, XI, 427, 516. and see about the negative propaganda of the Ayyubids against the Zangids: Köhler, *Alliances and Treaties between Frankish and Muslim Rulers*, 239-244.

79 The text of Saladin's letter to the Abbasid caliphate is reported in al-Qalqashandī, *Ṣubḥ al-aʿshā,* X, 82-83.

Conclusion

This study has demonstrated that ʿImād al-Dīn's portrayal of Zangī, ruler of Mosul and Aleppo, is markedly singular, diverging from the narratives preserved in other contemporary and near-contemporary sources. In *Nuṣrat al-fatrah*, ʿImād al-Dīn crafted a uniquely negative image of Zangī—an image unsupported by the historical accounts of Zangī's time. Unlike his brief references to other emirs of Mosul, Zangī is the only figure to receive an extensive and sharply critical treatment. This exceptional focus raises questions about the motivations behind such a portrayal, particularly given the absence of cited sources and the author's non-contemporaneity with the events described.

The analysis suggests that ʿImād al-Dīn's antagonism was not rooted in dispassionate historical inquiry but in a nexus of personal grievance, family tragedy—especially the execution of his uncle al-ʿAzīz—and political alignment with Ayyubid interests. The work reflects an effort to delegitimize Zangī's legacy during a period of active conflict between the Ayyubids and the Zangid successors, offering a propagandistic narrative rather than a neutral chronicle.

Beyond its specific historical claims, *Nuṣrat al-fatrah* serves as a compelling case study in the role of emotion, memory, and political allegiance in historical writing. The prominence of feeling—whether grief, loyalty, or vengeance—raises broader methodological concerns about the subjective nature of premodern historiography. Historians, including those like Abū Shāmah, often veiled their emotions or alluded to them obliquely, constrained by political circumstances or personal vulnerability. This underscores the need for a critical reading of historical texts, attentive to both what is said and what is silenced. Thus, the study cautions against accepting at face value emotionally charged judgments in historical narratives, however venerable the source may be. ʿImād al-Dīn's *Nuṣrat al-Fatrah*, though foundational in the historiography of the Seljuk era, should be approached with careful scrutiny and contextual awareness, not only for what it reveals about its subject matter, but also for what it reflects about its author and his world.

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Araştırma Makalesi / Research Article

"Yabani" ve "Ehlîleştirilmiş" Barbarlar: Hui Müslümanları Niçin Uygurlar Kadar Baskı Görmüyor?

MEVLAN TANRİKUT*

Öz

Bu çalışma Çin'in Hui müslümanları ve Uygurlar'a yönelik farklı muamelesinin sebeplerini disiplinler arası bir yaklaşımla araştırmaktadır. Aynı dini paylaşmalarına rağmen Huiler'in daha az baskı görmesi, Çin'in etnik politikaları çerçevesinde dikkat çeken bir konudur. Çalışma Çin'in tarihsel ve felsefî perspektiflerden "barbar" olarak sınıflandırdığı Han olmayan topluluklara yönelik bakış açısını ve bu iki toplumun Çin ile olan tarihî ve kültürel ilişkilerini analiz ederek, Huiler'e ve Uygurlar'a uygulanan benzer ve farklı politikaları incelemektedir. İnceleme sonucunda elde edilen bulgular, Huiler'in baskı altında olmadığı söyleminin gerçeği yansıtmadığını, aksine hem geçmişte hem günümüzde farklı seviyelerde baskılara maruz kaldıklarını göstermektedir. Günümüzde bu iki topluma uygulanan farklı politikaların ise Çin yönetim anlayışının kültürel çeşitliliği bir tehdit olarak görme eğilimi, iki toplumun Çin kültürüne entegre olma, yani "ehlîleşme" düzeyindeki farklılıklar ve Çin ile olan ilişkisinin serüveninden kaynaklandığını ileri sürmektedir. Bu çalışma söz konusu meselenin Çin'in kültürel yapısı ve geleneksel yönetim anlayışı çerçevesinde ele alınmasının, Çin'in Han olmayanlara yönelik politikalarını daha derinlemesine anlamak açısından önemli bir perspektif sunduğunu vurgulamaktadır.

Anahtar Kelimeler: Çinli-barbar düzeni, Çin ulusu, Akkültürasyon, Farklılık, Uygur, Hui.

"Wild" and "Tamed" Barbarians: Why are Hui Muslims not Oppressed like the Uyghurs?

Abstract

This study explores the reasons behind China's differing treatment of Hui Muslims and Uyghurs through an interdisciplinary lens. Despite sharing the same religion, the fact that the Hui face less repression is a significant issue within the context of China's ethnic policies. By examining China's historical and philosophical classification of non-Han communities as "barbarian", along with the historical and cultural relationships these two communities have had with China, the study delves into the similarities and differences in the policies applied to Hui and Uyghurs. The findings reveal that the

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DOI: 10.26570/isad.1669903 • Geliş/Received 04.04.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Tanrikut, Mevlan, ""Yabani" ve "Ehlîleştirilmiş" Barbarlar: Hui Müslümanları Niçin Uygurlar Kadar Baskı Görmüyor?", *İslam Araştırmaları Dergisi*, 55 (2026): 33-69.

notion the Hui are not subjected to oppression is misleading and that, in reality, they have experienced various levels of repression both historically and contemporarily. The differences in current policies toward these two groups arise from the Chinese administration's tendency to perceive cultural diversity as a threat, the varying degrees of integration — or "domestication" — of each community with Chinese culture, and the historical trajectory of their relations with China. This study underscores that addressing the issue within the framework of China's cultural structure and traditional administrative mindset offers a crucial perspective for a deeper understanding of the state's policies toward non-Han peoples.

Keywords: Sino-Barbarian Order, Chinese nation, Acculturation, Diversities, Uyghur, Hui.

Giriş

Çin'in etnik politikaları, özellikle Uygur, Kazak, Kırgız, Özbek ve Tatar gibi Türk müslüman topluluklara yönelik uygulamaları, uzun süredir akademik araştırmaların merkezi olmuştur.[1] Mevcut literatüre göre, 2016 yılından itibaren yaklaşık 1,8 milyon kişi, "radikalleşmeyi ortadan kaldırma" (去极端化) gerekçesiyle "yeniden eğitim" kamplarına gönderilmiştir.[2] Ayrıca 3 milyona kadar Uygur, Kazak ve diğer müslüman Türkler, "yoksulluğun azaltılması" (扶贫) ve "Sincan'a yardım" (援疆) adı altında zorla çalıştırılmıştır. Bu süreçte kültürel kimliği yok etme amacı güdülerek, kırsal bölgeler sistematik bir şekilde boşaltılmış, köyler yıkılmış ve nüfus zorla başka bölgelere taşınmıştır.[3] Uygurlar için dinî, tarihî veya kültürel anlam taşıyan 630 köy ismini Çince'ye ya da komünist ideolojisini yansıtan isimlere değiştirilmiştir.[4] Yaklaşık 16.000 cami yıkılmış, oruç tutmak, namaz kılmak, sakal bırakmak ve baş örtüsü takmak gibi dinî pratikler yasaklanmış, Kur'an dahil dinî materyallerin bulundurulması radikalizm belirtisi olarak değerlendirilmiştir.[5] 2017 yılı itibariyle, Uygur dili bütün eğitim kurumlarında yasaklanmış[6] ve ana dilinde eğitim veren öğretmenler, "vatan haini" ve "ikiyüzlü" olarak suçlanarak hapsedilmiştir.[7] 2020 yılından itibaren yaklaşık 900.000 Türk çocuğu, ailelerinden alınarak Çin dili, kültürü ve komünist ideolojiye adapte olmaları için yatılı okullara veya yetimhanelere yerleştirilmiştir.[8]

1 Bu makalede Doğu Türkistan'da yaşayan Uygur, Kazak, Kırgız, Özbek ve Tatar gibi Türk ve müslüman halklar, genel bir çerçevede "Uygur" ya da "Türk" adı altında ele alınmaktadır. Aksi belirtilmedikçe, metin boyunca geçen "Uygur" ve "Türk" ifadeleri bu toplulukların tamamını kapsamaktadır.

2 Zenz, "Beyond the Camps", s. 1-3.

3 Sintash, *Elimination of Uyghur Identity,* s. 1; Murphy, v.dğr., *Laundering Cotton,* s. 9-11.

4 Human Rights Watch, "China: Hundreds of Uyghur Village Names Change".

5 Millward, *Eurasian Crossroads,* s. 393-404.

6 Lipes, "China Bans Uyghur Language".

7 Human Rights Watch, "Break Their Lineage", s. 1.

8 Office of International Religious Freedom, *2021 Report on International Religious Freedom*.

Çin hükümeti, aynı zamanda Uygur tarihini yeniden şekillendirmeyi amaçlamakta, Uygurlar'ın Türk kökenlerini reddederek onları "Zhonghua minzu" (中华民族) yani Çin ulusunun ayrılmaz bir parçası olarak tanımlamaktadır.[9] Bu kapsamda propaganda içerikli yayınlar yayımlanmakta ve yetkililer tarafından Uygurlar'ın Türk olmadığına dair yazılar kaleme alınmaktadır.[10] "Etnik birlik" (民族团结) politikası çerçevesinde, Uygur kadınlarının Han erkekleriyle evlenmeleri teşvik edilmekte[11] ve Uygurlar'a geleneksel Çin kıyafetleri giydirilerek çeşitli Çin bayramlarının gösterişli ve geniş katılımlı kutlatılması yaygın bir hale gelmiştir. Doğum oranlarını düşürmek amacıyla Uygur kadınlarına zorla rahim içi doğum kontrol cihazları (IUD) takılmaktadır. Bunun sonucunda Hotan ve Kâşgar'da 2015-2018 yılları arasında doğum oranlarında %84'lük bir düşüş yaşanmış ve nüfus kaybının 2,6 ile 4,5 milyon arasında olduğu tahmin edilmişti.[12] Ayrıca seyahat özgürlüğü kısıtlanmakta, iletişim engellenmekte, yüksek teknoloji ile desteklenen toplu gözetim politikaları uygulanmaktadır.[13]

Bu politikalar kapsamı ve etkisi bakımından benzeri görülmemiş düzeydedir. Camilerin yıkılması, İslamî pratiklerin radikal unsurlarla özdeşleştirilerek yasaklanması, bunun yerine Çin bayramlarının teşvik edilmesi; Uygurca'nın kamu kurumlarında kullanımının yasaklanması; birçok köyün yıkılması ve geri kalanların adlarının Çince'ye değiştirilmesi; Çinliler'le evlenmenin teşvik edilmesi; hatta Uygurlar'ın Türk kökenli olmadığını ileri süren söylemlerin dolaşıma sokulması gibi birçok uygulamaya bakıldığında Çin Devleti'nin temel amacının Uygurlar'ın tarihsel ve kültürel kimliğini silmek olduğu sonucuna varmak mümkündür. Dolayısıyla Amerika Birleşik Devletleri, Kanada ve Çek Cumhuriyeti dahil olmak üzere on bir demokratik ülke, Çin'in politikalarını soykırım veya insanlığa karşı suç olarak tanımlamıştır. Birleşmiş Milletler İnsan Hakları Yüksek Komiserliği ise bu uygulamaların insanlığa karşı suç teşkil edebileceğini belirtmiştir.[14]

Bu bağlamda Çin'in izlediği politikaların arkasındaki gerekçelere ilişkin çeşitli sorular gündeme gelmektedir. Bunlardan en önemlisi, aynı dini paylaşmalarına rağmen Hui halkının niçin Uygurlar kadar kapsamlı bir baskıya maruz kalmadığı ya da iki etnik gruba yönelik baskı politikalarının niçin farklılık gösterdiğidir. Bu konu, hem Çin'in resmî söyleminden etkilenenler hem de bölgedeki gelişmelere dair sınırlı bilgiye sahip olanlar

9 Stroup, "Good Minzu and bad Muslims", s. 1231.

10 Tuniyaz, "Correctly Understand the History of the Uyghur Nationality".

11 Byler, "Uyghur love".

12 Zenz, *Sterilizations, IUDs*; "'End the dominance of the Uyghur ethnic group'", s. 291–312.

13 ASPI, "How mass surveillance works in Xinjiang", 2019.

14 ASPI, "How mass surveillance works in Xinjiang," 2019.

tarafından sıkça dile getirilmektedir. Son derece yerinde ve önemli olan bu soru, çalışmamızın temel odak noktasını oluşturarak kapsamlı bir analizle cevaplanmaya çalışılacaktır.

Mevcut araştırmalarda, Hui müslümanlarının Uygurlar gibi varoluşsal bir tehdit olarak görülmediği öne sürülmektedir. Garcia'ya göre, Çin hükümeti Hui müslümanlarını politik olarak örgütsüz ve ayrılıkçı bir gündemden yoksun oldukları için baskı altına almamaktadır. Uygurlar ise bağımsızlık talepleri ve örgütlü direnişleri sebebiyle daha sert müdahalelere maruz kalmaktadır.[15] Ma'ya göre, Hui halkı tarihsel olarak ticaret ve kültürel aracılar olarak konumlandıkları için, Çin toplumuna daha kolay entegre olmuş ve bu sayede daha az tehdit olarak algılanmıştır. Bu durum, kültürel kimliklerini ve ayrılıkçı eğilimlerini korumaya çalışan Uygurlar'ın maruz kaldığı baskılarla keskin bir tezat oluşturmaktadır.[16] Ernazarov da Huiler'in tarihsel olarak Çin toplumuna uyum sağlayarak entegre olduklarını, özellikle Ming hanedanlığı döneminde önemli pozisyonlarda bulunarak dinî, siyasî ve ekonomik özgürlükler kazandıklarını vurgulamaktadır.[17] Ancak Huiler'in her dönemde devletle uyum içinde olduklarını söylemek güçtür; bu çalışmanın sonraki bölümünde anlatıldığı gibi özellikle Ming hanedanlığı döneminde yoğun kültürel baskılara ve etnik ayırımcılığa maruz kalmışlardır.

Bazı çalışmalar ise konuyu kültürel kimlik perspektifinden ele alarak, Uygurlar'ın Çinliler'den kültürel olarak daha farklı, Hui müslümanlarının ise daha yakın olduğu için tehdit olarak algılanmadığı öne sürülmektedir.[18] Ancak bu çalışmaların çoğu belirli bir kısa döneme odaklanmakta ve uzun vadeli tarihsel süreçleri göz ardı etmektedir. Mesela Gönül ve Rogenhore 1990 yılı sonrası dönemi ele almakta olup, Çin Halk Cumhuriyeti öncesindeki politikaları ve etkileşimler kapsam dışı bırakılmıştır.[19] Oysa Çin'in bu farklı bakış açısının kökenlerini ve gelişimini anlamak için daha geniş bir tarihsel perspektiften değerlendirme yapmak büyük önem taşımaktadır. Bu bağlamda, Çin'in kültüre niçin bu kadar önem verdiği ve Hui kültürünün ciddi bir sorun olarak görülmediğini anlamak, konuyu derinlemesine kavramak için kritik bir gerekliliktir.

Dolayısıyla bu çalışma, Çin'in farklı etnik gruplara yönelik algılarının tarihsel dönüşümünü analiz ederek, Uygurlar ve Hui müslümanlarına uygulanan politikaların kökenlerini tarihsel etkileşim ve kültürel Çinlileşme

15 Garcia, "Resistance and Assimilation", s. 282-293.

16 Ma, "The Middleman", s. 326-337.

17 Ernazarov, "The Process Of Settling Muslims", s. 90-98.

18 Zhang, "An Analysis of China's Muslim-Related Policies", s. 45–55; Durneika, "China's Favored Muslims?" s. 1; McKinney, "China's Muslims: Separatism," s. v.

19 Gonul - Rogenhofer, "The Disappearance of the 'Model Muslim Minority'", s. 2.

seviyelerindeki farklılıklar, Çin'in homojen ulus inşası çabaları ve bu bağlamda tehdit algısı çerçevesinde değerlendirecektir.

Kavramların makale içinde doğru kullanımını sağlamak açısından Çinlilik, Çinlileşme ve asimilasyon gibi terimlerin anlamlarını netleştirmek önemlidir. Çinlilik kimliği, etnik veya ırksal özelliklerden ziyade kültürel ve yaşam tarzına dayanan, sınırları tarihsel bağlamda genişleyip daralabilen sosyopolitik bir kimliktir. İlerleyen bölümlerde ayrıntılı inceleneceği üzere, 1900'lerde modern Çin kimliğinin inşası sırasında Çinli entelektüeller *Zhongguoren* (Çinli) ve *Zhonghua minzu* (Çin ulusu) kavramlarını ortaya koymuşlardır. Bu dönemin önde gelen düşünürlerinden Liang Qichao, yabancı toplumlarla karşılaştığında içgüdüsel olarak kendini Zhongguo insanı olarak gören herkesin *Zhonghua minzu* üyesi olduğunu ileri sürmüş, bu kapsamda Mançu ve Moğollar'ı da *Zhonghua minzu*, yani Çin ulusu içinde değerlendirmiştir.[20]

Çinlileşme kavramı Çince *Huahua* (华化) ve *Hanhua* (汉化) terimleriyle ifade edilir. Han (汉) terimi günümüzde Çin nüfusunun yaklaşık %92'sini oluşturan etnik grubu ifade ederken, *Hua* (华) terimi daha geniş kapsamlı olup Han ve Konfüçyüsçü kültürel kodları benimsemiş Han olmayan grupları da içermektedir. Diğer taraftan *Hua* (化) terimi ise Han olmayanları kültürel açıdan dönüştürmek ve medenîleştirmek anlamına gelir. Batı literatüründe bu süreç *Sinicisation*, *Sinofication* veya *Sinification* olarak ifade edilmiş ve Han olmayanların asimilasyon ve akültürasyon süreçlerini göstermektedir. Çinlileşme kavramı Batı akademik literatüründe ilk defa Alman antropolog Berthold Laufer tarafından kullanılmıştır. Laufer, 1900'lerin başında yaptığı saha araştırmalarında Çin'in güneyindeki Lolo halkının Çince soyadı kullanmasını Çinlileşme olarak tanımlamıştır. Çinli antropolog Chen Yuan ise 1923 yılında Çinlileşmeyi Konfüçyüsçülük, Taoizm, edebiyat, sanat, ritüeller, gelenekler ve kadın eğitimi gibi kültürel kodlarla asimilasyon olarak ele almıştır.[21] Leibold'un yakın tarihli çalışmalarında da Çinlileşmenin dil, kültür, bürokrasi, görgü kuralları ve gelenekler üzerinden ölçüldüğü ve tarihsel dönemlere göre hızının farklılık gösterdiği vurgulanmaktadır.[22]

Sonuç olarak, Çinlileşme ve asimilasyon, Han olmayan etnik grupların, Konfüçyüs ahlak ve kültürel kodlarının taşıyıcısı olan Han kültürüne adaptasyon sürecini ifade eder. Laufer, Chen ve Leibold'un çalışmalarında ifade edildiği gibi Çinlileşme süreci çeşitli seviyelerde akültürasyon, entegrasyon ve asimilasyon süreçlerini kapsamaktadır. Asimilasyon gerek kavramsal

20 Li, "From the Xia people, the Han people to the Chinese nation," s. 15.

21 Cheng, "The Evolution of 'Sinicisation'", s. 321-342.

22 Leibold - Chen, "Han-Centrism", s. 3.

gerekse olgusal açıdan tartışmalı ve sınırları net olmayan bir kavram olduğundan[23] bu çalışmada, Çinlileşme kavramı bir asimilasyon değil, daha kapsamlı ve nüanslı süreci kapsayan akültürasyon olma durumunu göstermektedir. Makalenin konusu olan Uygur ve Huiler'in Çinlileşmesi de bu çerçevede düşünülmelidir.

Çin'in Ötekilere Bakışının Tarihsel ve Düşünsel Kökeni ve "Yabani" ve "Ehlîleştirilmiş" Barbarlar

Çin kültürü Sarı ve Yangtze nehirlerinin orta havzalarıyla sınırlanan coğrafî bölgede şekillenmiştir. Çin halkı, tarihsel olarak bu bölgenin dışındaki topluluklarla -yerel dillerinde genellikle "dört barbar" (四夷) olarak adlandırılan Çinli olmayan gruplarla- sürekli komşuluk ilişkileri içinde olmuştur. Shang ve Zhou hanedanlıkları döneminde bu topluluklar Çin topraklarına çeşitli saldırılarda bulunmuş; bu durum, Çin halkını kültürel kimliğini koruma ve üstünlük iddiasını pekiştirme yönünde harekete geçirmiştir. Buna karşılık Çinliler kültürel farklılıkları temel alan hiyerarşik bir sistem inşa etmiş; bu sistemde Çinli olmayanlar aşağı, yabani, vahşi ve barbar olarak konumlandırılmış, potansiyel tehdit unsurları olarak değerlendirilmiştir. Zamanla bu bakış açısı, Çin merkezli söylemlerle beslenmiş; Konfüçyüs klasiklerinde de sıkça rastlanan ve Çinli filozofların katkılarıyla sistematik bir düşünce haline gelen bir kültürel üstünlük anlayışına dönüşmüştür.

Liji (Âyinler kitabı) hiyerarşik beş bölgeden bahsetmekte olup, bu modele göre kültürel gelişmişlik Çin imparatorluk merkezinden uzaklaştıkça azalmaktadır.[24] "Dört barbarlar" bu medeniyet merkezinin uzak çevre bölgelerinde yaşamaktadır. Kuzeydeki "barbarlar" *Beidi* (北狄), doğudakiler *Dongyi* (东夷), güneydekiler *Nanman* (南蛮) ve batıdakiler *Xirong* (西戎) olarak isimlendirilmiştir. Bu isimler aşağılayıcı çağrışımlar taşır ve üstelik kullanılan Çince karakterler genellikle hayvanlar için kullanılan vuruşlarıdır. *Yi* "ölü beden" veya "köleleştirilmiş düşman" anlamına geliyorken, *Man* bir yılana atıfta bulunmaktadır. *Di* ve Rong ise sırasıyla "av köpekli insanlar" ve "kavgacı kabileler" anlamına gelmektedir.[25] Bazı tarihî kayıtlarda "dört barbar", yaşadığı bölgeleri kastederek hep birlikte "Guifang" (鬼方) yani şeytanlar veya canavarlar ülkesi olarak adlandırılmıştır[26] ve genellikle aşağılayıcı bir şekilde kurtlar ve çakallar, insan görünümlü hayvanlar veya hayvan unsurlarına sahip insanlar olarak sıfatlandırılmıştır.[27] Mesela Çin

23 Callan, "The Ethics of Assimilation," s. 472; Hirsch, "Assimilation as Concept and as Process," s. 1.

24 Dikotter, *The Discourse of Race in Modern China*, s. 4-6.

25 Yang, "Perceptions of the Barbarian," s. 218–232.

26 Loewe - Shaughnessy, *The Cambridge History of Ancient China*, s. 269.

27 Poo, *Enemies of Civilization*, s. 83-84.

klasiklerinden *Shanhaijing* ve Taoist eser *Huainanzi*'de Çinli olmayan insanlar, insanlıktan çıkarılmış, aşağılık, hayvani, tek gözlü, üç başlı, tek kollu, basit, aptal, üç gözlü fantastik kabileler olarak tasvir edilmiştir.[28] Ayrıca Çince kayıtlarda bu halkların isimleri 1930'lara kadar hayvanlar için kullanılan vuruşlu karakterlerle yazılmıştır.[29]

Bu bakış açısı, Çinli ve Çinli olmayan halklar arasındaki sosyopolitik düzeni şekillendiren düşünce okulları, özellikle de Konfüçyüsçülük tarafından sistemleştirilmiştir. *Shujing*, *Shijing* ve *Chunqiu* gibi temel Konfüçyüs metinleri, Çin kültürel üstünlüğünü esas alan ve *Tianxia* (天下; "göklerin altındaki her şey") adıyla bilinen dünya düzenini yüceltmektedir. Konfüçyüs'ün, "Kralı olan barbarlar bile başsız Çin toplumuyla boy ölçüşemez" sözü (夷狄之有君，不如诸夏者亡也), Çin'in kültürel merkezîliğini vurgularken; Mencius'un "Barbarların Çin'e dönüştürüldüğünü duydum, ama Çin'in barbarlara dönüştüğünü duymadım" ifadesi (吾闻用夏变夷者，未闻变于夷者也), tek yönlü bir kültürel asimilasyon anlayışını yansıtır.[30]

Çin hanedanlıklarıyla "dört barbar" olarak adlandırılan gruplar arasındaki tarihsel mücadele ve bunun beraberinde gelişen kültürel temas, Çinli olmayanlara yönelik hem üstünlük hem de tehdit algısını beslemiştir. Çinliler, barbarların Çin'e egemenliğini medeniyetin çöküşü olarak değerlendirmiş; "Devlet ve toplum yıkılsa dahi barbarların Çin'i yönetmesine izin verilmez" (宁可国破家亡，也不让夷狄统一中国) görüşü bu anlayışı yansıtmaktadır.[31]

Bu bağlamda, önemli bir Konfüçyüs klasiği olan *Gongyang Zhuan* (公羊传), Çinli-barbar ilişkisini düzenleyen ve "büyük birlik" (大一统) idealini temel alan bir siyaset felsefesi olan *Hua-Yi düzeni* (华夷秩序) yani Çin-barbar düzenini geliştirmiştir. Bu anlayışa göre, Çin ya da *Hua* kültürü asil ve üstün, barbar kültürü ise aşağı, uyumsuz ve tehdit edicidir; ikili ilişkide ise Çinli "efendi", barbar "hizmetçi"dir ve tersi mümkün değildir.[32] Dolayısıyla "büyük birlik" çerçevesinde kültürel birleşme ancak barbarların Çin'e entegre olmasıyla mümkündür. Bunun için "Çin ile barbarları dönüştür" (用夏变夷), "Çin 'barbar' savunması" (华夷之防) gibi felsefe kavramları geliştirilmiştir. İlki Çin kültürel kodlarına uyarak "barbarları" dönüştürerek Çinli gibi yaşayabilmeyi mümkün kılarken, sonrakisi ise Çinli olmayanları düşünce ve politik olarak kabul etmemeyi meşrulaştırmıştır.

28 Meserve, "The Inhospitable Land of the Barbarian", s. 55-56.

29 Dikotter, *The Discourse of Race*, s. 4.

30 Chun, *A General History of Chinese Political Thought*, s. 362.

31 Liu, *History of Chinese Political Thought*, s. 389; Yun, "A Preliminary Study on Yelu Chucai's Thought", s. 70-74.

32 Liu, *History of Chinese Political Thought*, s. 389.

İşte bu sistematik düşünce tarzı Çin medeniyetini koruma, devam ettirme ve Çinli olmayan milletleri kendi içinde entegre etme yani "barbarları" "ehlîleştirme" çerçevesini şekillendirmiştir. Çinli ünlü sosyolog ve modern Çin ulus teorisinin en önemli mimarlarından biri olan Fei Xiaotong'a göre, Çinliler ve Çinli olmayanlar arasındaki bu düzen, hatta politik bölünmeler ve "barbarlar"ın Çin'i işgal ettiği dönemlere rağmen, tarih boyunca Çin'in bütünlüğünü ve istikrarını korumada önemli bir rol oynamıştır.[33]

Farklı medeniyetlerin karşılaşması sonucunda savunmacı bir pozisyon alarak gelişen bu düşünce biçimi, zamanla önemli bir siyaset felsefesi haline gelmiştir. Hatta Çin'e askerî gücüyle hâkim olan yabancı hanedanlıklar dahi bu anlayışa ve düzene göre kendilerini bir şekilde Çinli olarak tanıtma zorunluluğu hissetmiştir. Mesela XIII. yüzyılda Moğollar Çin'i istila ettiğinde, halkın desteğini kazanmak amacıyla Hao Jing (郝经) liderliğindeki Konfüçyüsçü düşünürlere "Çinli" ve "barbar" ayırımını yeniden tanımlattırmışlardır. Hao Jing, etnik köken yerine siyasî ve kültürel değerleri esas alarak, Konfüçyüsçü yönetim ilkelerini benimseyen her hükümdarın, kökeni ne olursa olsun, bir Çinli gibi Çin'i meşru biçimde yönetebileceğini yorumunu getirmiştir.[34] Aynı şekilde 1636'dan 1912'ye kadar yaklaşık 300 yıl boyunca Çin'i yöneten Mançu hanedanlığı imparatoru Yongzheng, etnik kimliği sebebiyle Çin halkının büyük bir isyanıyla karşı karşıya kalmıştır. Buna karşılık olarak Mançular'ın ve kendisinin Çin'in bölünmüşlük vaziyetine son vererek Konfüçyüs'ün "büyük birlik" ilkesini getirdiğini ve bundan dolayı bir Çinli imparatoru olduğunu söyleyerek savunma yapmıştır.[35]

Özetle, bu dünya görüşü Çin medeniyetini diğerlerinden üstün kabul eder. Farklı kültürler ve topluluklar potansiyel tehdit olarak değerlendirilir ve ikili ilişkiler bu hiyerarşik anlayış çerçevesinde şekillendirilir. Bu düşünce Çinli olmayan halkların "büyük birlik" ideali doğrultusunda Çin kültürüne entegre edilmesini ve homojen bir toplum yapısının oluşturulmasını hedefler. Çin tarihindeki çeşitli örneklerde, Çinli olmayan ama Çin sınırları içinde yaşayan topluluklar bu düzen çerçevesinde Çimlileştirme baskısına maruz kalmış ve bu süreç büyük ölçüde başarılı olmuştur; Çinlileşmeye başladıklarında ise bu baskılar azalmış veya tamamen ortadan kalkmıştır.

33 Fei, *The Diverse and Unified Structure of Zhonghua Minzu*, s. 338-343.

34 Sun, *History of Chinese Political Thought*, s. 371-373.

35 Ge, *History of Chinese Political Thought*, s. 433-439.

Çin-Hui İlişkileri: "Yabanilikten" "Ehlîleşmeye" Giden Süreç

1. Tehlikeli "Barbarlar" Olarak Huiler

Hui müslümanlarının kökenleri, Arap, Pers ve Türkler'in İpek yolu üzerinden Çin'e göç etmeye başladığı VII. yüzyıla kadar uzanmaktadır. Başlangıçta Tang hanedanlığı döneminin ticaret merkezlerine yerleşen bu göçmenler, zamanla Çin'in çeşitli bölgelerine, özellikle güneydoğu kıyı şehirlerine ve kuzeybatı sınır bölgelerine yayılmışlardır.[36] Tang ve Song hanedanları döneminde (VII-XII. yüzyıl), İslamî uygulamalarını sürdüren bu topluluklar, aynı zamanda yavaş yavaş Çin kültüründen etkilenmiş ve kendilerini ayrı bir topluluk olarak inşa etmişlerdir.[37] Çinliler'le evlilikler yapmış, Çince'yi kullanmaya başlamış ve bu sebeple bazı araştırmacılara göre İslam'ın Çinlileşmesinin temelini oluşturmuşlardır.[38]

Ancak Güney Song hanedanlığı (1127-1279) döneminde, Çinli bilginler Konfüçyüsçülüğü yeniden yorumlayarak hükümetin meşruiyetini tek temeli olarak belirlemişlerdir. Sonuç olarak, İslam da dahil olmak üzere diğer bütün rakip düşünceler, Çin toplumu ve kültürü için bir tehdit olarak görülmüştür.[39] Bu Neo-Konfüçyüsçülük, uyum ve istikrara büyük önem verdiği için, müslümanların Çin Devleti'ne karşı isyankâr bir tutum sergilemeleri durumunda sert bir şekilde cezalandırılacakları anlamına geliyordu.[40] Bu durum, Hui müslümanlarının gelecekte kültür ve inanç açısından Çin kültürüyle bir şekilde uzlaşmak zorunda kalacaklarının habercisiydi.

Moğollar'ın XIII. yüzyılda Çin'i fethetmesi, Hui müslümanlarının tarihinde önemli bir dönüm noktası olmuştur. Moğollar, Çin'de farklı dinlere karşı hoşgörülü bir yaklaşım benimsemekle beraber hiyerarşik bir toplum düzeni oluşturmuşlardır. Bu sınıflandırmaya göre, Moğollar birinci sırada yer alırken, Hui müslümanlarını da kapsayan Uygurlar, Ortadoğu coğrafyasından getirilen Türk, Pers ve Arap müslümanları ikinci sırada, Kuzeyli Çinliler üçüncü sırada, Güneyli Çinliler ise en alt tabakada yer almıştır. O dönemde Hui ve diğer müslümanlar, renkli gözleriyle dikkat çektikleri için "renkli gözlüler" anlamına gelen *Semu* (色目人) olarak adlandırılmıştır.[41] Moğollar kalabalık Çin toplumunun gücünü dengelemek için Hui ve diğer *Semu halklarını* yönetici sınıfın bir parçası yapmıştır.[42]

36 Green, "Tracing Muslim Roots," s. 34-35.

37 Frankel, "Chinese–Islamic Connections", s. 569-583.

38 He, "Past and Present" in *Chinese Islam,* s. 57.

39 Bol, *"This Culture of Ours"*.

40 Ching, "Ethnic Tensions between the Han and the Hui", s. 66-82.

41 Chang, "The Ming Empire", s. 4.

42 Dillon, "China's Islamic Frontiers", s. 97-104.

Moğol yönetimi Çin siyaset felsefesinde köklü değişime yol açmıştır. Kendilerini "barbarlar"dan üstün gören Çinliler için bu durumun kabul edilmesi oldukça zor olmuştur. Moğollar ise Konfüçyüsçü bilginlere ve öğretilerine pek değer vermemiştir. Bu yüzden Moğollar'ın meşruiyeti büyük tartışmalara sebep olmuş ama onların askerî gücü karşısında bir şey yapamamışlardır. Dolaysıyla Konfüçyüsçü düşünürler, etkilerini sürdürebilmek ve bir uzlaşı sağlamak için Çinli-barbar düzenine yeni yorum getirmek zorunda kalmıştır. Yukarıda bahsedildiği gibi Konfüçyüsçü bilgin Hao Jing'in meşrutiyeti Konfüçyüsçü ilkelere bağlayarak, Moğol saltanatının da bir Çinli hanedanı olduğunu ileri sürmüştür.[43] Bu yorum, iki taraf arasında iş birliğinin inşa edilmesine zemin hazırlamıştır.

XIV. yüzyıla gelindiğinde, Zhu Yuanzhang liderliğinde Çin halkı Moğol hanedanlığını yıkarak kendi hakimiyetini kurdu. İmparator Zhu, Hao tarafından ortaya atılan yorumu tamamen reddetmiş ve Çinliler'in yönetmesinin doğal düzen olduğunu, "barbarlar"ın ise boyun eğmeye devam etmesi gerektiğini savunmuştur. Moğollar'ın Çin halkını yöneterek bu doğal düzeni ihlal ettiğini ve hiçbir "barbar"ın Çinliler'i yönetmemesi gerektiğini vurgulamıştır.[44] Bir başka Çinli bilgin Fang Xiaoru, "barbarlar"ın Çinliler'in üzerine çıkarılmasının dünyayı bir hayvan çiftliğine dönüştüreceğini ileri sürmüş, böyle bir senaryoyu, köpeklerin veya atların insanların evlerini işgal etmesine benzetmiştir.[45]

Moğol yönetimi sırasında, Hui müslümanlarının da içinde bulunduğu *Semu* topluluğunun yönetim tabakasında yer alması, Ming hanedanının ilk döneminde bir rövanşla karşılık bulmuştur. İmparator Zhu, Hui müslümanlarını dışlamayı, aşağılamayı ve asimile etmeyi amaçlayan bir dizi uygulamayı "*Büyük Ming Kanunu"* çerçevesinde yasallaştırmış ve aşağıdaki politikaları hayata geçirmiştir:

1. Hui müslümanları da dahil olmak üzere *Semu* topluluğunun dili, yazıları, isimleri (İslamî isimler dahil), soyadları ve kıyafetleri yasaklanmıştır.[46]
2. Kendi toplulukları içinde evlenmeleri yasaklanmış ve Çinliler'le evlenmeye zorlanmışlardır. Bu yasağa uymayanlar seksen kırbaç ve köleleştirme ile cezalandırılmıştır.[47]

43 Yang, "How the 'Mandate of Heaven' Transfers", s. 22.

44 Ge, *History of Chinese Political Thought*, s. 28-29.

45 Fincher, *China as a race, culture, and nation*, s. 59–60.

46 Tan, "The Islamization of Southeast Asia", s. 9; Ma, "Zhu Yuanzhang discriminated against the Semu people, s. 98-99.

47 Yonglin, trc., *The Great Ming Code,* s. 88.

3. Hareket özgürlükleri kısıtlanmış, Kraliyet Müzik ve Dans Akademisi'nde (教坊) müslümanların domuz derisinden yapılmış ayakkabılar giymeleri zorunlu tutulmuş, ata binmeleri yasaklanmıştır. Sokakta rastlandıklarında sıradan insanlar tarafından dövülerek öldürülmelerine izin verilmiştir.[48]

Bu politikalar, yaygın bir kültürel Çinlileşmeye yol açmıştır. Birçok müslüman isimleri kısa sürede kaybolmuş ya da Çin soyadı sistemine uygun hale getirilmiştir. Çinliler'le yapılan evlilikler, Hui müslümanlarının hem fiziksel hem de kültürel olarak Çinlileşmesine sebep olmuştur. Çin kültürel normlarına uyum sağlayan Huiler, zamanla baskın Çin yaşam tarzını benimsemişlerdir. Daha sonra dinî inançlarını sürdürebilseler de günlük yaşamda açık bir şeklide Çinlileşmişlerdir. İmparator Zhu'nun bu politikalarını ele alan bir araştırmaya göre, bu uygulamaların temel amacı Hui müslümanlarını Çin toplumuyla kültürel ve fiziksel olarak bütünleştirerek, gelecekte ortaya çıkabilecek görünür farklılıklardan kaynaklanan ayırımcılık ihtimalini azaltmaktı. Bu süreç sonucunda yaklaşık 4 milyon müslümanın Çin kültürüne akkültüre edildiği kaydedilmiştir.[49]

Ming hanedanı dönemindeki bu politikalar, Hui "barbarlar"ın Çin kültürüne entegre olarak "ehlîleşmesi", "yabani barbar" kimliğinden çıkması, dolayısıyla bir tehdit olarak algılanmamasında önemli bir dönüm noktası olmuştur. Bu ağır entegre süreçlerinin ardından ise İslam "Çinlileşmiş" bir formda gelişim göstermeye başlamış ve müslümanlara eskiye göre daha iyi davranılmıştır. Sonradan büyük camiler inşa edilmiş,[50] müslüman komutanlar önemli görevler üstlenmiş ve Hui müslümanı Zheng He (郑和), Ming hanedanı donanmasının başına getirilmiştir. Zheng gerçekleştirdiği görkemli deniz seferleriyle dünya tarihine adını yazdırmıştır.

Mançu Qing hanedanlığı (1644-1911) döneminde Hui müslümanlarının yaşam tarzı önemli dönüşümler geçirmiştir. Bu dönemde, İslam'ın Çinlileştirilmiş bir yorumu olan Han Kitap geleneği Hui toplumunda etkili olmuş; ardından ise bu anlayıştan oldukça farklı iki mezhebin yayılması kimlik arayışlarını derinleştirmiştir. Ortaya çıkan mezhepsel ayrışmalar hem toplumsal çatışmalara hem de devletle yaşanan gerilimlere sebep olmuş ve bazı bölgelerde şiddetli katliamlarla sonuçlanmıştır. XVII. yüzyılın ortalarında Wang Daiyu, Ma Zhu ve Liu Zhi gibi Hui âlimleri, Neo-Konfüçyanist düşünceyle uyumlu bir İslamî yorum geliştirme amacıyla Han Kitap geleneğini oluşturmuşlardır. Bu entelektüel çaba, İslamî kavramlarla Konfüçyanist felsefe arasında yapıcı bir etkileşim kurmuş; hatta Konfüçyüs'ün

48 Ma, "Zhu Yuanzhang discriminated against the Semu people", s. 98-99.

49 Chang, *The Ming Empire,* s. 4.

50 Berlie, *Islam in China*, s. 1-8.

peygambervari bir figür olarak yorumlanmasına imkân tanımıştır. Han Kitap geleneği, farklı dinî gelenekler arasındaki ahlakî ve metafizik ortaklıkları takdir eden, Çin kültürel bağlamıyla uyumlu bir İslam anlayışını ortaya koymuştur.[51]

1700'lü yıllarda ise Doğu Türkistan kökenli Nakşibendî tarikatı lideri Afak Hoca'nın öğretilerinden yola çıkarak Khafiye tarikatı kurulmuş, tarikat 1723'te yeni lider Ma Laichi'nin Mekke'ye gitmesi, Yemen ve Buhara gibi ilim merkezlerinde uzun bir dönemi geçirerek Gansu'ya geri dönmesiyle yeni ivme kazanmıştır. Ma getirdiği yeni kaynaklarla reform yapmaya başlamıştır. Sonuçta 1740 yılında eski din anlayışını temsil edenlerle arasında kavga çıkmış, 1749 yılında Ma mahkemeye şikâyet edilmiştir.[52]

1761 yılında bir başka şeyh Ma Mingxin, Mekke ve Yemen'de on altı yıllık dinî eğitimini tamamladıktan sonra Gansu'ya dönmüştür. Ma Mingxin, Sufi Jahiriye tarikatını kurarak Hui kimliğinin tehlike altında olduğunu vurguladı ve Çinlileşmeyi reddetti.[53] Bu iki sufi tarikatı, özellikle Jahiriye, Huiler arasında eskiden var olan ve Çin kültürüyle uyum sağlayan dinî görüşten farklılık gösteriyordu. Jahiriye tarikatı, bir taraftan Hui halkına yeni bir kültürel kimlik kazandırırken,[54] öbür taraftan Khafiye tarikatıyla derin ve uzun süreli çatışmaya girmişti. Müslüman olmayan devlete karşı tutumu ise Jahiriye'nin daha sert ve militanca, Khafiye ise uysal olmuştur. Devlet ise bölgeye daha yeni girmiş olan bu tarikatları tehdit unsuru olarak algılamış olsa da Khafiye tarikatının tutumundan dolayı diğerini hedef almıştır.[55] Han Kitap geleneğini savunan Huiler de dikkate alındığında, Hui toplumunun yaşadığı coğrafyanın genişliği ve benimsediği tarikatların çeşitliliği sebebiyle tek tip bir siyasî ve dinî görüşe sahip olmadığı anlaşılmaktadır.

Öte yandan, Huiler her ne kadar Çin medeniyetine akkültüre olsalar da İslamî öğretilerin gerektirdiği pratik farklılıklar sebebiyle Han Çinliler'le tam uyum içinde olamamışlardır. Han elitleri ve halk arasındaki yaygın kanaat, Huiler'i genellikle ilkel, göçebe ve çoban topluluklar olarak görme eğilimindeydi. Sıkı evlilik kurallarını ahlaka aykırı buluyor; kültürlerini ise Konfüçyüsçü ahlakî ve medenî değerlerden yoksun olarak değerlendiriyorlardı. Bu dönemde özellikle Jahiriye tarikatı öncülüğünde sufi İslam'ın yükselişi, iki taraf arasında artan bir düşmanlığa yol açmıştır. Han Çinli bürokratlarının ve savaş ağalarının devlet düzeyinde güç kazandığı

51 Alexander, "Islam in China", s. 27.

52 Lipman, *Familiar Strangers*, s. 68.

53 Ching, "Ethnic Tensions between the Han and the Hui", s. 71.

54 Gladney, *Muslim Chinese,* s. 48-50.

55 Lipman, *Familiar Strangers*, s. 88-91; Berlie, *Islam in China,* s. 41.

bu süreçte, yerel yöneticileri iki toplum arasındaki anlaşılmazlıklarda Huiler'e adaletsizce hatta ırkçı davrandığı gözlemlenmektedir. Mesela 1781'de Çinliler tarafından yapılan adaletsiz uygulamalara karşı 3000 kadar Hui müslümanın ayaklanması sonucunda Ma Mingxin tutuklanmış ve idam edilmiştir.[56] Bu olay Huiler'le devlet ve Han toplulukları arasındaki gerilimi daha da arttırmıştır.

Araştırmalar, bu dönemde Han Çinlisi komutanların Huiler'e karşı uyguladığı ayırımcı ve ırkçı politikaların savaş suçlarına ve katliamlara yol açtığını göstermektedir. Hui toplumu hakkında kaleme alınan raporlarda ve emirlerde, isyancı, haydut ve ahlaksız gibi aşağılayıcı ifadeler kullanılmış, adları hayvanlar için kullanılan vuruşlarla yazılmıştır. Mesela *Huiler'in Bastırılmasının Kısa Kroniği* (平回纪略) adlı eserde Huiler; etik ve ahlak yoksunu, zalim ve vicdansız olarak tasvir edilmiştir. Ayrıca bu "çirkin" halkın Çin'den sürgün edilmesi, camilerinin yıkılması ve ibadetten uzak tutulması gerektiği belirtilmiştir. Bunun haricinde, Hui çocuklarının Çinli öğretmenler tarafından eğitilmesini zorunlu kılarak asimile edilmesi amaçlanmıştır. Huiler'in silahlı olarak üç kişiden fazla grup halinde dolaşması yasaklanmış ve bu yasağı ihlal edenler ağır cezalara çarptırılmıştır.[57]

Aynı zamanda, devlet 1830'lardan sonra Batı emperyal güçlerinin saldırıları ve Çin tarihinin en büyük halk isyanlarından biri olan Taiping isyanıyla (1851-1864) sarsılmıştı. Taiping isyancılarının kontrol ettiği bölgelerin Hui yerleşim alanlarına yakın olması, Huiler'in bu isyandan etkilenebileceği korkusunu arttırmış ve devletin Hui toplumuna karşı daha sert politikalar benimsemesine sebep olmuştur. Mesela "Huiler'i görüldüğü yerde yok edin" şeklinde bildiriler yayımlanmıştır.[58] Bu durum, Hui toplumunun devlete ait askerler tarafından yağmalanması ve taciz edilmesi gibi tehlikeli bir ortam yaratmıştır.[59] Ancak hükümet, bu olaylara dair Hui toplumunun şikâyetlerini dikkate almamış; aksine, "Doğru ya da yanlış olup olmadığına bakılmaksın Hui halkı bastırılmalıdır" şeklinde emirler yayımlamıştır. Shaanxi'deki Huazhou'da, "Bir Hui bir Han Çinli'yi öldürürse on Hui öldürülmeli, ancak bir Çinli on Hui'yi öldürürse yalnızca bir kişi öldürülmelidir" şeklinde adaletsiz hükümler uygulanmıştır.[60] Ayrıca Hui tüccarlarına yönelik bürokratik kısıtlamalar getirilmiş ve sufi tarikatları özel olarak hedef alınmıştır.[61]

56 Ching, "Ethnic Tensions between the Han and the Hui", s. 75.

57 Guan, *Northwest Hui Nationality and Islam,* s. 2–3.

58 a.g.e., s. 4.

59 Chu, *The Moslem rebellion,* s. 5; Spence, *The Search for Modern China*, s. 189.

60 Feng, "Shaanxi Hui Uprising", s. 23.

61 Berlie, *Islam in China,* s. 66.

Durumun bu aşamaya gelmesine rağmen Mançu Qing hanedanlığının Hui müslümanlarına ya da İslam'a yönelik sistematik bir dışlayıcı politikasından bahsetmek doğru değildir. Mesela devleti temsil eden Mançu generalleri her ne kadar Huiler'in hizaya getirilmesi konusunda Han generalleriyle hemfikir olsa da, isyancılarla suçsuz halkın ayırt edilmesine ve müslüman-Çin düşmanlığına ya da daha büyük isyanlara yol açacak uygulamalardan uzak durulması hakkında ısrarcı olmuştur. Mesela Mançu General Ding An saraya yazdığı raporda Han General Liu Songshan'ın ayırt etmeden herkesi katlederek müslümanların daha sert atağa geçmesine sebep olduğunu anlatırken, bir başka Mançu Komutanı Mu Tushan ise Çinli Başkomutan Zuo Zongtang'ın Huiler'in barış teklifini kabul etmediğini, Han Çinlileri'nin bütün Huiler'in öldürülmesini istediklerini ve bunun sarayın emrine aykırı olmakla beraber iki toplum arasında düşmanlığa yol açacağı endişesini anlatan uzun bir mektup yazmıştır. Başkomutan Zuo ise Huiler'in kurnaz olduğunu, barış tekliflerinde samimi olmadığı fikrinde ısrar etmiştir. Anlaşılan Hui müslümanları arasında yeni bir dinî tarikatın yayılarak etnik ve dinî kimliğin Çinlileşmesine direnç gösterilmesi ve Çin'de aralıksız devam eden isyanlar Han halkı da dahil olmak üzere Han savaş ağalarında ırkçı bir bakış açısını şekillendirmiştir.[62]

Bu olaylar silsilesi, Huiler'in Kuzeybatı Çin'de Shanxi, Ningxia ve Gansu eyaletlerinde ve Güney Çin'de Yunnan eyaletinde iki büyük isyan başlatmasına sebep olmuştur. Özellikle Yunnan bölgesinde, 1856 yılında Du Wenxiu liderliğinde büyük bir isyan başlamış ve aynı yıl Dali Sultanlığı adında bir Hui Devleti ilan edilmiştir. İlginçtir ki, bu devletin diplomatik dili Arapça olmuştur. İngiliz elçileri Burma'dan geldiklerinde, Çince'ye çevrilmesi gereken Arapça belgelerle karşılaşmışlardır. Du Wenxiu, Han Çinliler başta olmak üzere başka etnik grupları da kendi safına katmak için İslamî ve Çin etkilerini harmanlayarak kendini hem bir Konfüçyüsçü generalissimo hem de bir müslüman sultan olarak tanıtmıştır.[63] Ancak umduğu birlik sağlanamamış, üstelik askerî ve teknolojik açıdan Mançu ordusundan zayıf olduğundan 1872'de yok edilmiş ve Tonghai'daki sufi kalesi yıkılmıştır.[64]

Generalissimo Du Wenxiu, Hui müslümanlarına yönelik bir katliamı önlemek amacıyla teslim olsa da devlet ordusu, aralarında 4000 kadın, çocuk ve yaşlının da bulunduğu yaklaşık 150.000 Hui'yi katlederek büyük bir katliam gerçekleştirmiştir.[65] Du'yun başı, öldürülenlerin kulaklarıyla doldurulmuş yirmi dört sepetle birlikte Pekin'e gönderilmiş ve Hui generalleri idam

62 Guan, *Northwest Hui Nationality and Islam*, s. 24.

63 Atwill, "Blinkered Visions", s. 62.

64 Berlie, *Islam in China,* s. 64.

65 Dali Perfecture Government, "Du Wenxiu".

edilmiştir. Bir zamanlar İslam'ın önemli bir merkezi olan Yunnan bölgesi, bu katliamın ardından telafisi imkânsız kayıplar yaşamıştır. İslam'ın eyaletteki birincil din olarak sahip olduğu konum, bir daha asla eski seviyesine ulaşamamıştır.[66]

Her ne kadar resmî bir bağımsızlık ilanı yapılmasa da kuzeybatıdaki Hui isyanı, Yunnan isyanının gölgesinde kalmamıştır. 1860 yılında Jahiriye tarikatının şeyhi Ma Hualong (马化龙), Jin Jibao kasabasında Hui halkını Han Çinliler'in saldırılarından korumak amacıyla örgütlemiştir.[67] Ma Hualong, bir yandan devlete teslim olduğunu beyan ederken, diğer yandan müslümanlara yönelik saldırıların devam ettiğini öne sürerek silah bırakmayı reddetmiştir. Mançu ve Han askerler, General Zuo Zongtang'ın kumandası altında büyük çaplı katliamlar gerçekleştirmiştir. Hui yerleşim yerleri tamamen yerle bir edilmiştir. 1869 yılında yalnızca bir şehirde yaklaşık 30.000 Hui katledilmiştir.[68] Buna karşılık, Hui ordusu da Lingzhou'da 100.000'den fazla Han Çinli'yi öldürmüş, mallarına el koymuş ve kadınlarını esir almıştır. Aynı ay içinde, Çin ordusu tarafından ele geçirilen bir kalede, asker-sivil ayırımı yapılmaksızın bütün Hui halkı katledilmiştir.[69]

Savaş sona erene kadar bu tür katliamlar defalarca tekrarlanmıştır. Her iki taraf ağır kayıplar vermiştir. Devlet, savaşın getirdiği ekonomik yük sebebiyle yabancı bankalardan borç almak zorunda kalmıştır. Ancak nihayetinde Mançu ordusu zafer kazanmıştır. 1871 yılında müslümanların son direniş noktası olan Jin Jibao kuşatıldığında, Ma Hualong halkının affedilmesi umuduyla teslim olmuştur.[70] Fakat birkaç ay sonra, Ma Hualong, akrabaları da dahil olmak üzere yaklaşık 2000 destekçisiyle birlikte idam edilmiştir. Jin Jibao'da yaşayan 10.000'den fazla kadın, çocuk ve yaşlı erkek ise zorla başka bölgelere sürgün edilmiştir.[71]

Bunca kanlı savaş, etnik kin ve nefret yaşanırken vurgulanması gereken en önemli hususlardan biri, Hui toplumunun dağınık yapısı sebebiyle ayrılıkçılığın sınırlı kalmış olmasıdır. Nitekim Du Wenxiu da, yukarıda belirtildiği üzere çevresine Çinliler de dahil olmak üzere farklı toplulukları kendi safına çekmeye çalışmış ve kendini Konfüçyüsçü bir müslüman lider olarak tanımlamıştır. Bu sebeple söz konusu isyan, Marksist tarih yazımında ayrılıkçı bir hareket olarak değil, Mançu Qing hanedanı ve feodalizme karşı bir köylü isyanı olarak değerlendirilmiştir. Hui müslümanlarının bu

66 Berlie, *Islam in China,* s. 71.

67 Ching, "Ethnic Tensions between the Han and the Hui", s. 78.

68 Chu, *The Moslem rebellion*, s. 132.

69 Li, "Major battles", s. 95-124.

70 Ching, "Ethnic Tensions between the Han and the Hui", s. 79.

71 Chu, *The Moslem rebellion*, s. 142.

konumu ise Çin etnik literatüründe, özellikle XX. yüzyılda "dinî meseleler için savaşmak ama devlet meselelerinden uzak durmak", yani "bilinçli vatandaş olmamak" (争教不争国) şeklinde ifade edilmiştir.[72] İşte bu, Çin Halk Cumhuriyeti döneminde Huiler'e yapılan etnik politikalardaki ayrıcalığın sebeplerinin en başında geliyordu.

2. "Ehlîleşen Barbarlar"

Batı ile etkileşimde bulunmak, Mançu hanedanını hem modern teknolojiye ayak uydurmaya hem de yeni bir ulusal kimlik arayışına itmiştir. Etnik bölünmüşlüğün önüne geçmek amacıyla modern bir üst kimlik oluşturulması hedeflenmiştir. Ünlü reformcu ve modern Çin milliyetçiliğinin fikir babalarından biri olan Liang Qichao, bu meseleye hem klasik düşünce geleneğinden hem de sosyal Darwinist bir perspektiften yaklaşmıştır. Liang Qichao, dünyayı sarı, beyaz ve gri ırklar arasında süregelen bir mücadele olarak görmüş ve sarı ırkın, özellikle Mançular'ın, entelektüel olarak bu rekabete uygun olmadığını savunmuştur. Ancak sarı ırkın kurtuluşunun Çin'e, Çin'in kurtuluşunun ise kültürel ve entelektüel olarak üstün olduğuna inandığı Han Çinliler'e bağlı olduğunu öne sürmüştür. Onun ulusal kimlik inşası anlayışı, esas olarak iki temel fikir etrafında şekillenmiştir: Birincisi, Çin milliyetçiliğinin güçlendirilmesi; ikincisi ise Çinli olmayan diğer ulusların toprakları üzerinde idarî kontrolün sürdürülmesidir.

Liang eskiden beri devam eden barbar-Çinli ayırımını reddetmiş ama Han kültürünün üstünlüğünü savunmuştur. Herkes için üst bir kimliğin eksikliğini düşünerek 1902 yılında *Zhonghua minzi* (中华民族), Çin ulusu kimliğini öne sürmüştür.[73] Her ne kadar Liang muhalif ve fikirlerini sürekli değiştiren ve geliştiren bir düşünür olsa da onun Çin topraklarında yaşayan halklara bakışı dönemin Han milliyetçi entelektüellerinin ulus düşüncesine kıyasla kapsayıcı ve kucaklayıcıydı. Sert bir Han milliyetçisi olan Zhang Taiyan *Zhonghua* kimliğinin "barbarları" kapsamasının yanlış olduğunu savunurken, Liang bir yabancı karşısında kendini Çinli olarak hisseden herkesin *Zhonghua* yani Çin ulusunun bir üyesi olduğunu, dolayısıyla Mançu ve Moğollar'ın da bu ulusun bir parçası olduğu görüşünü savunmuştur.[74] Erken Çin komünist liderlerinden Li Dazhao ve Chen Duxiu da 4 Mayıs Hareketi döneminde *Zhonghua minzu* kavramını Linag'in çizdiği çerçevede kullanmıştır ve 1931'den sonra Çin diyasporası dahil olmak üzere herkes tarafından kabul edilmiştir.[75]

72 Tao - Zhai, "The 'Definition of Hui Nationality", s. 12-27.

73 Leibold, "Searching for Han", s. 214.

74 Li, "From the Xia people, the Han people to the Chinese nation", s. 15.

75 Zheng, "Modern Chinese nationalism", s. 22.

İşte bu yeni kimlik tartışmaları çerçevesinde, Hui müslümanları ve Uygurlar'ın farklı muamele görmelerinin teorik temelleri şekillenmiştir. *Zhonghua minzu* kavramı, Han kültürünü esas almış ve diğer halkların uzun vadede bu kültüre asimile edilmesini hedeflemiştir. Modern Çin'in kurucu figürlerinden Sun Yat-sen, 1920'li yıllarda yaptığı konuşmalarda bu yaklaşımı açıkça dile getirmiştir. 1920'de "Çin'deki bütün etnik grupları tek bir Çin ulusu içinde birleştirmeliyiz" derken, 1921'de ise "Milliyetçilik üzerinde çok çalışmalıyız, böylece Mançu, Moğol, Hui ve Tibet halkları Han halkımıza asimile olabilir ve büyük bir milliyetçi ülke haline gelebiliriz" ifadelerini kullanmıştır.[76] Burada Sun'un "Hui" kavramı içine Uygurlar'ı dahil edip etmediği tartışmalıdır. Qing döneminde "Hui" kimliği, genel olarak Doğu Türkistanlı Türkler de dahil olmak üzere bütün müslümanları kapsayan bir üst kimlik olarak kullanılmıştır. Ancak modern kimlik inşası sürecinde "Hui" kimliğinin tanımı önemli bir tartışma alanı haline gelmiştir. Bu bağlamda, "Hui"nin Türk müslümanlarını mı yoksa yalnızca Çince konuşan Huiler'i mi kapsayacağı sorusu çoğu zaman muğlak kalmış; konuya ilişkin birbirinden oldukça farklı görüşler ortaya atılmıştır.[77]

Sun'un şovenist söylemlerine rağmen, onun liderliğini yaptığı Japonya'daki Devrimci İttifak teşkilatı içinde Hui üyeleri de yer alıyordu. Bu entelektüeller, Sun'un asimilasyoncu yaklaşımına karşı çıkarken, kendilerini Çin ulusunun ayrılmaz bir parçası olarak konumlandırmaya çalıştılar. Dinî ve etnik kimliklerini reddetmeden, bu kimlikleri kültürel ve medenî açıdan yeniden çerçeveleyerek Çinliliğe dahil ettiler. İslam'ı bir engel değil, çok etnikli bir Çin ulusunun inşasında birleştirici bir unsur olduğunu ileri sürdüler.[78] Bu yaklaşım, Liang'ın ulus anlayışıyla daha fazla örtüşmekteydi. Bu modern kimlik arayışlarına dahil olmak ve ayak uydurmak için Hui seçkinleri İslamî düşünce reformu yaptılar ve bilim, vatan severlik ve siyasî farkındalığı birleştirerek İslamî eğitimi modernleştirme teşebbüslerinde bulundular. Bu entegrasyon, Çin'in laik toplumuna ve ulus inşa sürecine aktif katkıda bulunanlar olarak katılmalarını sağladı.[79]

1930-1940'larda, Han entelektüeller temel olarak Liang'ın fikrini takip etmişlerdir. Çünkü Liang'in öne sürdüğü *Zhonghua minzu* kavramı hem Çin toprak bütünlüğüne vurgu yapıyor, hem Han kültürel üstünlüğünün altına çiziyordu, hem de diğer halkları dışlamıyordu. Bu dönemin ana akımı olan Han milliyetçiliği ile de ters düşmüyordu. Aslında *Zhonghua minzu* düşüncesi Han kültürünü merkezinde barındıran diğer halkların zamanla

76 Deng, *History of Chinese Political Thought*, s. 203-222.

77 Ayrıntılar için bk. Sager, "A Place under the Sun", s. 825-858; Eroğlu, Muslim Transnationalism, s. 20-64.

78 Lee, "Muslims as 'Hui'", s. 246-247.

79 a.g.e.

Han kültürüne entegre olması öne sürülen bir ulus inşası modelini temsil ediyordu. Bundan yola çıkarak Han tarihçi Gu Jiegang 1939'da toplumları gelişmiş *Zhonghua minzu* (Han) ve az gelişmiş *Zhonghu minzu* (Han olmayan) şeklinde ikiye ayırmıştır. Ona göre Han olmayan grupları şimdilik asimile olmasalar da ulaşım kolaylaştığında ve sık sık kültürel alışveriş yapıldığında tamamen asimile olacaklardı.[80] Bir başka Han tarihçi Lai Xiru ise Han milletinin *Zhonghua minzu*'nun ana gövdesi (母体) olduğunu savunurken, 1942'de Milliyetçi Çin hükümeti (KMT) manifestosunda Han olmayan grupları *Zhonghua minzu*'nun "dalları" şeklinde ifade etmiştir.[81]

Çin Halk Cumhuriyeti döneminde Mao'un önderliğinde yeni etnik politika uygulandı ve Çin tabası elli altı etnik grup halinde sınıflandırıldı. Bu sınıflandırma Sovyet etnik politikasıyla Çin'de devam eden *Zhonghua minzu* düşüncesinin birleşimini yansıtıyordu. Han halkı hem çoğunluk bir grubu hem gelişmiş ve öncü bir medeniyeti temsil ederken diğer elli beş azınlık ise kültürel ve ekonomik olarak Han halkının seviyesine ulaşması bekleniyordu.[82] Leibold'un da ifade ettiği gibi çeşitlilik ancak belli bir süre tolere edilebilen ama en son güvenlikleştirilmesi ve kültürel olarak değiştirilmesi gereken bir olguydu. Çinlileşme veya Hanlılaşma olarak bilinen bu kültürel dönüştürme bazan zorla bazan ise ekonomik kalkınma, şehirleşme ve resmî kurumların eğitimleriyle kademeli olarak yürütülmekteydi. Çinli yetkililerinde söylemeden çekinmediği gibi Han milleti "yönetici ırkı" temsil ediyordu ve *Zhonghua* ailesinin ağabeyi idi. Dolaysıyla "küçük kardeşlerine" rehberlik ve öncülük yaparak dönüştürme ve entegre etme görevini üsteliyordu.[83] Ölçüsü ise Kuzey Han normları olup Mandarin dili, bürokratik kurallar, kültür, görgü kuralları ve gelenekleri içeriyordu.[84] Yani kültürel farklılıklar, tıpkı hanedanlıklar döneminde olduğu gibi, bir tehdit unsuru olarak algılanmıştır.

Bu standartlar çerçevesinde değerlendirildiğinde, Huiler'in imparatorluk döneminde dil, giyim ve kültürel pratikler açısından gözle görülür biçimde Çin kültürüne entegre olduğu, devlet ve Han halkıyla zaman zaman çatışmalar yaşamalarına rağmen bağımsızlık arayışlarına yönelmedikleri ve özellikle modern dönemde ulus inşası sürecine katılarak dinî düşüncede reformlara gittikleri dikkate alındığında, Hui halkının artık bir tehdit unsuru olmaktan büyük ölçüde uzaklaştığı ve Çin ulusu inşası çizgisinde ilerlediği söylenebilir. Bunlar hep birlikte devletin Huiler'e daha ılımlı politika izlemesine sebep olmuştur.

80 Li, "Theoretical interpretation", s. 4-6.
81 Huang, "The Application", s. 1-17.
82 Joniak - Luthi, *The Han,* s. 39-40.
83 Leibold, *Reconfiguring Chinese nationalism,* s. 113-147.
84 Leibold - Chen, "Han-Centrism", s. 3.

Çin Halk Cumhuriyeti uzun vadede Çinlileşme hedefi taşısa da Huiler gibi birçok halkın kültürel ve politik açıdan tanınması, anayasal olarak eşitlik garantisinin verilmesi önemli gelişmeleri beraberinde getirmiştir. Uygulamadaki sorunlar tartışmalı olsa da, Huiler'in yoğun olarak yaşadığı Ningxia bölgesine 1958 yılında özerk statü verilmiştir. Ancak bu dönemde %64 Ningxia nüfusu Han Çinliler'den oluşmaktaydı[85] ve bu durum Huiler'i eskisine nazaran daha az tehdit unsuru yapmıştır.

Huiler'i farklı kılan müslüman kimlikleri ise, bu dönemde devlet tarafından değişik bir yaklaşımla ele alınmıştır. Çin yönetimi, Huiler'i devlet yönetimine entegre ederek Çin müslümanlarının temsilcisi konumuna getirmiştir. Dahası, Çin, Dali Sultanlığı'nın kurucusu Du Wenxiu'yu millî kahraman olarak kabul etmiştir.[86] Huiler'in tarih ve kültürlerinin araştırılması desteklenmiş, bu bağlamda İslam ve Konfüçyüs felsefesiyle bir sentezi olan Han Kitab'ın yeniden tanıtılması önem kazanmıştır.[87] Çin Han Kitap'ı yücelterek bir taraftan Hui dinini ve geleneğini onaylamış oluyor; öbür taraftan ise "iyi" İslam'ın nasıl olacağını ima etmiş oluyordu.

Hui müslümanları, devlet yönetiminde özellikle dinî ve etnik çalışmalar alanında etkili roller üstlenmiştir. Çin'in en üst düzey İslamî kurumu olan Çin İslam Cemiyeti'nde önemli görevler üstlenmişlerdir. Bu durum, devletin onlara duyduğu güvenin ve iş birliği anlayışının bir göstergesi olarak değerlendirilebilir. "Vatan sever dinî birlik" olarak tanımlanan bu cemiyet, Çin Komünist Partisi'ni desteklemek, İslam'ı sosyalist toplumla uyumlu hale getirmek, dinî ve etnik birliği güçlendirmek, ulusal istikrar ve bütünleşmeye katkıda bulunmak gibi misyonlar üstlenmektedir. Ayrıca kutsal metinlerin çağdaş Çin toplumuna uygun yorumlarını geliştirme ve toplumsal uyumu güçlendirme gibi işlevler de üstlenmektedir.[88] Devlet politikalarıyla uyum içinde hareket eden Huiler, Çin'in etnik teori ve entegrasyon politikalarına da katkı sağlamıştır. Mesela Pekin Üniversitesi'nden Ma Rong, günümüzde Çin'in önde gelen etnik teorisyenlerinden biridir ve Xi Jinping'in, Uygurlar da dahil olmak üzere bütün etnik grupların Çin kültürüne entegre edilmesini amaçlayan homojen *Zhonghua minzu*, yani tek tip Çin ulusu politikalarının mimarlarından biridir.

Son dönemlerde, Huiler'in geleneksel tüccar, müslüman ve Çinli kimlikleri, Çin ile İslam dünyası, özellikle de Arap Körfezi ülkeleri arasındaki kültürel ve ekonomik ilişkilerde aracı bir rol üstlenmelerini sağlamıştır. Özellikle Dubâi gibi merkezlerde, Çin'in çıkarlarıyla Arap dünyası arasında

85 Friedrichs, "Sino-Muslim Relations", s. 55-79.

86 Miller, "The Ethnic Chameleon", s. 36; *Famous Chinese General Du Wenxiu*.

87 Lai, "The Making of Sino Muslim Identity", s. 167-198.

88 China Islamic Association, "About Chinese Islamic Association".

güvenilir ara bulucular olarak faaliyet göstermekte; bu yönleriyle Çin tarafından "kültürel elçi" olarak konumlandırılmaktadırlar. Bu aracı rol, Çin'in gözünde "iyi müslüman" imajının inşasına katkı sunarken, Huiler aynı zamanda müslüman ülkelerde Konfüçyüs enstitüleri aracılığı ile Çin kültürünün tanıtımına da destek vermektedirler.[89]

Bütün bu gelişmelere rağmen Çin'in Huiler'e yönelik baskılarının sona erdirdiğini söylemek yanıltıcıdır. Xi Jinping döneminde yürütülen *Zhonghua minzu* temelinde ulusal kimlik inşa sürecinde, Hui toplumu da Çinlileştirme politikalarından etkilenmiştir. 2016 sonrası Uygurlar'a yönelik başlatılan toplama kamplarıyla eş zamanlı olarak hayata geçirilen çeşitli Çinlileştirme uygulamaları, belirli ölçüde Huiler üzerinde de uygulanmıştır. Bu kapsamda, Çin İslam Cemiyeti 2018 yılında "İslam'ın Çinlileştirilmesine Doğru Beş Yıllık Plan (2018–2022)" başlıklı bir belge yayımlamıştır. Plan, Huiler ve Uygurlar'ın birleşik Çin ulusal kimliğine akkültürasyonunu amaçlamaktadır. İslamî semboller, özellikle kubbeler ve minareler, "yabancı" ve "Çinli olmayan" unsurlar olarak görülmüş; bu sebeple ulusal birlik ve siyasî kontrol açısından tehdit olarak değerlendirilmiştir.[90]

Uygulamalar sonucu birçok cami ya tamamen yıkılmış ya da geleneksel Çin mimarisine uygun şekilde pagodalar eklenerek yeniden tasarlanmıştır. Bu mimari dönüşümde Pekin'deki Ming dönemine ait olduğu düşünülen Niujie Camii örnek alınmıştır. Uydu görüntülerine dayanan bir çalışmaya göre, 2018'den bu yana İslamî mimariye sahip 2312 caminin yaklaşık %75'i ya dönüştürülmüş ya da yıkılmıştır. Ningxia'da bu oran %90'ı, Gansu'da ise %80'i aşmıştır. Çarpıcı kubbeleri ve süslü minareleriyle Kuzey Çin'in en görkemli camilerden biri olan Pekin'deki Doudian Camii'nin görkemli kubbe ve minareleri kaldırılarak yerlerine pagoda tarzı koniler ve kare kemerler eklenmiştir. Benzer müdahaleler, Yunnan'daki Najiaying Camii ve Ningxia'daki Weizhou Ulucamii'ne de uygulanmıştır. Bunların haricinde imamlar, cami yöneticileri ve muhalifler tutuklanmış; cami yönetim süreçlerine müdahale edilmiş ve müslümanlara yönelik gözetim artırılmıştır. Ayrıca dinî materyallerin çocuklara ulaştırılması yasaklanmış, on sekiz yaş altındakilerin camilere girmesi engellenmiştir.[91]

Özetlemek gerekirse, Hui müslümanlarına yönelik zulüm ve baskıların hiç yaşanmadığı iddiası gerçeği yansıtmamaktadır. Tarihsel olarak Huiler farklı olmanın bedelini ağır bir şekilde ödemiştir. Uzun süre Çin halkıyla iç içe yaşamış hem doğal yollarla hem de zorla akkültüre edilmiştir. Bu süreç, Huiler'in hem İslamî hem de Çin kültürel unsurlarını taşıyan melez

89 Wang, "The Making of China's Good Muslims", s. 131-154.

90 Kaufman, "Sinicization Campaigns".

91 The Financial Times, "How China is tearing down Islam".

bir kimlik geliştirmesine yol açmıştır. Modern dönemde Çin ulus inşası düşüncelerine dahil olmuş, kendilerini hep Çin ulusunun bir parçası olarak tanımlamışlardır. Devlet tarafından da onlara belirli haklar tanınmış ve devlet yönetimine entegre edilmiştir. Çin'in dünyaya açılmasıyla devlet çıkarları açısından daha pozitif rol oynamıştır. Bütün bu süreçte, Huiler "yabani barbarlar"dan "ehlîleştirilmiş barbarlar"a dönüşmüştür ve Çin tarafından "örnek müslümanlar" olarak Çin müslümanlarının temsilcisi konumuna getirilmiştir. Ancak bu dönüşüm, uzun süren karmaşık ilişkilerin ve tarihsel süreçlerin bir sonucu olarak değerlendirilmelidir. Bu bağlamda, Huiler'in mevcut konumunu anlamak, Çin'in etnik ve dinî politikalarını çözümlemede kritik bir öneme sahiptir. O halde, Huiler gibi müslüman olan Uygur, Kazak, Kırgız ve diğer Türk halklarının Çin ile ilişkileri nasıl bir tarihî süreçten geçmiştir ve bu ilişkiler nasıl bir sonuca yol açmıştır? Sonraki bölümde bu ilişkiler ele alınacaktır.

Uygurlar: "Yabani Barbarlar"

Tarihçi Miles Yu'nun belirttiği gibi, Doğu Türkistan Çin ile en az tarihi, etnik ve kültürel bağı olan bölgedir.[92] Çin her ne kadar bu bölgenin kadim zamanlardan beri bölünmez bir parçası olduğunu söylese de Doğu Türkistan'ın Pekin merkezli bir yönetime bağlanması 1759 yılında göçebe halk olan Mançular tarafından gerçekleştirilmiştir. 1865 yılında Yakup Beg'in liderliğinde Kâşgarıya Devleti kurulmuş, Osmanlı Devleti'ne bağımlılığını ilan etmiş ama 1877 yılında Huiler'in isyanını bastıran Mançu-Çin ordusunun saldırmasıyla bağımsızlığını kaybetmiştir. 1884 yılında bölge, Mançu hanedanlığının eyalet sistemine dahil edilmiş ve daha önce Qianlong döneminde verilmiş olan, "yeni hudut" veya "yeni kazanılmış toprak" anlamına gelen Xinjiang (新疆) adı resmen kullanılmaya başlanmıştır. 1912 yılında Mançu hanedanlığının yıkılmasıyla Doğu Türkistan'da çok sayıda isyan olmuş ve 1933 yılında Doğu Türkistan İslam Cumhuriyeti ve 1944 yılında ise Doğu Türkistan Cumhuriyeti olmak üzere iki bağımsız hükümet kurulmuştur. Bu süreçlerde Huiler'le olan savaştaki gibi çok büyük yıkımlar olmuş, mesela 1765 yılındaki küçük bir isyanda Mançu askerleri 2000 Uygur erkeğini öldürmüş ve 8000 kadını sürgün etmiştir.[93] 1876 yılında Türkler yaklaşık 5.000–6.000 asker kaybederken, 1866 yılında Mançu-Çin ordusunda yaklaşık 12.000 asker hayatından olmuştur .[94] Sonraki dönemlerde yaşanan savaşlarda da kayıplar olmuştur. Ama bölgede kalabalık Çin ya da Mançu nüfusu olmadığı için Huiler'le olan savaş gibi etnik savaş olmamıştır.

92 Yu, "China's Final Solution in Xinjiang".

93 Millward, *Eurasian Crossroads,* s. 106.

94 Kim, *Holy War in China,* s. 56, 166.

1949 yılında komünistler Çin'e hâkim olduğunda Sovyetler'in araya girmesiyle 1944'te kurulan Doğu Türkistan Cumhuriyeti ile anlaşmaya vararak bölgeyi yeni Çin rejimine dahil etmiştir. 1955'te özerklik statüsü verilerek Xinjiang Uygur Özerk Bölgesi adı verilmiştir. Daha önce bahsedildiği gibi Çin'de yaşayan halkları elli altı etnik gruba ayırmış, etnik grupların eşitliği, din ve kültürlerini yaşama, araştırma ve geliştirme hakları yasal olarak güvence altına alınmıştır. Ancak Çin *Zhonghua ulusu* inşası fikrinden vazgeçmemiş, aksine sürekli olarak geliştirilmiştir. Han kültürünün ana akım olduğu, diğer kültürlerin onu takip ederek en son asimile olması beklenen bu üst kimlik fikri geliştikçe Han merkeziyetçi bir hal almıştır.

Huiler bölümünde Mao döneminin etnik politikanın Han etnik grubunu ve medeniyetini merkeze koyan evrimci karaktere sahip olduğundan bahsedilmişti. Leibold'a göre bu Han merkezli etnik evrim görüşü, yalnızca Marksist tarihsel materyalizmle uyumlu olmakla kalmaz, aynı zamanda Çinli-barbar düzeni görüşünü de yansıtıyordu.[95] Yani Çin'in modern ulus inşası temelden geleneksel yönetim anlayışını yansıtıyordu; hiyerarşik yapıya sahipti, Han medeniyeti en üstteydi, diğer halkların entegre olması bekleniyordu, böylece ideolojik, kültürel ve coğrafîye olarak Konfüçyüsçü "büyük birlik" gerçekleşecekti. İşte Han olmayanların topraklarını kontrol altında tutmak 1900'lerde ortaya atılan yeni kimlik arayışları ve bu doğrultuda geliştirilen *Zhonghua minzu* fikrinin temel dayanağı idi. Bu yüzden Luthi'nin de ifade ettiği gibi Çin etnik teorileri bilimsel olmaktan daha ziyade siyasaldı.[96]

Konfüçyüsçülük Çin tarihi boyunca egemen bir düşünce olmakla beraber bazı dönemlerde gericiliğin sebebi olarak tenkit edilmiş hatta geniş çapta reddedilmeye maruz kalmıştır. Mesela Mao, gençliğinden itibaren benimsediği anti-Konfüçyüsçü düşünceyi yaşamı boyunca açıkça dile getirmiştir. Özellikle kültür devrimi döneminde, Mao'nun bizzat öncülüğünde Konfüçyüs, ülke genelinde doğrudan hedef alınmıştır.[97] Mao'dan sonra ise Konfüçyüsçü düşünce seçmece bir şekilde kabul edilmiştir. Ama Konfüçyüsçü "büyük birlik" ilkesi ve Çinli-Çinli olmayan ilişkisindeki Çin/Han merkeziyetçi görüş Modern Çin ulus inşasının da temel taşı olmuştur. Her ne kadar bugün Çin Halk Cumhuriyeti anayasasında elli altı etnik grubun eşit olduğu yer alsa de Leibold ve Luthi'nin bahsi edilen çalışmalarında ifade edildiği gibi Büyük Han şovenizmi ve lider grup düşüncesi hep varlığını sürdürmüştür.

95 Leibold - Chen, "Han-Centrism", s. 4.

96 a.g.e.

97 Tanrikut, "Mao Zedong and Legalism", s. 38-62.

İşte Çin'in etnik problemi burada yani devletin ulus inşası vizyonuyla anayasada verilen haklar arasındaki farkta gizilidir. Bu Uygur ve başka Han olmayan halkların kendi kültürlerini yaşama ve geliştirme hakkına sahip olduğunu bir anayasal hakkı olarak görmesiyle, aynı şeyi Çin'in homojen bir ulus inşası için engel olarak görmesine sebep olmaktadır. Çin buradan yola çıkarak en uzak ve en yabancı bölgesini hem siyasî hem kültürel olarak Çin'in başka eyaletleri gibi yapmak için uzun vadeli bir demografik ve kültürel dönüşüm stratejisi izlemektedir. Örnek olarak güvenlik için bölgede bir paralel yapı olan Xinjjang Üretim ve İnşaat Kolordusu'nun (1954) kurmak, demografik yapısını değiştirmek için Han göçmenleri bölgeye yerleştirmek, halkı ideolojik olarak değiştirmek için siyasî telkinlerde bulunmak gibi politika ve uygulamaları söylemek mümkündür. Bunlara yine sıkı sosyal, kültürel ve dinî kontroller, ekonomik marjinalleştirme ve her türlü şikâyet ve direnişin bastırılması eşlik etmektedir.[98]

Çin'in kültürel entegrasyon ve demografik dönüşüm politikaları, Uygurlar'ın yakın tarihsel hafızasıyla keskin bir biçimde çatışmaktadır. Çin'in bölgeyi kadim zamandan beri ayrılmaz bir parçası olarak sunma söylemi, Doğu Türkistan'da tarih boyunca var olmuş ve Çin'den bağımsız yönetimler olan Hun Devleti (m.ö. 220-m.ö. 45), Göktürkler (552-744), Uygurlar (748-840), Karahanlılar (840-1212), Koçu Uygur Kağanlığı (866-1369), Saidiye Hanlığı (1514-1689), Kâşgarya Devleti (1865-1878) ve 1933 ile 1944'te kurulan iki Doğu Türkistan Cumhuriyeti gibi siyasî oluşumların tarihî gerçekliği ile çelişmektedir. Üstelik, bölge özellikle Çin Halk Cumhuriyeti öncesi Han Çinli nüfusu oranı sadece %6,2 olup, Çin Halk Cumhuriyeti'den sonra devlet destekli göçmen politikası sonucu 2000'lere kadar %41 olmuş ama çoğunluk olarak Urumçi, Karamay ve Shihenze bölgelerinde iskân etmişlerdir.[99] Yani kültürel olarak Çin'den bağımsız bir yapı sergileyen bir coğrafya olmuştur.

Bu sebeple Çin Devleti Uygurlar'ın etnik kültürel kimliği, tarihsel mirası ve dinî inançlarını hedef alan politikalar yürütmüştür. Kültür devrimi (1966-1976) sırasında Çin geleneği de radikal tahribatlardan nasibini almış gibi Uygurlar'ın dini, kültürel ve entelektüel kayıpları ağır olmuştur. Han kızıl muhafızlar, camileri kapatmış, dinî metinleri yakmış, din adamlarını tutuklamış ve camileri domuz çiftliklerine dönüştürmüştür. Buna ek olarak, Uygurlar'ın geleneksel kıyafetlerine kısıtlamalar getirilmiş, kadınlara Han tarzı saç modellerini benimsemeleri yönünde baskı uygulanmıştır. Uygur entelektüelleri ise hapse atılmış veya zorunlu eğitim kamplarına gönderilmiştir.[100]

98 Clarke, "Settler Colonialism", s. 11; Hierman, "The Pacification of Xinjiang", s. 52.

99 Howell - Fan, "Migration and Inequality in Xinjiang", s. 123.

100 Roberts, *The War on the Uyghurs*. s. 47-49.

Kültür devrimi sonrasında etnik ve dinî kimliği doğrudan hedef alan uygulamalar önceki döneme kıyasla daha örtük ve sınırlı olsa da devam etmiştir. Mesela Uygurlar'ın müzik, dans, fıkra, şiir ve ahlak öğretimi gibi kültürel unsurlarını içeren geleneksel folklor oyunu olan "meşrep", 1990'larda hükümet tarafından bir güvenlik tehdidi olarak değerlendirilmiştir. 1996 yılında yürütülen "sert darbe" kampanyası kapsamında meşrep organizatörü Abduhelil Abdurahman gözaltına alınmış, ağır işkence sonucu hayatını kaybetmiş ve ailesine cenazesini görme izni dahi verilmemiştir. 1997'de ise meşrep ve diğer dinî pratiklerin baskı altına alınması, 5 Şubat olayları olarak bilinen büyük çaplı protestolara yol açmıştır. Ancak Çin hükümetinin sert müdahalesi sonucunda çok sayıda Uygur hayatını kaybetmiş, birçok kişi tutuklanmış ve 200'den fazla kişi idam cezasına çarptırılmıştır.[101]

Bunun yanı sıra, dini kurumlar ve ibadet alanları da sistematik olarak hedef alınmıştır. Mesela 2001 yılında Çin hükümeti, öğrencilerin ibadetten olumsuz etkilenebileceği gerekçesiyle Hotan bölgesinde okullara yakın konumda bulunan üç camiyi yıktırmıştır.[102] Çin meşrep gibi kalabalık ortamda gerçekleştirilen kültürel içerikli oyunlar bölge halkının millî kimliğini güçlendireceğini düşünürken dinî faaliyetleri müslüman kimliğinin pekiştireceğinden endişe duyuyordu. Çünkü zaten Uygurlar'ı Çinliler'den farklı kılan buydu. Bu yüzden Çinli entelektüeller Uygurlar'ın bu iki kimliğinin bölücülüğü körükleyeceğini ileri sürüyorlardı.[103]

Uygurlar, devletin baskıcı politikalarına hem barışçıl hem de şiddet içeren yollarla karşılık vermiştir. Ancak hükümet, bütün direnişleri sert bir şekilde bastırmış; 11 Eylül öncesinde bu eylemleri bölücülük ve pantürkizmle, sonrasında ise terörizm ve dinî aşırılıkla ilişkilendirmiştir. Oysa Uygurlar'ın eylemlerinin büyük bir kısmı, Çin'in baskıcı politikalarına karşı gelişen tepkisel hareketlerdir. Çin Halk Cumhuriyeti tarihindeki en büyük etnik çatışma olarak kabul edilen 5 Temmuz 2009 olayları da bu bağlamda değerlendirilmelidir. Olaylar Çin'in Guangdong eyaletindeki bir oyuncak fabrikasına zorla çalıştırılmak üzere götürülen Uygur gençlerin 26 Haziran sabahı odalarının Han Çinliler tarafından basılarak sopalarla dövülmesine ve devletin bu saldırıya yönelik herhangi bir açıklama yapmamasına karşı bir tepki olarak başlamıştır. Saldırıda en az iki Uygur genci hayatını kaybetmiş, çoğunluğu Uygurlar olmak üzere 118 kişi yaralanmıştır.[104]

Bu olayın ardından, suçluların cezasız kalmasına yönelik artan tepkiler on gün sonra başkent Urumçi'de büyük bir protestoya dönüşmüştür.

101 Irwin, "Remembering the Ghulja Incident".

102 Amnesty International, *China's anti-terrorism legislation,* s. 23.

103 Ma, *National Interests Above All*, s. 4.

104 Xinhua, "Guangdong toy factory brawl; Andrew, "At a Factory".

Protestocular, ellerinde Çin bayraklarıyla "adalet" ve "eşitlik" sloganları atarken, Çin Devleti bu talepleri Batı'nın demokrasi ve insan haklarını bir silah olarak kullanarak Çin'i bölme girişimi olarak değerlendirmiştir. Başlangıçta barışçıl olan gösteri, polisin sert müdahalesiyle Han halkına karşı bir şiddete dönüşmüş ve çatışmalarda 197 kişi hayatını kaybetmiştir. Ertesi gün Han Çinliler, Uygurlar'a yönelik saldırılar başlatmış, ancak güvenlik güçleri herhangi bir müdahalede bulunmamış, aksine bir Han parti sekreteri "Teröristleri yok edin" şeklinde bağırmıştır. Olaylar sonucunda hükümet, Han Çinliler'e yönelik herhangi bir yasal işlem yapmazken yüzlerce Uygur'u tutuklamış ve pek çoğuna idam cezası vermiştir.[105]

Çin, Uygur dili, tarihi ve kültürünü zayıflatmak amacıyla, Uygurca'yı eğitim kurumları ve resmî devlet dairelerinden aşamalı olarak kaldırmıştır. Ayrıca Uygurlar'ın tarihini kendi resmî tarih anlatısına uygun şekilde yeniden yorumlamıştır. Bütün bu kısıtlamalara rağmen, Uygur aydınları mevcut imkânları en iyi biçimde kullanarak Uygur tarihi, kültürü ve sanatları üzerine üretkenliklerini sürdürmüştür. 2011 yılı verilerine göre, sadece Uygur dilinde yayımlanan kitap sayısı yılda yaklaşık 2000 civarında olmuştur ve bu sayı, Doğu Türkistan'da en yüksek, Çin genelinde ise ikinci en yüksek düzeyde yer almaktadır.[106] Bu eserler, Çin'in resmî tarih anlatısı ve metodolojisine uygun şekilde kaleme alınmıştır. Nitekim kitapların giriş bölümlerinde genellikle Doğu Türkistan'ın kadim zamanlardan beri Çin'e ait olduğu ve Uygurlar'ın, diğer Türk halklarıyla birlikte, Çin ulusunun ayrılmaz bir parçası olduğu vurgulanmıştır. Ayrıca bu eserler yayımlanmadan önce resmî denetimden geçirilmiştir.

Üretilen eserlerin büyük çoğunluğu tarihî romanlar ya da yarı tarihî, yarı kurgusal anlatılardan oluşmaktadır. Çeşitli dönemlerde değişik yazarlar tarafından kaleme alınan bu romanlar Uygurlar'ın Hunlar döneminden günümüze kadar uzanan tarihini kapsayabilmektedir ve okuyuculara farklı dönemlerde kurulan devletler ve yaşanan olaylar hakkında bilgi sunmaktadır. Üstelik roman tarzındaki tarih anlatımı okuyucuların geçmişe dair mistik düşünceler geliştirmesine, ulusal gurur duymasına ve tarihî kimliğine yönelik bir özlem hissetmesine sebep olabilmektedir. Özellikle 1920'lerdeki halk isyanları ve 1933 ile 1944 yıllarında kurulan cumhuriyetler üzerine birçok roman yazılmıştır. Her ne kadar Çin hükümeti anayasa gereği bu tür eserleri yasaklayamasa da zamanla bunları tehlikeli olarak değerlendirmiştir. 2016 yılından başlatılan toplama kamp olaylarından sonra 1950'lerden beri yayımlanan Uygurca ve Kazakça tarihî romanlar yasaklanmış, birçok yazar hapse atılmış ya da toplama kamplarına gönderilmiştir.

105 Tobin, "A 'Struggle of Life or Death", s. 310.

106 Turan, "ئەشريياتچىلىقىمىزنىڭ تەرەققىيات يولى شىنجاڭ مەدەنىيتى". s. 95.

Ardından 2022 yılında Pekin Üniversitesi *Sosyoloji Dergisi*'nde yayımlanan bir makalede, bu romanların milliyetçi duyguları körükleyebileceği ve ayrılıkçı düşüncelere zemin hazırlayabileceği yönünde değerlendirme yapılmıştır.[107] Anlaşılıyor ki, Uygurlar'ın kültürel ve etnik kimliklerini koruma çabalarıyla haksızlıklara karşı verdikleri mücadele, Çin yönetimi tarafından bir tehdit olarak algılanmıştır.

Ayrıca 2013 yılında Pekin'de bir Uygur'un kalabalık üzerine araç sürerek gerçekleştirdiği saldırı[108] ve 2014 yılında Urumçi'deki sabah pazarı saldırıları,[109] Çin kamuoyunda yalnızca saldırıyı düzenleyen kişilerin değil, genel olarak Doğu Türkistan halkının terörle ilişkilendirilmesine yol açmıştır.[110] Bu olaylar, devletin Uygurlar'a yönelik güvenlik politikalarını giderek daha sertleştirmesi için gerekçe oluşturmuş ve Xi Jinping'in iktidara gelmesiyle baskıcı politikalar daha radikal bir boyuta ulaşmıştır. Xi dönemi Çin etnik politikasının en belirgin yönü *Zhonghua minzu* kavramı çerçevesinde asimilasyoncu bir ortak Çin üst kimliği inşası girişimi olmuştur. Mao'dan sonra 1990'larda ünlü etnik teorisyen Fei Xiaotong Konfüçyüsçü etnik ilişki çerçevesinde Çin halkının 2000 yıllık etnik entegrasyon sürecini inceleyerek *Zhonghua minzu* kavramını önemli katkıda bulunmuştu. Fei'in teorisine göre, *Zhonghua minzu*, elli altı etnik grubu temsil eden üst düzey kimliktir. Bu kimlik çeşitli etnik grupların birleşimi sonucu ortaya çıkmıştır. 2000 yıldan fazla bir süredir, Han etnik grubu genişleyerek çeşitli etnik grupları emerek ve birleştirerek bu entegrasyonda temel bir rol oynamıştır.[111] Fei çeşitliliğe tolere eden ama Han kültürü çerçevesinde uzun vadede entegrasyonu hedefleyen bir Çin üst kimliğini öne sürmüştür ve onun görüşü geniş çapta kabul edilmiştir.

Xi, 2014 yılında düzenlenen IV. Merkezî Etnik Çalışma Konferansı'nda etnik bütünleşmenin ve birleşik *Zhonghua minzu* kimliğinin önemini vurgulayarak, çift dilli eğitim, etnik gruplar arası akkültürasyon, etnik birlik için yasal önlemler ve gençlere yönelik ulusal bilinç programları gibi politikalar başlatılması gibi konulara vurgu yapmıştır. Xi, *Zhonghua minzu* her zaman birliği takip ettiğini ve etnik stratejinin merkezinde işte bu Çin ulusunun büyük birliğinin olduğunu vurguladı.[112] Ma Rong, konferansın ardından yazdığı bir makalede Xi'nin etnik politikasının eşitliliği bırakarak etnik grupların kaynaşması, kültürel alışverişi ve entegrasyonuna

107 Sun, "Historical Narrative ", s. 18-20.

108 Rajagopalan, "China security chief blames Uighur Islamists".

109 BBC, "Deadly China blast".

110 Guan, "The stigmatized 'border'", s. 1-6.

111 Ma, "The pluralistic unity of the Zhonghua Minzu".

112 Chang, "Research on Xi Jinping's Thoughts", s. 36-47.

odaklandığını ifade etmiştir.[113] Nitekim bu asimilasyoncu politika "partinin yeni dönem etnik çalışması" olarak belirlenmiştir.[114]

Uygur meselesine gelince, meselenin sebepleri kültürel farklılık ve devletin baskılarına karşı zaman zaman sert tepkilere dönüşen karşılık şeklinde değerlendirerek, "Çin ulusu bilinci oluşturmak" (铸牢中华民族共同体意识) ve "Teröre Karşı Sert Darbe" (严厉打击暴力恐怖活动) adında iki programı eş zamanlı olarak başlatılmıştır. 2016 yılında Tibet'te baskıcı uygulamalarla tanılan Tibet Parti Sekreteri Chen Quanguo, Doğu Türkistan'a sekreter atanmış ve 2017 itibariyle giriş bölümünde anlatıldığı gibi geniş çaplı tutuklamalar başlamıştır. Bu süreçte Uygurlar, toplama kamplarına atılmış, ardından hapis cezalarına çarptırılmış veya zorla üretim fabrikalarına yönlendirilmiştir. Uygulanan politikalar, Doğu Türkistan'daki bütün Türk halklarını hedef almış olup kapsamı ve yöntemleri açısından benzersiz bir baskı sürecini beraberinde getirmiştir. 2017 yılında Çin dinî işleri yetkilisi "Soylarını kurut, köklerini kopar, bağlarını kes ve kökenlerini yok et" çağrısında bulunmuştur.[115]

Politikaların radikal niteliği, gündelik yaşam pratiklerine kadar uzanmıştır. Mesela evinde fazla gıda bulundurmak dahi aşırılık ve terör belirtisi olarak değerlendirilmiştir.[116] Uygulamalar, yalnızca bireysel hakları değil, Uygurlar'ın etnik, kültürel ve dinî kimliklerini de doğrudan hedef almıştır. Kamplarda tutulan kişiler dinî inançlarını reddetmeye zorlanmış, ana dillerinde konuşmaları yasaklanmıştır.[117] Kamp mağdurlarının anlattıklarına göre Uygurlar en az 1000'den fazla Çince karakter öğrenmeleri, Çince konuşmaları ve sadık bir Çin tebaası olduklarını belirtmeleri gerektiğini anlatmaktadır. Bunun yanı sıra, yetkililer tutukluların dinî ve kültürel pratikleri, diğer tutukluları, arkadaşlarını ve ailelerini eleştirmeye zorlamışlardır.[118]

Dışarıda dinî ibadetler yasaklanmış, Uygurlar ise helal olmayan gıdalar tüketmeye zorlanmıştır.[119] Geleneksel Çin bayramlarının kutlanması zorunlu hale getirilmiştir.[120] Uygur evleri ve köyleri "reform" adı altında yıkılmış, halk ise farklı bölgelere göç ettirilmiştir.[121] Uygurlar'ın günlük yaşam

113 Ma, "Comrade Xi Jinping's recent speech", s. 123.
114 State Ethnic Affairs Commission, "We must make strengthening".
115 Human Rights Watch, "Break Their Lineage", s. 1.
116 Denyer, "From burqas to boxing gloves".
117 Byler, "The smart camp as classroom", s. 429-434.
118 Human Rights Watch, "Break Their Lineage", s. 22-30.
119 Yan, "China's Uyghur Muslims forced to eat and drink".
120 Mehriban, "In song and dance".
121 Shi, "Carry out high-quality".

tarzlarını, sosyal çevrelerini ve düşüncelerini kontrol edebilmek amacıyla yapay zekâ destekli veri toplama, yüz tanıma ve fişleme sistemlerini entegre eden Orwell tarzı bir yüksek teknoloji gözetim sistemi uygulanmaktadır. Uygurlar siyasî görüşleri, kimlikleri ve diğer kişisel bilgilerini izleyen gözetim uygulamalarını telefonlarına yüklemeye zorlanmakta; ayrıca rutin telefon kontrolleri, biyometrik taramalar ve sorgulamalara maruz bırakılmaktadır.[122] Benzer uygulamalardan daha fazla örnek vermek mümkündür.

Baskı politikalarının bir sonucu olarak Uygurlar'ın Çin ulusuna aidiyetlerini ifade etmeleri teşvik edilmiş, dinî unsurlardan uzaklaşan bir kimlik oluşturulmaya çalışılmıştır. Mesela eski şarkı ve şiirlerin yeniden seslendirilmesi sırasında "Allah" ve "Tanrı" gibi kelimeler çıkartılmıştır.[123] Ayrıca Uygur, Kazak ve Kırgız kadınlarının Çinli erkeklerle evlenmesi devlet tarafından teşvik edilmiş ve bu tür evliliklerin sayısında belirgin bir artış gözlemlenmektedir.[124]

Sonuç

Çin'in ötekilere bakışı, kültürel temelli olup kendi siyasî sınırları içerisinde farklı kimlik ve kültürlere karşı düşük tolerans göstermektedir. Geleneksel yönetim anlayışına göre farklılık, homojenlik ve toplumsal uyumu bozarak ulusal birliği ve Çin kültürünün tehdit etmektedir. Bu sebeple Çin sınırları içinde yaşayan halkların, Çin'in yüksek medeniyetine adapte olarak büyük birliği gerçekleştirmesi ve koruması beklenmektedir. Bu yaklaşım, tarih boyunca Çinli ve Çinli olmayan topluluklar arasındaki ilişkileri şekillendirmiştir. Pek çok toplum, bu çerçevede Çin medeniyetine entegre olmuştur; ancak bu süreçte ciddi baskılar, şiddet, aşağılanma ve marjinalleştirme gibi uygulamalara maruz kalmışlardır. Modern dönem ulus anlayışı da farklı kavramlar kullanılsa da kültürel merkeziyetçilik ve farklılıkları Çin kültürüne entegre etme düşüncesi etrafında gelişmiştir. Bu bakış açısı günümüzde Huiler'e ve Uygurlar'a uygulanan politikalardaki farklılıkların temelini oluşturmaktadır.

VII. yüzyılda Arap, Pers, Türk ve Çin halklarının etkileşimi sonucunda oluşan Hui müslümanları, tarihsel olarak Çin kültürüyle iç içe olmuş, zamanla yönetici sınıfa dahi dahil edilmiştir. Moğol kökenli Yuan hanedanlığı döneminde siyasî ve bürokratik kademelerde yer alan Huiler, Ming hanedanlığının iktidara gelmesiyle birlikte sert dönüşüm politikalarına maruz kalmıştır. Bu süreçte Huiler, fiziksel ve kültürel kimliklerini büyük ölçüde

122 Oztig - Karluk, "The impact of China's high-tech", s. 504–522.

123 *Dawut*; *Who Uploaded This Banned Song*.

124 Forced Marriage of Uyghur Women, s. 6-28.

kaybetmiş, isimleri Çinlileşmiş ve dinî pratikleri Çin kültürüyle daha fazla bütünleşmiştir. Bu dönüşüm sonucunda, İslam ve Konfüçyüsçülüğün sentezlendiği "Han Kitap" ortaya çıkmıştır. XVIII. yüzyıldan itibaren bazı tarikatların yayılması ve Hui kimliğini yenileme çabaları, eş zamanlı olarak Çin'deki büyük halk isyanlarıyla birlikte Hui toplumu ile Han Çinliler ve devlet arasında gerilime yol açmış ve nihayetinde kitlesel katliamlarla sonuçlanan savaşlar meydana gelmiştir. Ancak XX. yüzyılda modern ulus-devlet düşüncesinin yayılmasıyla birlikte Huiler başta kendilerini Çin ulusunun bir parçası olarak tanımlamış ve bağımsızlık arayışında olmamıştır. Çin Halk Cumhuriyeti döneminde ise özerklik statü verilmiş, Çin ulusal kimliği içinde daha eşit bir konuma sahip olmuş, Çin'in müslüman ülkelerle olan ticarî ve kültürel faaliyetlerinde köprülük rolü oynamıştır. Dolayısıyla Çin hükümeti tarafından dünyaya model müslümanlar olarak sunulmuştur. Ancak 2018'de başlayan İslam'ı Çinlileştirme politikasıyla Hui imamlar tutuklanmış, dinî hayatlarına müdahale edilmiş, gençlerin dinî eğitimi yasaklanmış ve pek çok Hui camilerinin dış görünümü "yabancı" olarak değerlendirilerek kubbe ve minareleri kaldırılmıştır. Hui halkı bu konuda görüşlerini beyan etmekten de aciz duruma düşürülmüştür. Bu gerçekler Huiler'in baskı görmediği söyleminin doğruyu yansıtmadığını göstermektedir.

Uygurlar'ın durumu ise Hui toplumundan farklı bir seyir izlemiştir. Yaşadıkları bölgenin Çin kültür havzasından uzak olması, etnik, dilsel ve dinî açılardan Çin'den belirgin şekilde ayrışmaları ve tarihsel süreçte çoğunlukla Çin merkezli bir yönetimin parçası olmamaları, Uygurlar'ın kültürel anlamda farklı bir kimlik geliştirmesine sebep olmuştur. 1884 yılında bölge, resmen Mançu hanedanlığının bir eyaleti haline getirilse de Çin nüfusunun varlığı son derece sınırlı kalmış ve Çin kültürü Uygurlar üzerinde belirleyici bir etkiye sahip olmamıştır. Ancak 1949 yılında Çin Halk Cumhuriyeti'nin kuruluşuyla birlikte bölgedeki Çin unsuru giderek daha belirgin hale gelmiş ve Uygurlar'ın kültürel entegrasyonuna yönelik politikalar sistematik olarak uygulanmaya başlanmıştır.

Bu dönemde, Huiler'den farklı olarak Uygurlar'ın anayasal hakları çeşitli kısıtlamalara maruz kalmıştır. Anayasa tarafından güvence altına alınan dinî özgürlükler ve etnik kimliklerini yaşama hakkı, devlet tarafından "bölücülük" tehdidi olarak değerlendirilmiş ve sert müdahalelerle engellenmiştir. Bu durum Uygurlar'la Çin Devleti arasında sürekli bir baskı-reaksiyon döngüsü yaratmış ve süreç, toplama kampları ve zorla çalıştırma uygulamalarına kadar varan geniş çaplı asimilasyon politikalarına dönüşmüştür.

Huiler'e ve Uygurlar'a yönelik farklı muamelelerin arka planında, bu iki topluluğun Çinlileşme düzeylerindeki farklılık, farklı tarihî geçmişleri ve

Çin Devleti'nin güvenlik algısı yatmaktadır. Tarihsel açıdan değerlendirildiğinde, Hui topluluğu yüzyıllar boyunca Çin toplumu içinde kademeli olarak akkültüre olmuş, böylece devlet açısından tehdit oluşturmayan, "evcilleştirilmiş" bir grup haline gelmiştir. Buna karşılık, Uygurlar Çin'in siyasî ve kültürel yapısına ancak XX. yüzyılın ortalarından itibaren dahil edilmiş; Çinlileştirme politikalarına maruz kalmalarına rağmen hâlâ "yabani", "barbar", dolaysıyla tehdit unsuru olarak algılanmaktadır. Çin'in günümüzde uygulamakta olduğu politikalar, Uygurlar'ı Hui toplumu gibi "ehlîleşmiş" bir toplum haline getirme ve nihayetinde tamamen Çinlileştirme amacını taşımaktadır. Bu sebeple ilerleyen dönemlerde Uygurlar'a yönelik politikaların kültürel boyutuna odaklanan çalışmaların arttırılması ve bu topluluğun tam ölçekli bir asimilasyona maruz kalmasının önüne geçilmesi büyük önem arzetmektedir.

Son olarak, bu makalede ulaşılan çıkarım, doğrudan bir saha araştırmasına değil; mevcut literatürün tarihsel perspektiften analizi yoluyla yapılan teorik bir akıl yürütmeye dayanmaktadır. Daha kesin sonuçlara ulaşmak adına Huiler'in ve Uygurlar'ın yaşadığı bölgelerde yapılacak saha çalışmalarına, bu verilerin sosyolojik ve siyaset bilimi çerçevesinde teorik ve metodolojik olarak ele alınacağı araştırmalara ihtiyaç duyulmaktadır.

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Extended Summary

"**Wild" and "Tamed" Barbarians: Why are Hui Muslims not Oppressed like the Uyghurs**?

This study examines the underlying reasons for China's differential treatment of Hui Muslims and Uyghurs through an interdisciplinary approach. Since the "peaceful liberation" of East Turkistan in 1949, China's policy towards Uyghurs has been consistently repressive and assimilationist. Since 2016, with the establishment of "re-education camps" and the onset of mass detention, China's policy has become exceedingly comprehensive, harsh, and coercive. Indirectly referring to the religious and ethnic identity of the Uyghurs, China has asserted that religious extremism and separatism pose threats to the nation's security and unity, and that the policies targeting Uyghurs are necessary to counter the influence of religious radicalism, extremism, and terrorism. Although Hui Muslims adhere to the same religion, they have not experienced state oppression to the same extent as the Uyghurs, but are rather portrayed as "good Muslims." This disparity raises the question of why Hui and Uyghurs, despite belonging to the same religion, are treated differently.

The rationale for this approach stems from China's perception of the "Other," a worldview deeply embedded in its culture and history. This perspective shows low tolerance for diverse identities and cultures within its political boundaries. The traditional Hua-Yi Order governance principles posit that diversity disrupts homogeneity and social

harmony, threatening Chinese unity. Consequently, all communities within China's borders must acculturate into Han Chinese culture and maintain greater unity. This approach has historically influenced relationships between Chinese and non-Chinese populations. Many non-Chinese groups have integrated into Chinese culture, though, they have faced significant pressures, violence, humiliation, and marginalization.

Hui Muslims, originating in the seventh century through interactions among Arab, Persian, Turkic, and Chinese groups, have historically been deeply woven into Chinese culture, eventually becoming part of the ruling class. During the Yuan Dynasty, established by the Mongols, the Hui occupied important political status and administrative roles. However, with the Ming Dynasty, they faced stringent assimilation policies. The Hui largely lost their distinct physical and cultural traits as their names were adapted to Chinese forms, and their religious practices aligned with Chinese cultural norms. This transformation led to the creation of the "Han Kitab," a comprehensive religious and cultural encyclopedia that integrates Islamic teachings with Confucian thought. From the 18th century onward, the spread of Jahirriya Sufi orders and the strengthening of Hui identity created tensions with the Han people and the state, coinciding with significant rebellions in China. This resulted in wars leading to massacres, discrimination, relocation and cultural destruction. However, Hui Muslims aimed to "fight for religion" rather than "fight for independence."

In the 20th century, modern nation-state ideology and ethnic theory led Chinese scholars to develop a comprehensive Chinese identity known as the *Zhonghua Minzu*. This new identity, grounded in cultural norms and lifestyle, facilitated the inclusion of the Hui community, already culturally and linguistically aligned with Han Chinese culture, as a non-obstructive element to national unity. Concurrently, Hui intellectuals actively engaged in discussions regarding the construction of the modern Chinese nation, asserting that the Hui community, with its Islamic identity, was an integral part of the Chinese nation. Under PRC governance, the Hui community attained greater equity and autonomy, and was incorporated into the administrative process. In China's relations with Muslim nations, the Hui community has served as a representative and been portrayed by the Chinese government as an exemplary Muslim community.

The Uyghurs, including other Turkic people in the East Turkistan region, such as Kazak, Kirgiz, Ozbek and Tatar, on the other hand, have followed a different historical trajectory from the Hui. The geographical distance of East Turkistan from China's cultural sphere, its distinct ethnic, linguistic, and religious characteristics, and its historical detachment from Chinese-centered governance have led it to develop a distinct cultural identity. Although the region was officially incorporated into the Manchu Qing Dynasty as a province in 1884, Chinese settlement remained extremely limited, and Chinese culture had little influence on the Uyghurs. However, following the establishment of the PRC, the presence of Han elements in the region became more pronounced, and systematic assimilation policies targeting the Uyghurs were implemented.

Unlike the Hui, the Uyghurs have faced constitutional restrictions on their rights. Religious freedoms and the right to maintain their ethnic identity, which are formally guaranteed by the constitution, have been perceived by the state as a "separatist" threat and have been met with constant interventions. This has resulted in a persistent cycle

of repression and resistance, both peaceful and violent, between the Uyghurs and the Chinese state. Under the leadership of Xi Jinping, China’s policy towards the Uyghurs has evolved to become more radical, comprehensive, and oppressive, culminating in large-scale assimilation policies, including but not limited to re-education camps and forced labor practices.

Analyzing the issue through the lens of China’s perception of others and its different historical relations with Uyghurs and Hui Muslims shows that the main reasons behind the differential treatment of the Hui and Uyghurs are their degree of Sinicization, their historical background and China’s security perception. From a historical perspective, the Hui have undergone centuries of acculturation within Chinese society and ceased to be perceived as a threat. In contrast, the Uyghurs were only incorporated into China’s political and cultural sphere in the mid-20th century. Despite being subjected to assimilation policies, they are still regarded as a threat.

Keywords: Sino-Barbarian Order, Chinese nation, Acculturation, Diversities, Uyghur, Hui.

Araştırma Makalesi / Research Article

Türk Maden Sanatında Askı Toplarının İşlevleri Üzerine Bir Değerlendirme: İstanbul Türk ve İslam Eserleri Müzesi'ndeki Osmanlı Dönemi Örnekleri

FIRAT ALLAK*

Öz

Bu çalışmada, İstanbul Türk ve İslam Eserleri Müzesi'nde bulunan madeni askı topları, sanat tarihi disiplini çerçevesinde ele alınarak değerlendirilmiştir. Çalışmanın amacı, askı toplarının ne olduklarını ve hangi işlevlerde kullanıldıklarını ortaya koymak; incelenen örneklerin malzeme, yapım ve süsleme teknikleriyle üzerlerindeki bezemeleri ayrıntılı biçimde açıklamaktır. Çalışmanın bir diğer amacı ise, bu eser grubunun işlevine dair farklı görüşlerin ortaya konulması ve değerlendirilmesidir. Bu görüşler doğrultusunda ele alınan örneklerle yurt içi ve yurt dışında bulunan benzer askı topları karşılaştırılarak bir sonuca ulaşılması hedeflenmektedir. Yapılan araştırmalar, Osmanlı öncesi dönemlerde örneğine rastlanmayan; ahşap, seramik, maden, deve kuşu yumurtası ve hindistan cevizi gibi çeşitli malzemelerden yapılan askı toplarının, Osmanlı sanatında ortaya çıktığını göstermektedir. İncelenen askı topları, çoğunlukla gümüş malzemeli olup, XVII. yüzyıl ve sonrasında üretildiği anlaşılmaktadır. Ele alınan eserlerin formları birbirine yakın bir özellik göstermektedir. Dövme ve döküm teknikleriyle üretilen askı toplarında; süsleme tekniği olarak kazıma, kabartma, mıhlama, güverse gibi tekniklerin kullanıldığı tespit edilmiştir. Askı toplarında dikkat çekici bir diğer husus ise; üzerlerinde dönemin sanat zevkini yansıtan çeşitli tekniklerle işlenen birden fazla değerli taşların olmasıdır. Ustalıkla eser üzerine yerleştirilen değerli taşlar, aynı zamanda üretildiği dönemde kuyumculuk sanatının da ne kadar geliştiğini göstermektedir.

Anahtar Kelimeler: Maden Sanatı, Askı topu, İşlev, Mıhlama, Değerli taşlar.

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DOI: 10.26570/isad.1656699 • Geliş/Received 12.03.2025 • Kabul/Accepted 03.11.2025
Atıf/Citation Allak, Fırat, "Türk Maden Sanatında Askı Toplarının İşlevleri Üzerine Bir Değerlendirme: İstanbul Türk ve İslam Eserleri Müzesi'ndeki Osmanlı Dönemi Örnekleri", *İslam Araştırmaları Dergisi*, 55 (2026): 71-96.

An Evaluation of the Functions of Spherical Hangings in Turkish Metal Art: Ottoman Period Examples in the Istanbul Museum of Turkish and Islamic Arts

Abstract

In this study, metal spherical hangings housed in the Turkish and Islamic Arts Museum in Istanbul are examined within the framework of the discipline of Art History. The aim of the study is to offer an explanation of Spherical hangings and their intended functions, as well as to provide a detailed analysis of the materials, production and decoration techniques, and the ornamental features found on the examined examples. This study also aims to present and evaluate the various scholarly interpretations regarding the function of this group of objects. In line with these interpretations, a comparative analysis is conducted between the selected examples and similar spherical hangings found both domestically and internationally in order to reach a comprehensive conclusion. Research has shown that spherical hangings, made from various materials such as wood, ceramic, metal, ostrich eggshell, and coconut, emerged within Ottoman art, with no known examples predating the Ottoman period. The studied spherical hangings are predominantly made of silver and were produced during or after the 16th century. The forms of the examined objects display a high degree of similarity. Produced using techniques such as forging and casting, the decoration methods identified include engraving, embossing, inlay, and filigree work. Another notable feature of these spherical hangings is the presence of multiple gemstones, set using a variety of artistic techniques that reflect the aesthetic preferences of the period. The skillful placement of these precious stones also serves to indicate the advanced level of goldsmithing in the era in which they were produced.

Keywords: Metal art, Spherical hangings, Function, Riveting, Precious stones.

Giriş

Askı topu, cami ve türbelerde süs olarak kubbenin ortasından aşağıya doğru bir zincir yardımıyla sarkıtılan çini, ahşap, deve kuşu yumurtası ve madenden üretilmiş toplar şeklinde tanımlanmaktadır.[1] Küre şeklinde olanlar hindistan cevizinden, beyzî formda olanlar ise genellikle deve kuşu yumurtasından yapılmışlardır.[2] Çapları 12 ile 30 cm. arasında değişkenlik gösteren askı toplarının, günümüze ulaşan örneklerinden yola çıkarak daha çok seramik malzemeden üretildiği anlaşılmaktadır. Osmanlı'da XVI. yüzyılda İznik'te, XVIII. yüzyılda Kütahya'da üretimleri yoğunluk kazanmıştır.[3]

Osmanlı öncesi örneklerine pek rastlanılmayan askı toplarının Osmanlı döneminde ortaya çıktığı düşünülmektedir. Bu topların cami, türbe, saray odaları ve padişah tahtlarının tavanlarında dekoratif amaçlı olarak kullanıldığı; ayrıca makam belirleyici bir unsur olarak ve cihan hakimiyetini

1 Arseven, "Askı Top", s. 111; Sözen – Tanyeli, *Sanat Kavram ve Terimleri Sözlüğü*, s. 36; Gültekin, "Ahşap Askı Top", s. 132.

2 Ertuğrul, "Askı", s. 494.

3 Anonim, "Askı Top", I, 143.

simgelemek amacıyla da işlev gördüğü düşünülmektedir.[4] Osmanlı döneminden günümüze ulaşan askı topu örneklerinden biri, ahşap malzemeden üretilmiş olup Süleymaniye Camii'ne aittir. Armudî biçimli gövdesi ve kalem işi bezemeleriyle dikkat çeken bu eser (Foto 1), dönemin teknik ve süsleme özelliklerini yansıtan nadir örneklerden biridir.[5]

Foto 1: Süleymaniye Camii'ndeki askı topu[6]

Osmanlı Devleti'nde XV. yüzyıl ile XVII. yüzyılın sonlarına kadar İznik, çini üretiminde öne çıkan önemli merkezlerden biri olmuştur. Bu dönemde İznik atölyelerinde üretilen yüksek kaliteli çiniler, başta cami, medrese, türbe ve saraylar olmak üzere birçok anıtsal yapının iç ve dış süslemelerinde yoğun biçimde kullanılmıştır. İznik çinileri hem teknik başarıları hem de özgün desen ve renkleriyle Osmanlı mimari süsleme sanatında belirleyici bir rol oynamıştır. Mimari süslemelerin yanı sıra, İznik seramik üretimi kapsamında farklı işlevlere yönelik çeşitli kap formları da üretilmiş ve günümüze ulaşmıştır. Bu seramik ürünler arasında, farklı boyutlarda yapılmış askı topu örnekleri de yer almaktadır. Bugün Kudüs Leo Aryeh Mayer İslam Sanatları Müzesi'nde yer alan mavi-beyaz renkteki askı topu, küre formunda olup (Foto 2; eser nr. 277) 1480-1490 yılları arasına tarihlendirilmektedir.[7] Londra Victoria ve Albert Müzesi'nde bulunan 1515 tarihli başka bir örnek (Foto 3; eser nr. 280) yine mavi-beyaz renkte dönem üslubunu yansıtacak şekilde yapılmıştır.[8]

4 Şahin, *Türk ve İslam Eserleri Müzesi,* s. 287.

5 Gültekin, "Süleymaniye Camii'ne Ait Ahşap "Askı Top"un Konservasyon ve Restorasyonu", s. 143.

6 Gültekin, "Süleymaniye Camii'ne Ait Ahşap "Askı Top"un Konservasyon ve Restorasyonu", s. 143.

7 Atasoy – Raby, *İznik*, s. 151.

8 Atasoy – Raby, *İznik*, s. 51.

Foto 2: Kudüs İslam Sanatları Müzesi'nde yer alan askı topu[9]

Foto 3: Londra Victoria ve Albert Müzesi'nde yer alan askı topu[10]

Osmanlı döneminde İznik'ten sonra ikinci bir çini-seramik üretimin merkezi, çevresinde zengin kil yatakları bulunan Kütahya'dır.[11] İznik'te olduğu gibi Kütahya'da da aralarında askı toplarının da olduğu farklı işlevlere

9 Atasoy – Raby, İznik, s. 51.

10 Atasoy – Raby, *İznik*, s. 153.

11 Bilgi, *Kütahya Çini ve Seramikleri,* s. 9.

sahip eserler üretilmiştir. En erken örneklerine XVI. yüzyılda rastlanılan askı toplarının üretiminin, günümüze ulaşan eserlerden anlaşıldığı kadarıyla XVIII. yüzyılda yoğunlaştığı, XIX. yüzyıl da devam ettiği görülmektedir.[12] Mesela Kütahya üretimli olup, günümüzde Metropolitan Müzesi'nde yer alan basık küre formlu seramik askı topu (Foto 4) XIX. yüzyıla aittir.[13]

Foto 4: Amerika Birleşik Devletleri
Metropolitan Müzesi'nde yer alan askı topu[14]

Askı toplarının çini malzeme dışında, madenden üretilmiş örnekleri de bulunmaktadır. Madenden yapılmış en erken tarihli askı topu örnekleri tespit edilebildiği kadarıyla Eyüp Sultan Türbesi'ne vakfedilmiştir. Günümüzde bu örnekler, türbe mekânında Eyüp Sultan'ın sandukasının üzerinde asma kandillerle birlikte asılı halde sergilenmektedir.[15] Madenden üretilmiş ve üzerleri çeşitli niteliklere sahip değerli taşlarla süslenmiş askı toplarının seçkin örnekleri, Topkapı Sarayı Müzesi'nde mukaddes emanetlerin korunduğu Has Oda ile Hazine Dairesi'nde muhafaza edilmektedir. Bazı örneklerin gövdelerinde padişah tuğraları kabartma tekniği ile işlenmiş; bu tuğralar elmaslarla bezeli ve dikkat çekici büyüklükte olacak şekilde uygulanmıştır[16] (Foto 5). Bu örneklerin dışında, nitelikli işçiliğe sahip bazı askı topları da İstanbul Türk ve İslam Eserleri Müzesi ile İstanbul Türbeler Müzesi'nde bulunmaktadır.

12 Atasoy – Raby, *İznik*, s. 141.
13 Atasoy – Raby, *İznik*, s. 141.
14 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 18.
15 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 536-551.
16 Çığ, "Topkapı Sarayındaki Padişah Askıları", s. 139.

Foto 5: Topkapı Sarayı Müzesi'nde yer alan
Padişah III. Selim'in tuğrasının işlendiği askı topu[17]

Bu çalışmanın amacı, İstanbul Türk ve İslam Eserleri Müzesi envanterine kayıtlı askı toplarını, sanat tarihi disiplini çerçevesinde form, süsleme ve tasarım anlayışları açısından değerlendirmektir. Askı topları üzerine yapılan araştırmalar oldukça sınırlı olup, konuya dair bilgi, belge ve yayınların azlığı dikkat çekmektedir. Bu durum söz konusu eser grubunun bilimsel açıdan ele alınmasını ve değerlendirilmesini önemli kılmaktadır. Çalışma yalnızca madenî malzemeden üretilmiş askı toplarını kapsamaktadır. Bu çerçevede ilgili müzeye eserlerin yayımlanmasına yönelik bir izin talebiyle başvuruda bulunulmuş; olumlu cevap alınmasının ardından, müze uzmanları tarafından eserlerin fotoğrafları dijital ortamda tarafıma iletilmiştir.[18] İncelenen askı toplarının, İstanbul'daki bazı türbelerden müze koleksiyonuna aktarılmıştır. Müze tarafından incelenmesine onay verilen ve görselleri sağlanan örnekler çalışmaya dahil edilmiştir. Eserler üzerindeki yapım teknikleri, süsleme yöntemleri ve bezeme gibi sanatsal özellikler ayrıntılı biçimde tanıtılmış; bu bulgular, farklı müze ve koleksiyonlardaki benzer örneklerle karşılaştırılmıştır. Elde edilen sonuçlar, konuya dair mevcut yaklaşımlar etrafında tartışılmıştır.

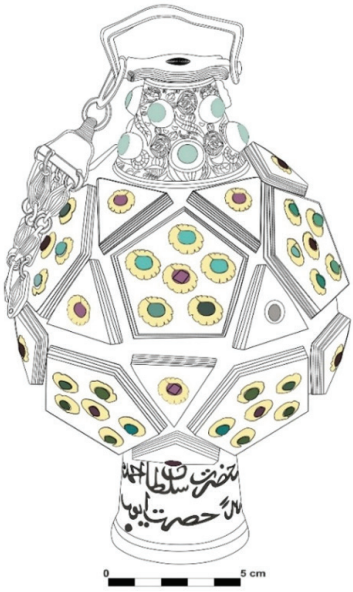
17 Çığ, "Topkapı Sarayındaki Padişah Askıları", s. 142.

18 Eser çekimleri sırasında sağladıkları destek için İstanbul Türk ve İslam Eserleri Müzesi idaresine ve uzmanlarına teşekkür ederim.

Örnekler

Örnek 1

Foto 6: Örnek 1'in genel görünümü



Çizim 1: Örnek 1'in çizimi[19]

Envanter nr. 187, ölçüleri: yükseklik: 15 cm.; Foto 6: Çizim nr. 1, malzemesi: Gümüş, altın, taş; yapım tekniği: Döküm ve dövme; süsleme tekniği: Kazıma, mıhlama.

Askı topu, küre formunda bir gövdeye sahiptir. Silindirik biçimde yükselen kaidesinin yüzeyine kazıma tekniği ile işlenmiş iki satırlık kitabede, eserin Sultan I. Ahmed tarafından Eyüp Sultan Türbesi'ne vakfedildiği belirtilmektedir. Gövde, yüksek tutulan kaidenin üzerinde küresel biçimde yükselmekte olup, üst kısmında küreyi kapatacak şekilde aşağıdan yukarıya doğru daralan bir boyun yer almaktadır. Boynun ağız kısmı ise yatay dikdörtgen formunda bir kapak bulunmaktadır. Bu kapağın her iki yanına, eserin asılabilmesi amacıyla tutamak vida ile sabitlenmiştir. Tutamağa, halka yardımıyla dekoratif amaçlı metal levhalar asılmıştır. Süsleme açısından oldukça zengin bir işçiliğe sahip olduğu anlaşılan askı topunun gövdesindeki uygulamalar dikkat çekicidir. Gövdenin bütün yüzeyi üçgen

19 Bu çalışmanın tüm çizimlerini gerçekleştiren Uzm. Dilek Zirekbilek'e teşekkürlerimi sunuyorum.

ve beşgen formunda levhalarla kaplanmış; bu levhaların içi cam malzeme ile doldurulmuştur. Bu yüzeyler, mıhlama tekniği ile yerleştirilen yakut, firuze ve zümrüt gibi değerli taşlarla bezenmiştir. Beşgen levhaların her birine altışar, üçgen levhaların her birine ise birer değerli taş yerleştirilmiştir. Taşların düşmesini engellemek amacıyla, çevreleri sıvama yöntemiyle altınla kaplanmıştır. Askı topun boyun kısmı ise bitkisel bezemeli bir zemin üzerine mıhlama tekniği ile yerleştirilen firuze ve zümrüt taşlarla süslenmiş; böylece gövde ile bütünlük sağlayacak bir bezeme programının uygulandığı görülmektedir.

Örnek 2

Foto 7: Örnek 2'in genel görünümü; Foto 8: Örnek 2'nin süsleme ve kitabe detayı; Çizim 2: Örnek 2'nin çizimi

Envanter nr. 202, ölçüleri: Yükseklik: 40 cm.; fotoğraf nr. 7-8; çizim nr. 2, malzemesi: Hindistan cevizi, değerli taşlar, madenî levhalar; yapım tekniği: Döküm ve dövme; süsleme tekniği: Kazıma, mıhlama.

Askı topu, topuz dipli ve küresel gövdeli olarak tasarlanmıştır. Gövde kısmı hindistan cevizinden yapılmıştır. Üst bölümde, yarım kubbe formunda bir kapak yer almakta olup bu kapak, mıhlama tekniği ile yerleştirilmiş firuze taşlarla bezenmiştir. Kapağın ortasında, eserin asılmasını sağlayan zincire bağlı bir kanca bulunmaktadır. Gövdeye, levha üzerine kazıma tekniği ile yazılmış bir kitabe yerleştirilmiştir. Kitabede, eserin Sultan Ahmed tarafından Eyüp Sultan Türbesi'ne vakfedildiği belirtilmektedir. Eserin dip kısmı topuz şeklinde ve kuvarstan yapılmıştır. Kuvarsın alt kısmında, püskül görünümünde tasarlanmış ve yaldızlanmış gümüş tellerle oluşturulmuş bir kulp yer almaktadır. Gövde üzerinde çivi ile monte edilmiş levha şeklinde şemseler bulunur. Bu şemseler, kazıma tekniği ile yapılmış bitkisel

süslemelerle, yüzeyin tamamını kaplayacak şekilde bezenmiştir. Bitkisel motiflerin arasına, mıhlama tekniği ile firuze ve sarı akik gibi değerli taşlar yerleştirilmiş, böylece hem gövde hem de şemseler estetik açıdan zenginleştirilmiştir.

Örnek 3




Foto 9: Örnek 3'teki askı topu teşhirdeki durumu; Foto 10-11: Örnek 3'teki askı topunun genel görünümü ve padişah tuğrası;[20] Çizim 3: Örnek 3'ün çizimi

Envanter nr. 210; yeri: Ölçüleri: Yükseklik: 32 cm.; foto 9-11: Çizim 3: malzemesi: Gümüş; yapı tekniği: Dövme; süsleme tekniği: Kabartma, kazıma

Askı topu, elips formuna yakın şişkin gövdelidir. Eserin üst kısmının merkezine bir kanca yapılmış, kancanın ortasından zincir geçirilerek askı topunun asılması sağlanmıştır. Aynı şekilde eserin dip kısmının ortasında aşağıya doğru sarkan dekoratif amaçlı gümüşten püskül yapılmıştır.

Yapılan araştırmalar sonucunda Garo Kürkman'ın *Osmanlı Gümüş Damgaları* adlı kitabında eseri yayımladığı tespit edilmiştir. Kürkman, eserin üzerinde Padişah Abdülmecid'e ait (1823-1861) tuğra ve sah damgasının olduğunu belirtmiştir.[21]

Eserin dikkat çeken özelliği bütün yüzeyinin boş bırakılmayacak şekilde süslenmiş olmasıdır. Askı topunun üst ve dip kısmının merkezine, uçları gövdeye dönük iri kenger yaprakları yerleştirilmiştir. Bu yaprakların arasından, aşağıdan yukarıya doğru uzanan kıvrımlı ve sade kuşaklar geçmekte, kuşaklar helezonik formda gövdeyi sarmaktadır. Kuşaklar arasındaki boşluklar ise kabartma tekniği ile işlenmiş beş yapraklı çiçekler ve kıvrık dallarla hareketlendirilerek sarmaşık etkisi oluşturulmuştur.

20 Kürkman, *Osmanlı Gümüş Damgaları,* s. 195.

21 Kürkman, *Osmanlı Gümüş Damgaları,* s. 195.

Örnek 4

Foto 12: Örnek 4'teki askı topunun genel görünümü; Çizim 4: Örnek 4'ün çizimi

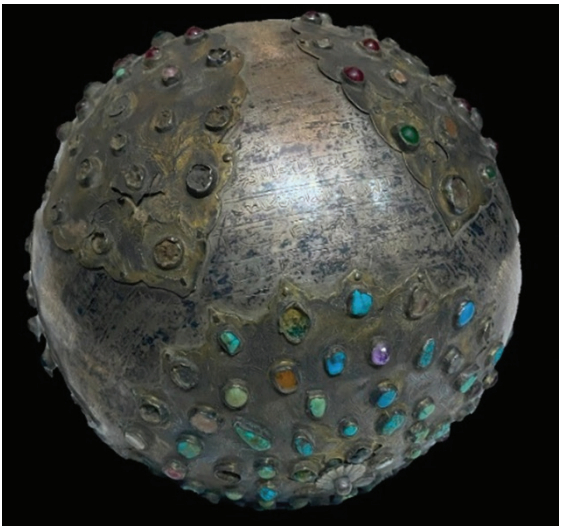


Foto 13: Örnek 4'teki askı topunun dip kısmı

Envanter nr. 197, ölçüleri: Yükseklik: 20 cm.; Foto 12-13: Çizim nr. 4; malzemesi: Gümüş; değerli taşlar; yapım tekniği: Döküm ve dövme; süsleme tekniği: Kazıma, mıhlama, yaldızlama

Tanımı: Askı topu, küresel gövdeli olup üst kısmı kademeli olarak daralan bir kapakla örtülmüştür. Kapağın tepesine bir kulp yerleştirilmiş, buradan uzanan üç uzun zincir diğer bir kapağa bağlanmıştır. Bu ikinci kapağın ortasında ise eserin tavana asılmasını sağlayan bir kulp bulunmaktadır. Eserin gövdesine yukarıdan aşağıya doğru bütün yüzeyine kazıma tekniği ile yazı yazılmıştır. Yazılar üst tarafta besmele ile başlamaktadır. Besmeleden sonra Âyetü'l-kürsî, daha sonra Fetih sûresi kazınmıştır. Askı topuna işlenen bütün yazılar on yedi satır halinde sülüs hatla işlenmiştir. Satırları ayırt etmek için aralarına kazıma tekniği ile çizgiler atılmıştır. Eserin gövdesinin ortasında, eş büyüklükte dilimlenmiş ve yaldızlanmış gümüş levhalardan oluşan şemseler, belirli aralıklarla çivilerle monte edilmiştir. Şemselerin yüzeyine kazıma tekniği ile lale ve kıvrık dal motifleri işlenmiştir. Bu motiflerin arasına mıhlama tekniği ile yakut, zümrüt, firuze, ametist, yeşim, akik ve kuvars gibi değerli taşlar yerleştirilerek yüzey hareketlendirilmiştir. Bazı taşların günümüze ulaşmadığı, taş yuvalarının ise farklı formlarda tasarlandığı görülmektedir. Yuvaların bir kısmı büyük ve dikdörtgen, bir kısmı ise dairesel formdadır. Şemselerin ortasında yer alan büyük yuvalardan, bu alanlara elmas yerleştirildiği düşünülmektedir. Askı topunun üst bölümünü, yaldızlı ve dilimli bir plaka sarmaktadır. Bu plaka üzerine kazıma tekniği ile lale ve kıvrık dal süslemeleri işlenmiş, yüzeye iki sıra halinde firuze ve yeşim taşlar mıhlama tekniği ile yerleştirilmiştir. Eserin dip kısmından gövdeye doğru genişleyen bölümünde, lale ve kıvrık dallarla bezenmiş, dilimli formda geniş bir levha yer almaktadır. Bu levhanın uçları çivilerle gövdeye sabitlenmiş, üzerine de şemseler ve üst plakada olduğu gibi mıhlama tekniği ile değerli taşlar yerleştirilmiştir.

Örnek 5

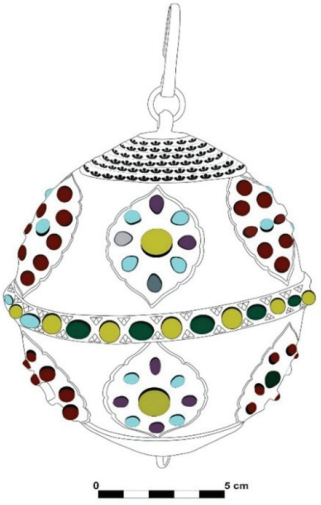


Foto 14: Örnek 5'teki askı topunun genel görünümü; Çizim 5: Örnek 5'in çizimi

Envanter nr. 189, ölçüleri: Yükseklik: 30 cm.; Foto 14: Çizim 5: Malzemesi: Gümüş, taş; tapım tekniği: Döküm ve dövme; süsleme tekniği: Kazıma, güverse, mıhlama

Tanımı: Askı topu küresel gövdelidir. Eserin üst ve alt tarafına aşağıdan yukarıya doğru kademeli olarak daralma gösteren birer kapak yapılmıştır. Güverselerle yüzeyleri hareketlendirilen kapakların ortasına birer kulp bulunur. Üstteki kapağın kulp kısmına bir halka geçirilerek eserin asılması için bir kancaya bağlanmıştır. Askı topunun gövdesi ortadan kalın bir levha ile ikiye ayrılmış, bu levhanın yüzeyine mıhlama tekniği ile eş büyüklükte zebercet taşının farklı renkleri yerleştirilmiştir. Levhanın alt ve üst taraflarına belirli aralıklarla dilimli şemseler çivi ile eserin gövdesine monte edilmiştir. Şemselerin yüzeylerine mıhlama tekniği ile zümrüt, firuze, zebercet, ametist, yakut, lal, akik gibi değerli taşlar yerleştirilmiş, taşların arası da kazımadan kıvrık dallarla hareketlendirilmiştir. Askı topunun üzerinde herhangi bir kitabe ya da yazı bulunmamaktadır.

Örnek 6

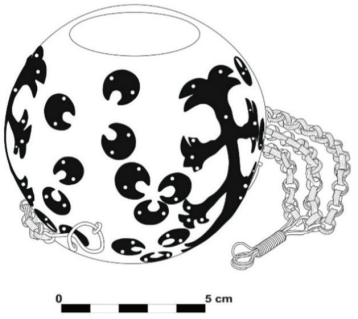


Foto 15: Örnek 6'daki askı topunun genel görünümü Çizim 6: Örnek 6'nın çizimi

Envanter nr. 189, ölçüleri: Yükseklik: 50 cm., Foto 15: Çizim nr. malzemesi: Hindistan cevizi, madenî levhalar, yapım tekniği: Dövme süsleme tekniği: -

Tanımı: Küresel gövdeli olarak tasarlanan askı topu, hindistan cevizinden üretilmiştir. Tavana asılabilmesi için üst kısmına bir kanca yerleştirilmiş; bu kancadan, üç sıralı tellerin halka biçiminde birbirine geçirilmesiyle oluşturulan yaldızlı bir zincir yükselmektedir. Yüzeye, süsleme amacıyla çivilerle monte edilmiş yaldızlı gümüş levhalar uygulanmıştır. Bu levhaların orta bölümünde dikey bir sütun yer almakta, sütunun her iki yanına ise üç sıra halinde, ağızları açık stilize edilmiş ejder figürleri yerleştirilmiştir. Aynı düzenleme, gövdenin diğer yüzeylerinde de tekrarlanmıştır. Ejder figürlerinin arasına belirli aralıkla gövdenin yüzeyine madenî levhalarla çintemani motifine yer verilmiştir.

Değerlendirme ve Karşılaştırma

Bu çalışmada İstanbul Türk ve İslam Eserleri Müzesi'nde bulunan altı adet askı topu incelenmiştir. Eserlerden sadece biri (Örnek 3) teşhir salonunda Osmanlı dönemi eserlerinin olduğu bölümde sergilenmektedir. Diğer beş örnek depolarda muhafaza edilmektedir. İncelenen askı toplarından üçünde (Örnek 1, 2, 3) kitabe veya dönemini kesin olarak tarihlendirebilecek yazıya yer verilmiştir. Örnek 1'de yer alan iki satırlı kitabede, eserin Sultan I. Ahmed tarafından Eyüp Sultan Türbesi'ne vakfedildiğine dair bir ifade yer almaktadır. Bu yazı içeriğine dayanarak, eserin söz konusu sultanın saltanat yılları (1590-1617) içerisinde üretildiği ve Eyüp Sultan Türbesi'ne vakfedildiği anlaşılmaktadır. Örnek 2'de ise askı topunun gövdesinin alt kısmında yer alan kartuştaki kitabede yine Sultan I. Ahmed'in Eyüp Sultan Türbesi'ne vakfettiği belirtilmiştir. Bu yazı, içerik bakımından Örnek 1'deki kitabe ile benzerlik göstermektedir. Dolayısıyla bu askı topunun da Sultan I. Ahmed'in hüküm sürdüğü dönemde (1590-1617) üretildiği söylenebilir. Ele alınan eserler içinde dönemi veya tarihi kesin olarak belirlenen bir diğer eser ise müzede teşhir bölümünde sergilenen Örnek 3'teki askı topudur. Bu askı topu üzerinde Sultan Abdülmecid'e ait kabartma tekniği ile tuğra bulunduğundan[22] eserin sözü edilen sultanın saltanat yılları arasında (1823-1861) yapıldığı düşünülmektedir. İncelenen askı toplarından Örnek 4, 5 ve 6'daki eserlerden tarih veya dönem belirtecek herhangi bir emareye yer verilmediğinden bu eserlerin form, tasarım ve süsleme özellikleri dikkate alınarak çalışmada incelenen Örnek 1 ve 2'deki eserlerle aynı ya da yakın dönemlerde üretildiği düşünülmektedir. Aynı şekilde İstanbul Türbeler Müzesi envanterine kayıtlı ve Sultan Ahmed'in saltanat yılları arasında yapıldığı üzerinde yer alan kitabe içeriğinden anlaşılan askı topların[23] (Foto 16-19) çalışmada incelenen örneklerle form ve tasarım açısından benzer olduğu tespit edilmiştir. Dolayısıyla çalışmada ele alınan üç örnek de (Örnek 4, 5, 6) Sultan Ahmed döneminde yapıldığı varsayılmaktadır.

Çalışmayı oluşturan altı adet askı topu birbirine yakın form özelliği göstermektedir. Eserlerden beşi küre formunda yapılırken sadece biri (Örnek 3) elips şeklinde üretilmiştir. Askı toplarından Örnek 1, 2, 4 ve 5'teki eserlerin üst bölümlerine birer kapak yapılmış, kapakları ortasına zincirler yapılarak eserlerin asılmasını sağlamıştır. Ele alınan askı toplarından Örnek 5'teki eserin üst tarafına yerleştirilen kapağın aynısı simetrik olarak alt tarafına dip bölümüne yapılmıştır.

Ele alınan eserlerde malzeme olarak gümüş madeninin sıkça tercih edildiği tespit edilmiştir. Gümüşün yanında iki askı topunda (Örnek 2, 6)

22 Kürkman, *Osmanlı Gümüş Damgaları,* s. 195.

23 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 536-551.

hindistan cevizi kullanılmıştır. Süsleme amacıyla kullanılan Örnek 1'deki eserin gövdesinde yer alan taşların etrafı altınla çevrilmiştir. İncelenen askı toplarında Örnek 2'de yer alan eserin topuz şeklinde tasarlanan dip bölümü ise kuvarstan yapılmıştır. Yapım tekniği olarak dövme ve döküm tekniklerinin uygulandığı askı toplarında, kulp kısımlarında döküm tekniğinden faydalanılmıştır.

Askı toplarındaki süsleme teknikleri başta kazıma olmak üzere, kabartma, mıhlama, güverse gibi maden sanatında kullanılan birçok tekniğin eserler üzerinde uygulandığı tespit edilmiştir. Kazıma tekniği beş örnekte (Örnek 1, 2, 3, 4, 5), kabartma tekniği bir örnekte (Örnek 3), mıhlama tekniği dört örnekte (Örnek 1, 2, 4, 5), güverse tekniği de bir örnekte (Örnek 5) kullanılmıştır. Kazıma tekniği, uygulanabilirliği kolay olduğu için sıkça tercih edildiği görülmektedir. Bu teknik hem yazı hem de bitkisel bezemelerde kullanılmıştır. Kabartma tekniğinin uygulandığı Örnek 3'teki askı topunda eserin gövdesini saran ve sarmaşık izlenimi veren bitkisel süslemeler bu yöntemle yapılmıştır. Ayrıca eser üzerinde yer alan Padişah Abdülmecid'e ait tuğra ve sah damgası da belirgin bir biçimde görülmesi için kabartma tekniği ile uygulandığı tespit edilmiştir. *Sah* kelimesi sözlükte "sahih, uygun, doğru" anlamına gelir.[24] Osmanlı Devleti madenî eserlerin üretiminde sanatkârın yanında yer almış; üretim sürecini devlet denetimiyle kontrol altında tutmuştur. Her eser, kalite kontrolünden geçirildikten sonra "sad" (ص) ve "ha" (ح) harflerinden oluşan "sah" damgasıyla devrin padişahına ait tuğra vurularak onaylanmıştır.[25]

Mıhlama tekniği, dört askı topunda (Örnek 1, 2, 4, 5) uygulandığı tespit edilmiştir. Bu teknik, değerli veya yarı değerli taşların madenin yüzeyine çeşitli usullerle yerleştirilmesi olarak tanımlanmaktadır.[26] Bu tekniğin ilk örneklerine Sumerler'e ait Ur Kraliyet mezarlarındaki eserlerde rastlanılmıştır.[27] Mıhlama tekniği, zaman içerisinde gelişerek Osmanlı sanatında çeşitli kapların ve takıların süslenmesinde sıkça tercih edilen bir teknik olmuştur. Osmanlı maden sanatkârları, bu tekniği ustalıkla eserlerde uyguladığı anlaşılmaktadır ki incelenen askı toplarında yer alan taşların eserler üzerine yerleştirilmesi dikkat çekmektedir. Ele alınan askı toplarında, yakut, firuze, zümrüt, akik, ametist, kuvars, zebercet, lâl, yeşim ve elmas gibi on farklı taş tespit edilmiştir. Bu taşların bir kısmı kıymetli, bir kısmı da yarı kıymetli taşlar grubunda yer almaktadır.[28] Firuze dört eserde (Ör-

24 İpşirli, "Sah", s. 490.

25 Bodur, *Türk Maden Sanatı,* s. 40; Kürkman, *Osmanlı Gümüş Damgaları*, s. 54.

26 Kuşoğlu, *Maden Terimleri Sözlüğü,* s. 156; Büyükyazıcı – Altuntaş, "Mıhlama Tekniği" s. 1767.

27 Köroğlu, *Anadolu Uygarlıklarında Takı,* s. 11.

28 Ethem, *A'dan Z'ye Kıymetli ve Yarı Kıymetli Taşlar*, s. 3-115.

nek 1, 2, 4, 5), yakut üç eserde (Örnek 1, 4, 5), zümrüt üç eserde (Örnek 1, 4, 5), akik üç eserde (Örnek 2, 4, 5), ametist iki eserde (Örnek 4, 5), kuvars iki eserde (Örnek 2, 4), yeşim bir eserde (Örnek 4), zebercet bir eserde (Örnek 5), elmas bir eserde (Örnek 4), lâl taşı bir eserde (Örnek 5) tespit edilmiştir (Tablo 1). Sözü edilen taşlar genellikle eserlerin kaide, gövde ve boyun gibi farklı bölümlerine yapılmıştır.

Taşın Cinsi	Örnek 1	Örnek 2	Örnek 4	Örnek 5
Firuze	X	X	X	X
Yakut	X	-	X	X
Zümrüt	X	-	X	X
Akik	-	X	X	X
Ametist	-	-	X	X
Yeşim	-	-	X	-
Zebercet	-	-	-	X
Lâl	-	-	-	X
Elmas	-	-	X	-
Kuvars	-	X	X	-

Tablo 1: Askı toplarında kullanılan taş türleri

Örnek 1'de eserin gövde bölümündeki beşgen ve üçgenlerin yanı sıra boyun kısmında da mıhlama tekniği ile taşlar dolanmaktadır. Örnek 2 ve 3'teki askı toplarının gövdelerine yapılan şemse formundaki levhaların üzerine taşlarla yapılan mıhlama tekniği dikkat çekici bir uygulamadır. Her iki eserin boyun kısımların da farklı renkte taşlar bu teknikle yapılmıştır. Mıhlama tekniğinin ustalıkla uygulandığı bir diğer askı topu ise Örnek 5'tir. Bu eserde diğer ele alınan askı toplarından farklı olarak eserin gövdesini ortadan ikiye ayıran gümüşten yapılmış levhanın yüzeylerine aynı büyüklükte nöbetleşe zebercet taşlar mıhlama tekniği ile yerleştirilmiştir. Aynı eserde sözü edilen madenî levhanın alt ve üst tarafına gövdeye simetrik olarak yerleştirilen şemselere yine mıhlama tekniği ile zümrüt, zebercet, ametist, yakut, lâl ve akik taşlarının kullanımı esere görsellik açısından zenginlik katmıştır.

Güverse tekniği, bir askı topunda (Örnek 5) kullanıldığı tespit edilmiştir. Güverse bir diğer adı *granül* teriminin kökeni "tahıl" veya "tohum" mânasına gelen *granuma* kadar uzanır.[29] Bir süsleme tekniği olan güverse, kuyumculuk sanatında *granül* ya da *güverse* olarak isimlendirilmektedir. Çeşitli şekillerde hazırlanmış altın veya gümüş taneciklerinin yan yana lehimlenmesiyle elde edilen süslemeye *granül tekniği* denir.[30] Bir diğer tanımı, gümüş ve altın eserlerin muhtelif yerlerine kondurulan küçük pırıltılı

29 Özdemir, "Granülasyon Tekniği", s. 867.

30 Erginsoy, *İslam Maden Sanatının Gelişmesi*, s. 39.

küreciklerdir.[31] Granül süsleme, düz bir madenî yüzey üzerine de yapılabilir.[32] Güverse tekniği, incelenen askı topları içerisinde Örnek 5'teki eserin üst bölümüne ve alt bölümüne simetrik yerleştiren kapakların yüzeylerine uygulanmıştır. Eserin kapaklarına uygulanan güverseler aşağıdan yukarıya doğru daralarak altı sıra halinde kademelenme yapmıştır.

Ele alınan askı toplarının bezemesinde bitkisel, yazı, geometrik, figür ve diğer temaların kullanıldığı tespit edilmiştir. Bu süsleme konuları arasında en sık tercih edilen tür bitkisel motiflerdir. İncelenen örneklerden yalnızca Örnek 6 dışında tamamında bitkisel süslemelere yer verilmiştir. Üç örnekte (Örnek 2, 4, 5) şemse motifi, eş büyüklükte ve belirli aralıklarla kesilerek madenî levha formunda hazırlanmış, ardından çivi yardımıyla gövdeye monte edilmiştir. Örnek 1'de boyun bölümünün yüzeyi, Örnek 2, 4 ve 5'te ise gövdeyi saran madenî şemselerin yüzeyleri; değerli taşların etrafına işlenmiş lale ve kıvrık dallardan oluşan bitkisel kompozisyonlarla hareketlendirilmiştir. Bitkisel süslemenin yoğun olarak görüldüğü bir diğer örnek olan Örnek 3'te, eserin dip ve üst kısımlarına simetrik şekilde birer kenger yaprağı işlenmiş; gövde bölümü ise kabartma tekniği ile bezenmiş beş yapraklı çiçekler ve kıvrık dallarla çevrelenmiştir.

Süsleme konularından yazıya dört örnekte (Örnek 1, 2, 3, 4) rastlanmaktadır. Örnek 1'de, silindirik kaide yüzeyine eseri vakfeden kişi ile türbenin adı kazıma tekniği ile işlenmiştir. Örnek 2'de ise gövdenin alt kısmına monte edilen madenî kartuş üzerine, Örnek 1'de olduğu gibi vakfeden kişinin adı ve türbe ismine yer verilmiştir. Örnek 3'te yer alan askı topunda ise yazı, kabartma tekniği ile uygulanmış olup tevkī' hat ile yazılmış Sultan Abdülaziz'e ait tuğra ve "sah" damgasından oluşmaktadır. Örnek 4'te yer alan askı topunda, diğer örneklerden farklı olarak yazı, eserin bütün yüzeyini kaplayacak şekilde uygulanmıştır. Kazıma tekniği ile sülüs hatla yazılmış olan yazı toplam on yedi satırdan oluşmaktadır. Gövdenin üst bölümünde besmele ile başlayan yazı, Bakara sûresinin 255. ayeti olan Âyetü'l-kürsî ile devam etmekte; ardından eserin gövdesinin tamamını kapsayacak biçimde Fetih sûresine yer verilmiştir.

İncelenen eserler içerisinde geometrik süslemeler, bir eserde (Örnek 1) kullanıldığı tespit edilmiştir. Örnek 1'deki askı topunda gümüş madenî, üçgenler ve beşgenlerden formlar elde edilerek eserin gövdesine monte edilmiştir. Üçgen ve beşgenlerin arası boş bırakılarak gövdeye, dolaysıyla esere dekoratif bir özellik kazandırmıştır. Figür kullanımı, geometrik süslemelerde olduğu gibi sadece bir askı topunda (Örnek 6) görülmektedir. Eserin gövdesinde dikine kesilen madenî levha sütunların her iki tarafına

31 Kuşoğlu, *Türk Sanatı'nda Gümüş,* s. 94.

32 Maryon, *Metalwork*, s. 53; Eruz, *Konuşan Maden*, s. 33.

simetrik olarak stilize edilmiş ejder figürüne yer verilmiştir. Türk sanat geleneğinde ejder figürü, erken dönemlerden itibaren özellikle mimari bezemelerde ve el sanatlarında bolluk, bereket, refahla birlikte gücün ve kudretin simgesel bir temsili olarak kullanılagelmiştir.[33] Askı topunun üzerindeki ejder tasvirinin varlığı, bu figürün koruyucu ve güç aktarımıyla ilişkili sembolik anlamlarını yansıttığını düşündürmektedir.

İncelenen eserlerde tespit edilen başka bir süsleme türü diğer temalardır. Bu türde askı toplarında bir örnekte (Örnek 6) çintemani motifi görülmektedir. Örnek 6'daki askı topunun gövdesinde, pirinçten kesilerek hazırlanan levhalarla çintemani motifi oluşturulmuş; bu motif, çiviler aracılığı ile gövdeye monte edilerek ejder figürüyle birlikte kullanılmıştır. Çintemani, iç içe birbirlerine aynı noktada teğet olarak değen üç daireden oluşan ve bu biçimde üç öğenin bir üçgenin köşelerini merkez alacak konumda yerleştirilmesiyle oluşan bezemedir.[34] Çintemani motifi bazı kaynaklarda Buda'nın üç ruhanî özelliğini temsil ettiğini söylemektedir. Bu motif "Timuçin damgası" da denilen beneğe Timur devri sikke örneklerinde görülmektedir. Osmanlı sanatkârları, bu motifi güç, kuvvet ve saltanat sembolü olarak kabul etmişlerdir. Padişah ve şehzadelerin giydiği kaftanlar üzerinde sıkça kullanılması bu sebepledir. Üç yuvarlak, pars postundaki beneklere, iki dalgalı çizgi ise kaplan postuna benzetilmiştir.[35] Askı topu üzerinde çintemani motifinin ejder figürüyle birlikte yer alması, bu motifin de tıpkı ejder tasviri gibi padişahın güç, kudret ve saltanatını simgelemek ve bu nitelikleri pekiştirmek amacıyla kullanılmış olabileceğini düşündürmektedir.

Yapılan araştırmalar sonucunda çalışmada ele alınan askı toplarının benzerleri yurt içi ve yurt dışındaki farklı müzelerde ve koleksiyonlarda bulunduğu tespit edilmiştir. Bu bağlamda ele alınan eserlerden Örnek 1, 2, 4, 5, 6 form olarak küre şeklinde olmasıyla İstanbul Türbeler Müzesi envanterine kayıtlı ve üzerinde yer alan kitabe içeriklerinden hareketle Padişah I. Ahmed döneminde yapıldığı anlaşılan 1762 ve 1743 numaralı askı toplarıyla benzerlik gösterir (Foto 16, 18).[36] Osmanlı dönemine ait olup XVII. yüzyılda üretildiği düşünülen, gümüşten yapılmış ve yaldızlanmış bir askı topu örneğine bir müzayede sayfasında rastlanmıştır (Foto 20). Kavun biçiminde dilimlenmiş küresel gövdeye sahip olan bu eser, mıhlama tekniği ile yerleştirilmiş zebercet taşlarla bezenmiştir. Form ve süsleme özellikleri bakımından, çalışmada ele alınan askı toplarından Örnek 1 ve Örnek 5 ile benzerlik göstermektedir.

33 Çoruhlu, *Türk Mitolojisinin Ana Hatları,* s. 172.

34 Sözen-Tanyeli, *Sanat Kavram ve Terimleri Sözlüğü,* s. 78.

35 Birol - Derman, *Türk Tezyînî San'atlarında Motifler*, s. 169.

36 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 537-547.

Maden ile üretilen askı toplarının dışında deve kuşu yumurtası ve seramikten üretilen örnekler de farklı müze ve koleksiyonlarda bulunmaktadır. Ele alınan askı toplarından Örnek 3'te bulunan eserin elips biçiminde olmasıyla Topkapı Sarayı Müzesi'nde bulunan ve Padişah II. Mahmud'un tuğrasının gövdeye büyükçe yazıldığı eser deve kuşu yumurtasından yapılmıştır (Foto 21). Sözü edilen askı topu ile çalışmada ele alınan Örnek 3'teki eser form açısından benzerlik gösterse de süsleme özellikleri açısından farklılık göstermektedir.

Foto 16: İstanbul Türbeler Müzesi'ndeki 1762 numaralı askı topu;[37]
Foto 17: İstanbul Türbeler Müzesi'ndeki 1762 numaralı askı topu kitabe detayı[38]

Foto 18: İstanbul Türbeler Müzesi'ndeki 1743 numaralı askı topu;[39]
Foto 19: İstanbul Türbeler Müzesi'ndeki 1743 numaralı askı topu kitabe detayı[40]

37 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 537.
38 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 537.
39 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 547.
40 Allak, *İstanbul Türbeler Müzesi'nde Bulunan Madeni Eserler*, s. 547.

Foto 20: Müzayedede bulunan askı topu[41]
Foto 21: Topkapı Sarayı Müzesi'ndeki askı topu[42]

Seramik örneklerine de sıkça rastlanan askı toplarının, günümüze ulaşan örneklerden anlaşıldığı üzere küresel gövdeli türleri yaygındır. Bugün British Museum'daki askı topuyla (Foto 22; eser nr. 380) Amerika'da Walters Art Gallery'de (Baltimore) bulunan askı topunun (Foto 23; eser nr. 02) İznik üretimi olduğu ve XVI. yüzyılda üretildiği belirtilmiştir.[43] Her iki eser de küre gövdeli olup çalışmada incelenen madenî askı toplarıyla form açısından benzerlik göstermektedir. Sözü edilen seramik askı toplarının, incelenen maden örneklerinden daha erken tarihlerde üretildiği anlaşılmaktadır. Bu durum maden ustalarının seramik alanda geliştirilen askı topu formlarını örnek alarak kendi üretimlerinde uyguladıklarını göstermektedir.

41 https://elogedelart.canalblog.com/archives/2010/04/15/17587213.html (erişim tarihi: 09.11.2024).

42 Köseoğlu - Rogers, *The Topkapi Saray Museum*, s. 13.

43 Atasoy – Raby, *İznik*, s. 224-225; Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 15.

Foto 22: British Museum'daki askı topu[44]
Foto 23: Amerika'da Walters Art Gallery'deki askı topu[45]

Tartışma ve Sonuç

Çalışmanın giriş bölümünde de vurgulandığı üzere, askı topları üzerine yapılan araştırmalar oldukça sınırlıdır; konuya dair bilgi, belge ve yayın sayısının azlığı dikkat çekmektedir. Mevcut az sayıdaki çalışmada ise, bu eser grubunun işlevine ilişkin farklı görüşler öne sürülmektedir.

Nurhan Atasoy ve Julian Raby *İznik: The Pottery of Ottoman Turkey* adlı eserde Osmanlı döneminde üretilen İznik seramiklerini tanıtmışlardır. Kapsamlı bir çalışma olan bu kitapta, yazarlar çini askı toplarına da değinmiş; bu eserlerin görsel ve dekoratif amaçlarla kullanıldığını, ayrıca asma kandillerle birlikte tercih edilmelerinin sebebinin kaygan yüzeylerinden faydalanma isteği olduğunu belirtmişlerdir. Eski bir rivayete göre ise, askı toplarının kandillerin zincirlerine geçirilme sebebi fare gibi kemirgenleri engellemektir. Fareler asma kandillere bırakılan yağı içmek istediklerinde askı toplarının kavisli, kaygan yüzeyleri buna engel olduğu ve kandildeki yağa ulaşamayacağı varsayılarak bu eserlerin yapıldığı düşünülmektedir.[46] Josep Soustiel, *Osmanlı Seramiklerinin Görkemi: Suna-İnan Kıraç ve Sadberk Hanım Müzesi Koleksiyonlarından, XVI. – XIX. Yüzyıl* adlı çalışmasında Atasoy ve Raby'nin çalışmasında olduğu gibi askı toplarının işlevi hakkında fare gibi kemirgenlerin zincirden aşağı inip kandildeki yağı içmesini önlemek maksadıyla yapıldığını belirtmiştir.[47]

44 Atasoy – Raby, *İznik,* s. 224.
45 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 15.
46 Atasoy – Raby, *İznik,* s. 41.
47 Soustiel, *Osmanlı Seramiklerinin Görkemi,* s. 136.

Nurhan Atasoy ve Julian Raby ile Josep Soustiel'in askı toplarının işlevleri hakkında söylediklerini destekleyecek nitelikte asma kandile bağlı olarak bu eser gruplarından günümüze ulaşan örnekler bulunmaktadır. Bugün Fransa Ermeni Müzesi'nde bulunan, üretim yerinin Kütahya olduğu belirtilen ve XVIII. yüzyıla tarihlendirilen bir askı topu, madenî bir asma kandile bağlı olarak günümüze gelmiştir (Foto 22).[48] Benzer şekilde Suna ve İnan Kıraç Vakfı Koleksiyonu'nda yer alan çini asma kandilin gövdesinde üç yönden yükselen zincirlerinin üst tarafta askı topu ile birleştiği eser, Kütahya üretimli olup XIX. yüzyıla aittir (Foto 23).[49] Fransa Ermeni Müzesi ile Suna ve İnan Kıraç Vakfı'nda bulunan örneklerde, askı toplarının asma kandillere bağlı olduğu ve kandilleri taşıyan zincirlerin üst kısımda askı toplarıyla birleştiği görülmektedir. Bu durum söz konusu eserlerin kandil içindeki yağın kemirgenler tarafından içilmesini engellemeye yönelik olduğu yönündeki görüşleri desteklemektedir. Bu tür işlevsel yorumların özellikle seramikten üretilmiş askı topları için geçerli olabileceği anlaşılmaktadır. Dolayısıyla yukarıda ismi geçen araştırmacıların askı toplarının işlevine dair yaptıkları değerlendirmelerde, malzeme faktörünü ön plana alarak yorum geliştirdikleri söylenebilir.

Foto 24: Fransa Ermeni Müzesi'ndeki asma kandilli askı topu[50]
Foto 25: Suna ve İnan Kıraç Vakfı Asma kandilli askı topu[51]

48 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 38.
49 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 83.
50 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 38.
51 Akal, *18. Yüzyıldan Günümüze Kütahya Cami Askı Toplarının Araştırılması*, s. 83.

Askı toplarının işlevi ile ilgili bir diğer görüş Kemal Çığ'a aittir. *Topkapı Sarayı Padişah Askıları* adlı eserinde söz konusu askı toplarının; dünyayı simgelediğini, uçlarına yapılan püsküllerin de dünya iradesi anlamına geldiğini belirtmiştir. Kemal Çığ, padişahlar, bu objeler vasıtasıyla "Dünya budur, yönetimi de benim elimdedir, ona hâkim olan benim" mesajını vermek istediğini vurgulamıştır.[52] Kemal Çığ'ın bu yorumu sadece madenden üretilen ve üzerleri değerli taşlarla süslenen askı topları için söylemiş olacağı düşünülmektedir. Zira kendi çalışmasında ele aldığı askıların hepsi madenden üretilerek üzerleri çok kıymetli taşlarla süslenmiştir.

Askı toplarının formlarına bakıldığında, çoğunlukla küre biçiminde tasarlandıkları ve bu yönleriyle yeryüzünü simgeleyen bir görünüme sahip oldukları görülmektedir. Bu biçimsel tercih, sembolik anlamlar taşımasının yanı sıra söz konusu eserlerin padişahların talebi doğrultusunda üretildiğine dair güçlü bir izlenim uyandırmaktadır. Nitekim günümüze ulaşan madenî örneklerin bazılarında padişah isimlerinin ya da tuğralarının kazınmış olması, eserlerde sergilenen üstün işçilik kalitesi ve üzerlerine büyük bir ustalıkla yerleştirilmiş değerli taşlar, bu objelerin sıradan kullanım eşyası değil, doğrudan saray çevresine veya hanedan üyelerine yönelik özel üretimler olduğunu ortaya koymaktadır. Bütün bu unsurlar bir arada değerlendirildiğinde, askı toplarının hem işlevsel hem de temsilî anlamda padişah iradesiyle şekillendirildiği düşüncesi kuvvet kazanmaktadır.

Çalışmada incelenen askı topları ile Kemal Çığ'ın *Topkapı Sarayı Padişah Askıları* adlı eserinde tanıtılan örnekler karşılaştırıldığında, her iki gruptaki eserlerin büyük ölçüde madenden üretildiği ve üzerleri firuze, zümrüt, zebercet, yakut, elmas, yeşim, akik gibi değerli taşlarla süslendiği görülmektedir. Bu özellikler askı toplarının yalnızca estetik ve dekoratif amaç taşımadığını, aynı zamanda bulunduğu mekânlara sembolik anlamlar yüklediğini göstermektedir. Nitekim söz konusu eserlerin Topkapı Sarayı Müzesi ve Eyüp Sultan Türbesi gibi Osmanlı kültür ve inanç dünyasında derin bir manevi değere sahip mekânlarda bulunması, onların temsil gücünü arttıran önemli bir unsurdur. İncelenen örneklerden 1 ve 2 numaralı askı toplarının kitabelerinde Eyüp Sultan Türbesi'ne doğrudan atıf yapılmaktadır. Eyüp Sultan, Hz. Muhammed'in sancaktarı olması sebebiyle İslam dünyasında yüksek bir manevi konuma sahiptir ve Osmanlılar tarafından da "gönüllerin sultanı" olarak görülmüştür. Osmanlı sultanlarının tahta çıkışlarında Eyüp Sultan Türbesi önünde kılıç kuşanmaları, siyasî meşruiyetlerini dinî bir bağlamda güçlendiren sembolik bir ritüel niteliği taşımaktadır. Bu bağlamda, askı toplarının Eyüp Sultan Türbesi'ne vakfedilmiş olması, Osmanlı padişahlarının türbeye atfettikleri kutsiyetin yanı sıra türbenin

52 Çığ, "Topkapı Sarayındaki Padişah Askıları", s. 36.

temsil ettiği manevi otoritenin bir yansıması olarak değerlendirilebilir. Dolayısıyla bu eserler, yalnızca işlevsel ya da dekoratif objeler olmanın ötesinde, Osmanlı saray kültüründe kutsallık, iktidar ve temsil arasındaki ilişkinin somut birer göstergesi olarak önem taşımaktadır.

Nurhan Atasoy, Julian Raby ve Josep Soustiel'in askı toplarının, kemirgenlerin kandillerdeki yağa ulaşmasını engellemek amacıyla üretildiği yönündeki değerlendirmeleri, özellikle seramik malzemeden yapılmış örnekler açısından işlevsel bir amaca hizmet ettiklerini düşündürmektedir. Buna karşın Kemal Çığ'ın askı toplarının padişahlar tarafından sembolik mesajlar iletmek amacıyla kullanıldığına dair görüşü ise, daha çok maden gibi kıymetli malzemelerden üretilen ve üzerleri değerli taşlarla süslü örnekler bağlamında anlam kazanmaktadır. Bu doğrultuda seramik askı toplarının öncelikle pratik işlevleri ön plana çıkaran nesneler olduğu; deve kuşu yumurtası, hindistan cevizi, ahşap ve özellikle de maden gibi değerli malzemelerden üretilmiş, zengin süsleme teknikleri ve kıymetli taşlarla bezeli örneklerin ise hem estetik hem de sembolik anlam katmanlarıyla saray çevresine yönelik üretildiği anlaşılmaktadır. Özellikle madenî örneklerin taşıdığı yüksek sanat değeri, bu objelerin yalnızca dekoratif nitelik taşımadığını, aynı zamanda padişahın kudretini, saray estetiğini ve Osmanlı iktidar söylemini yansıtan birer temsil aracı olarak tasarlandığını ortaya koymaktadır. Dolayısıyla ilgili literatürde askı toplarının işlevine dair yapılan yorumların büyük ölçüde üretim malzemesi temelinde şekillendiği; malzemenin ise yalnızca teknik veya estetik bir tercih değil, aynı zamanda sembolik ve ideolojik mesajları biçimlendiren stratejik bir unsur olduğu görülmektedir. Bu çerçevede askı topları, sadece aydınlatma elemanlarının tamamlayıcı bir parçası değil, Osmanlı saray kültürünün çok katmanlı anlam dünyasını yansıtan özgün sanat objeleri olarak değerlendirilmelidir.

Sonuç olarak, bu çalışma kapsamında askı toplarının her ne kadar asma kandillere bağlı tamamlayıcı bir obje olarak üretildiği bilinse de bunun özellikle seramik malzemeden yapılan örnekler için geçerli olduğu söylenebilir. Buna karşılık seramik dışındaki farklı malzemelerden, özellikle madenden yapılan askı toplarının ise tek başına bir eser grubu niteliğinde ortaya çıktığı anlaşılmaktadır. Bu tür eserlerin yalnızca mekâna dekoratif ve süsleyici bir katkı sunmakla kalmadığı; üzerlerinde yer alan değerli taşlar ve yazı içeriklerinden hareketle, padişahların bu objeleri doğrudan maden sanatkârlarına özel olarak yaptırdığı düşünülmektedir. Nitekim incelenen örneklerden üçünde Sultan Ahmed ve Abdülmecid gibi padişah isimlerine yer verilmiş olması; bir diğer örnekte ise besmele, Âyetü'l-kürsî ve Fetih sûresi gibi Kur'an-ı Kerim'de geçen dinî içeriklerin bulunması, bu eserlerin padişahların doğrudan isteği doğrultusunda üretildiğini ve bu bağlamda sembolik anlamlarının da özellikle ön planda tutularak üretildiklerini göstermektedir.

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Extended Summary

An Evaluation of the Functions of Spherical Hanging in Turkish Metal Art: Ottoman Period Examples in the Istanbul Museum of Turkish and Islamic Arts

This study provides a detailed examination of the metal spherical hangings found in the Istanbul Museum of Turkish and Islamic Arts within the framework of Art History. The primary objective of the study is to analyze in depth the production processes, materials, decorative techniques, and ornamentation of these artifacts, thereby revealing their place in Ottoman art. Additionally, since there are differing opinions

regarding the function of Spherical hangings, the study presents a discussion aimed at understanding their uses.

Metal Spherical hangings are a unique group of objects that have no known counterparts from pre-Ottoman periods and appear to have developed within Ottoman art. These artifacts were produced using various materials, including wood, ceramics, metal, ostrich eggs, and coconut shells. However, the study has determined that most of the examined examples were made of silver. Notably, from the classical period of the Ottoman Empire (16th century and later), metal Spherical hangings became more widespread, and artisans displayed remarkable craftsmanship in this field. In art-historical literature, various views have been proposed regarding the function of Spherical hangings. Some researchers suggest that these objects served as decorative items, particularly favored by the palace and upper classes. Other sources claim that Spherical hangings were used for religious or mystical purposes. Considering that both aesthetics and functionality were important in Ottoman palace culture and architecture, it is plausible that these artifacts carried a significance beyond mere ornamentation. Another perspective suggests that these balls were suspended from ceilings in specific spaces as decorative elements. Given that ceiling decorations and hanging objects are known to have enhanced aesthetic perception in Ottoman art, Spherical hangings may also be evaluated in this context.

Research has provided clues that similar Spherical hangings were used in both Ottoman palaces and mosques. While they may have served as aesthetic elements in palaces, they could have also functioned as symbolic objects in places of worship. In this regard, comparisons have been made with similar artifacts to better understand the functionality of the examples examined in this study. It is well known that Ottoman art pieces were crafted with meticulous attention to detail, both in their workmanship and material selection. The same meticulous approach is evident in the examined Spherical hangings. In terms of production techniques, these objects were shaped using forging and casting methods, indicating that they were significant works reflecting the quality of craftsmanship of the time.

Among the decorative techniques, engraving, relief, setting, enamel, and guilloché stand out. These methods closely resemble the traditional jewelry-making techniques used in Ottoman art. Patterns created through engraving and relief techniques, in particular, have added an aesthetic depth to the Spherical hangings. Spherical hangings adorned with precious stones also highlight the advanced level of Ottoman jewelry art. It is observed that valuable gems such as rubies, emeralds, and turquoise were skillfully embedded in these artifacts. The use of precious stones not only served an aesthetic function but also suggested that these objects could have been indicators of status and prestige. The presence of such objects in the Ottoman palace and elite circles offers significant insights into both the craftsmanship and luxury consumption practices of the period.

When examining the ornamentation of the Spherical hangings, intricate details reflecting the artistic sensibilities of the era stand out. Floral and geometric motifs, which are frequently encountered in Ottoman decorative arts, are also present in these artifacts. Botanical motifs such as tulips and curved branches, commonly used

in Ottoman art, create an aesthetic harmony in the spherical hangings. Additionally, some spherical hangings feature Arabic calligraphy inscriptions. These inscriptions often consist of religious expressions, Quranic verses, or phrases such as "Bismillah" (In the name of God). The presence of such decorations suggests that spherical hangings were not merely decorative objects but also carried religious and cultural significance.

This study provides a comprehensive analysis of the metal spherical hangings housed at the Istanbul Museum of Turkish and Islamic Arts from an art-historical perspective. These objects, which have no known predecessors from the pre-Ottoman period, were produced in Ottoman art using various materials and became more widespread, particularly from the 16th century onward. Predominantly crafted from silver, these artifacts are considered among the finest examples of Ottoman jewelry art. Although it is difficult to reach a definitive conclusion regarding the function of spherical hangings, it is understood that these objects were not only used for decoration but also to convey prestige, religion, and culture. Offering a rich diversity of decorative techniques and materials, these artifacts showcase the advanced level of jewelry craftsmanship achieved in Ottoman art.

Keywords: Metal art, Spherical hanging, Function, Riveting, Precious stones.

المنهج الفقهي عند يوسف القرضاوي: رائد منهج الاجتهاد*

ABDULLAH KÜSKÜ / عبد الله كوسكو**

ملخص البحث

أهداف البحث: في القرن العشرين، يمكن ملاحظة أن الأعمال الفقهية والقانونية التي تم إنجازها في العالم الإسلامي تختلف عن الأعمال التي كانت في العصور السابقة، ففي تاريخ الفقه كان الفقهاء يشتغلون على مسائل فقهية مرتبطة بمذهب معين، بينما انتقل هذا الاتجاه في القرن الأخير إلى الأعمال الفقهية المقارنة وفي المذاهب الأربعة. أحد أبرز متبعي هذا الاتجاه الجديد هو الفقيه يوسف القرضاوي، صاحب العديد من المؤلفات والذي يعد من أكثر الفقهاء تأثيرًا على المسلمين في جميع أنحاء العالم. لم يتم حتى الآن دراسة هذا المنهج في ضوء المواضيع التي تناولناها.

منهج الدراسة: في هذا المقال ستتم دراسة منهج القرضاوي في فقه القضايا المعاصرة، مثل مسألة "المُرَابَحَة" في المؤسسات المالية الإسلامية، وشراء المسلمين المقيمين في أوروبا وأمريكا للمنازل باستخدام القروض بفائدة، ومشكلة تحديد الربح في بيع السلع

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* تستند هذه المقالة جزئيًا إلى أطروحة الدكتوراه بعنوان: مقاربتان مختلفتان في الدراسات الفقهية المعاصرة: يوسف القرضاوي ومحمد تقي العثماني نموذجًا / This article is partly based on the doctoral dissertation entitled "Two Different Approaches in Contemporary Fiqh Studies: The Case of Yusuf al-Qaradawi and Muhammad Taqi al-Usmani".

أتقدّم بجزيل الشكر إلى الدكتور منذر شيخ حسن على إسهاماته القيّمة وإلى السادة المحكّمين الكرام في المجلة / I would like to thank Dr. Münzir Şeyhhasan and the esteemed reviewers of the journal for their valuable contributions.

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DOI: 10.26570/isad.1728559 • Geliş/Received 30.06.2025 • Kabul/Accepted 30.01.2026
Atıf/Citation Küskü, Abdullah, "المنهج الفقهي عند يوسف القرضاوي: رائد منهج الاجتهاد", *İslam Araştırmaları Dergisi*, 55 (2026): 97-122.

التجارية. سيتم أيضًا تقييم منهج القرضاوي في التعاطي مع النصوص الشرعية، واختياره بين آراء الصحابة والتابعين، وكذلك مواقفه تجاه اجتهادات الفقهاء الذين لم تنعكس آراؤهم على شكل مذهب متكامل.

النتائج: بناءً على ذلك، يتبين أن يوسف القرضاوي قد تخلى عن منهج الفقهاء الكلاسيكيين، وتبنى –كما نطلق عليه– "المنهج الاجتهادي" أي منهج المصلحة والتيسير المعاصر.

أصالة البحث: إن اتباع المنهج العلمي والوصول إلى نتائج معينة سوف يكشف عن نجاح هذ المقال، ويمهد الطريق لدراسات أخرى عن القرضاوي.

الكلمات المفتاحية: القرضاوي، الفقه، منهج الاجتهاد، المصلحة، فقه الأقليات.

İçtihadî Yöntem Takipçisi Yûsuf el-Karadâvî'nin Fıkıh Yaklaşımları

Öz

XX. yüzyıl İslam dünyasında yapılan fıkıh ve kanun çalışmalarının eski dönem çalışmalarından farklı olduğu görülmektedir. Tarih boyunca fakihler, belirli bir mezhebin doktrini üzerinde fıkıh çalışmalarını yürütmüşlerken, bu yöneliş son yüzyılda mezhepler arası/mezhepler üstü bir mecraya kaymıştır. Bu yeni yönelişin takipçilerinden biri de çok eser sahibi, dünya müslümanları üzerinden en etkili görülen İslam hukukçularından Yûsuf el-Karadâvî'dir. Yûsuf el-Karadâvî, ortaya koyduğu İslam hukuku mesaisinde klasik yöntemden farklı bir yaklaşım benimsemiştir. Makalede faizsiz finans kurumlarının işlettiği murâbaha, Avrupa ve Amerika ülkelerinde azınlık olarak yaşayan müslümanların faizli kredi kullanarak konut satın alımı meseleleri ile ticarî ürünlerin satımında kâr haddi meselelerine ilişkin Yûsuf el-Karadâvî'nin fıkıh yöntemi incelenmektedir. Onun naslara yaklaşımı, sahabe ve tâbiîn görüşleri arasından tercihleri ve görüşleri doktrinleşmemiş müçtehitlerin içtihatlarına yönelik yaklaşımları değerlendirilmekte ve çağdaş yeni bir yöntem takip ettiği tespit edilmektedir.

Anahtar Kelimeler: Karadâvî, İslam hukuku, İçtihadî yöntem, Maslahat, Azınlıklar fıkhı.

Fiqh Approaches of Yūsuf al-Qaraḍāwī as a Proponent of an *Ijtihād*-Based Methodology

Abstract

In the 20th century, Islamic jurisprudential and legal studies shifted from single-maḍhab methodologies to a comparative or supra-madhhab approach. Yūsuf al-Qaraḍāwī, one of the most influential contemporary Islamic jurists, exemplifies this trend by combining classical methodologies with innovative solutions for modern challenges. This study examines al-Qaraḍāwī's approach, particularly his handling of *murābaḥa* in Islamic finance, the permissibility of interest-based loans for Muslim minorities in the West, and profit-margin regulations in trade. His approach towards primary texts, choices

regarding the views of the Companions and Successors of the Prophet, and approach towards independent jurists' examples of *ijtihād* will be examined. The study concludes that Yūsuf al-Qaraḍāwī diverged from the classical juristic methodology and adopted what may be termed an "*ijtihād*-based approach", which emphasizes contemporary notions of public interest or utility (*maṣlaḥa*) and legal ease (*taysīr*). By adhering to a scientific methodology and drawing concrete conclusions, this article aims contribute to the field and help pave the way for further scholarly studies on al-Qaraḍāwī.

Keywords: al-Qaraḍāwī, Islamic law, *Ijtihād*-Based methodology, *Maṣlaḥa*, Fiqh for minorities.

مقدمة

يعتبر القرضاوي أحد أبرز الفقهاء المهتمين بالقضايا الفقهية المعاصرة في القرن الأخير، إذ لم يكتف بحدود المنطقة التي عاش فيها؛ بل تطرّق إلى مشاكل المسلمين المقيمين في مناطق جغرافية مختلفة واهتمّ بها. أبرز مثال تتجلى من خلاله شخصيته هي آراؤه حول القضايا السياسية المحلية والدولية لا سيما فيما يتعلق بقطر أو مصر، كتب القرضاوي مقالات عن القضايا الجهادية للمسلمين الفلسطينيين، وفي الوقت نفسه طرح اجتهاداته في القضايا المتعلقة بالمسلمين الذين يعيشون جنوب آسيا والقارّة الأمريكيّة في المجالات المختلفة. تظهر المقالات والكتب التي كتبها في العديد من فروع العلوم الإسلامية ومحتويات أوراق العمل المقدّمة في الندوات والمؤتمرات، أنّه عالم من الطراز الرفيع. ومِن أبرز الأدلّة على نجاحه العلمي، هو: معدّل قراءة الناس لدراساته، والمراجعات المكتوبة عنها، وترجماتها إلى لغات مختلفة، والتفاعل الذي يحدث من خلال النقد والتقدير لها. وهو كَشخصٍ يمتلك قوّة خطابية، ولديه نهج فريد من نوعه، حاول حلّ القضايا الفقهية المعاصرة في ضوء المذاهب الفقهية الكلاسيكية وآراءِ الفقهاء أوّلاً. ومن ناحية أخرى، لم يتردّد في طرح آرائه أثناء حلّ القضايا، بل قام بالاجتهاد. ولِلقرضاوي جوانب فقهية تُميّزه عن الفقهاء المعاصرين له. من بعض هذه الجوانب، هي: اجتهاداته وعدم اكتفائه باجتهادات مذهب فقط، وآراؤه حول المصلحة والتيسير، وسعيه لبناء فقه الوسطية.

الموضوع الرئيسي لهذه الدراسة، هو تحديد مقارباته للفقه من خلال الدراسات التي كتبها في مجال الفقه الإسلامي. وبالنظر إلى أنّنا ندرس فقيهًا

ذا إنتاج غزير، علينا أن نعترف بأن الأمر سيستغرق وقتًا لإجراء الاستقراء أثناء تحديد مقارباته. ولذلك سنحلِّل بعض أفكاره الفقهيّة المنثورة في مؤلفاته الفقهية والتي نتجت عنها فتاوى. وسنحاول فهم عملية تشكّل فتاواه، وما هي المسائل التي لاحظها والتفتَ إليها وانتقاها دون غيرها وتكلّم عنها أثناء هذه العملية. وأمّا علاقته بالفقه الكلاسيكي، ونظرته إلى التراكم المذهبي، وأفكاره في الاجتهاد والتقليد فهي النقاط التي تُلفت الانتباه في هذه التحليلات. أجرِينا هذه التحليلات حول قضايا مثل المرابحة، وهي مجال اهتمام المؤسسات المالية غير الربوية، وشراء المساكن باستخدام قروض بفائدة مِن قِبل المسلمين الذين يعيشون كأقليّة في البلدان غير الإسلامية. وتحديد أرباح التجار. والسبب في تفضيلنا لهذه المسائل بين العديد من أعماله، هو أنها قضايا معاصرة تهم شريحة كبيرة من المسلمين في يومنا هذا. القضيّة الرئيسيّة التي ركّزنا عليها في دراستنا، هي منهج القرضاوي في الفقه، هل يراعي المنهج الفقهي الذي اتّبعه الفقهاء الكلاسيكيون؟ وإذا كان لا يتّبع المنهج الفقهيّ الكلاسيكيّ، فما هي أساليبه الخاصّة به؟ ونحن في دراستنا القصيرة هذه، نريد أن نشرح الحلّ من خلال التركيز على القضية المذكورة. وإذا تمكّنّا من إثارة الانتباه فسنكون أيضًا قد مهّدنا الطريق لدراسات حول علاقته بالتراث الفقهيّ الكلاسيكيّ المذهبيّ.

١. تصوّر المذهب في البيئة العلمية بمصر في القرن العشرين

علم الفقه هو مصدر الفتوى مِن حيث موضوعه. أمّا المكوِّنات التي تتكوّن منها مؤسسة الفتوى، فتدخل في تراث الفقه، ومفاهيم "المستفتي والمفتي والفتوى" تنتمي إلى هذا التراث. إن علم الفروع المتناقَل منذ زمن نبينا صلى الله عليه وسلم والمعلومات الفقهيّة المنتَجة من أدلّته موجودان في هذا التراث، وفي هذا الصدد جاءت الفتوى كمؤسسة ضمن حدود علم الفقه. ومع ذلك، فإنّ النّظام الذي أسَّسَ وطوّرَ هذا التخصّص، ويُدير مؤسّسة الفتوى هو المذهب. أما تعريف المذهب فهو: "تاريخ الفقه المستمرّ باعتبار احتوائه على العمل الفقهيّ والاستدلال داخل المذهب والمناسبات العلمية الواقعة في إطارهما".[١] وبحسب

[١] Kaya, *Mezheblerin Teşekkülünden Sonra Fıkhî İstidlal,* s. 45.

هذا التعريف، فإن أحد عناصر المذهب الأساسيّة هو العمل الفقهي، والآخر هو الاستدلال داخل المذهب. وكما يجب أن يقوم بهذا العمل الفقهيّ مجتهد أو مفتٍ، فإنّ الشخص الذي يقوم بالاستدلال هو أيضًا مجتهد. في الوقت نفسه هناك نقطة مهمّة في هذا التعريف هي أنّ المذهب ظاهرةُ التاريخ الفقهي المستمرة، وفقًا لهذا التعريف، من الممكن أيضًا قبول تاريخ الفقه كمذهب. وإذا كان المذهب هو تاريخ الفقه فإن المسلمين عبر تاريخهم قاموا بأعمالهم الفقهيّة داخلَ المذهب، وبعبارة أخرى، تمّ قبول الأعمال الفقهيّة المتراكِمة طوال التاريخ كمذهب. تظهر اليوم الاختلافات في فهم المذهب واضحة لدى الفقهاء لما يقرب من قرن من الزمان. ومع ذلك، في القرنين الثامن عشر والتاسع عشر كان يُنظر إلى الشوكاني على أنه الأكثر تطرفًا بين معارضي المذهب.[٢] وبرأي الشوكاني (ت ١٢٥٠هـ/١٨٣٤م) التقليد حرام، ووجود المذاهب المقلَّدة بدعة، وإزالتها ضرورة.[٣]

اقترح محمّد عبده (ت ١٣٢٣هـ/١٩٠٥م) الذي عاش بعد الشوكاني بقرن في مصر في تقريره المتعلق بإصلاح المحاكم الشرعية، اختيار قاضٍ من كلِّ مذهب، والتمكّن مِن الحُكم بأحد اجتهاداتٍ هذه المذاهب عند الحاجة.[٤] وقد اقترح عبده هذا العرض، لأنّه اعتقد أنّه سيُسهِّل على المسلمين. وبعد فترةٍ وجيزةٍ من هذا العرض، دُرِسَ الكتابُ المسمى بـ "مقارنة المذاهب في الفقه" في كلية الشريعة بجامعة الأزهر. يقول مؤلفا الكتاب شلتوت عبده (ت ١٣٨٣هـ/١٩٦٣م) والسايس (ت ١٣٩٦هـ/١٩٧٦م) اللذان درَّسا القرضاوي، إنهما أعَدَّا هذا الكتاب من أجل التخلّص من التعصّب المذهبي.[٥] يذكر المؤلفان في هذا الكتاب أنّ الآراء غير مذاهب الأئمة الأربعة تصلح ليُعمَل بها، ويذكران أنّ الحكومة المصرية احتاجت إلى آراء فقهاء غير فقهاء الحنفية، وأنها قبِلت هذه الآراء من حين لآخر، وفي واقع الأمر عام ١٩٢٩ أجرت الحكومة تعديلاً

٢ Okuyucu, "Şevkânî'nin Islah Düşüncesinin Ana Hatları", s. 248.

٣ Okuyucu, "Şevkânî'nin Islah Düşüncesinin Ana Hatları", s. 248.

٤ Reşid Rıza, *Gerçek İslâm'da Birlik*, s. 109. في نفس النص، يقول إن هذا العرض تسبّب في الكثير من الضجيج واعتُبر ادعاءً متناقضًا.

٥ شلتوت والسايس، مقارنة المذاهب في الفقه، ص:٢.

قانونيًّا شاملاً لآراء خارج المذهب الحنفي وخارج مذاهب الأئمّة الأربعة. ويذكر المؤلفان أيضًا أن هذا القانون أتاح فرصة كبيرة لدراسات الشيخ المراغي (ت ١٣٦٤هـ/١٩٤٥م) ، ويصِفان هذه الحركة التي يمكن تسميتها بـ"الانفصال عن المذاهب" بـ"المباركة".[٦]

بحسب مصطفى الزرقا (ت ١٤٢٠هـ/١٩٩٩م)، نتيجةً لجهود حركات التجديد في الدول الإسلامية، كانت هناك محاولات لإعداد قوانين مدنية بالاستفادة من الفقه في منتصف القرن العشرين. وفي هذه المحاولات، لم يكن القانون قائمًا فقط على آراء المذهب الحنفيّ كما في المجلّة؛ بل بُنِيت القوانين بالاستفادة من المذاهب كلها، مثل آراء فقهاء الأمصار وجميع الفقهاء المنتسبين للمذاهب. يعبِّر مصطفى الزرقا عن التغيّر في فهم المذهب على النحو التالي:

> إن التجديد في تدريس الفقه والتأليف فيه في الجامعات قد صاحبه الانفتاح على المذاهب الفقهية جميعًا، والأربعة الأخرى التي سبقت الإشارة إليها في موضعها، بل وعلى آراء الصحابة والتابعين وسائر فقهاء السلف الذين لم تدون مذاهبهم تدوينا كاملا وإنما نقلت لهم آراء في موضوعات شتى في كتب اختلاف الفقهاء كالأوزاعي والليث بن سعد وابن شبرمة وابن أبي ليلى والحسن البصري وسفيان الثوري وغيرهم، للاستفادة من آرائهم فيما نقل عنهم.[٧]

> هذا الانفتاح قد أزال العصبية المذهبية التي كانت بين أتباع المذاهب في الماضي مما سبقت الإشارة اليه، وأصبحت الدراسة الفقهية في الجامعات تظهر للطالب مزايا المذاهب المختلفة وما فيها من ثورة فقهية، وتنمية فكرية، وتوسعة للمدارك بمناقشة الأدلة، وتيسر على المكلف في التطبيق، وتسهل على أولياء الأمور لعملية التقنين من الفقه الإسلامي أن يختاروا في كل موضع من كل مذهب ما أنسب وأوفى بالحاجة الزمنية والمكان.

٦ شلتوت والسايس، مقارنة المذاهب في الفقه، ص:٥.

٧ الزرقا، المدخل الفقهي العام، ص:٧٤٢-٨٤٢.

يوافق الزرقا على هذه المقاربات ويشترط للجواب عن النوازل المعاصرة الاستفادةَ مِن عموم الفقه الإسلامي. ويتحقق ذلك بتخريج الفقه الإسلامي وفقًا لمقاصد الشريعة.[٨] وتجلّى هذا التغيّر الذي عبّر عنه الزرقا في العديد من المجالات، مثل المجلّات الموسوعيّة ومجالس الفقه الإسلامي خارج مصر، كما رأيناه في المناهج المدرسية في القرن الماضي وفهم الفقهاء. حيث تضمّ ''موسوعة الفقه الإسلامي'' المصرية، التي بدأت في الستينيات في مصر، آراء الظاهرية والزيدية والإباضية والإمامية بالإضافة إلى فقهاء المذاهب الأربعة. ومع ذلك فهي وفقًا للطريقة التي تتبعها المجلة، لا يُرجَّح أيٌّ من هذه الآراء.[٩] على نفس المنوال، كان إحدى مقترحات المشاريع التي طلبها باحثو الشريعة الإسلامية المعاصرين من قبل المنظمة ذات الصلة في اجتماعات تأسيس المؤسسة ''مجمع الفقه الإسلامي الدولي'' في الثمانينيات: هو تأليف كتاب ''تيسير الفقه بتدوين الأحكام الشرعية على حسب الأقوال الراجحة في المذاهب الأربعة وبتدوين أصول المرافعات''.[١٠] ما تم تداوله في هذه الاجتماعات من طلب التحقيق ''تحقيق القواعد الأصولية ببحث موضوعات القياس وقول الصحابي والمصلحة المرسلة والاستحسان وبيان أثر ذلك في الاجتهاد وتعليل الأحكام'' مهم أيضًا من حيث إظهار المناقشات الأكاديمية لتلك الفترة وجدول أعمال باحثي الشريعة الإسلامية.[١١]

عندما طُلب من القرضاوي تأليف كتاب عن الحلال والحرام في مشروع ''نشر الثقافة الإسلامية'' بجامعة الأزهر حيث كان شابا كتب القرضاوي إحدى أهم الدراسات حول هذا الموضوع. وذكر في مقدمة هذا العمل أنه لم يجد مِن المناسب كتابة عمله مقيَّدا بمذهب واحد.[١٢]

٨ الزرقا، المدخل الفقهي العام، ص:٧٤٢-٨٤٢.

٩ Yaşaroğlu, *Pakistan'da İslam Ceza Hukukunun Kanunlaştırılması*, s. 490.

١٠ مجلة مجمع الفقه الإسلامي، ٦٨٩١، المجلد ١، العدد١ ، ص:٤٢٢.

١١ مجلة مجمع الفقه الإسلامي، ٦٨٩١ المجلد١، العدد١، ص٥١٢. على سبيل المثال، في القرار الذي تم اتخاذه في الكويت عام ٩٧٩١، يشير قبول وعد المرابحة على أنه ملزم قضاءً عند المالكيين وباعتباره ملزمًا ديانة عند المذاهب الأخرى إلى فهم مهم للفكر المذهبي لهذه المجمع.
Cebeci, *İslam İktisadında Murâbaha*, s. 186, Dipnot, 18.

١٢ يوسف القرضاوي، الحلال والحرام في الإسلام، ص:٤١-٥١.

لا يمكن القول إن القرضاوي قد أدار ظهره تمامًا للمذاهب؛ بل كان يحاول عدم الخروج عن آراء إحدى المذاهب الأربعة إن وجد فيها جوابًا مناسبًا. لكن على الرغم من ذلك لا يمكن القول إن القرضاوي كان متمسكًا بمذهب واحد. يجب أن نقول إنه مُنظِّر ''الطريق الوسطي'' أو ''فقه الوسطية''، وأنه كثيرًا ما يستخدم مفاهيم منتشرة ومشهورة في الدراسات الفقهية مثل ''الإصلاح'' و''التجديد'' و''التقليد'' و''المصلحة'' في أعماله.[١٣] يمكننا في هذه الدراسة المضي قدمًا للتعرف على مقارباته الفقهية من خلال بعض آرائه الفرعية.[١٤]

١ . ١ . المرابحة للآمر بالشراء

أدّى تطبيق المرابحة الحديثة الذي أصبح اليوم لا غِنى عنه للمؤسسات المالية غير الربوية، إلى مناقشات محتدِمة عندما برزت لأوّل مرّة. لم يحسم الجدل في هذه المسألة على الرغم من كثرة الدراسات عليها بشكل فردي ومن قبل مختلف المؤسسات. ساهم القرضاوي في هذا الموضوع بكتابه المسمى بـ''بيع المرابحة للآمر بالشراء كما تجريه المصارف الإسلامية''. وجّه هذا الكتابُ المناقشاتِ في هذا المضمار، وشمل آراء القرضاوي النهائية المتعلقة بالموضوع. وأشار بآرائه الفقهية فيه إلى أنّه يريد تمكين المؤسسات المالية غير الربوية من الاستمرار بالعمل، وتصحيح الأخطاء في التطبيق الحاليّ.[١٥]

عُرّفت المرابحة في ''بداية المبتدي'' بهذا الشكل: ''المرابحة نقل ما ملكه بالعقد الأول بالثمن الأول مع زيادة ربح''.[١٦] في هذا التعريف، يبيع البائع البضائع التي يريد بيعها بإضافة ربح إلى السعر الذي اشتراه. وهنا ينعقد العقد بين البائع

١٣ Kavak, "Reşid Rıza'nın Islah Anlayışı", s. 258.

14 وانظر آراءه في المنهج الفقهي: Küskü, *Çağdaş Fıkıh Çalışmalarında İki Farklı Yaklaşım*, s. 77–190.

١٥ القرضاوي، بيع المرابحة، ص:٨٤–٨٥. أدرج القرضاوي في كتابه ادعاءات رفيق يونس المصريّ وانتقاداته والردود التي أعِدَّت من قِبَله عليها. أمّا المصريّ فانتقد تطبيق المرابحة الحديثة للمؤسسات المالية الخالية من الفوائد في خمس عشرة مادة. وقد نُشر هذا النقد في العدد ٦١ من مجلة الأمة الصادرة في قطر. من أجل فحص آراء المصريّ حول هذا الموضوع، يمكن الاطلاع على الصفحة ١١٢٩ والصفحات التالية من العدد الثاني من المجلد الخامس من مجلة مجمع الفقه الإسلاميّ.

١٦ المرغناني، الهداية في شرح بداية المبتدي، ج:٣، ص:٥٦.

والمشتري فقط. وهنا العنصر الذي يُدخِل لفظَ العقد في تعريف المرابحة هو بيان سعر شراء البضاعة وإضافة مبلغ/ربح عليه.

وهذا التعريف مذكور في ''الدرّ المختار'' مع فارق بسيط بعبارة ''المرابحة بيع ما ملكه بما قام عليه وبفضل''.[١٧] فبحسب هذا النص، لا يبيع البائع البضاعة بالسعر الذي اشتراه به، بل يضيف المصاريف الأخرى التي تكبدها أثناء شراء البضاعة ويبيعها على السعر الذي كلّفه. يستبدل الحصكفي (١٠٨٨هـ/١٦٧٧م) عبارة ''بالعقد الأول بالثمن الأوّل'' الواردة في التعريف الأوّل بعبارة ''بما قام عليه''. ومع ذلك، لا يمكن القول إنّ هذا الفارق يشكّل فارقًا من حيث المحتوى. وخلاصة القول هي أنّ عقد المرابحة الكلاسيكية ينعقد بين شخصين على سعر معيّن نقديّ بإضافة ربح إلى التكلفة وبدون تقديم الطرفين أيّ وعد لبعضهما البعض.

أما في التطبيق الحالي، تكون المرابحة بين البائع والمشتري والمؤسسة المالية غير الربوية، أي بين ثلاثة أطراف على الأقل،[١٨] وبأجل وبمواعدة. الجوانب الأخرى المختلفة عن التطبيق الكلاسيكي اليوم، هي طلب العميل من المؤسسة المالية غير الربوية شراء منتج ما، ثم الذهاب واستلام المنتج من البائع نيابة عن المؤسسة مع وجودِ توكيلِ نيابةٍ عن هذه المؤسسة تُعطى للعميل، وتسديد المدفوعات مباشرة للمؤسسة بحلول موعد الاستحقاق.

ذكر الملحم أنه يجب تسمية المرابحة الحالية بـ''المرابحة المركّبة'' بسبب هذه الفروق.[١٩] وزعم بعض الكُتّاب أنّ كون المرابحة الحديثة مركّبةً لا يضيف إليها شيئًا جديدًا. وبالنسبة إليهم أتت المرابحة في كتب الفقه بأشكال وبأمثلة

١٧ علاء الدين الحصكفي، الدرّ المختار، ص:٤٢٤.

١٨ Bayındır, *İslam Hukuku Penceresinden Faizsiz Bankacılık*, s. 77; ملحم، بيع المرابحة وتطبيقاتها في المصارف الإسلامية، ص:٥٢، ٧٨.

١٩ ملحم، بيع المرابحة، ٢٥؛ آل خضير، معيار المرابحة، ص:٥٧.

مختلفة. ويُلاحَظ أنّ تطبيق المرابحة الحاليّ الذي تقوم به المؤسسات المالية غير الربوية موجود في هذه الأمثلة.[٢٠]

النقطة التي تهيمن على المناقشات حسب التطبيق الحالي هي الحكم الشرعيّ للمواعدة بين الأطراف، حيث يكون العقد بين أكثر من طرفين. وبما أنّ المواعدة لم تكن مذكورة في المرابحة الكلاسيكية، فقد نظر الفقهاء بشكل إيجابي إلى عقد المرابحة وأصدروا في الغالب حكمًا بجوازه. وكذلك قيل إنّ لطرفٍ العقد حقّ التراجع. وعلى سبيل المثال، ذَكر الإمام الشافعي في المتن الذي يُجيز فيه المرابحة: أنّ لطرفي العقد حقّ التراجع.[٢١] وأجاز الفقهاء الأحناف والشافعية والحنابلة المرابحةَ إذا لم يكن هناك مواعدة،[٢٢] ولكن المالكية اعتبروها خلافَ الأولى.[٢٣]

وأمّا المرابحة الحديثة فدارت فيها مناقشات حول حق التراجع للأطراف. وذكر القرضاوي بخصوص هذه المناقشات أولاً، أنّ هناك بعض المصارف الإسلامية التي تثبّت الخيار وتُلزِم بالوعد.[٢٤] وبعد أنْ سرد القرضاوي ملاحظات الإمام الشافعي بشأن حكم المرابحة المطبقة في شكلها الحديث، ذكر أنّه يُجيزها في الجملة وإن خالفها في بعض النتائج أو التفاصيل.[٢٥] وعلى ما يبدو أنّ أوّل شخص اعتمد عليه القرضاوي في فتوى هذه المسألة هو الشافعي. ومع

٢٠ الضرير، المرابحة للآمر بالشراء، المجلد ٥، العدد ٢، ص:٩٩٥.

٢١ القرضاوي، بيع المرابحة، ص:٣٣.

٢٢ بن نجيم الحنفي، البحر الرائق شرح كنز الدقائق، ج: ٦، ص:١١٦-١١٧؛ ابن الهمام ، فتح القدير، ج:٦، ص:٤٩٤-٤٩٧؛ الشيرازي، المهذب في فقه الإمام الشافعي، ج:٢، ص:٥٧؛ الشربيني، مغني المحتاج إلى معرفة ألفاظ المنهاج، ج:٢، ص:٤٧٦؛ المقدسي، الكافي في فقه الإمام أحمد، ج:٢، ص:٥٤.

٢٣ القرطبي، المقدمات الممهدات، ج:٢، ص:١٢٨؛ آل خضير، معيار المرابحة، ج:٦، ص:٦٣-٦٤؛ والسبب في وصفها المالكية بأنها خلافَ الأولى هو الشك في التكلفة، وهي سعر البيع. سيحدد البائع سعر المنتج بالربح الذي سيضعه على السعر الذي يكلفه لذلك، وفقًا لهم، هناك عدم يقين هنا.

٢٤ القرضاوي، بيع المرابحة، ص:٣٤.

٢٥ القرضاوي، بيع المرابحة، ص:٣٣.

ذلك فإنّ القرضاوي يرى أنّ الإلزام بالوعد واجب في العقود بينما الشافعي لا يراه واجبًا.[٢٦] وقد اتُّهِم القرضاوي من قِبل أحد الفقهاء بأنّه قام بالتلفيق؛ لأنّه أجاز المرابحة متّبِعًا الشافعي، ولكنّه في الفتوى نفسها لم يأخذ رأي الشافعي (ت ٢٠٤هـ/٨٢٠م) في موضوع الإلزام بالوعد.[٢٧] ويبيّن لنا ردُّ القرضاوي على هذا النقد وجهةَ نظره في التلفيق واجتهادَه في هذا الموضوع:

> والحقّ الذي لا ريب فيه أن أيّ رأي فقهيّ في مسألة ما مبنيّ على الاستدلال والترجيح لا يدخل دائرة التقليد، ولا يعتبر من التلفيق الذي ذكره من ذكره، وإن خرج الرأي في النهاية بصورة جديدة لم يقل بها واحد من المذاهب المتبوعة؛ لأن هذا إنما يقال فيمن يأخذ من المذاهب بطريق التقليد المحض، دون اعتماد على الأدلة وموازنة بعضها ببعض. على أنّ القضية التي معنا لو أخذناها من وجهة نظر التقليد لا تعتبر أيضًا من باب التلفيق، لأن موضوع الوعد والإلزام به مستقلّ عن بيع المرابحة، كما هو معلوم.[٢٨]

إنّه قد صرّح في هذه العبارات بأنّه لا يأخذ مِن المذاهب بطريق التقليد المَحض؛ بل يعتمد على الأدلّة. وكذلك أنّه لا بدّ مِن اعتبار قبول رأيين مختلفين لمذهبين مختلفين في مسألة ما ترجيحًا؛ لأنّ المسألة قابلةٌ للترجيح والاستدلال، حيث إنّه قام بالترجيح والاستدلال. وقال أيضًا إنّ رأيه قد يتعارض مع رأي أحد المذاهب بشأن المسألة محل البحث.

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٢٦ القرضاوي، بيع المرابحة، ص: ٦٧.

٢٧ المصري، "بيع المرابحة للآمر بالشراء في المصارف الإسلامية، المجلد ٥، العدد ٢، ص: ١١٦٠. يقول المصري إن القرضاوي ومن يتفق معه يقبلون بعضاً من أقوال الشافعي (جواز المرابحة) ويعتبرون ممارسات المرابحة في المؤسسة المالية الخالية من الفوائد دليلاً، بينما لا يقبلون الشق الآخر (الوعود ليست ملزمة) ولا تطبقه على المعاملات في المؤسسة المالية الخالية من الفوائد. في واقع الأمر، فإن أولئك الذين يجيزون المرابحة الحديثة يقعون في التلفيق، وأخذوا رأي جواز المرابحة للآمر بالشراء من الإمام الشافعي، وأن الشافعي أعطى كلا الطرفين حق الخيار في هذا العقد؛ وأخذوا رأي لزومية الوعد من مذهب مالك، وأن المالكيين لم يجيزوا المرابحة للآمر بالشراء. فياض، التطبيقات المصرفية لبيع المرابحة في ضوء الفقه الإسلامي، ص: ٤١.

٢٨ القرضاوي، بيع المرابحة، ص: ٣٥.

حاول القرضاوي أولاً الكشف عن حكم القضيّة باقتباس مِن الإمام الشافعي الذي هو من أئمة المذاهب[٢٩] ومع هذا لا يقبل القرضاوي حكم تثبيت الخيار لطرفي العقد الموجود في رأي الشافعي. بالنسبة إليه لا بدّ من وجود وعد في العقود. حتى بحسب رأيه لو عاش الشافعي اليوم، ورأى ما يترتّب على إعطاء الخيار للمشتري من الأضرار والخسائر، لغيّر اجتهاده دفعًا للضّرر وتجنبًا لأسباب النزاع بين الناس.[٣٠] وهو لا يبني رأيه في عدم لزوم الوفاء بالوعد على مذهب مالك. لأنّ المالكيين يرون أنّ الوعود تكتسب لزوم الوفاء بها في مسائل المعروف والإحسان دون عقود المعاوضات.[٣١] وأمّا القرضاوي فيرى مستدلًا بالآيات والأحاديث، أنّ الوعد سواء كان بصِلة وبِرّ أم بغير ذلك واجبُ الوفاء به ديانة.[٣٢] ويدّعي بأنّ هذا الرأي مرويّ عن فقهاء كعبد الله بن عمر، وسمرة بن جندب، وعمر بن عبد العزيز، والحسن البصري، وابن الأشوع، وابن شبرمة، وإسحاق بن راهويه.[٣٣]

١.٢. شراء البيوت السكنية من قِبل الأقليات المسلِمة التي تعيش في البلدان غير الإسلامية باستخدام القروض الربوية

يعدّ امتلاك البيوت الخاصّة من القضايا الاجتماعيّة الحاسمة في العصر الحديث. هاجر كثير من الناس الذين يعيشون في المناطق الريفيّة على مرّ التاريخ إلى المدن الكبيرة في القرن الأخِير، وبعد الانتقال إلى المدينة ظَهرتْ مشاكل متعلّقة بالجوانب الاجتماعيّة والثقافيّة والدينيّة والاقتصاديّة. وقد تحوّلتِ العلاقات الإنسانية إلى أبعاد مختلفة، واختفتِ الاختلافات الثقافية، وأصبح التغيّر في المؤسسات الدينية أمرًا لا مفرّ منه، ونشأت صعوبات مالية، ومن إحدى المشاكل الدينية

٢٩ القرضاوي، بيع المرابحة، ص:٣٣.

٣٠ القرضاوي، بيع المرابحة، ص:٣٤.

٣١ وذكر القرضاوي في كتابه آراء بعض ممّن يزعمون أن المالكية كانوا مع هذا الرأي. انظر: القرضاوي، بيع المرابحة، ص:٦٢-٦٤.

٣٢ القرضاوي، بيع المرابحة، ص:٦٥-٦٧. قال القرضاوي بعد دراسة الآيات والأحاديث: والظاهر من هذه الأدلة أنّ الوعد سواء كان بصلة وبرّ، أم بغير ذلك واجب الوفاء به؛ إذ لم تفرق النصوص بين وعد ووعد. نفس الكتاب، ص:٦٧.

٣٣ القرضاوي، بيع المرابحة، ص:٧٢.

والاقتصادية هي شراء البيوت مِن قِبل الأقليات المسلِمة التي تعيش في الغرب. اضطر المهاجِرون المسلِمون في أوروبا وأمريكا، مثل كلّ الوافدين من القرى إلى المُدن ولا يملكون بيوتًا للسّكن إلى الاقتراض من البنوك مِن أجل امتلاك بَيتٍ. وكما أنّ عدم امتلاكهم بيوت خاصة بهم مشكلة اقتصادية فإنّ استخدام القروض السكنيّة الربويّة من البنوك مشكلةٌ دينيّةٌ؛ لأنّ الربا نشاط اقتصاديّ محرَّم على المسلمين. على الرغم من أنّه لا يمكن خرق المحرمات ما لم تكن هناك مشكلة حياتيّة إلا أنه يمكن تجاوُز هذه المحرمات بقدر الاحتياج في حالات الضرورة. هل امتلاك بيتٍ ضرورة حياتيّة للمجتمعات الإسلامية التي تعيش في الغرب؟ إذا كان الأمر كذلك، فهل يجوز استخدام القروض الربوية لهذه الضرورة؟

دخلت هذه القضيّة في جدول أعمال الفقهاء المسلمين فيما يتعلّق بالأقليات المسلمة التي تعيش في الغرب. كما درس يوسف القرضاوي هذه القضيّة على أنها قضيّة المسلمين الذين يعيشون كأقليات في البلدان غير الإسلامية، وبالنسبة له إنها قضيّة تتعلق بفقه الأقليات، وبما أنّ القرضاوي عالَج القضايا المندرِجة في فقه الأقليات في كتابه المسمى ''فقه الأقليات المسلِمة''، أدرج هذه القضيّة أيضًا في هذا الكتاب. مِن أجل تحليل نهجه بشكل صحيح، سيكون مِن المفيدِ النّظرُ إلى ما كتبه عن الفائدة أوّلاً، وعن شراء البيوت بالقروض الربويّة ثانيًا.

نجد في كتابه المسمى ''الحلال والحرام في الإسلام'' العبارات التالية عن الفائدة:

> وإذا كانت هناك ضرورة ملِحّة اقتضت معطي الفائدة أن يلجأ إلى هذا الأمر، فإنّ الإثم في هذا الحال يكون على آخذ الربا (الفائدة) وحده. وهذا بشرط أن تكون هناك ضرورة حقيقية، لا مجرّد توسع في الحاجيات أو الكماليات. فالضرورة ما لا يمكنه الاستغناء عنه، إلاّ إذا تعرّض للهلاك، كالقوت والملبس الواقي، والعلاج الذي لا بدّ منه. ثمّ أن يكون هذا الترخيص بقدر ما يفي بالحاجة، دون أيّ تَزَيُّد. ومن ناحية أخرى، عليه أن يستنفد كلّ طريقة للخروج من مأزقه المادي، فإن لم يجد وسيلة إلاّ هذا، فأقدم عليه غيرَ باغٍ ولا عادٍ.[٣٤]

٣٤ القرضاوي، الحلال والحرام في الإسلام، ص: ٢٣١-٢٣٢.

يرى القرضاوي أنّ الفائدة حرام وأنّ مقدار الضرورة اللازم لاستخدام الفائدة يجب أن يكون شيئًا مثلَ الملبس والقوت والعلاج الذي لا بدّ منه. حتى يقول: إنّه لكي تحدث الضرورة، يجب أن يكون هناك خطر يهدّد الحياة عند عدم استخدامه. وعلى الرغم من أنه لم يتطرَّق إلى قضيّة شراء البيت في هذا المقال، فإنّ شراء البيت المطلوب للسكن لا يندرج في إطار الضرورة الذي رسمه. ذلك أنّ هذه الحاجة يمكن تلبيتها باستئجار بيتٍ أو بطريقة أخرى، وعدم امتلاك البيت عن طريق الشّراء لا يهدّد الحياة.

دافع القرضاوي عن هذه الآراء لفترة طويلة من حياته. وإذا نظرنا إلى التصريحات التي كتبها بخصوص هذه القضيّة، وجدناه قد استشار مصطفى الزرقا فيها، وكان رأي الزرقا الإجازة بناءً على تبنيه للمذهب الحنفيّ، ولكنّ رأي القرضاوي كان المنعَ بناء على ما تبناه من رأي الجمهور ومِن ظاهر عموم الأدلة المحرمة للربا، بغض النظر عن دار الإسلام أو دار الحرب.[٣٥] وبالنظر إلى أنّ كتابه في فقه الأقليات الذي يتضمّن مقالتَه بعنوان "شراء بيوت السكنى في الغرب عن طريق البنوك" قد نُشر في عام ٢٠٠١، فإنّ القرضاوي لم يُجِز شراء البيوت بالقروض الربوية حتى هذا التاريخ.[٣٦] إلا أنّه في هذا الكتاب، قد تَراجَع عن رأيه القديم وترك رأي الجمهور الذي قال عنه سابقًا إنّ شواهده أقوى.[٣٧] وفي هذا الصدد، فإنّ هذه القضية من القضايا التي غيّر رأيه فيها في حياته. فلماذا ترك القرضاوي هذا الرأي الذي دافع عنه لسنوات؟ وما الذي دفعه إلى اختيار رأي أبي حنيفة ومحمّد بن الحسن المُجيز أخْذَ المسلمين في دار الحرب الفوائدَ مِن غير المسلمين؟

سأل القرضاوي نفسه هذا السؤال أيضًا، ويقول أثناء تصريحه بأنه غيّر رأيه، إنّه من الطبيعيّ لعالِمٍ مسلمٍ تغيير اجتهاده. وغالب الظن أنه غير اجتهاده

٣٥ القرضاوي، في فقه الأقليات المسلمة، ص:١٥٤-١٥٥.

٣٦ وفي الواقع، يقول إنّه ينتقِد من يُجيز ذلك ولم يتسامح مع هذه الفتوى. انظر للحصول على تصريحاته: القرضاوي، في فقه الأقليات المسلمة، ص:١٥٤.

٣٧ القرضاوي، في فقه الأقليات المسلمة، ص:١٦٨.

بسبب أحد أمرين، إمّا أنّ الإنسان في شيخوخته يكون أكثر عطفًا وإشفاقًا على خلق الله تعالى، وأكثر رغبة في التيسير عليهم، وإيجاد المخارج لهم من مآزق حياتهم. وإمّا أنّ الإنسان بعد النضج يكون أكثر شَجاعةً في تبنّي الرّخص والتخفيفات في فتاواه.[٣٨] كما يتّضِح من كلا الاحتمالين، فإنّ تفضيلَ القرضاوي للشيء الأسهل وميلَه إلى الترخيص كانا مؤثّرَيْن في تغيير رأيه. وفي الوقت نفسه، لم يكن اجتهاده الجديد باختياره آراءَ أبي حنيفة ومحمّد بن الحسن فقط؛ بل قدّم بعض الاستدلالات الفقهيّة واتبع طريقة الاستدلال.

بنى القرضاوي فتواه أولاً على آراء أبي حنيفة (١٥٠هـ/٧٦٧م) ومحمّد بن الحسن المتعلّقة بإمكانيّة أخذ الفائدة من غير المسلمين في دار الحرب.[٣٩] ورأي أبي حنيفة ومحمّد بن الحسن بحسب الآراء الموجودة في كتاب الأصل، أنّه يمكِن لِمسلِمٍ يعيش في دار الحرب أن يأخذ أموال غير المسلمين بِرضاهم، لأنّ أحكام المسلمين لا تجري عليهم هناك. أمّا رأي أبي يوسف (١٨٢هـ/٧٩٨م)، فهو لا يُجيز ربًا ولا يجيز بيع المسلمين خمرًا وميتةً.[٤٠] وذكر القدوريّ (٤٢٨هـ/١٠٣٧م) هذا الموضوع في التجريد وقال: "قال أبو حنيفة ومحمّد: إذا دخل المسلم دار الحرب مستأمنًا فباع درهمًا بدِرهمين جاز، وكذلك إذا دخل بغير أمان."[٤١] ويقول القرضاوي إنّ الإمامين أبا حنيفة ومحمّدًا لم ينفرِدا بهذا الرأي؛ بل قد وافقهما في ذلك إبراهيم النخعي (٩٦هـ/٧١٤م)، وسفيان الثوري، (١٦١هـ/٧٧٨م)، وهما مِن أئمة التابعين.[٤٢] بعد أن سرد أقوالَ السّلف في هذه القضيّة، يقول إنّ هؤلاء العلماء يُجيزون في دار الحرب من ألوان التعامل ما لا يجوز في دار الإسلام إذا رضيه أهلها وأجازوه بينهم، فيعتبر هذا الرأي معقولا.[٤٣]

٣٨ القرضاوي، في فقه الأقليات المسلمة، ص:١٦٩-١٧٠.

٣٩ القرضاوي، في فقه الأقليات المسلمة، ص:١٧٠.

٤٠ الشيباني، كتاب الأصل، ج:٧، ص:٤٨٠.

٤١ القدوري، التجريد، ج:٥، ص:٣٣٧٠.

٤٢ القرضاوي، في فقه الأقليات المسلمة، ص:١٧٠.

٤٣ القرضاوي، في فقه الأقليات المسلمة، ص:١٧١.

أجاز مصطفى الزرقا قبل القرضاوي شراء البيوت بِالقروض الربويّة مِن قِبل الأقليات المسلِمة التي تعيش في البلدان غير الإسلاميّة معتمِدًا على رأي أبي حنيفة ومحمّد بن الحسن. ويقول القرضاوي إنّ الزرقا رجّح هذ الرأي لمبدأ الحاجة. وكانت آراء الأئمة في المصادر ذات الصلة هي أنّ المسلمين يمكنهم أخذ الربا، وأمّا الزرقا فيقول إنّ المسلمين اليوم يمكنهم إعطاء الربا. ويقول إنّ السّبب في ذلك أنّ ما كان مفيداً للمسلمين في ذلك اليوم قد تغيّر اليوم، وإنّه مِن المفيد للمسلمين إعطاء الربا مِن الآن فصاعداً.[٤٤] ويؤيِّد القرضاوي الآن رأي الزرقا في هذه القضية، والأمر المهمّ بالنسبة إليه هو مصلحة المسلمين.[٤٥] ومع ذلك في التسعينيات انتقد رأي أستاذه محمود شلتوت أن "الفائدة قد تكون مباحة للناس في حالة الضرورة الشخصية أو الاجتماعية". وقال: إن شلتوت يستخدم مبدأ الضرورة في نطاق أوسع مما ينبغي أن يكون. إنه لا يبسط مبدأ الضرورة بهذا القدر ويقول إنه لن يوافق عليه.[٤٦] القرضاوي الذي يرى أن قرار الهيئة العامة للفتوى في الكويت بشأن موضوعنا صحيح، يفسر قاعدة "الحاجات التي يجب قبولها في حالة الضرورة" على أنها حاجات تجعل الأشياء المحظورة مباحة ويقول من المُسلَّم بالاتفاق إباحة المحظورات بسبب الضرورات.[٤٧] كما هو واضح فإن القرضاوي الذي لم يسمح ذات مرة بشراء مساكن للأقليات المسلمة في البلدان غير المسلمة بقروض بفوائد، في نفس الفترة عارض أن يوسع أستاذه شلتوت مبدأ الضرورة كثيرًا، وانتقد الفتوى التي طرحها مصطفى الزرقا باعتبارها وضعاً تقتضيه مصالح المسلمين. ولكن بعد ذلك تخلّى عن هذه الآراء، وتبنى وجهة نظر مغايرة في هذه المسألة، قائلاً إنها ضرورية لمصلحة المسلمين، والحاجات تبيح المحظورات.

٤٤ الزرقا، الفتاوى، ص:٦٢٥-٦٢٦.

٤٥ القرضاوي، في فقه الأقليات المسلمة، ص:١٧٢.

٤٦ يوسف القرضاوي، ج:١، ص:٦٠٥.

٤٧ القرضاوي، في فقه الأقليات المسلمة، ص:١٦٥.

١. ٣. تحديد أرباح التجار

هناك العديد من القضايا الفقهية التي كتبها الأستاذ القرضاوي في مجال التجارة والمعاملات، ومن الموضوعات التي تعكس اجتهاده فتوى كتبها حول تقييد الربح في التجارة. موضوع هذه الفتوى التي في كتابه ''فتاوى معاصرة'': هل يوجد نص في الشريعة الإسلامية بشأن تحديد الربح على المنتجات التي يبيعها التجار؟ هذا الموضوع مثل العديد من القضايا الأخرى دخل في جدول أعمال الأستاذ القرضاوي بعد سؤال وُجِّه إليه. وأثناء إجابته على هذا الموضوع تناول القرضاوي -كما فعل في العديد من القضايا الأخرى- الموضوعَ بالتفصيل، وقدم تفسيرات حول مفاهيم التجارة والربح، والنصوص المتعلقة بوجود أو عدم وجود حد أعلى للربح، وكسب الحرام، والخداع، والغبن الفاحش، والتخزين. اعتبر القرضاوي في مقالته هذه القضية سببًا للتعرض لمسألة طرق الربح المشروعة وغير المشروعة في التجارة. يمكن أن تدخل القضايا المذكورة أعلاه في مجال دراستنا من حيثية إظهار المنهج الذي اتبعه القرضاوي شكليًّا في كتابة فتاواه. إلا أن ما يعنينا هاهنا هي مقاربته للمسألة التي دفعته لكتابة مقالته تلك. ويحدد القرضاوي في هذا المقال الرأي الفقهي من حصر أرباح التجار بالحد الأعلى في بيع المنتجات التجارية، وتحديد أسعار البيع حسب نسب أسعار الشراء، ويعرض رأيه في هذا الموضوع.

يقول الأستاذ القرضاوي، الذي ركز أولاً على القرآن والسنة من أجل معرفة الحكم في الموضوع، إن القرآن يشجع على الربح في التجارة، لكنا لا نجد في السنة أو القرآن نصًّا يسمح بتحديد أسعار المنتجات من خلال نسبة معينة أو تحديد معدلات الربح.[٤٨] يقول الأستاذ القرضاوي إن معدل ربح الذين يبيعون سلعًا أقل والذين يبيعون سلعًا كثيرة يمكن أن يتغير، ومعدلات ربح السلع ذات العرض الأقل مقارنة بذوات العرض الكثير وتلك التي تباع إلى أجل مقارنة بالتي تباع نقدًا يمكن أن تتغير أيضًا. ويذكر كذلك أنه قد تكون هناك تغييرات في مثل

٤٨ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٢٨-٤٢٩.

هذه المبيعات أو المنتجات حسب الحاجة. وبحسب القرضاوي يجب أن يكون هذا هو السبب في عدم تحديد معدلات الربح في أسعار مبيعات المنتجات.[٤٩]

يعتقد القرضاوي أن إحدى غايات الفقه يجب أن تكون عدم اقتصار الأرباح التجارية على مقدار أو نسبة معينة. وعليه فإن هذا الميزان التجاري سيحدده ضمير الفرد المسلم وأعراف المجتمع المحيط به وفق مبادئ العدل والخير. وبالطبع ستعطى الأهمية لمبادئ مكافحة الأذى وعدم الرد على الأذى بالضرر، مما يضمن التوازن في جميع تصرفات الفرد المسلم.

يقول القرضاوي إنه لم يستطع إيجاد تفسيرات في كتب الفقه الكلاسيكي لتحديد هامش الربح الذي سيكسبه التجار من المنتجات في تجارتهم وقصره على الحد الأعلى للمبيعات، ويقول إنه لم يجد في المصادر أية قيود على هذه المسألة من قبل الفقهاء.[٥٠]

من أجل تمييز هذا الموضوع عن الموضوعات الأخرى، نظرًا لأن بعض الكتاب المعاصرين يخلطون بين هذا الموضوع وموضوعات أخرى، ينصح القرضاوي أيضًا بعدم الخلط بين هذا الموضوع وبين تحديد الأسعار وتحديد هوامش الربح من قبل السلطان. ويذكر أنه إذا كان الموضوع يتعلق بتدخل السلطان في السوق، فيجب دراسة الموضوع تحت عنوان التسعير.[٥١]

يقول القرضاوي إنه ما لم تكن هناك شبهة للحرام فإن الأحاديث الصحيحة وعمل الصحابة تشير إلى أن جميع أنواع المكاسب مسموح بها، وأن التاجر يمكنه بيع منتجه بضعف تكلفته أو أزيد من ذلك. وفي هذا الصدد، فإن الأدلة

٤٩ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٢٨.

٥٠ يذكر هنا بأن ما اقتبسه من الزيلعي يعتبر استثناء. وبحسب تعريف الزيلعي لـ ''الزيادة الباهظة''، وهي المسألة التي تناولتها مؤلف كتاب الهداية، فإن الزيادة الباهظة هي بيع شيء ما بضعف قيمته. كما يقول إنه لم يستطع الوصول إلى مصدر المعلومات القائلة بأن الفقهاء المالكية حددوا نسبة الربح بنسبة الثلث. القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٢٨.

٥١ القرضاوي، فتاوى معاصرة، ج:٤، ص:٤٢٤. التسعير: تحديد أسعار السلع. انظر: القلعجي، حامد صادق قنيبي، معجم لغة الفقهاء، مادة التسعير.

من السنة النبوية الصحيحة على جواز بيع المنتج بضعف تكلفته أو أكثر نجده في مسند أحمد، وصحيح البخاري، ومصادر حديثية أخرى.[٥٢]

ومن الأحاديث التي أخذها القرضاوي في الاعتبار ما رواه البخاري في صحيحه: أن النبي صلى الله عليه وسلم «أعطاه دينارًا يشتري له به شاة، فاشترى له به شاتين، فباع إحداهما بدينار، وجاءه بدينار وشاة، فدعا له بالبركة في بيعه، وكان لو اشترى التراب لربح فيه».[٥٣]

والحديث الآخر هو الحديث المشهور عن الأرض التي باعها عبد الله بن الزبير بن العوام لسداد ديون والده.[٥٤]

مناقشة الأحاديث التي استشهد بها القرضاوي كأساس لرأيه القائل بعدم وجود حد للربح في الفقه من حيث المعنى والصحة يتعارض مع هدفنا في هذا المقال. لكن العلاقة التي أقامها مع الآيات والأحاديث تقع ضمن مجال دراستنا.

يحتمل أن تكون مقاربات القرضاوي للنصوص المتعلقة بالموضوع مرتبطة بالمكانة التي وضعها لنفسه في علم الفقه. يمكن القول إن عدم التزامه بمذهب واحد، وأخذه الأقوال من كل المذاهب الموجودة في التراث الفقهي، وقبوله فتاوى وآراء فقهاء التابعين والأتباع الذين ليس لهم مذهب متبع، تنبع من اعتقاده بكونه مجتهدًا؛ لأنه أحيانًا يرجح رأيًا ما بعد الاستفادة من هذه الآراء، وأحيانًا أخرى يعبر عن رأيه بشكل مستقل عنها.

يقول القرضاوي الذي لم يجد نصاً واضحاً في الآيات والأحاديث عن حكم المسألة التي تناولها إن الآيات تدل على الأقل على أن أساس التجارة هو الربح.[٥٥] في هذه الآيات، لا توجد مسألة تبين مقدار الربح أو تحدده، أو تشير إلى أي نسبة. لذلك وحسب قوله، فإن الآيات تسمح بالسوق الحر. وقوانين

٥٢ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٣٠.
٥٣ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٣١.
٥٤ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٣٢.
٥٥ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٢٥.

السوق الحر ترجع الى تصرفات الأفراد والعادات الاجتماعية، وتحكم بمبادئ العدل والأخلاق. وهكذا نجد في كلام القرضاوي أنه تم تحقيق نوع من الوحدة الأخلاقية والاقتصادية.[٥٦] يمكن اعتبار هذا الرأي الشخصي على أنه الموضوع الأول الذي حدده في هذه المسألة.

ويمكن أن نقبل بعض الأحكام التي استنبطها من نصوص السنة كتقرير آخر له. وفقًا لذلك فإن التاجر يمكنه بيع المنتج بربح يصل إلى مئة بالمائة.[٥٧]

كذلك فقد توصل لبعض الاستنتاجات اعتمادًا على بعض الآثار من الصحابة، أنه يمكن بيع السلعة بربح مضاعف أو بأضعاف كثيرة.[٥٨]

على الرغم من كل هذا، فإن حقيقة أن التجار لهم الحق في تحديد معدلات الربح في التجارة لا يعني أن السلطان لا يمكنه الحد من ذلك وتحديد الأسعار. السلطان لديه السلطة ويمكنه تحديد أسعار الحوائج الأصلية للناس دفعًا للضرر بهم ومن أجل ضمان رفاهية الناس.

٢. خاتمة

القرضاوي فقيه معاصر يفكر في المشاكل المعاصرة، وهو في نفس الوقت يعتمد على النصوص الفقهية التقليدية ويثمن آراء أئمة المذاهب والفقهاء ويقبل الأدلة الفقهية كالكتاب والسنة والإجماع مراعيًا التسلسل والأولوية فيما بينها. ومع ذلك فهو عالم مستقل لا يقيد نفسه بمذهب واحد، ويحاول الاستفادة من الأحكام المنصوص عليها في المذاهب قدر الإمكان، ويهتم بالقواعد الكلية وقواعد الأصول بقدر اهتمامه بكتب فروع الفقه.

من الأهمية بمكان لحل المشكلات المعاصرة الاهتمام بالقواعد الكلية، ومبدأ المصلحة والضرورة؛ لأنه غالبًا ما يعتمد على هذه المبادئ لاستنباط الأحكام

٥٦ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٢٩.

٥٧ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٣٠.

٥٨ القرضاوي، فتاوى معاصرة، ج:٢، ص:٤٣٣.

للمسائل المعاصرة. على سبيل المثال، في كتابه الذي بحث فيه المرابحة، يدرج قواعد الفقه التي تدعم منهجه تحت عنوان ''قواعد حاكمة للمعاملات''. وعلى سبيل المثال يعتقد القرضاوي أن مبدأ ''الأصل في المعاملات الإباحة'' يكون ساريًا معتمدًا طالما لا يوجد نص تحريمي.[٥٩] يستخدم قاعدة الفقه ''المعاملات مبنية على مراعاة العلل والمصالح'' ضد بعض الاعتراضات على المرابحة الحديثة. ومن هذه الاعتراضات هي: الوعود الملزمة تستلزم مكاسب غير مشروعة، وبيع لمنتج لم يتسلمه البائع بعد، ومن الواضح أن سعره وتكاليف شرائه وشحنه غير معروفة، وهذه الشكوك تولد غررًا، والغرر هو علة يستلزم تحريم العقد. ومع ذلك وفقًا للقرضاوي، فإن الغرر هنا يسير ويتسامح في مثله بحيث لا يحرم العقد به، ويجب احتسابه غررًا يسيرًا، أما الغرر الممنوع فهو الغرر الفاحش. كما أن وجود فقهاء يوافقون على الغرر اليسير كافٍ لصحة عقود المرابحة.[٦٠]

بالإضافة إلى ذلك، فهو يقبله كأساس للمجتهدين كي يجتهدوا في مجال المعاملات. وفقا للقرضاوي، لو جاز لأحد إنكار الاجتهاد المطلق في الفقه، يجب أن يكون لدى الفقهاء الاجتهاد الجزئي. حتى لو كانت هذه الاجتهادات تتعارض مع اجتهادات وآراء الفقهاء القدامى. لأن هذا الاجتهاد جائز مشروع، بل يمكن أن يكون ضروريًا.[٦١] وفي الحقيقة فإنه عندما يقول إن الوعد ملزم، فهو يعتمد على أقوال بعض العلماء من السلف وفقهاء الأمصار مثل ابن شبرمة وابن حزم وليس أئمة المذاهب.[٦٢]

يقول القرضاوي إنه من الطبيعي أن يغير المجتهد اجتهاده. وبحسب القرضاوي، من الضروري التعاطف مع هؤلاء الناس، والتخفيف عليهم فيما يحتاجون إليه، وبناء الفقه على التراخيص. فالقرضاوي من أجل دعم قضية يراها ضرورية يغير اجتهاده، ويتخلى عن آراء العلماء، ويقبل رأيًا في المذهب الحنفي

٥٩ القرضاوي، بيع المرابحة، ص:١١٢-١١٣.

٦٠ القرضاوي، بيع المرابحة، ص:١٣.

٦١ القرضاوي، بيع المرابحة، ص:٢٠.

٦٢ القرضاوي، بيع المرابحة، ص:٦٧-٦٨.

كأساس لفتواه، ويهتم بمبدأ المصلحة، ومرة أخرى يعتمد على أقوال فقهاء الأمصار، كما يسمح باستخدام الفائدة لبعض الناس في مثل هذه الحالات التي يراها في نطاق الضرورة. وبهذه الطريقة يتخذ موقفًا لصالح التيسير في مسائل الفروع. فهو عندما تكون المسألة بين التيسير والاحتياط يرجح التيسير. وهو يعتقد أنه يجب تفضيل مبدأ التيسير ما لم يتعارض مع مبادئ الشريعة القطعية.[٦٣]

القرضاوي، الذي يشير باستمرار إلى المصادر الأصلية للفقه الإسلامي يعتمد في مسألة تحديد معدل الربح على النصوص الواردة في السنة النبوية؛ إذ لا يوجد في الآيات ما يشير إلى تعيين أو تحديد الربح بنسبة معينة. واعتماداً على الأقوال الواردة في الأحاديث يرى جواز بيع المنتجات بربح يصل إلى مئة بالمائة، وبحسب الآثار المروية عن الصحابة يكشف اجتهاده بأن الربح يمكن أن يكون أعلى بكثير من التكلفة. وبهذه الطريقة، عندما لا يستطيع حل مشكلة من خلال النصوص الفقهية، يتأمل في المراجع الأصلية ويدلي بتعليقات فردية.

لا يتقيد القرضاوي بمذهب من المذاهب الفقهية، ويعتقد أنه ينبغي الاستفادة من آراء كل مذهب في تاريخ الفقه. كما رأينا أعلاه، فإنه يفضل أيضًا آراء فقهاء التابعين والأتباع الذين ليس لديهم مذهب مستقل وليس لهم أتباع. ومع ذلك فمن الصعب تعريفه ''بالمقلد''؛ إذ نجده بين الحين والآخر يختار آراء أئمة المذهب أو الفقهاء، ومن حين لآخر يختار آراء التابعين والأتباع، وعندما لا يجد في آرائهم ما يراه صوابًا يكشف عن رأيه الشخصي من خلال أسلوب تفكيره الخاص ومنهجه الفقهي.

هذه الدراسة العلمية التي نعرضها بين أيديكم هي محاولة بحث وكشف عن منهجية القرضاوي في فهمه التراث الفقهي بصفته فقيهًا. ويبدو أنه لا يوجد حتى الآن دراسات كافية استوعبت هذا البحث. وفي الحال يمكننا القول بأن المجال متاح للبحث عن هذه القضية. فنرى أن القرضاوي يتميز عن معظم معاصريه اللذين يتبعون المنهج الفقهي الأصلي بتأسيسه علاقة بين التراث الفقهي

٦٣ القرضاوي، بيع المرابحة، ص:٢٢-٢٣، ١١٦.

والمذاهب الفقهية أثناء تقديمه الحلول للقضايا المعاصرة الخاصة بالمسلمين. وعلى هذا فإنه لا بد من إقامة الأبحاث أيضًا فيما يختص به فقط عن غيره من المزايا العلمية، وعلى وجه الخصوص، أعني محاولة فهم العلاقة التي أقامها بينه وبين المذاهب وخاصة من خلال تفكيره وتصوره في قضية المصلحة والتيسير والتقليد. فهذه الدراسات الأكاديمية المتعمقة في هذا المجال سوف تساعدنا على استكشاف أفكاره عن الأصول والفقه. ومن هذا الباب أيضًا أن دراسة الحالة التي سوف يتم إجراؤها مقارنة بين أفكاره في المؤلفات التي كتبها حول أصول الفتوى وتطبيقاته في فتاواه التي ألفها عن فروع الفقه.

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Extended Summary

Fiqh Approaches of Yūsuf al-Qaraḍāwī as a Proponent of the *Ijtihād*-Based Methodology

It is well known that Islamic jurisprudence (*fiqh*) and law has shifted away from the approaches of earlier periods. Historically, jurists conducted their work within the doctrinal frameworks of specific legal schools (*maḍhab*). However, over the past century, this approach has moved towards a 'comparative' or 'supra-maḍhab' methodology (*uṣūl)*, characterized by the use of perspectives from multiple schools of law or even independent legal reasoning (*ijtihād*) by non-canonical jurists. These studies frequently prioritize principles such as necessity (*ḍarūra*), public interest (*maṣlaḥa*), and ease (*taysīr*), attempting to ground legal rulings in these principles.

In contrast to the traditional approach of single-school-based jurisprudence, contemporary scholars like Yūsuf al-Qaraḍāwī (1926–2022) have advocated a multi-school perspective, asserting that only such an approach can adequately address the complex problems of modern times. He extensively draws on the views of jurists from the four Sunni schools, independent scholars, alongside sayings of the Ṣaḥāba (Companions) and Tābiʿūn (Successors) of the Prophet, as seen in the literature on Islamic jurisprudence and fatwas.

Al-Qaraḍāwī further pushes the boundaries of jurisprudence by incorporating a free *ijtihād* approach, placing emphasis on *ijtihād* while also utilizing concepts from Islamic jurisprudence (*uṣūl al-fiqh*) such as public interest, prevention of harm (*sadd al-ḍarāʾiʿ*), and local customs (*ʿurf*). His method reflects an interest in integrating diverse scholarly perspectives, including those of Ibn Ḥazm, Ibn Taymiyya, and al-Shawkānī.

This paper critically examines the methodological and *ijtihād* approach of Yūsuf al-Qaraḍāwī, focusing on his efforts to balance traditional jurisprudential frameworks with modern realities. Specific issues analyzed include the contractual enforceability of

murābaḥa in interest-free finance, the permissibility of using interest-based loans for home purchases by Muslim minorities in non-Muslim countries, and the regulation of profit margins in trade.

For instance, in *murābaḥa* contracts, Yūsuf al-Qaraḍāwī, who rejects the binding nature of promises, opposes the position of the Shāfiʿī school. He aligns himself with the opinion of the Mālikī jurists, who hold that promises are binding in matters of good deeds in law. However, Yūsuf al-Qaraḍāwī is aware that the opinions of the Mālikīs are insufficient for his view on *murābaḥa*, a contract involving consideration. Therefore, as in the case of good deeds, he supports the view that promises are binding in contractual agreements, grounding his stance in the Qur'ān and hadīth. He argues that this opinion was transmitted by Companions such as 'Abdullah ibn 'Umar, Samura ibn Jundub, and ʿUmar ibn ʿAbd al-ʿAzīz, as well as by Tābiʿūn figures such as Ḥasan al-Baṣrī, and jurists like Ibn al-Ashwaʿ, Ibn Shubrumah, and Isḥāq ibn Rāhawayh.

The issue of Muslim minorities in Europe and America using interest-based loans for purchasing homes is, for Yūsuf al-Qaraḍāwī, a matter of "minorities fiqh." Due to their specific circumstances, he argues that such individuals should be permitted to use interest-based loans to purchase homes, which are essential for their well-being. It can be said that al-Qaraḍāwī bases this view on the principles of necessity, hardship, and the *maṣlaḥa* of Muslims. While he once opposed any form of interest, in his later years, he allows the use of interest in housing purchases. In presenting this opinion, al-Qaraḍāwī also refers to the fiqh principle that necessities can make otherwise prohibited things permissible (*al-ḍarūrāt tubīḥ al-maḥẓūrāt wa-l-ḥājāt tunazzalu manzilat al-ḍarūra*), as well as the rule that a mujtahid can revise his own *ijtihād*.

When expressing his views on the regulation of profit margins in trade, such as the idea of imposing a "profit ceiling," he refers to the primary sources. He asserts that there is no indication of a limit in the foundational texts. Nevertheless, he finds support for this idea in certain practices of the Ṣaḥāba, where no upper limit was set on the profits of traded goods. Based on this evidence, al-Qaraḍāwī articulates his *ijtihād*, arguing that when products are critical to the public, such as those fulfilling essential needs, the rulers may impose a profit ceiling to ensure that public interest is protected and that people do not suffer harm.

In these issues, al-Qaraḍāwī refers to the Qur'ān and Sunnah, the original sources of legal rulings, when presenting his legal positions. Where he cannot find direct evidence in these sources, he turns to the practices of the Companions and the fatwas of the Tābiʿūn. He does not frequently rely on the opinions of the four Sunnī maḍāhib but values the *ijtihād* of scholars like Ibn Shubrumah and Ibn Ḥazm. He accepts necessity, ease, and public interest as legitimate principles of fiqh and determines his legal rulings in accordance with them.

Keywords: al-Qaraḍāwī, Islamic law, *Ijtihād*-Based methodology, *Maṣlaḥa*, Fiqh for minorities.

Araştırma Makalesi / Research Article

دور المخطوطات العربية في الحفاظ على الهوية الدينية والثقافية لدى المسلمين البوماك في بلغاريا بعد العهد العثماني

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Osmanlı Sonrası Bulgaristan'daki Pomak Müslümanlarının Dinî ve Kültürel Kimliğinin Korunmasında El Yazmalarının Rolü

Öz

Bu çalışma, Osmanlı döneminden miras kalan medrese ve kütüphane el yazmalarının Bulgaristan'daki Pomak müslümanlarının dinî ve kültürel kimliğini korumadaki rolünü incelemektedir. XX. yüzyıl boyunca Bulgar Devleti'nin yürüttüğü asimilasyon politikaları karşısında Pomaklar, bu el yazmalarını bir bilgi kaynağı olmanın ötesinde, İslamî aidiyetin somut simgeleri ve Osmanlı geleneğine dayalı kolektif hafızanın taşıyıcıları olarak görmüştür. Araştırma, Güney Bulgaristan'daki köylerde yapılan yarı yapılandırılmış mülakatlar, sözlü tarih yaklaşımı ve halen özel evlerde korunan yazmaların içerik analizine dayanan nitel saha verilerine dayanmaktadır. Bulgular, el yazmalarının öğretici işlevlerini yitirmiş olsa da topluluk içinde sembolik bir değer kazandığını, sessiz bir direniş ve kimlik muhafazası aracı haline geldiğini göstermektedir. Nesiller boyunca korunan ve aktarılan bu miras, yazılı sayfanın ötesine geçerek canlı bir hafıza işlevi üstlenmiştir. Çalışma, kimliğin korunmasının yalnızca resmî kurumlarla değil, gündelik ev içi pratikler ve aile içi aktarımlar aracılığı ile de mümkün olduğunu; böylece maddi mirasın süreklilik, aidiyet ve toplumsal dayanışma kaynağına dönüştüğünü ve Pomak müslümanlarının azınlık kimliğinin kuşaklar boyunca korunmasına ışık tuttuğunu ortaya koymaktadır.

Anahtar Kelimeler: Kültürel hafıza, El yazmaları, İslamî kimlik, Sessiz direniş, Pomak müslümanları.

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DOI: 10.26570/isad.1749281 • Geliş/Received 23.07.2025 • Kabul/Accepted 30.01.2026
Atıf/Citation Özmerdivanlı, Adile, "دور المخطوطات العربية في الحفاظ على الهوية الدينية والثقافية لدى المسلمين البوماك في بلغاريا بعد العهد العثماني", *İslam Araştırmaları Dergisi*, 55 (2026): 123-152.

The Role of Ottoman Manuscripts in Preserving Pomak Muslims' Religious and Cultural Identity in Bulgaria in the Post-Ottoman Period

Abstract

This study examines the role of Ottoman-era madrasas and library manuscripts in preserving the religious and cultural identity of Pomak Muslims in Bulgaria. Throughout the twentieth century, in the face of policies of assimilation imposed by the Bulgarian state, Pomaks regarded these manuscripts less as sources of instruction than as tangible symbols of Islamic belonging and carriers of collective memory rooted in the Ottoman tradition. This study is based on qualitative field data, combining semi-structured interviews conducted in several villages in southern Bulgaria, oral history accounts, and content analysis of manuscripts still preserved in private homes. The findings show that, although the manuscripts no longer served a direct educational function, they gained symbolic value within the community and became quiet instruments of cultural resilience and identity maintenance. Preserved and transmitted across generations, they extended beyond the written page and came to embody a form of living memory. This study concludes that identity can be sustained not only through formal institutions but also through everyday domestic practices and family transmissions, which turn material heritage into a source of continuity, belonging, and solidarity, shedding light on the ways Pomak Muslims have safeguarded their minority identity across generations.

Keywords: Cultural memory, Manuscripts, Islamic identity, Silent resistance, Pomak muslims.

المقدمة

يُعَدُّ البوماك إحدى الأقليات المسلمة في بلغاريا؛ إذ ينتمي أفرادهم عرقيًّا إلى السلاف ويتحدثون البلغارية كلغةً أم، بينما يعتنقون الإسلام منذ الحقبة العثمانية.[١] وعلى امتداد القرن العشرين واجه هذا المجتمع أشكالًا متكرّرة من السياسات القمعية والدمج القسري التي استهدفت محو مظاهر الهوية الإسلامية، من فرض تغيير الأسماء ومنع الممارسات الدينية إلى إقصاء الرموز الإسلامية من المجال العام.[٢] ورغم اختلاف هذه السياسات بين فترة وأخرى، فقد استطاع البوماك أن يحافظوا على هويتهم الدينية والثقافية من خلال أشكال متنوّعة من المقاومة الهادئة واستراتيجيات التكيّف.

ومن بين هذه الوسائط المخطوطات العربية العائدة إلى العهد العثماني، والتي وصلت إلى القرى البوماكية من مكتبات المدارس، والمكاتب الوقفية، والمكتبات

١ Balikci, *Pomak Identity*, 51.

٢ Gruev – Kalyonski, *Vazroditelniyat protses*, 103–105.

الملحقة بالمساجد والزوايا، فضلًا عن مجموعات العلماء المحليين كما هو موثق في تقاليد تنظيم المكتبات العثمانية.[٣] ومع مرور الزمن انتقلت هذه النصوص إلى البيوت البوماكية عبر التوارث العائلي، وحُفظت داخل الصناديق والخزائن بعيدًا عن أعين السلطات. شملت هذه المخطوطات، إلى جانب المصاحف والكتب الدينية الأساسية، مؤلفات في اللغة والتصوف والأخلاق، بل وأحيانًا في الفلسفة والعلوم العقلية، مما يعكس تنوع التراث الذي احتُفظ به. وقد اعتُبرت جزءًا من الإرث الديني والثقافي العثماني.[٤] وبالرغم من أن أصولها الدقيقة لم تعد معروفة عند الأجيال اللاحقة، فإن الوعي الجمعي ظلّ يتعامل معها كأمانة عثمانية وكشهادة صامتة على الانتماء الإسلامي.

اللافت أنّ هذه المخطوطات ظلّت محفوظة بعناية رغم أنّ معظم أفراد العائلات لم يكونوا قادرين على قراءتها لكونها مكتوبة بلغة لم يتقنوها. ومع ذلك، فقد أولَوا لها اهتمامًا خاصًّا وحرصوا على توريثها من جيل إلى جيل. وكان وجود هذه الكتب معروفًا بين أهالي القرى البوماكية، لكن من دون معرفة دقيقة بأيّ البيوت كانت محفوظة، نظرًا لكون اقتنائها في بعض الفترات محظورًا ويعرّض أصحابها للمساءلة. وهذا ما أكسبها قيمة رمزية خاصة، تتجاوز مضمونها النصي لتجسّد استمرارًا ماديًّا للانتماء.

من هنا تنطلق هذه الدراسة لتتساءل: لماذا واصلت بعض العائلات البوماكية في بلغاريا، على مدى أكثر من قرن، الاحتفاظ بمخطوطات عربية لا يستطيعون قراءتها، في ظل ظروف سياسية واجتماعية اتسمت بالضغط والاضطهاد، ومع ما كان في ذلك من مخاطر مباشرة عليهم؟ وللإجابة عن هذا السؤال، يعتمد البحث على إطار نظري مركّب يزاوج بين مفهوم الذاكرة الجمعية عند موريس هالبفاكس، وفكرة ''أماكن الذاكرة'' لدى بيير نورا، ومفهوم الذاكرة الثقافية كما طوّره يان آسمان. وبذلك يسعى البحث إلى تقديم قراءة جديدة لهذه المخطوطات، ليس بوصفها مجرد بقايا تراثية، بل كعناصر فاعلة في صون الذاكرة والهوية ضمن سياق اجتماعي وسياسي معقّد.

٣ Erünsal, *Osmanlılarda Kütüphaneler ve Kütüphanecilik*, 122–125.

٤ Kenderova, "Golemite obshtestveni (vakıfski) biblioteki", 115-135.

الخلفية التاريخية للمسلمين البوماك في بلغاريا

يُشكّل المسلمون في بلغاريا اليوم نحو ١١٪ من السكان[٥]، وينتمي هؤلاء إلى جماعات عدّة أبرزها الأتراك والرومان المسلمون والبوماك. ويُعتبر البوماك جماعة أصيلة في البلاد، إذ لم يكونوا مهاجرين، بل ظلوا عبر القرون جزءًا من النسيج الثقافي والديني للمنطقة، محافظين على لغتهم البلغارية وهويتهم الإسلامية.[٦]

منذ استقلال بلغاريا عن الدولة العثمانية، تبنّت الدولة البلغارية رؤية تعتبر البوماك ''بلغارًا أصليين'' أو ''بلغارًا صافين'' جرى أسلمتهم قسرًا خلال الحقبة العثمانية، وأنهم بذلك ''ضلّوا طريقهم'' إلى الإسلام وينبغي إعادتهم إلى الدين القومي الأرثوذكسي. وبما أنهم لا يختلفون إثنيًا أو لغويًا عن بقية البلغار، فقد اعتُبروا قابلين ''للإصلاح'' والاندماج التام. وعلى هذا الأساس، أصبحت هذه الجماعة هدفًا متكررًا لسياسات قسرية هدفت إلى محو هويتها الإسلامية.[٧]

وقد استمرت هذه السياسات الضاغطة، بأشكال متفاوتة، من مرحلة ما بعد العثمانيين حتى قيام النظام الديمقراطي في نهاية القرن العشرين، واتخذت أنماطًا متعددة من القسر والإكراه. ويمكن تلخيصها في سلسلة من ''موجات'' متعاقبة من محاولات الاستيعاب القسري، كما يلي:

الموجة الأولى: إجبار البوماك على تغيير أسمائهم وديانتهم (١٩١٢–١٩١٣)

مع اندلاع حروب البلقان وما تبعها من إعادة رسم الحدود، شنّت الدولة البلغارية أولى حملاتها المنظّمة لإرجاع البوماك إلى المسيحية الأرثوذكسية. وقد شملت هذه الحملة عمليات تعميد قسرية، رافقها هدم بعض المساجد أو تحويلها إلى كنائس، وإجبار السكان على ممارسات محرّمة في الإسلام مثل أكل لحم الخنزير وشرب الخمر، في محاولة لإذلالهم دينيًا وإجبارهم على الانصهار. وفي مواجهة هذه الضغوط، لجأت العائلات البوماكية إلى إخفاء ما لديها من

٥ National Statistical Institute of Bulgaria, *Census 2021*.
٦ Vucinich, "Islam in the Balkans", 236.
٧ Georgiev – Trifonov, *Pokrastvaneto na Bulgarite Mohamedani 1912–1913*, 75–76.

مصاحف ومخطوطات دينية ورثتها عن أجدادها، حمايةً لها من المصادرة أو الإحراق. وقد شكّلت هذه الممارسات نقطة انطلاق لمسار طويل من المقاومة الصامتة، حيث تحوّلت المخطوطات والمصاحف المحفوظة في البيوت إلى رموز للصمود والذاكرة الجماعية .[٨]

الموجة الثانية: استمرار سياسات التذويب في ظل النظام الملكي (١٩٣٤–١٩٤٤)

بعد فترة قصيرة من الانفراج النسبي خلال عهد حكومة ألكسندر ستامبوليسكي (١٩١٩–١٩٢٣)، حيث نال المسلمون في بلغاريا – ولا سيما البوماك – شيئًا من الحرية الدينية والثقافية، عادت السياسات القمعية بقوة مع انقلاب يوني ١٩٢٣ وتفاقمت أكثر بعد وصول المجلس العسكري إلى السلطة عام ١٩٣٤، سعت الحكومة الجديدة إلى محو هويات المسلمين الثقافية والدينية من خلال سياسات قسرية تهدف إلى دمجهم في المجتمع البلغاري الأرثوذكسي. تم استبدال الأسماء ذات الطابع العثماني بأخرى بلغارية، وتمّ تبني دراسات تؤكد الأصل البلغاري العرقي للبوماك.[٩] في هذا السياق، نشر الجغرافي البشري إيفان باتاكلييف تقريرًا يؤكد فيه أن البوماك لا يمتلكون وعيًا قوميًّا بلغاريًّا، وكان هذا التقرير أحد المبررات النظرية لحملات تغيير الأسماء والديانة. كما أُغلقت المدارس التابعة للمسلمين، وأُجبر الأطفال المسلمون على الدراسة في المدارس البلغارية. وانتشرت الجمعيات والهيئات المدنية التي تهدف إلى دمج البوماك في المجتمع البلغاري الأرثوذكسي.[١٠]

الموجة الثالثة: حملات التغيير القسري في العهد الشيوعي المبكر (١٩٦٢–١٩٦٤)

في عامي ١٩٥٢ و١٩٥٣، أُطلقت حملة لتغيير الوثائق الرسمية بهدف تحديد ومراقبة الأقليات في بلغاريا. حيث تم إجبار البوماك على تغيير هويتهم

٨ Myuhtar-May, *Identity, Nationalism, and Cultural Heritage*, 18-50.
٩ Troeva, *Religion, Memory, Identity,* 198–200.
١٠ Neuburger, *The Orient Within*, 142–149.

في الوثائق الرسمية، ليتم تسجيلهم تحت مصطلحات ''بلغار'' أو ''بلغار محمديين''.[١١] لاقت هذه الخطوة اعتراضات كبيرة من جانب البوماك. ثم في الفترة بين عامي ١٩٦٢ و١٩٦٤، اضطر المجتمع البوماكي إلى مواجهة حملة جديدة للتغيير القسري لعدد من أسمائهم، باستخدام أساليب تشمل العنف والتهديد. في مواجهة ذلك، أرسل البوماك وفودًا إلى صوفيا، حيث قاموا بتقديم شكاوى إلى الحزب الشيوعي والسفارة التركية . وفي النهاية، صدرت أوامر من الأمين العام للحزب الشيوعي تودور جيفكوف بوقف هذه السياسة القسرية لتغيير الأسماء.[١٢]

الموجة الرابعة: عملية "العودة إلى الأصل" وسياسات المحو الشاملة (١٩٧٠–١٩٨٩)

منذ عام ١٩٦٤، توقّفت السياسة القسرية لتغيير الأسماء، غير أنّ أجهزة الدولة الشيوعية واصلت مراقبة المجتمع البوماكي، وجمعت تقارير دورية عن أوضاعه. وقد أشارت هذه التقارير الصادرة عن المنظمات الحزبية المحلية إلى رغبة بعض البوماك في الهجرة إلى تركيا، وإلى تزايد حالات الزواج المختلط مع الأتراك. وبناءً على هذه المعطيات، اتخذ المكتب السياسي للحزب في عام ١٩٧٠ قرارًا بإعادة تفعيل سياسات التغيير القسري للأسماء، في إطار استراتيجية طويلة الأمد لإزالة الهوية المميزة للبوماك.[١٣] وقد انطلقت الحملة الجديدة من مدينة سموليان (Paşmaklı)، التي اعتُبرت منذ أربعينيات القرن العشرين مركزًا لحركة ''رودينا''، ثم امتدّت بين عامي ١٩٧١ و١٩٧٢ إلى مدن وبلدات أخرى مثل مادان، رودوزيم، زلاتوغراد، دوسبات، ديفين، وغوتسي دلتشيف. وقد رافقت هذه الحملة إجراءات إدارية صارمة، شملت مداهمة البيوت وتغيير الوثائق الرسمية بشكل جماعي، بالإضافة إلى اجتماعات علنية كان يُعلَن فيها عن الأسماء الجديدة.[١٤]

١١ Georgiev – Trifonov, *Pokrastvaneto na Bulgarite Mohamedani 1912–1913*, 75-76.

١٢ Gruev, *Violence, Politics and Memory*, 13-14.

١٣ Bulgarian National Archives – Blagoevgrad (ДА – Благоевград), f. 2Б, op. 12, a.e. 40, l. 40–41.

١٤ Myuhtar-May, Identity, *Nationalism and Cultural Heritage*, 96–143.

فترة الديمقراطية (١٩٩٠ – الوقت الحاضر)

في عام ١٩٩٠، أقرّ البرلمان البلغاري ما يُعرف بـ"قانون الأسماء"، الذي أتاح للمسلمين استعادة أسمائهم التركية التي فُرض تغييرها خلال حملات الدمج القسري في العقود السابقة. وفي العام التالي، تم اعتماد دستور جديد ينصّ صراحةً على ضمان "حرية الدين والمعتقد" لجميع المواطنين، ويؤكد على أنّه "لا يجوز إخضاع أي شخص للتعذيب أو المعاملة القاسية أو اللاإنسانية أو لإجباره على تغيير هويته قسرًا.[١٥]

وقد مكّن هذا التحول الدستوري المسلمين، بمن فيهم البوماك، من تطوير ثقافتهم الخاصة بما ينسجم مع هويتهم الدينية واللغوية.

ومع انضمام بلغاريا إلى حلف شمال الأطلسي عام ٢٠٠٤، ثم إلى الاتحاد الأوروبي عام ٢٠٠٧، بدأ البوماك يتمتعون بفضاء أوسع من الحريات السياسية والثقافية، الأمر الذي أتاح لهم التعبير عن ذواتهم بأريحية أكبر. وقد ساهم هذا الانفتاح في تحسين ظروفهم المعيشية وتعزيز شعورهم بالاستقرار بعد عقود من الإقصاء والضغط.

وعلى امتداد قرنٍ كامل من المحاولات المتكررة لطمس هوية البوماك، أثبت المجتمع البوماكي – خلال الموجات الأربع المتعاقبة من سياسات التغيير القسري للأسماء – قدرته على الصمود والحفاظ على هويته الإسلامية من خلال استراتيجيات متعددة للتكيّف والمقاومة. ومن هذه الاستراتيجيات الاحتفاظ بنسخ من القرآن الكريم ومخطوطات عربية من العهد العثماني ورثوها عن الأجداد. أُخفيت هذه النصوص بعناية داخل البيوت وتداولتها الأيدي سرًا جيلاً بعد جيل، لكيلا تُفقد أو تُتلف، وأيضًا كتعبير عن ارتباط عميق بالدين والذاكرة الجماعية على الرغم من كل شيء. يلاحظ هنا أن الهوية الإسلامية للبوماك أعيد إنتاجها ليس عبر المواجهة العلنية أو التمسك بالشعائر الظاهرة – إذ تعذّر عليهم ذلك تحت القمع – وإنما عبر وسائط ثقافية صامتة (كالمخطوطات) حملت ذاكرة الجماعة ومعاني مقاومتها في الخفاء.

١٥ *Constitution of the Republic of Bulgaria (1991)*, art. 13.

الإطار النظري والمراجعة الأدبية

المراجعة الأدبية

بعد التحول الديمقراطي في بلغاريا عام ١٩٨٩، ازداد الاهتمام الأكاديمي بمسلمي البلاد وهويتهم الدينية والثقافية. فقد تناول علي إمينوف قضايا اندماج الأقليات وسياسات الدولة تجاه المسلمين[١٦]، فيما ركّزت إيكاترينا جليازكوفا[١٧] على البنية الثقافية والدينية للبوماك في سياقات ما بعد الاشتراكية[١٨]، وقدّم ميخائيل غرويف وألكسندر كاليونسكي تحليلاً لسياسات تغيير الأسماء وحظر الرموز الإسلامية وتقييد التعليم الديني بوصفها أدوات لإعادة تشكيل الهوية.[١٩] وإلى جانب هذا الخط من الدراسات التي ركّزت على السياسات الرسمية والبنى العامة، برزت مقاربات أنثروبولوجية أكثر قربًا من الواقع الميداني. فقد اعتمد آسن باليكجي مقاربة الأنثروبولوجيا البصرية لتوثيق طقوس الختان والممارسات المتصلة بالنساء[٢٠]، بينما قدّمت كريستن غودسي دراسة إثنوغرافية معمّقة حول تجارب النساء البوماكيات وتحولات التدين في الحياة اليومية.[٢١] كما أسهمت ماري نيوبورغر في تقديم قراءة تاريخية موسعة لمكانة المسلمين — ومن ضمنهم البوماك — في مشروع بناء الأمة البلغارية، مظهرةً التداخل بين الدين والقومية والسياسة عبر القرن العشرين.[٢٢]

يُلاحظ أن هذه الأدبيات على تنوّعها تتوزع بين مقاربات سياسية وأخرى إثنوغرافية وتاريخية، وهو ما أتاح صورة مركّبة عن علاقة المسلمين — ومن ضمنهم البوماك — بالدولة والمجتمع في مرحلة ما بعد الاشتراكية. فبينما وفّرت أعمال إمينوف وغرويف — كاليونسكي إطارًا لفهم سياسات الدولة وممارساتها القسرية، أضافت دراسات باليكجي وغودسي بُعدًا أنثروبولوجيًا يوثّق تفاصيل الحياة اليومية

١٦ Eminov, *Turkish and Other Muslim Minorities in Bulgaria*.
١٧ Zhelyazkova, "Bulgaria", 327–345.
١٨ Zhelyazkova, "Bulgaria's Muslim Minorities", 203–220.
١٩ Gruev – Kalionski, *Vazroditelniyat Protses*.
٢٠ Balikci, *Visual Anthropology of the Pomaks in Bulgaria*.
٢١ Ghodsee, *Muslim Lives in Eastern Europe*.
٢٢ Neuburger, *The Orient Within*.

والطقوس المحلية، في حين قدّمت نيوبورغر منظورًا تاريخيًا أوسع يربط بين الدين والقومية في المشروع البلغاري. وبذلك يتّضح أن هذه الدراسات، رغم اختلاف مناهجها، تتكامل في رسم مشهد متعدّد الأبعاد حول هوية البوماك وتحولاتها عبر القرن العشرين.

وفي هذا الإطار، يبرز بُعد آخر في دراسة الهوية يتمثّل في التراث المخطوط، إذ يشكّل وسيطًا مادّيًا حافظ على الذاكرة الدينية والثقافية للمجتمع في مواجهة سياسات القمع والتغيير القسري. كما تضمّ بلغاريا بعضاً من أكبر مجموعات المخطوطات العربية العثمانية في أوروبا[٢٣]، وهي في الأصل بقايا المدارس والمكتبات الوقفية التي خلّفها العهد العثماني. وتُعَدّ المجموعة الشرقية في المكتبة الوطنية في صوفيا من أغنى هذه المجموعات على المستوى الأوروبي، إذ جُمعت إليها منذ أواخر القرن التاسع عشر آلاف المخطوطات من مكتبات فيدين وساموقوف وغيرها بعد الحروب البلقانية.[٢٤] كما تحتفظ مكتبة إيفان فازوف في بلوفديف بجزء مهم من التراث المكتبي العثماني، ولا سيما بقايا مكتبة عائلة آغوش الشهيرة في رودوب.[٢٥] وقد تناولت هذه المجموعات أبحاثٌ متخصصة ركّزت على التراث الرسمي وتحليل محتويات النصوص، من أبرزها أعمال ستويانكا كندروفا وأورلين سابيف .[٢٦] كما بيّنت بعض الدراسات أن جزءًا من هذا التراث المخطوط لم ينجُ من السياسات القمعية للدولة البلغارية في القرن العشرين، إذ جرى حظر تداول المخطوطات الدينية الإسلامية، بل وصل الأمر في حالات موثقة إلى تدمير مجموعات كاملة منها. وتذكر ميهايلا ستاينوفا مثالًا صارخًا لذلك في مدينة بريفادي، حيث أُحرقت مجموعة كبيرة من المخطوطات عام ١٩٤٠ بأمر من السلطات المحلية.[٢٧]

٢٣. Yordanov, *Istoriya na Narodnata biblioteka v Sofiya*, 45.
٢٤. Kenderova, "Bulgaria", 121–142.
٢٥. Ivanova – Stoilova, "Arabografichni knigi", 184.
٢٦. Sabev, *Osmanskite Uchilishta v Bălgarskite Zemi*.
٢٧. Stajnova, *Osmanskite biblioteki*, 161–163.

أمّا المخطوطات التي ظلّت مخفية في البيوت حتى نهاية الحقبة الاشتراكية فلم تلقَ اهتماماً يُذكر إلا بعد مطلع الألفية الثالثة. فقد كانت أعمال زوركا إيفانوفا وأنكا ستويلوفا من أوائل الدراسات التي وثّقت هذه النصوص في قرى المسلمين في جنوب بلغاريا، بدءاً من تشيبنتسي (١٩٩٦) ثم يونوس دَرَه/ إلخوفتس (١٩٩٩)، إضافةً إلى دراستهم حول مجموعات جديدة كُشف عنها في أواخر التسعينيات (١٩٩٨).[٢٨] غير أنّ هذه الأعمال اقتصرت على وصفٍ مادي للمخطوطات وتحديد موضوعاتها أو زمن نسخها، مع الإشارة أحياناً إلى تدهور حالتها الفيزيائية بفعل عقودٍ من الإخفاء.[٢٩] في المقابل، لم تتناول تلك الدراسات الأبعاد الاجتماعية والثقافية لعملية الإخفاء ذاتها، أي الأسباب التي جعلت العائلات المسلمة تحرص على صون هذه الكتب سراً جيلاً بعد جيل، وهو ما تسعى هذه الدراسة إلى معالجته.[٣٠]

وفي الأدبيات التركية، ركزت بعض الدراسات على الجوانب الثقافية والتاريخية للمخطوطات في السياق العثماني. فقد تناولت خديجة أَينور (٢٠١٣) أنماط القراءة وتداول الكتب في المجتمع العثماني، مبيّنة كيف شكلت المخطوطات جزءًا من الحياة اليومية ووسيطًا للذاكرة الثقافية، وإن لم تربط ذلك صراحةً بمسائل الهوية.[٣١] كما أبرزت غولرو نجيب أوغلو (١٩٩٥) البعد الجمالي والرمزي للمخطوطات في الفنون الإسلامية، دون معالجة بعدها الاجتماعي أو الهوياتي.[٣٢]

وتسعى هذه الدراسة إلى سد هذا الفراغ، من خلال تحليل المخطوطات المحفوظة في منازل بعض العائلات البوماكية، ليس فقط بوصفها نصوصًا دينية، بل كوسائط رمزية وثقافية متجذرة، أسهمت في صوغ الانتماء الديني والتماسك الجماعي اعتمادًا على تحليل ميداني نوعي.

٢٨ Ivanova – Stoilova, “Arabografichni knigi”.
٢٩ Stoilova, *Arabskite rıkopisi*, 89–156.
٣٠ Ivanova – Stoilova, *Sbirka ot arabografichni knigi*.
٣١ Aynur, Artan, *Osmanlı Kitap Koleksiyonerleri*, 23-45.
٣٢ Necipoğlu, *The Topkapı Scroll*, 9-14.

الإطار النظري

تعتمد هذه الدراسة على إطار نظري متكامل يهدف إلى دراسة دور المخطوطات العربية المحفوظة لدى المسلمين البوماك في بلغاريا في الحفاظ على الهوية الدينية والثقافية الإسلامية، وذلك في سياق تاريخي واجتماعي مشحون بالتحولات السياسية القسرية التي أدت إلى تغييرات جذرية في هوية الجماعات المسلمة، لا سيما المجتمعات البوماكية. يجمع هذا الإطار بين ثلاثة مفاهيم أساسية مترابطة، وهي: الذاكرة الثقافية كما طورها يان آسمان[٣٣]، التمثيل الرمزي كما ناقشه كليفورد غيرتز[٣٤]، والمقاومة الصامتة كما شرحها جيمس سكوت.[٣٥] تتكامل هذه المفاهيم ضمن إطار واحد يمكن تسميته بـ ''الذاكرة الرمزية المقاومة''، حيث تُفهم المخطوطات كأدوات مادية تُجسّد الذاكرة الجمعية للمجتمع، وتحمل دلالات رمزية متعددة، وتُستخدم كآلية خفية للمقاومة الثقافية ضد محاولات التذويب الثقافي والديني.

يُعَدّ مفهوم الذاكرة الجمعية الذي طوّره موريس هالبواكس مدخلًا مبكرًا لفهم العلاقة بين الذاكرة والهوية داخل البنى الاجتماعية، حيث تتشكّل الذكريات من خلال الانتماء الجماعي لا الفردي.[٣٦] كما يشير بيير نورا إلى أنّ الرموز والمعالم يمكن أن تتحوّل إلى مواقع للذاكرة الجمعية، تُمارَس فيها الرمزية من خلال الغياب أكثر من الحضور.[٣٧] وقد طوّر يان آسمان هذا الأساس عبر مفهوم الذاكرة الثقافية، بوصفها نمطًا من أنماط الذاكرة الجمعية التي تتجاوز حدود التجربة الفردية وتمتدّ عبر الأجيال لتشكّل سرديات وهوية جماعية متواصلة.[٣٨] ويُميّز آسمان بين ''الذاكرة التواصلية'' المرتبطة بالحياة اليومية القريبة، و''الذاكرة الثقافية'' التي تتجسَّد في وسائط مادية مثل النصوص، والطقوس، والرموز، والمعالم، وتُعاد صياغتها بشكل منظَّم ضمن فضاءات ثقافية تؤطِّر

٣٣ Assmann, *Cultural Memory and Early Civilization*, 36–46.
٣٤ Geertz, *The Interpretation of Cultures*, 5–10.
٣٥ Scott, *Domination and the Arts of Resistance*, 183–200.
٣٦ Halbwachs, *On Collective Memory*, 38–40.
٣٧ Nora, *Realms of Memory*, 14–20.
٣٨ Assmann, *Cultural Memory and Early Civilization*, 38–46.

العلاقة بين الماضي والحاضر.[٣٩] ويشير آسمان إلى أن هذا النوع من الذاكرة لا يقوم على النصوص فقط، بل يعتمد كذلك على ما يسميه بـ"الشخصيات المرجعية" و"المعالم الرمزية" ، التي تُرسّخ الذاكرة داخل الوعي الجماعي وتعيد إنتاج الانتماء.[٤٠] وتُعدّ المحفوظات اليدوية العربية، التي جرى تناقلها داخل الأسر البوماكية المُسلمة، مثالًا حيًّا لهذا الشكل من الذاكرة الثقافية المتجذّرة. فهي ليست مجرد مواد تعليمية دينية، بل رموز منزلية تحفظ صلة الجماعة بأسلافها. إنّها "رموز منزلية للذاكرة": تُجسّد في مادّيتها ذاكرةً جمعية صامتة، تُستحضر عبرها صورة الأسلاف دون الحاجة إلى ذكر أسمائهم أو عرضهم كأبطال. وتستمدّ هذه الذاكرة قوّتها لا من مضمون النصّ وحده، بل من كونه موروثًا داخل الأسرة، محفوظًا باحترام، ومصونًا كجزء من الهوية الإسلامية الجماعية المتوارثة. وفي ضوء هذا التصوّر، يمكن فهم هذه المخطوطات، ولا سيّما الدينية منها، بوصفها شواهد مادية تختزل الماضي في الحاضر، وتُعيد تأكيد استمرارية الهوية في مواجهة سياسات التذويب والطمس المتكرّرة.

وبينما يُركّز آسمان على كيفية حفظ الهوية عبر وسائط مادية، يُقدّم غيرتز منظورًا يُبرز كيف تُنتج هذه الوسائط نفسها معاني رمزية داخل الجماعة. ينظر كليفورد غيرتز إلى الثقافة بوصفها نظامًا من الرموز التي يستخدمها الإنسان لمنح الحياة معنى وتنظيم التفاعل الاجتماعي.[٤١] فالثقافة، في هذا التصوّر، لا تُختزل إلى ممارسات خارجية، بل تتجلّى من خلال وسائط مادية مثل النصوص، والطقوس، والعلامات، التي تُعيد إنتاج البُنى الرمزية وتُرسّخ الانتماء الجماعي. ويعتمد غيرتز في تحليله للثقافة على ما يُسمّيه "الوصف الكثيف" أي الغوص في الطبقات العميقة للرموز ضمن سياقها الاجتماعي والثقافي الكامل.[٤٢] وفي هذا السياق يقدّم غيرتز مثالًا شهيرًا هو "مصارعة الديوك في بالي"، حيث يكشف من خلال الوصف الكثيف أن هذا الطقس ليس مجرد لعبة دموية أو تسلية، بل

٣٩ Assmann, *Cultural Memory and Early Civilization*, 42.
٤٠ Assmann, *Cultural Memory and Early Civilization*, 62.
٤١ Geertz, *The Interpretation of Cultures*, 88-89.
٤٢ Geertz, *The Interpretation of Cultures*, 5-10.

رمز اجتماعي مركّب يُجسّد صراعات المكانة والهوية والانتماء لدى الجماعة المحلية.[٤٣] هذا المثال يوضّح كيف يمكن للرموز الثقافية أن تحمل طبقات متراكبة من المعاني، بحيث يتحوّل الفعل الظاهر البسيط إلى نصّ اجتماعي غني بالمدلولات. وباستحضار هذا النموذج المقارن، يمكن القول إنّ المخطوطات البوماكية تؤدّي دورًا رمزيًا مشابهًا، وإن كان في اتجاه مغاير: فهي لا تُعرَض في الساحات العلنية كما في بالي، بل تُخفى في البيوت، وتكتسب معناها تحديدًا من كونها مخفيّة، أي من غيابها القسري. وهكذا تنشأ ''رمزية الصمت''، حيث يُعاد إنتاج الانتماء الجمعي من خلال الغياب بدل الحضور، ومن خلال الكتمان بدل الإعلان. وعليه، يمكن فهم المحفوظات اليدوية العربية لدى البوماك ليس فقط كمستندات دينية أو لغوية، بل كرموز ثقافية صامتة تُجسّد هوية إسلامية خفيّة. وعلى عكس الطقوس الجماعية العلنية التي حلّلها غيرتز، فإنّ هذه المخطوطات لا تُعرض ولا يُحتفل بها، بل تُحفظ في الخفاء، وتُتداول بسرّية داخل المجال العائلي، وذلك نتيجة لفترات من القمع السياسي التي جعلت امتلاكها أو تداولها علنًا أمرًا محفوفًا بالمخاطر. وبهذا المعنى، تؤدّي المخطوطات وظيفة رمزية مزدوجة: فهي من جهة دينية في الشكل والمحتوى، ومن جهة أخرى ثقافية في علاقتها بالانتماء الجماعي. وما يجعلها جديرة بالتحليل في ضوء نظرية غيرتز هو قدرتها على تكثيف الذاكرة والانتماء من خلال مادّية النص وصمته.

وإذا كانت الرموز، في تحليل غيرتز، تُعبّر عن هوية الجماعة من خلال ممارساتها العلنية أو الخفية، فإنّ سكوت يكشف لنا عن ''النصّ الخفي'' الذي تُمثّله هذه الرموز حين تُستخدم كوسائل مقاومة صامتة داخل المجال الخاص.[٤٤] يقدّم جيمس سكوت مفهوم ''المقاومة اليومية غير المعلنة'' بوصفه شكلًا من أشكال التفاعل السياسي الذي لا يقوم على المواجهة العلنية أو العصيان الجماهيري، بل يتجلّى في أفعال صغيرة ومتكرّرة تُمارس في الخفاء، تهدف إلى الحفاظ على الكرامة والهوية في ظل أنظمة القمع والسيطرة. ويُطلق سكوت على

٤٣ Geertz, *The Interpretation of Cultures*, 412–453.

٤٤ Scott, *Domination and the Arts of Resistance*, 180–200.

هذا النمط من التعبير اسم ''النصّ الخفي'' (Hidden Transcript)، وهو الفضاء الرمزي الذي تُعبّر فيه الجماعات المقهورة عن رفضها وصمودها من دون التصريح العلني أو التحدّي المباشر.[٤٥] وفي هذا السياق، يمكن اعتبار المحفوظات اليدوية العربية لدى البوماك شكلًا من أشكال هذه المقاومة الصامتة. فهي لا تُستخدم فقط لأغراض معرفية أو دينية، بل تُحفظ وتُتداول في الخفاء، ويُنظر إليها داخل الأسر المسلمة كرمز لاستمرار الوجود الإسلامي والتعلّق بالجذور الثقافية في وجه سياسات المحو والطمس. إنّ ''قرار إخفاء الكتاب نفسه'' في لحظة التفتيش أو الخوف من المصادرة لم يكن قرارًا معرفيًا بقدر ما هو فعل مقاومة رمزيّة يُعيد تأكيد الانتماء من دون ضجيج. يكفي أن تُحفظ المخطوطات وتُنقل وتُحاط بالاحترام لتؤدي وظيفتها كأداة مقاومة رمزية. ويتوافق هذا النمط من المقاومة مع خصائص المجتمع البوماكي الذي اختار الحذر بدل الصدام، والصمت بدل المواجهة. فالمخطوطات لم تكن يومًا وسيلة مواجهة مباشرة، بل أداة للصمود الهادئ، تُعبّر عن الذات الجماعية في أشكالها الأكثر تواضعًا وبساطة، لكنها في الوقت نفسه أكثرها رسوخًا وعمقًا. ومع سقوط الشيوعية، خرج هذا ''النص الخفي'' إلى العلن. فقد ظهرت المخطوطات المخفية إلى الفضاء العام، وأُعيد تنظيمها في مكتبات محلية داخل المساجد، وأصبحت جزءًا من تراث معلن يعتز به المجتمع. هذا التحول من الخفاء إلى العلن يعكس كيف أن استراتيجيات المقاومة الصامتة تستطيع أن تضمن نقل الهوية عبر الزمن حتى تتهيأ الظروف لإعلانها.

المنهجية

اتبعت هذه الدراسة منهجًا نوعيًا يركّز على فهم تجارب المسلمين البوماك في القرى الواقعة في جبال بيرين ورودوب جنوب بلغاريا، من خلال العمل الميداني والملاحظة المباشرة، وهو ما يؤكّده كريسويل باعتبار أن البحث النوعي يهدف إلى الكشف عن المعاني العميقة وراء الممارسات اليومية بعيدًا عن التعميمات الصارمة. وقد أُجري العمل الميداني بصورة منتظمة خلال الفترة ما بين عامي

٤٥ Scott, *Domination and the Arts of Resistance*, 4-5; 183–200.

٢٠١٨ و ٢٠٢٠، عبر زيارات متكرّرة لتلك القرى، حيث تم اللقاء مع عدد من العائلات التي لا تزال تحتفظ بمخطوطات عربية قديمة داخل منازلها.

بدأت الباحثة العمل الميداني بلقاء تمهيدي مع إمام محلّي في إحدى القرى، كان على معرفة بوجود بعض المخطوطات في بيوت العائلات. ومن خلال هذا اللقاء، تم التعرّف على عائلة تحتفظ بهذه المحفوظات، ثم تكررت الزيارات لاحقًا وشملت عددًا من الأسر الأخرى في قرى مجاورة. جرت الحوارات في مناخ طبيعي وغير رسمي، وبأسلوب عفوي، دون استخدام أجهزة تسجيل احترامًا لحساسية الموضوع ورغبة المشاركين، واكتفت الباحثة بتدوين ملاحظات ميدانية تفصيلية خلال وبعد اللقاءات، وهو ما ينسجم مع ما أشار إليه هرتزفيلد[٤٦] وسيلفرمان من أن المرونة المنهجية تسمح بكشف معانٍ لا تظهر في السياقات الرسمية.[٤٧]

جرى التواصل بلغتهم اليومية (البلغارية المحكية في الجنوب)، ما ساعد على بناء الألفة وخلق بيئة آمنة للسرد.[٤٨] أثناء الزيارات، لاحظت الباحثة طرق حفظ المخطوطات وسجّلت ملاحظات وصفية تتعلق بطريقة التعامل معها ومكانتها في الحياة اليومية للعائلة.

لم تكن الغاية من هذا العمل إجراء مسح كمي أو توثيق ببليوغرافي شامل، بل استكشاف المعاني الرمزية والاجتماعية التي تحملها هذه المخطوطات بوصفها عناصر حية في الذاكرة الثقافية. ولذلك، تم اعتماد أسلوب التحليل الموضوعاتي في تنظيم الملاحظات واستنتاج الأنماط المتكررة في السرد، مثل: احترام المخطوطات، الصمت تجاهها، والخوف من فقدانها.

راعت الدراسة المبادئ الأخلاقية للبحث النوعي، حيث تم الحصول على موافقة شفوية مسبقة من جميع المشاركين، مع ضمان السرية التامة واستخدام أسماء مستعارة حفاظًا على خصوصيتهم.

٤٦ Herzfeld, *Kulturna intimnost*, 22.
٤٧ Dupret vdğr., *İslamp Pratiklere etnografik yaklaşımlar*, 25–30.
٤٨ Silverman, *Nitel Araştırma Nasıl Yapılır?*, 75–80.

النتائج الميدانية

المخطوطات كذاكرة موروثة

أظهرت المقابلات الميدانية التي أُجريت في عدد من القرى البوماكية بجنوب بلغاريا أن المخطوطات العربية كانت حاضرة في الذاكرة الجماعية للمجتمع، لا بوصفها أدوات تعليمية، بل كرموز دينية وثقافية محفوظة داخل البيوت. لم تكن هذه المعرفة محصورة داخل الأسر المالكة لها، بل كانت منتشرة بين أهالي القرى عمومًا. الجميع كان يعرف أن هناك كتبًا عربية قديمة محفوظة في بعض البيوت، لكن لم يكن أحد يعرف على وجه التحديد في أي بيت، أو في يد من، أو من أي جدّ انتقلت، أو إلى أي ابن ورثها. كانت هذه الأمور تُخفى ولا يُفصح عنها، وكأنها جزء من سرّ عائلي محفوظ بالصمت.

في كثير من المقابلات، أشار المشاركون إلى أنهم نشؤوا في بيوت احتوت على كتب قديمة ملفوفة بالقماش، محفوظة في صناديق خشبية أو موضوعة على الخزائن في أماكن عالية لا تصل إليها الأيدي، وأحيانًا في تجاويف خفية أُعدّت داخل الجدران.[٤٩] وقد تأكّد هذا النمط من الإخفاء أيضًا من خلال روايات موثقة؛ ففي قرية تشيبينتسي، وهي من القرى البوماكية الواقعة في جبال رودوب، رُوي على لسان إسميت موللوف، رئيس المجلس الإسلامي المحلي، أنّ مصحفًا

٤٩ من ذكريات الباحثة: "في بيت المرحومين حوّاء وشعبان، في إحدى قرى منطقة بيرين، حيث كان والد شعبان إمامًا للقرية، كان يوجد تجويف خاص في الجدار مخفي خلف خزانة، وُضع فيه مصحف وبعض المخطوطات المكتوبة بالحرف العربي بلغة عثمانية. ذكر شعبان أنّه لم يكن قادرًا على قراءته إلا قراءة القرآن، بينما زوجته حوّاء لم تكن تقرأ العربية، لكنها كانت متعلّمة وتجيد القراءة والكتابة بالخط البلغاري. وقد أضاف أنّ بعض الكتب التي ورثها الجدّ عن أسرته دُفنت في التراب خوفًا من مداهمات الشرطة في زمن الشيوعية، ولم يتمكّنوا من إنقاذها بعد ذلك، فلم يبقَ سوى مصحف واحد وبعض المخطوطات المكتوبة بالحرف العربي بلغة عثمانية. كما ذكر أنّ جدّه درس في مدرسة قريبة من كافالا (مدينة في اليونان اليوم) وكان يعرف التركية، وأنه حين كان طفلًا تعلّم منه بعض الكلمات التركية. وروى أيضًا أنّه حضر ليلةً في بيت جدّه في القرية حين زاره بعض أصدقائه القدامى الذين كانوا قد درسوا معه في كافالا، وبعد صلاة الجماعة أقاموا مجلس ذكر، وخلال الذكر رأى بأمّ عينه أن السبحة الملقاة على الأرض تتحرك كأنّها حيّة."

فريدًا من القرن الرابع عشر، عُرف لاحقًا باسم ''القرآن الذهبي''، وُجد مخفيًا في جدار بيت قديم قبل أن يُنقل بعد ترميمه إلى مكتبة الجامع المركزي في القرية.[٥٠]

وغالبًا ما كانت تلك الكتب تُعامل باحترام خاص، فلا تُلمس إلا بالأيدي النظيفة، ولا تُفتح إلا نادرًا، إن فُتحت أصلًا. وكان الكبار في العائلة — الجدّات والأمهات والآباء — يوصون بعدم العبث بها، ويكتفون بالقول: ''هذا من عند الجد، مكتوب بالعربية، لا يجوز رميه.''

غالبًا ما كانت هذه المخطوطات تُنقل داخل العائلة بطريقة غير معلنة. وعندما يتقدّم من يحتفظ بها في السنّ، أو يشعر بدنوّ أجله، كان يختار أحد الأبناء أو الأقارب لتسليمه إياها. لم تكن هناك قاعدة محددة للاختيار، لكن الغالب أن يُعطى الكتاب للابن أو القريب الأقرب إلى قلبه، أو الذي يُعتقد أنه الأجدر بالحفظ، أو الذي يعيش في مكان أكثر أمنًا.[٥١] كانت عملية التسليم تتمّ في جلسة خاصة، من دون علم باقي أفراد الأسرة، ولا يعرف بأمرها إلا الطرفان: من يُعطي ومن يأخذ. وفي بعض الحالات، لم يكن الابن هو المستلم، بل ابن الأخت أو أحد الأقارب المتدينين، حسب ما يراه صاحب المخطوطة مناسبًا. وعند التسليم، كان بعضهم يستخدم عبارة: ''أعطيتك الإزِم''، ويبدو أنّ هذه الكلمة مشتقة من ''الإذن''، وتحمل ضمنيًا معنى منح الحقّ والمسؤولية في الحفظ.

ورغم أنّ الغالبية لم تكن قادرة على قراءة هذه المخطوطات، فإنّ حفظها استمرّ كواجب عائلي. كانت تُنقل من جيل إلى جيل كأمانة، ويُمنع التفكير في التخلص منها. لم يكن النص بحد ذاته هو المهم، بل شكل الكتاب، وورقه، ولغته، وما يمثله من صلة غير مرئية بالماضي. وقد لوحظ في أحد البيوت وجود

٥٠ Cholakov, "*V Chepintsi pazyat Zlatniya Koran*." *BNR*.

٥١ في إفادة ميدانية من قرية بريزنيتسا في جبال بيرين (٢٠١٩)، ذكر أحد الشيوخ أنه لم يترك كتبه لابنيه لاعتقاده أنهما بعيدين عن الالتزام الديني، بل أوصى بها لحفيدته. وقد وأوضح اختياره بعبارته بالعامية المحلية: vleche ya sărtséto kăm viarata ،أي: ''قلبها يميل إلى الإيمان''، معتبرًا أن ''الأمانة الروحية تُعطى لمن يحفظها بالنية لا بالقرابة وحدها''.

حقيبة صغيرة منسوجة يدويًّا بخيوط ملوّنة، كانت معلّقة في زاوية مرتفعة من الجدار بواسطة مسمار كبير. لم تُذكر الحقيبة في المقابلة، لكنها بدت جزءًا من مشهد الصون، وكأنها صُنعت خصيصًا لحماية المصحف. تُعبّر هذه التفاصيل عن كيفيّة امتداد الذاكرة إلى الأشياء البسيطة التي تُحيط بالمخطوطات، وتمنحها حضورًا حسّيًا مستمرًا في فضاء البيت. وهكذا، أصبحت المخطوطات ''أشياء محفوظة'' لا تُقرأ، بل تُحترم وتُصان وتُورَّث، دون شرح أو تعليم، وكأنها تمثل ذاكرة صامتة تسكن البيت في الظل.

ممارسات الحفظ والإخفاء في زمن القمع

في فترات القمع السياسي والديني التي شهدتها بلغاريا، خصوصًا خلال الستينيات والثمانينيات، واجه المسلمون البوماك خطر المداهمة والملاحقة في حال وُجدت كتب دينية داخل بيوتهم. وقد دفعت هذه الظروف العديد من العائلات إلى ابتكار أساليب مختلفة لحماية ما تملكه من مصاحف ومخطوطات عربية. كانت هذه الممارسات تدور في نطاق العائلة، وغالبًا ما كانت النساء هنّ من يتولّين عملية الإخفاء.

في إحدى الروايات، قالت امرأة إن زوجها كان مهددًا بالسجن إن عُثر على كتب دينية في المنزل. وعندما بلغها خبر اقتراب الشرطة من قريتهم، أخذت مصحفًا وكتابًا آخر ودفنتهما بسرعة تحت شجرة في الحقل المجاور، دون أن تضع أي علامة تدل على المكان. كانت ترتجف من الخوف، وتتحرك بارتباك شديد، حتى إنها لم تنتبه إلى الموقع الدقيق. وبعد أيام، حاولت تذكّر الموضع دون جدوى، وقالت: ''أظنني دفنتهما هنا، أو ربما هناك، لا أعرف... كنت خائفة جدًا في ذلك اليوم.'' ثم أضافت: ''إلى اليوم، هما تحت الأرض، ولا نعرف أين.''

وفي رواية أخرى، روت سيدة أن الشرطة كانت تراقب بيتها لأن شقيق زوجها كان إمامًا في القرية. عندما سمعوا أن المداهمة وشيكة، هرب زوجها إلى الغابة حيث كان قد بنى مسبقًا كوخًا صغيرًا للاختباء في مثل هذه الحالات. أما هي، فبقيت وحدها في البيت، ولم تعرف أين تضع المصحف. بحثت في أنحاء

المنزل ولم تجد مكانًا آمنًا، ثم قررت أن تخبّئه في مهد طفلها الرضيع على سطح المنزل، بين الأغطية. تقول: ''لم يكن لدينا حفاظات، وخفت أن يتلف، لكن خوفي من أن تأخذه الشرطة كان أكبر.'' دخلت الشرطة وفتّشت كامل البيت، لكنها لم تجد شيئًا. وبعد سنوات، سلّمت العائلة ذلك المصحف لإمام المسجد ليُحفظ هناك.

عبارات مثل: ''لا أحد كان يعرف مكانه غير أمي''، أو ''أخفته بين الوسائد''، تكررت كثيرًا في المقابلات، ما يشير إلى أن مسؤولية الحفظ والإخفاء كانت غالبًا لدى النساء. لم تكن هناك طريقة واحدة موحّدة، لكن كان هناك إدراك جماعي بأن هذه الكتب تمثّل شيئًا يجب حمايته بأي وسيلة. وقد دعمت بعض الدراسات الميدانية هذا الانطباع، إذ سجّل زوركا إيفانوفا وأنكا ستويلوفا أنّ الأهالي في قرى مثل تشيبينتسي وإلهوفتس كانوا يخفون الكتب والمخطوطات في الجدران أو يدفنونها تحت الأرض، الأمر الذي أدى إلى ضياع أو تلف عدد كبير منها، وهو ما يفسر الحالة المتدهورة التي وصلت بها إلينا غالبية هذه المجموعات اليوم.[٥٢]

من البيوت إلى المساجد – جهود الجمع

بعد التحوّلات السياسية التي شهدتها بلغاريا في أوائل التسعينيات، وخصوصًا بعد تراجع الخوف من الملاحقة الأمنية، بدأت بعض العائلات البوماكية بالكشف عن الكتب الدينية التي كانت محفوظة داخل بيوتها لسنوات طويلة. لم تعد المخطوطة شيئًا يُخفى، بل تحوّلت إلى عنصر يمكن مشاركته علنًا، لا سيما من خلال مبادرات محلية ظهرت في عدد من القرى. ففي قرية تشيبينتسي، الواقعة في جبال رودوب، بادر إسميت مولوڤ إلى إنشاء مكتبة صغيرة بجانب المسجد، وبدأ بجمع الكتب والمصاحف التي لا تزال محفوظة لدى العائلات. واستجاب كثير من الأهالي لهذه الدعوة، وسلّموا ما لديهم طواعية، دون أي ضغط أو توجيه رسمي. وفي قرية إلخوفتس قام الإمام

٥٢ Ivanova – Stoilova, *Sbirka ot arabografichni knigi*, 84-92.

شكري أورمانوف بمبادرة مشابهة، حيث شجّع السكان على تسليم الكتب القديمة للمسجد من أجل حفظها وتنظيمها.[٥٣]

في مكتبة تشيبينتسي جُمعت مئات الكتب والمخطوطات التي تمثّل تنوّعًا كبيرًا في التراث العلمي والديني للمنطقة. فقد احتوت على مصاحف قديمة من أبرزها ما يُعرف محليًا بـ ''المصحف الذهبي'' الذي عُثر عليه في جدار أحد البيوت في قرية يانوفسكا التابعة لمنطقة مادان. يتميز هذا المصحف بكتابة لفظ الجلالة وكل العبارات المرتبطة بالتوحيد بالذهب الخالص، كما أن فواصل الآيات والهوامش زُيّنت بزخارف مذهبة دقيقة. إلى جانب المصاحف، تضم المكتبة كتبًا في الفقه الحنفي والمواريث (الفرائض)، وكتبًا في التفسير والعقيدة، والأوراد والأدعية، بل وحتى رسائل في النحو والصرف. كما وُجدت نسخ نادرة من كتب الفلسفة والتصوّف والتاريخ، فضلًا عن مؤلفات في علم الفلك والرياضيات والموسيقى، مما يعكس اتساع أفق الثقافة الإسلامية في جبال رودوب.[٥٤] بعض المخطوطات كُتب على غلافها الداخلي أنها ''وقف لله''، أو أنها ''لا تُباع ولا تُشترى''، أو أنها ''صدقة جارية عن روح فلان''. كما وُجدت ملاحظات هامشية بخط اليد تشير إلى تاريخ الوقف، أو إلى أسماء القرّاء الذين مرّوا عليها، أو أدعية شخصية مكتوبة بين السطور. وفي بعض الحالات، عُثر بين صفحات الكتب على أوراق صغيرة تحتوي على أذكار، أو وصايا تتعلق بالموت، أو تذكيرات بآيات قرآنية يُرجى حفظها.[٥٥]

أما في مكتبة إلخوفتس، التي تشكّلت في الوقت نفسه تقريبًا، فقد تميّزت بمجموعة واسعة من المصاحف والكتب الكلاسيكية. تضم المكتبة نسخًا من القرآن الكريم تعود إلى القرنين السادس عشر والسابع عشر، بعضها غير كامل لكنه محفوظ بعناية، إلى جانب مؤلفات في الفقه مثل ''حاشية ملتقى الأبحر'' لإبراهيم الحلبي، و''مختصر القدوري''، وكتب في العقيدة والتفسير أبرزها أعمال النسفي والبغدادي. كما وُجدت كتب في النحو والبلاغة مثل ''شرح أبيات

٥٣ Ivanova – Stoilova, *Sbirka ot arabografichni knigi*, 84-85.
٥٤ Cholakov, "*V Chepintsi pazyat Zlatniya Koran*." BNR.
٥٥ Ivanova – Stoilova, *Sbirka ot arabografichni knigi*, 178-193.

الكافية'' و''المغني'' و''شرح المطوّل''، إضافة إلى كتب في الفلسفة والمنطق. ومن النوادر أيضًا نسخة من ''الشفا'' للقاضي عياض نُسخت في القرن الثامن عشر، وكتاب ''المحمّدية'' ليَزيدي أوغلي، ورسالة فارسية — تركية بعنوان ''تحفة وهبي'' تضم معجمًا شعريًا قصيرًا.[٥٦]

ويُظهر هذا التنوع أن ما احتفظت به القرى البوماكية لم يكن مجرد بقايا متفرّقة، بل يعكس البنية المعرفية التي صاغها العلماء العثمانيون في مصنفات كـ ‹مفتاح السعادة› لطاشكُبري زاده و‹الكواكب السبعة›. فتناظر الأنواع المحفوظة في القرى مع التصنيفات المركزية يشير إلى أن الحياة الثقافية في جبال رودوب كانت امتدادًا حيًّا لأفقٍ علمي عثماني واسع. كما أشارت بعض المقابلات الميدانية في قرى بيرين ورودوب إلى أن الشيوخ والأئمة ربطوا ما ورثوه من كتب بسلاسل علمية قد تكون وصلت إلى كافالا، مما يشير إلى احتمال أن هذا التراث لم يكن محصورًا في العزلة القروية، بل كان جزءًا من شبكة معرفية عثمانية أوسع.[٥٧]

ومع التحولات السياسية في أواخر القرن العشرين، انتقل هذا التراث من كونه رصيدًا معرفيًا صامتًا إلى أن يصبح عنصرًا علنيًا في الحياة الاجتماعية والدينية للقرى. عكس هذا التحوّل رغبة جماعية في الحفاظ على ما تبقى من التراث، وإخراجه من الخفاء إلى المجال العام. لم تعد المخطوطة ''سرًا''، بل أصبحت دليلًا مرئيًا على استمرارية الهوية الإسلامية، ومصدر فخر مشترك بين أهل القرية. كما مكّنت هذه المرحلة الأجيال الجديدة من التعرّف إلى هذا التراث وجهًا لوجه، وطرحت سؤالًا جديدًا: ماذا سنفعل به الآن؟

ومع بداية هذه المرحلة، بدأ البوماك يقرؤون ما ورثوه. ففي الماضي، لم يكن محتوى المخطوطات اليدوية يشكّل عنصرًا أساسيًّا في قيمتها لدى العائلات، بل كان مجرّد وجودها كافيًا لمنحها مكانة رمزية. كانت تُحفظ في أماكن خاصة، وتُعامَل باحترام، وتُنقل من جيل إلى آخر، لا باعتبارها كتبًا للقراءة، بل بوصفها

٥٦. Ivanova – Stoilova, *Sbirka ot arabografichni knigi*, 186-194.

٥٧. Taşköprizâde, *Mevzûâtü'l-ulûm*, 121–142; *Kevâkib-i Sebʿa*, 156.

"أشياء تحمل الذاكرة". ومع مرور الزمن، بقيت هذه المحفوظات صامتة، حاضرة بأجسادها لا بأصواتها.

لكن هذا الوضع تغيّر تدريجيًّا في العقود الأخيرة، خاصة بعد تراجع سياسات القمع وانفتاح المجتمع البوماكي على التعليم الديني في الخارج. فقد ظهر جيل من الشباب الذين تعلّموا اللغة العربية في جامعات تركيا والسعودية ومصر، وبدؤوا يفتحون تلك المخطوطات القديمة التي طالما كانت مغلقة. بعضهم بدأ يقرؤها، ويتساءل عن مضمونها، ويسجّل محتواها، ويقارن بين ما فيها وبين ما تعلّمه. وهكذا، تحوّلت المخطوطات من رموز غير مقروءة إلى نصوص تُقرَأ وتُؤوَّل. ولم يعد التعامل معها مقتصرًا على الحفظ والاحترام، بل بدأ يأخذ طابعًا معرفيًّا واستكشافيًّا.

لم تمحُ هذه المرحلة الدلالات الرمزية والروحية للمخطوطات، لكنها أضافت إليها وظيفة معرفية جديدة. تحوّل الكتاب من رمز صامت إلى مصدر للفهم، ومن شيء يُلمَس بحذر إلى نصّ يُفسَّر ويُتداول. وهكذا، بدأ الإرث المحفوظ يستعيد لغته، ويعود إلى الحياة، لا كذاكرة فقط، بل كمصدر للمعرفة الدينية والتاريخية.

المناقشة

المناقشة في دلالات الذاكرة والمقاومة الصامتة

تكشف نتائج هذا البحث أن المخطوطات اليدوية التي احتُفظ بها في بيوت المسلمين البوماك لم تكن مجرد كتب دينية قديمة، بل كانت رموزًا حسّية للذاكرة والهوية. ففي سنوات الحظر والطمس، لم يكن الناس قادرين على قراءتها، لكنها بقيت محفوظة ومصونة ومقدَّسة بوصفها إرثًا عائليًا. وقد ارتبط الحفظ في بعض البيوت بطقوس منزلية مختلفة؛ فأحيانًا تُلفّ المخطوطات في أقمشة مطرّزة، وأحيانًا تُوضَع في أماكن عالية أو حتى داخل جدار، وأحيانًا لا تُلمس إلا بعد وضوء. ليست هذه الممارسات قاعدة ثابتة في كل بيت، لكنها تعبّر في مجموعها عن قصدٍ دائم في حماية الكتاب بأفضل صورة ممكنة. وهكذا يتضح أن الذاكرة لم تنتقل بالنصوص فقط، بل بالممارسة الجسدية والعاطفة والمكان.

يشير يان آسمان إلى أن الذاكرة الثقافية تُنتَج عادةً من خلال النصوص والطقوس.[٥٨] غير أن حالة البوماك تكشف مسارًا مختلفًا؛ إذ لم تكن المخطوطات تُقرأ يوميًا أو تُستَخدم في التعليم، بل حُفظت في البيوت بوصفها رموزًا صامتة للانتماء. إن فعل الحفظ نفسه ـ حتى من دون قراءة ـ أصبح وسيلة لصون الذاكرة. وهنا يلفت بول كونّرتون إلى أن المجتمعات لا تحفظ ذاكرتها بالنصوص وحدها، بل أيضًا بالعادات الجسدية والطقوس المتكررة التي تمنح الأشياء معناها.[٥٩] وتؤكد أليدا آسمان أن هذا الشكل من الذاكرة يتسم بالمرونة، إذ يتيح بقاء الرمز حاضرًا حتى في غياب التلاوة أو الفهم المباشر.[٦٠] وبناءً على ذلك، فإن قيمة هذه المخطوطات عند البوماك لا تقوم على مضمونها النصي بقدر ما تقوم على بقائها محفوظة، محاطة بعادات الصون والاحترام.

أما على صعيد الممانعة، فإن سلوكيات الإخفاء والصمت المرتبطة بهذه المخطوطات تمثّل شكلاً من المقاومة اليومية من دون خطاب سياسي أو إعلان جماعي. فالمقاومة هنا لم تأخذ صورة "كلامٍ بديل" أو "خطابٍ موازٍ" كما وصفه جيمس سكوت، بل ظهرت في أفعال عملية صامتة: وضع الكتاب في موضع خفي، لفّه بالقماش، إخفاؤه في مكان مرتفع أو داخل جدار، ونقله من جيل إلى آخر. وهكذا صار فعل الحفظ نفسه وسيلةً للحفاظ على الإيمان داخل دائرة الحياة الخاصة .[٦١]

لقد أظهرت الروايات الشفوية أن ما يحدث في المنزل ليس عشوائيًا، بل هو فعل متكرر يحمل معنى خاصًا. ويشير كليفورد غيرتز إلى أن الرموز الثقافية تُنتَج في سياقاتها الاجتماعية، وأن الطقوس لا تعكس الواقع فقط، بل تعيد صياغته.[٦٢] وفي الاتجاه نفسه يرى فيكتور تيرنر أن الطقوس ليست مجرد عادة، بل عملية تُعيد إنتاج البنية الاجتماعية وتُرسّخ الانتماء الجماعي.[٦٣] ومن هذا المنظور

٥٨ Assmann, "Communicative and Cultural Memory", 110–112.
٥٩ Connerton, *How Societies Remember*, 72–75.
٦٠ Assmann, *Cultural Memory and Western Civilization*, 35–38.
٦١ Scott, *Domination and the Arts of Resistance*, 2–4.
٦٢ Geertz, *The Interpretation of Cultures*, 412–453.
٦٣ Turner, *The Ritual Process*, 95–96.

يمكن فهم طقوس حفظ المصحف في السياق البوماكي بوصفها وسيلة لصياغة انتماء غير معلن، يتجاوز حدود المعرفة المباشرة إلى الاحترام العملي والتكرار الصامت.

كما تكشف الروايات أن هذه المخطوطات لم تكن سرًّا فرديًا، بل سرًّا جماعيًّا؛ يعرف الجميع أنها موجودة في القرية، لكن لا أحد يسأل أو يبوح بمكانها. وهذا الشكل من "السكوت الجماعي" لا يعبّر عن الخوف فقط، بل يشكّل آلية مجتمعية لصون الذات في سياق من الخطر المستمر. ويمكن فهم هذا النمط في ضوء ما وصفه مايكل توسيغ بـ"السرّ العلني"، أي ما يعرفه الجميع لكنهم يتظاهرون بجهله، كجزء من آلية اجتماعية للصون والحماية.[٦٤] تُظهر هذه الممارسة أن المجتمع البوماكي طوّر استراتيجية صامتة داخلية لا يقوم بها الأفراد منعزلين، بل كشبكة غير مرئية من الحفظ الجماعي.

وبعد عام ١٩٩٠، لم تفقد هذه الرمزية قوتها، بل أعيد تفسيرها. فقد خرجت الكتب من البيوت إلى المساجد، وصارت تُقرأ وتُعرض بفخر، لكنها احتفظت بقيمتها الرمزية. وهذا يوضح مرونة الرمز وقدرته على إعادة التشكل في ظروف جديدة.

تقدّم هذه الدراسة إذن نموذجًا لفهم الهوية والمقاومة من خلال ما يُمارَس في الصمت: ما يُورَّث بالقماش والمكان، لا بالكلام والخطاب. فالذي يحفظ الهوية ليس التعليم أو المعرفة المكتوبة فقط، بل الطقوس الصغيرة المتكررة التي تُبقي الإيمان حيًا في المجال الخاص.

الخاتمة

أظهرت هذه الدراسة أن المخطوطات اليدوية العربية لدى المسلمين البوماك لم تكن مجرد نصوص قديمة محفوظة في البيوت، بل تحوّلت إلى وسائط مادية ذات رمزية عالية حافظت من خلالها الأسرُ على ملامح انتمائها الإسلامي، خصوصًا في فترات القمع والطمس. ففي كثير من الحالات لم تكن

٦٤ Taussig, *Defacement*, 5–7.

هذه المخطوطات تُقرأ أو تُستَعمل استعمالًا تعليميًا مباشرًا، بل اكتسبت قيمتها من صونها بوصفها أمانةً روحيةً ورمزًا للهوية، إذ وُرِّثت من جيل إلى جيل بطريقة تُبرز الوعي الجمعي بأهميتها. وقد شملت طرائق الحفظ وضعها في أماكن مرتفعة، أو تغليفها بالقماش، أو إخفاءها في الجدار، مما جعل فعل الحفظ ذاته وسيلةً لحماية الانتماء واستمراره.

وتدلّ النتائج على أن انتقال هذه المخطوطات لم يكن مؤسسيًا أو رسميًا، بل جرى في المجال الخاص، عبر شبكة من الصون العائلي والطقوس المنزلية المتكرّرة. ومن هذا المنظور يمكن القول إن الهوية الدينية لم تُصن عبر التعليم والخطاب المعلن فقط، بل أيضًا عبر الممارسات الهادئة التي منحت الأثر المادي معنى يتجاوز مضمونه النصي المباشر. وتكشف هذه الممارسات عن أن الحفظ بحد ذاته صار خطابًا صامتًا، أعاد إنتاج الذاكرة الجمعية من غير حاجة إلى تعبير علني.

كما أظهرت الدراسة أن الرمزية المرتبطة بهذه المخطوطات لم تتلاشَ بزوال الخوف المؤسسي بعد عام ١٩٩٠، بل أعيد تأويلها في سياق جديد؛ إذ انتقلت بعض النسخ إلى مساجد القرى لتُقرأ أحيانًا على يد أئمة محليين، مع احتفاظها بمكانتها كرموزٍ للذاكرة والهوية. وهذا التحوّل يوضح مرونة الرمز وقدرته على التكيّف مع تغير الظروف التاريخية، بحيث يتحرك بين الخفاء والعلن، بين البيت والمؤسسة، من غير أن يفقد وظيفته الرمزية الأساسية.

وفي ضوء ذلك يتبيّن أن هذه المخطوطات لم تختزن قيمتها في ماديتها ورمزيتها فقط، بل كشفت أيضًا عن غنى مضموني لافت؛ فهي تضمّ تفاسير موجزة وأدعية وأجزاء من كتب الفقه والوعظ ونصوصًا تعليمية متنوّعة. وهذا يدلّ على أن التراث الذي حافظت عليه الأسر البوماكية أوسع بكثير من مجرد رموز محفوظة، بل هو جزء من مكتبة محلية صامتة ظلّت حاضرة في الذاكرة الجمعية. ومن ثمّ تبرز الحاجة إلى دراسات لاحقة تُحلّل هذه المضامين وتكشف أبعادها الفكرية والتاريخية، بما يربط بين فعل الحفظ الرمزي ومحتوى النصوص ذاتها.

واستنادًا إلى الإطار النظري الذي استُخدم في هذه الدراسة، يتضح أن ما طرحه يان آسمان حول الذاكرة الثقافية، وبول كونّرتون حول الممارسات الجسدية، وجيمس سكوت حول المقاومة الصامتة، وكليفورد غيرتز وفيكتور تيرنر حول الرموز والطقوس، ثم مايكل توسيغ حول ''السرّ العلني''، يجد تجليه في هذا السياق المحلي. فالمخطوطات هنا ليست نصوصًا تُقرأ بقدر ما هي رموز تُصان، تحفظ ذاكرة المجتمع وتؤكد انتماءه رغم محاولات الطمس المتكرّرة. وبذلك تُسهم هذه الدراسة في سدّ فجوة معرفية تتعلق بكيفية استمرار الذاكرة الإسلامية في مجتمعات إسلامية، وتبرز أهمية الأثر المادي في صياغة الهوية الدينية.

وتفتح النتائج المجال أمام مزيد من الأبحاث في ثلاثة اتجاهات أساسية: الأول، إجراء مسوح ميدانية أوسع في قرى ومناطق أخرى من البلقان لاختبار ما إذا كانت هذه الظاهرة مقتصرة على البوماك أو شائعة في مجتمعات مسلمة أخرى. الثاني، تحليل محتوى المخطوطات التي ما زالت محفوظة داخل البيوت وربط موضوعاتها بأنماط الحياة الدينية والاجتماعية في القرية. والثالث، دراسة الأثر العاطفي والنفسي لهذه المخطوطات على الأجيال الجديدة، خصوصًا بعد أن بات بعضهم قادرًا على قراءتها وفهمها نتيجة التعليم الجامعي. كما يُوصى بإنشاء مشروعات توثيقٍ وحفظٍ بالتعاون مع المكتبات الوطنية ومراكز الدراسات التراثية، بما يضمن بقاء هذا الإرث حيًّا وقادرًا على أداء دوره الرمزي والمعرفي في آنٍ واحد.

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Extended Summary

This study investigates how Ottoman-era madrasas and library manuscripts helped preserve the religious and cultural identity of Pomak Muslims in Bulgaria. Far from being inert relics, these manuscripts anchored memory, transmitted belonging, and sustained Islamic continuity in contexts where public religious life was severely constrained. The analysis draws on qualitative fieldwork conducted between 2018 and 2020 in the Pirin and Rhodope regions, combining semi-structured interviews, participant observation, and close examination of manuscripts still preserved in private households and mosque collections.

The historical trajectory of Pomak life in Bulgaria has been repeatedly shaped by state-led policies aimed at assimilating the Muslim population. The first wave, during the Balkan

Wars (1912–1913), imposed forced name changes and ethnic reclassification. Under the royal regime (1934–1944), assimilation advanced through state control of education and the establishment of civil associations designed to promote "Bulgarization." During this period, Arabic-script manuscripts were also confiscated and, in many cases, destroyed, further undermining Pomak communities' access to their textual heritage. Socialist campaigns later intensified this trajectory: between 1962 and 1964, administrative restrictions multiplied, and under the Zhivkov regime of the 1970s and 1980s, the most aggressive measures were introduced, policing names, clothing, religious instruction, and rites of passage. Each successive wave narrowed the institutional space available to Pomaks to sustain religious life. In this shifting landscape, families relied on quiet strategies—silence, concealment, and symbolic preservation—to safeguard what could no longer be practiced openly.

It is in this context that manuscripts assumed a distinctive role. Originating in Ottoman madrasas, mosque libraries, and waqf collections, many were transferred into households during the late nineteenth and early twentieth centuries. Families regarded them less as texts to be read—since few custodians still possessed the linguistic competence to engage Arabic or Ottoman Turkish—than as sacred legacies. Interviews and observations reveal recurring practices: manuscripts were placed on high shelves, wrapped in embroidered cloth, concealed in ceilings or walls, and brought out only on special occasions. They were passed down from one generation to the next with careful instructions on how to protect them, and when police raids were anticipated, some were even buried in the ground or hidden under floorboards to avoid confiscation. Children were taught to revere them without handling, reinforcing their aura of sanctity. Through such gestures, preservation itself ensured continuity, allowing manuscripts to endure as symbolic anchors of identity across ruptured generations.

These preservation practices were enveloped in secrecy. While villagers rarely disclosed who possessed the manuscripts, it was widely understood across Pomak communities in Bulgaria that such books survived. This silence created a protective ambiguity, a collective awareness without open acknowledgment. Michael Taussig's notion of the "public secret" —something known by all yet never spoken—captures this atmosphere precisely.

After the end of socialist restrictions in 1989, manuscripts long concealed in private homes began to resurface. In many villages, local Muslims took the initiative to gather these volumes and transfer them into mosques, where they could be safeguarded under better conditions and displayed as visible markers of communal identity. The most prominent examples of this process are the mosque collections of Chepintsi and Elhovets, both established in the 2000s from manuscripts once kept in secrecy. Chepintsi preserved hundreds of volumes, including Qur'ans, fiqh manuals, works of tafsir and aqīda, prayer books, grammatical treatizes, and even texts on philosophy, astronomy, and music. A celebrated piece was the fourteenth-century "golden Qur'an," discovered concealed within the wall of an old house, with the name of God inscribed in gold and its margins illuminated with intricate designs. Elhovets housed Qur'ans from the sixteenth and seventeenth centuries, alongside Ibrahim al-Ḥalabī's *Multaqā al-Abḥur*, the *Mukhtaṣar al-Qudūrī*, exegetical works by al-Nasafī and al-Baghdādī,

rhetorical treatizes such as *al-Muṭawwal*, and rarities including Qāḍī ʿIyāḍ's *al-Shifāʾ*, Yazıcıoğlu's *Muhammadiyya*, and the bilingual *Tuhfe-i Vehbī*. Taken together, the richness and variety of these collections not only reveal the resilience of Pomak communities in preserving their heritage, but also point to the vibrant intellectual and cultural life that once flourished in the region during the Ottoman era.

The theoretical framework of this study draws on Jan Assmann's concept of cultural memory, James Scott's notion of hidden transcripts, and Clifford Geertz's interpretive anthropology. Together, these perspectives clarify how Pomak manuscripts, even when unread, functioned as vehicles of memory, silent forms of resistance, and symbolic performances of identity.

This article argues that manuscripts preserved in Pomak households were not passive remnants of the Ottoman past but active instruments of survival. They carried Islamic memory through periods of repression, safeguarded identity when institutions collapsed, and continue to shape cultural belonging and collective memory in the post-communist present. More broadly, they demonstrate how minority Muslim communities in the Balkans developed distinctive strategies of resilience, relying on material continuity, secrecy, and ritualized domestic practice rather than institutional authority. By foregrounding these dynamics, the study contributes to wider debates on Islamic heritage, memory, and resistance, while also correcting the neglect of the Balkans in manuscript studies that have long privileged Middle Eastern contexts. The findings further suggest the need for future research that not only catalogs and analyzes the contents of these manuscripts but also situates them within the lived experiences and oral traditions of the communities that preserved them.

Keywords: Cultural memory, Manuscripts, Islamic identity, Silent resistance, Pomak muslims.

Özel Dosya
Special Dossier

Araştırma Makalesi / Research Article

Constructing 19th-century Ḥanafī authority: The case of Qur'anic recitation for pay

MARİON HOLMES KATZ*

Abstract

By the thirteenth century AH/19th century CE, the practice of hiring a professional to recite the Quran and donate the resulting merit (*thawāb*) to a deceased person was well-entrenched in many parts of the Islamic world. Responding to a wave of bequests for this purpose after an outbreak of the plague, the Syrian Ḥanafī jurist Ibn ʿĀbidīn (d. 1252/1836) produced a famous work strongly denying the legitimacy of such transactions in Ḥanafī *fiqh*. Freestanding treatises representing the opposing view were produced by two other leading Ḥanafī thinkers of the 19th century, the Algerian Ibn al-ʿAnnābī (d. 1850) and the later Syrian authority Maḥmūd al-Ḥamzāwī (d. 1887). While Ibn ʿĀbidīn's intervention has usually been interpreted as a response to evolving social practices, it can also be read as an extended application of Ibn ʿĀbidīn's distinctive approach to the authority structure of the Ḥanafī madhhab. This paper centers on Ibn ʿĀbidīn's Ḥanafī legal methodology and how it contrasts with those of these other two scholars. Through an examination of these three contrasting Ḥanafī discussions of the same legal issue, it is possible to see the methodological diversity of the Ḥanafī madhhab in the 19th century.

Keywords: Qur'anic recitation, Ibn ʿĀbidīn, Hanafi, Legal methodology.

XIX. Yüzyıl Hanefî Otoritesinin İnşası: Ücret Karşılığı Kur'an Okuma Meselesi

Öz

XIX. yüzyıla gelindiğinde, Kur'an okuması için bir profesyonel kiralamak ve ortaya çıkan sevabı (thawāb) ölen bir kişiye bağışlama uygulaması, İslam dünyasının birçok yerinde iyice yerleşmişti. Veba salgınının ardından bu amaçla yapılan bir dizi vasiyete yanıt olarak, Suriyeli Hanefî fakihi İbn Âbidîn bu tür işlemlerin Hanefî fıkhında meşruiyetini kesin bir dille reddeden ünlü bir eser kaleme aldı. Karşı görüşü temsil eden bağımsız

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DOI: 10.26570/isad.1880812 • Geliş/Received 25.06.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Katz, Marion Holmes, "Constructing 19th-century Ḥanafī authority: The case of Qur'anic recitation for pay", *İslam Araştırmaları Dergisi*, 55 (2026): 155-181.

risaleler ise XIX. yüzyılın önde gelen diğer iki Hanefî düşünürü, Cezayirli İbnü'l-Annâbî (ö. 1850) ve daha sonraki Suriyeli Maḥmûd Ḥamza (ö. 1887) tarafından yazılmıştır. İbn Âbidîn'in müdahalesi genellikle gelişen sosyal uygulamalara bir yanıt olarak yorumlanmış olsa da bu müdahale aynı zamanda İbn Âbidîn'in Hanefî mezhebinin otorite yapısına dair kendine özgü yaklaşımının genişletilmiş bir uygulaması olarak da okunabilir. Bu makale İbn Âbidîn'in Hanefî hukukî metodolojisine ve bunun diğer iki âliminki ile nasıl tezat oluşturduğuna odaklanmaktadır. Aynı hukukî meseleye dair bu üç zıt Hanefî tartışmasının incelenmesi yoluyla, XIX. yüzyıldaki Hanefî mezhebinin metodolojik çeşitliliğini görmek mümkündür.

Anahtar Kelimeler: Kur'an tilaveti, İbn Âbidîn, Hanefî mezhebi, Fıkıh usulü.

1. Introduction

In the early nineteenth century, recurrent outbreaks of plague left many Syrian Muslims bereaved. Concerned for the otherworldly wellbeing of their kinsfolk, some of them did what Muslims in many places had been doing for centuries: they hired professionals to recite the Qur'an and donate the resulting religious reward (*thawāb*) to the souls of their deceased loved ones.[1] By this period, the validity of such transactions had been a fiercely contested legal issue for many centuries, one that potentially affected not only the private arrangements of individual believers but the provisions of many pious foundations (*awqāf*) that designated some or all of their revenues to support such recitations.

The validity of Qur'anic recitation for pay is a conceptually complex issue in Islamic legal thought, reflecting varied and evolving attitudes towards ethical individualism and the distinction between religious and economic spheres.[2] In the nineteenth century, it also elicited unusually lengthy and elaborate legal argumentation from a diverse set of Ḥanafī authors, offering a rich sample of their contrasting legal approaches. This article will use three nineteenth-century Ḥanafī legal treatises on the question of Qur'anic recitation for pay as a window into the diversity of late Ḥanafī legal methodology. In each case, while summarizing the author's substantive views on the issue, the emphasis will be on the given treatise's explicit and implicit arguments about what constitutes authoritative Ḥanafī doctrine. As we shall see, despite the authors' shared commitment to the Ḥanafī *madhhab*––and despite the fact that two of them share the same substantive doctrine on this issue––from a methodological point of view, they have very little in common. Their differences suggest the diversity of legal frameworks among nineteenth-century Ḥanafīs.

1 See Ibn ʿĀbidīn, *Shifāʾ al-ʿalīl*, 1:152.

2 I plan to address these themes in a forthcoming study.

2. The first treatise: Ibn ʿĀbidīn, *Shifāʾ al-ʿalīl*

The first treatise is *Shifāʾ al-ʿalīl wa-ball al-ghalīl fī ḥukm al-waṣīya bi'l-khatamāt wa'l-tahālīl*, by the prominent Syrian Ḥanafī Muḥammad Amīn Ibn ʿĀbidīn (d. 1252 AH/1836 CE). Ibn ʿĀbidīn is by far the most prominent of our three authors in the English-language secondary literature, often regarded as either the final representative of traditional Ḥanafī scholarship before the ruptures of modernity or an early harbinger of legal responses to modern social change.[3] The work is dated 1229 AH/1814 CE, and as evoked above, the author states that it was composed in response to a wave of bequests for the recitation of the Qur'an following an outbreak of plague.[4] This lengthy epistle (forty eight pages in a modern printed edition) is a sustained refutation of the idea that acts of worship can legitimately be performed for pay, aside from limited exceptions. Ibn ʿĀbidīn's contention throughout is that acts performed for the sake of otherworldly reward cannot simultaneously be contracted for this-worldly wages. Indeed, he states that he has long harbored doubts about the validity of the ubiquitous practice of hiring third parties to generate and donate *ajr* (compensation) based on 'the principles of our Ḥanafī authorities' (*qawāʿid aʾimmatinā al-ḥanafīya*). Nevertheless, he has heretofore kept his reservations to himself because he 'knew that people are constitutionally averse to anything that diverges from what they are familiar with.'[5]

Implicitly, he is confronting not only entrenched popular mores but the doctrine currently prevalent among Ḥanafī jurists. This is made explicit towards the end of the epistle, when his imagined interlocutor asks outright: 'Have not the Ḥanafīs of your time been giving fatwas affirming the validity of these bequests and contracts of hire, [or] do you think they have been doing so without any basis?!' Ibn ʿĀbidīn responds with a defiant 'Yes!'[6] Nevertheless, he insists that he is not engaging in novel legal reasoning that departs from school doctrine: 'I have stated nothing without a textual basis (*mustanad*) and have relied only on authentic (*ṣaḥīḥ*) and authoritative (*muʿtamad*) citations.'[7] Clearly anticipating quick rejection of his stance, he implores his audience to read his essay multiple times and reflect deeply before evaluating his arguments.

3 For a discussion of the various ways in which Ibn ʿĀbidīn has been framed either as a traditional continuation of or a reformist rupture with the premodern Ḥanafī tradition, see Martha Mundy, 'On reading two epistles of Muhammad Amin Ibn 'Abidin of Damascus,' in Yavuz Aykan and Işık Tamdoğan (eds.), *Forms and Institutions of Justice: Legal Actions in Ottoman Contexts* (Istanbul: Institut français d'études anatoliennes, 2018).

4 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl,'1:152.

5 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:152; see also 1:173.

6 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 188.

7 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 152.

This treatise has already been discussed by several scholars. Ahmad Atif Ahmed uses it to illustrate Ibn ʿĀbidīn's approach to the problem of legal change;[8] Itzchak Weismann interprets it as a response to contemporary 'socio-religious deterioration';[9] and Astrid Meier frames it as an effort to revive scholarly *adab* in the face of the 'over-commodification of scholarship' in his times.[10] Rather than approaching the work as a source of evidence for Ibn ʿĀbidīn's response to contemporary social developments, this article builds on Samy Ayoub's observation that *Shifāʾ al-ʿalīl* 'illustrates Ibn ʿĀbidīn's affirmation of the hierarchy of legal authority within the *madhhab*."[11] Despite the vividness of the few passages denouncing contemporary customs and the palpable sincerity of Ibn ʿĀbidīn's concern for the concrete issue at stake, this epistle appears, at heart, an unusually sustained argument about the right and wrong ways to construe a complex Ḥanafī canon. Ibn ʿĀbidīn himself seems to have regarded it as a key example of his methodology, one that he revisits at some length in his methodological auto-commentary *ʿUqūd rasm al-muftī*.[12]

Ibn ʿĀbidīn's overall line of argumentation is straightforward. The introductory section presents relevant ḥadīth and their interpretation by Ḥanafī authorities in this field, including Badr al-Dīn al-ʿAynī and al-Ṭaḥāwī.[13] It establishes that it is prohibited to take wages for acts of worship (*ṭāʿa*, *qurba*); apparent exceptions, such as Qur'anic recitation for purposes of healing (*ruqya*), should be regarded as services provided to other human beings rather than as pure acts of worship. This rule was espoused by the founding authorities of the school, Abū Ḥanīfa, Abū Yūsuf and Muḥammad al-Shaybānī, and by the early Ḥanafī jurists (*al-mutaqaddimūn*).

Ibn ʿĀbidīn goes on to acknowledge that many later Ḥanafīs (*mutaʾakhkhirūn*) made an exception allowing compensation for teaching the Qur'an, and that some of them added further exceptions (such as teaching *fiqh* or serving as a prayer leader). It is these exceptions that have led some of Ibn ʿĀbidīn's contemporaries to claim that the doctrine of the later Ḥanafīs allows the payment of wages for acts of worship. Ibn ʿĀbidīn's response is threefold. Firstly, he argues that according to the rules of jurisprudence, the articulation of an exception implies that the original rule applies to all cases that are not enumerated—that is, if a text states that it is invalid to contract for wages for acts of worship *except* teaching the Qur'an, it affirms by implication

8 Ahmad, *The Fatigue of the Shariʿa*, 45.

9 Weismann, 'Law and Sufism", 74.

10 Meier, "*Adab* and Scholarship Mirrored by Law", 98, 113.

11 Ayoub, *Law, Empire, and the Sultan*, 112.

12 Ibn ʿĀbidīn, "Uqūd rasm al-muftī", 1:13-14.

13 Ibn ʿĀbidīn, "Shifāʾ al-ʿalīl", 1:153-157.

that such a contract remains invalid for all other acts of worship (including pure recitation). Secondly, he argues that the explicit rationale (*ʿilla*) for the exceptions enumerated by the later Ḥanafīs is necessity (*ḍarūra*);[14] when the early Islamic state ceased to pay stipends to Qur'an teachers and the religious commitment of Muslims began to wane, it was necessary to sustain Qur'anic instruction. In contrast, no necessity dictates the payment of wages for Qur'anic recitation.[15] Thirdly, he argues that the ubiquity of the custom of paying for Qur'anic recitation does not legitimate it as a legally authoritative custom (*ʿurf*).[16] Here Ibn ʿĀbidīn invokes a distinction between general (*ʿāmm*) and particular (*khāṣṣ*) custom. He argues that the practice of paying for qurʾanic recitation is neither documented to have persisted since the time of the Prophet (implying his tacit approval and thus the custom's status as sunna) nor universally practiced in all Muslim communities (demonstrating the existence of consensus, *ijmāʿ*); it is thus an *ʿurf khāṣṣ* without legal legitimacy.[17]

Ibn ʿĀbidīn's arguments are deeply imbued with ethical concern; in his eyes the practice of payment for Qur'anic recitation is inherently fraudulent (because acts of worship driven by a profit motive generate no religious merit to donate)[18] and represents a misuse of the assets of the deceased (which are wrongfully diverted from heirs, including needy kinsfolk and orphans).[19] Perhaps more painfully, scholarly endorsement of the practice reflects the distortion of legal knowledge by cupidity and ignorance.[20] Nevertheless, most of the work's length results from Ibn ʿĀbidīn's sustained effort to demonstrate that his position is, in fact, that of the Ḥanafī *madhhab* correctly understood; it is an extended master class in how to read the school tradition.

In *Shifāʾ al-ʿalīl*, Ibn ʿĀbidīn consistently positions himself as a *muqallid* (an 'emulator,' or a scholar unqualified to engage in independent legal reasoning) in an age of *taqlīd* whose task is to faithfully transmit the doctrines of the school in the form of prooftexts (*nuqūl*) from authoritative works of the Ḥanafī canon. In one place, pointing to the unanimity of

14 Ibid, 1:161, 167.

15 Ibid, 1:167, 180.

16 Ibid, 1:186-9.

17 Ibid, 186. This restrictive approach seems at first blush to contrast with his more expansive approach in 'Nashr al-ʿurf' (see id., *Majmūʿat rasāʾil*, 2:124-5), but this would require further study. Ibn ʿĀbidīn's arguments about the authority of *ʿurf* have been discussed extensively; see Ayoub, *Law, Empire, and the Sultan*, 103-6 and the sources discussed there.

18 Id., 'Shifāʾ al-ʿalīl', 1:167, 171.

19 Ibid, 1:172.

20 Ibid, 1:185-6.

authoritative Ḥanafī sources, he asks rhetorically, 'Would any of us have the audacity to contradict them and refute their texts on the basis of his own opinion (*raʾy*)? Indeed, if anyone were to do so ... even junior students would refute him and tell him, 'We do not accept *fiqh* based on rational argumentation (*ʿaql*); you need to give us citations (*lā budda min iḥḍār al-naql*)!'[21] Ibn ʿĀbidīn states firmly that engaging in fresh analogical reasoning (*qiyās*) has not been permissible since the year 400 AH (roughly corresponding to the turn of the first millennium CE).[22] In his view, even more modest forms of personal judgment are not available to latter-day scholars; he cites al-Qāsim ibn Quṭlūbughā (d. 879/1474) to the effect that a *muqallid* judge cannot engage in *tarjīḥ*, or independent evaluation of the merits of competing legal opinions transmitted within the school.[23]

In light of this positioning, it is unsurprising that the epistle consists in large part of verbatim quotations (*nuqūl*) from texts in the Ḥanafī canon. Ibn ʿĀbidīn highlights the extent to which his work is grounded in a broad canon of prior texts by prefacing it with a bibliography of more than fifty works from which he has cited. Early in the treatise he promises his reader 'mutually corroborating prooftexts (*nuqūl*) on that [subject] that will leave no scope for doubt to the perplexed.'[24] At one point in his argumentation he exclaims, 'Look at these prooftexts (*unẓur ilā hādhi'l-nuqūl*) and how they explicitly state the invalidity of this kind of bequest!'[25]

Despite this emphasis on verbatim quotation from long-established school textbooks, *Shifāʾ al-ʿalīl* is a complex and original piece of legal argumentation. For Ibn ʿĀbidīn, the Ḥanafī canon is a complex entity whose correct representation itself involves significant interpretive sophistication. His primary, and far from trivial, task is to take the multifarious statements produced by historical members of the school and harmonize them with another. Jonathan A.C. Brown notes that it is a widely accepted idea in the study of canonization that the 'canonicity of a scripture [or in this case, a body of legal texts] can be measured by the charity with which it is read and interpreted.'[26] In other words, a person's commitment to the authority of a canon is manifested in efforts to affirm its accuracy and cohesiveness. In this epistle, Ibn ʿĀbidīn strives to present his Ḥanafī canon as consistent both internally and with respect to external standards such as authentic hadith and fundamental legal principles (*qawāʿid*).

21 Ibid, 1:184.
22 Ibid, 1:163.
23 Ibid, 1:189.
24 Ibid, 1:157; see also 164, 178.
25 Ibid, 1:169.
26 Brown, *The Canonization of Al-Bukhārī and Muslim*, 30.

He explicitly describes his own efforts in terms of harmonization (*tawfīq*),[27] and this goal is evident throughout the work. For instance, he rejects one possible construal of a statement by al-Ṭaḥāwī (d. 321/933-4) on the grounds that 'it would entail contradiction in the statements of this illustrious authority (*hādhā'l-imām al-jalīl*)' and also because it would create a contradiction between al-Ṭaḥāwī's doctrine and those of other Ḥanafī textbooks (*mutūn*), commentaries (*shurūḥ*), and legal opinions (*fatāwā*).[28] Of course, al-Ṭaḥāwī himself could not have been animated by fear of contradicting Ḥanafī authorities who lived long after his death; the implication is that Ibn ʿābidīn envisions the cumulative Ḥanafī tradition as a canon that must be approached with maximal charity. At another place, rejecting al-Shurunbulālī's (d. 1069/1658) construal of a statement of Ibn al-Humām (d. 861/1457), Ibn ʿĀbidīn asks in a rhetorical display of horror, 'Could anyone imagine of Ibn al-Humām that he did not understand the expressions of the school texts (*al-mutūn*) … to the point that he would have the audacity to object to Qāḍīkhān [d. 592/1196]?!'[29] He then proposes a charitable reading of Qāḍīkhān to bring his wording into line with the madhhab's doctrine (of course, as Ibn ʿĀbidīn understands it).[30]

The project of harmonizing apparently divergent statements of doctrine is not a straightforward one. While Ibn ʿĀbidīn does not engage in original reasoning based on Qur'an or hadith, he uses the tools of legal theory to construe the statements of the school's past authorities.[31] As mentioned above, he is at pains to show that the later Ḥanafīs' acceptance of contracts of hire for teaching the Qur'an is a limited and exclusive one that cannot be extended to contracts for mere recitation. To support this point, he invokes the legal principle known as *mafhūm al-laqab* to argue that an explicit exception implies that the original rule continues to apply to all other cases.[32] He also notes that works of legal theory identify the naming of an exception as one of the constructions indicating that a statement is general (*al-istithnāʾ min adawāt al-ʿumūm ka-mā taqarrara fī'l-uṣūl*).[33] The key thing here is that, as one would expect under what Sherman Jackson calls a

27 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:160, 161.

28 Ibid, 1:156, 157. On Ibn ʿĀbidīn's understanding of these categories see Calder, 'The "*ʿUqūd rasm al-muftī*" of Ibn ʿĀbidīn, 226-7; Ayoub, *Law, Empire, and the Sultan*, 101-103.

29 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 184.

30 See also ibid, 1:185, where he argues that Khayr al-Dīn al-Ramlī (d. 1081/1671) cannot be assumed to have ruled arbitrarily or to have misunderstood school texts.

31 For a discussion of this phenomenon see, for instance, Jackson, "Kramer versus Kramer", 29.

32 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 159.

33 Ibid, 1:163.

regime of *taqlīd*,[34] he is applying *uṣūl* principles not to the primary sources of Qur'an and hadith but to the texts of his Ḥanafī canon.

Of course, harmonization is not always possible. Ibn ʿĀbidīn sometimes makes arguments based on the comparative stature of individual scholars. For example, in one case of conflict, he states unapologetically that al-Sarakhsī (d. 483/1090) is more knowledgeable than al-Bazzāzī (d. 827/1424).[35] He also gently suggests that the authorities of the school may sometimes have misunderstood each other's arguments. For instance, he argues that commentators on Ibn Nujaym's (d. 970/1562) *Ashbāh wa'l-naẓāʾir* may have failed to adequately distinguish between the rules applying to endowments and those applying to bequests.[36] Most centrally, he claims that in *al-Jawhara al-nayyira*, al-Ḥaddādī (d. 800/1397) inadvertently confused the ruling applicable to teaching the Qur'an with that for simply reciting it, thereby leading later Ḥanafī scholars astray. However, he charitably construes this as an honest oversight (*sabaqa qalamuhu*) and a mere slip (*zilla*), albeit one with momentous consequences, in his words, *fī zillat al-ʿālim zillat al-ʿālam* (in the error of the scholar is the error of the world).[37] He is notably less charitable to al-Zāhidī (d. 658/1259-60), whom he portrays as generally unreliable.[38] By sacrificing individual statements and even individual scholars, Ibn ʿĀbidīn is able to construct a broad Ḥanafī mainstream characterized by agreement, consistency, and deference to the early authorities of the school.

Of course, the obvious irony of this approach is that on the specific issue at hand, the anomalies Ibn ʿĀbidīn seeks to explain away explicitly include the majority doctrine of his Ḥanafī contemporaries. Despite his disavowal of performing *tarjīḥ*, Ibn ʿĀbidīn is making a vigorous argument against a prevailing doctrine that in fact has textual precedents reaching back centuries in the school. It is not surprising that he later refers back to *Shifāʾ al-ʿalīl* as his prime example of the methodological principle that a mufti may not opine on the basis of books written in recent centuries (*al-kutub al-mutaʾakhkhira*) without scrutiny of their sources and their modes of transmission.[39] Indeed, without such scrutiny, the accumulation of latter-day sources is to no avail, because as many as twenty later sources can transmit the error of a single earlier author.[40] This can even apply to

34 See Jackson, "Kramer versus Kramer", 29 and sources cited in n. 5 there.

35 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:159.

36 Ibid, 1:181. He similarly suggests that al-Shurunbulālī (d. 1069/1659) may have overlooked a relevant statement in an earlier source (ibid, 1:163).

37 Ibid, 1:190.

38 Ibid, 1:176, 180, 190.

39 Ibn ʿĀbidīn, "Uqūd rasm al-muftī', 1:13, 14.

40 Ibid, 1:13.

al-Ḥaṣkafī (d. 1088/1677), the celebrated author of Ibn ʿĀbidīn's base text in *Radd al-muḥtār*.[41]

Implicitly, such a deviant doctrine does not become authoritative simply because later authors broadly agree on it; they are not performing (or qualified to perform) *tarjīḥ* but failing to identify and transmit the preponderant position (*rājiḥ*) long ago established by qualified interpreters. Ibn ʿĀbidīn treats with respect works (some of which number among the *mutūn*) of authors belonging to the Ottoman period and offers serious discussion on them, but he tends to handle even the most prominent scholars of later centuries simply as distinguished interpreters of an authoritative tradition, transmitted from earlier scholars who enjoyed the hermeneutic authority to make independent doctrinal determinations.

As Ayoub has demonstrated, Ibn ʿĀbidīn more than once states that he accepts the authority of the doctrines of the later Ḥanafīs (*mutaʾakhkhirīn*) even when these diverge from those of the founding figures (the *mutaqaddimūn*).[42] Indeed, in such instances, he considers it impermissible to adhere to the doctrine of the *mutaqaddimūn*. In the case at hand, the argument that prohibition of recitation for pay mistakenly adheres to the doctrine of the *mutaqaddimūn* is a counter-argument that Ibn ʿĀbidīn must refute.[43] However, I believe that Ibn ʿĀbidīn uses the term *mutaʾakhkhir* in two distinct senses. In its technical sense (the one in which the doctrine of the *mutaʾakhkhirūn* is binding on later scholars), it refers to anyone coming after the beginning of the third century AH (*raʾs al-qarn al-thālith*).[44] Ibn ʿĀbidīn, like other Ḥanafī thinkers, gives no fixed end date for the period of the *mutaʾakhkhirūn*, but as Talal al-Azem has observed, this label generally refers not to all Ḥanafī jurists subsequent to the formative period of the school but to a specific stage in the development of Ḥanafī doctrine, one whose precise boundaries vary from one author to another. Al-Azem concludes that 'being a late jurist … has intrinsically less to do with period, and more to do with function: it is to weigh opinions and to formulate rules.'[45] It would seem that for Ibn ʿĀbidīn, the functions of weighing opinions and formulating rules are not legitimately exercised by jurists in or close to his own time (who are *mutaʾakhkhir* in a distinct, less technical sense).

41 Ibid, 1:15.

42 Ayoub, *Law, Empire, and the Sultan*, 101.

43 See Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:170, 1:183. For another example, see id., *Radd al-muḥtār*, 4:352.

44 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:161; see also Ayoub, *Law, Empire, and the Sultan*, 8-13; Al-Azem, *Rule-Formulation*, 84-88; Ibn ʿĀbidīn, "Uqūd rasm al-muftī', 1:33.

45 Al-Azem, *Rule-formulation*, 88.

In *Shifāʾ al-ʿalīl*, the applicable doctrine of the *mutaʾakhkhirūn* appears to originate with Abū'l-Layth al-Samarqandī (d. 373/983).[46] It is documented with references to texts that Ibnʿ Ābidīn categorizes among the canonical *mutūn* and *fatāwā* of the *madhhab*.[47] The sources cited (like Ibn ʿĀbidīn's general category of *mutūn*) do stretch into the Ottoman period. However, my reading of *Shifāʾ al-ʿalīl* is that these later texts serve to document the doctrine of the *mutaʾakhkhirūn*, rather than to form it. The doctrine of the *mutaʾakhkhirūn*, like that of the *mutaqaddimūn*, appears to be time-honored and binding, and it is implied that no quantity of more recent Ḥanafī learned opinion can change it.[48] In this case, recent Ḥanafīs agree on the permissibility of Qur'anic recitation for pay, but they are represented as being wrong about the doctrine of the *mutaʾakhkhirūn*, not collectively right about the currently valid interpretation.

Based on his arguments in *Shifā al-ʿalīl*, then, Ibn ʿĀbidīn does not appear to believe that the *mutaʾakhkhirūn* in the non-technical sense—that is, all later Ḥanafīs stretching to his own time and into the future—have the authority to establish a new doctrine as authoritative (unless, as is the case in his own treatise, they are identifying and restoring an obscured earlier doctrine). This, of course, does not mean that he regarded the tradition as rigid or static, both because *taqlīd* (like Ibn ʿĀbidīn's own) could be so complex and creative—up to and including, in this case, fully overturning received doctrine and practice—and because he accorded important roles to custom and necessity.

3. The second treatise: Ibn al-ʿAnnābī, *Imʿān al-bayān*

The second text under consideration is a lengthy fatwa by a North African contemporary of Ibn ʿĀbidīn, the Algerian mufti Muḥammad ibn Maḥmūd Ibn al-ʿAnnābī. Ibn al-ʿAnnābī, descended from a prominent family of Algerian Ḥanafī ulama, is best known for his work *al-Saʿy al-maḥmūd fī naẓm al-junūd,* which addresses the issue of military reform in the face of European ascendancy.[49] His work, including the fatwa to be discussed here, has been studied by Algerian scholars including Abū'l-Qāsim Saʿd Allāh, Fikrāt ʿĀbid, and Ṣādiq Ghirrīsh,[50] yet has been largely neglected in

46 Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl', 1:157.

47 Ibid, 1:157-9.

48 Were it possible for a later work (like that of Ibn ʿĀbidīn himself) to be established as an authoritative *matn* of the *madhhab*, it would in any case serve only to offer an authoritative interpretation of the prior canon.

49 Saʿd Allāh, *Rāʾid al-tajdīd*, 57-84.

50 Saʿd Allāh, *Rāʾid al-tajdīd*; ʿĀbid, "al-Mawsūʿa al-ʿilmīya, 27-61; Ghirrīsh, "Qirāʾa taʾṣīlīya", 50-71.

the English-language secondary scholarship. Ibn al-ʿAnnābī was nine years older than Ibn ʿĀbidīn but lived longer than the latter, dying in 1257/1851.

His work on payment for Qur'anic recitation, titled *Imʿān al-bayān fī ḥukm al-ujra ʿalā al-Qur'ān*, is a lengthy work of 63 folios. It is preserved in a manuscript that the author himself donated as a *waqf* to al-Azhar and is dated to Rabīʿ al-Awwal of the year 1240 (corresponding to October or November of 1824),[51] a period when Ibn al-ʿAnnābī is known to have been living in Egypt.[52] However, it remains unclear when the work itself was originally composed. It is framed as a response to the inquiry of an unnamed notable writing from Istanbul about the legitimacy and parameters of receiving wages for reciting the Qur'an.[53] It nowhere mentions Ibn ʿĀbidīn, and does not, as far as I can tell, directly acknowledge his arguments. It could predate *Shifāʾ al-ʿalīl,* reflect an ongoing controversy sparked by Ibn ʿĀbidīn's intervention, or be completely unrelated.

Ibn al-ʿAnnābī opens his work observing,

> since the objective of contracts of hire to perform different acts is the benefits resulting from [those acts] that accrue to someone other than the person who performs them, it is necessary to begin by discussing what [transferable benefits] result from the recitation of the Noble Qur'an.[54]

Here he is building on the overall definition and parameters of the contract of hire (*ʿaqd al-ijāra*) in Islamic law. One of the constitutive components of the transaction is the benefit (*manfaʿa*) delivered to the hirer by the hiree.[55] The first section of the text is devoted to the presentation of prooftexts supporting the idea that Qur'anic recitation can yield both this-worldly (*dunyawī*) and otherworldly (*ukhrawī*) benefits to someone other than the reciter.

According to Ibn al-ʿAnnābī, the this-worldly benefits (which include bodily healing, banishment of Satan from one's home, and the easing of poverty) are known both from hadith of the Prophet and from empirical experience.[56] The otherworldly benefits include those reaped by the living (including enhanced comprehension of the meanings of the Qur'an[57] and

51 Ibn al-ʿAnnābī, *Imʿān al-bayān*, Cairo ms., al-Maktaba al-Azharīya, 1130 ʿUlūm al-qurʾān, 91945 al-Shawāmm. The word *taʿlīm* ("teaching") in the title is clearly an error.

52 Saʿd Allāh, *Rāʾid al-tajdīd*, 8, 36-37.

53 Ibn al-ʿAnnābī, *Imʿān al-bayān,* 1[b].

54 Ibid, 1[b]-2[a].

55 *al-Mawsūʿa al-fiqhīya*, 1:259-263.

56 Ibn al-ʿAnnābī, *Imʿān al-bayān*, 2[a]-5[a].

57 Comprehension of the Qur'an is probably categorized as an otherworldly benefit because it leads to salvation after death.

the rewards of listening to it[58]) and the merit that reaches the dead.[59] Ibn al-ʿAnnābī acknowledges some degree of scholarly disagreement about the latter, specifically regarding cases in which the reciter unilaterally donates the recitation or the resulting merit to the deceased rather than simply praying to God to bestow it on them.[60] He then offers an overview of *madhhab* doctrines on the different kinds of action that can benefit a deceased person and evaluates them through direct interpretation of relevant texts from Qur'an and hadith.[61] Ibn al-ʿAnnābī's own view is that the doctrine of the *Ahl al-sunna wa'l-jamāʿa* (that is, of hadith-oriented Sunnis) affirms that a believer can donate the merit resulting from any act of piety, and that dissenting views within his madhhab reflect their authors' adherence to Muʿtazilism.[62]

The second chapter of *Imʿān al-bayān* presents hadith texts concerning the performance of Qur'anic recitation and other acts of devotion for pay,[63] and the third reviews scholars' interpretations of this material. Observing that there are relevant prooftexts suggesting both the permissibility and the prohibition of contracts of hire for Qur'anic recitation, Ibn al-ʿAnnābī notes that jurists' approaches fall into four categories. The first group argues that, in the absence of clear evidence for the chronological sequence of the reports permitting and forbidding recitation for pay, one must exercise pious caution by adhering to the prohibition.[64] This approach is also justified by the idea that God's speech must be protected from degradation through ordinary use (*ibtidhāl*; in this case, being subject to a commercial transaction).[65]

The second group of scholars argues that with the proper intention, far from cheapening God's word, the expenditure of money can in fact serve as a form of glorification (*taʿẓīm*). However, they hold that one cannot contract to perform acts of worship for pay because their validity depends on being performed with the intention of drawing closer to God (*taqarrub*) – an intention that a profit motive would presumably vitiate.

58 Ibid, 2[a].

59 Ibid, 5[a].

60 Ibid, 5[a]-6[a].

61 Ibid, 6[a]-21[a].

62 Ibid, 10[b]-11[a]; see also 7[b]. For this doctrinal position see al-Marghīnānī, *al-Hidāya*, ed. Sāʾid Bakdāsh (Medina: Dār al-Sirāj, 1440/2019), 2:505.

63 Ibid, 21[a]-25[a].

64 Ibn al-ʿAnnābī himself argues that the hadith texts permitting payment for Qur'anic recitation must be later than (and thus abrogate or specify) those forbidding it (ibid, 31[a]).

65 Ibid, 25[a]-26[a].

Ibn al-ʿAnnābī states that this is the original doctrine of the Ḥanafī school (*ẓāhir al-riwāya*) and offers a series of relevant citations from the *Mabsūṭ* of al-Shaybānī. He states that Ḥanafīs also justify this doctrine by arguing that acts of worship are legislated to test people's devotion to God, an objective that presumably cannot be achieved by outsourcing the relevant ritual. There follows a long series of prooftexts for this position from the Qur'an and hadith, all of them focusing on the idea that one should not have mixed or ulterior motives for one's acts of worship.[66]

The third group of scholars, Ibn al-ʿAnnābī writes, seeks to harmonize (*tawfīq*) the previous two.[67] In their view, the relevant prooftexts do not categorically prohibit the admixture of this-worldly motivations for one's acts of worship; rather, they apply to someone who acts purely for profane ends.[68] This group of scholars limits the prohibition on performing acts of worship for pay to those acts that are individually incumbent on a person (such as obligatory prayers).[69] In such a case, the person performing the ritual would in effect be acting for his own benefit by discharging the obligation; this is incompatible with a contract of hire, which is predicated on the hiree acting for the benefit of the employer.[70] Ibn al-ʿAnnābī points out that this approach entails the permissibility of contracts of hire for Qur'anic recitation (in cases where recitation is not individually incumbent on the reciter) as long as the reciter intends some transferrable benefit, whether this-worldly or otherworldly and whether its occurrence is certain (such as the comfort or pleasure of listening) or merely conjectural (such as healing a sick person or driving away Satan).[71]

Ibn al-ʿAnnābī's fourth group goes yet farther, allowing contracts of hire for all acts of devotion yielding transferrable benefits and making exceptions only in cases of specific textual prohibition. Some of these jurists even allow compensation for individual obligations, as when a man uses his conversion to Islam as dower in a marriage contract.[72] Others limit the permission to acts of worship that can be carried out by proxy, do not require intent (*nīya*) for their validity, and are not among the defining rites of the religion (*shaʿāʾir al-dīn*). Ibn al-ʿAnnābī states that this is the doctrine of al-Shāfiʿī and also of Mālik. He notes some diversity of opinion within individual schools about the religious functions that can be performed for

66 Ibid, 26[a]-28[b].

67 Ibid. 28[b].

68 Ibid, 29[b].

69 Ibid, 29[b]-30[a].

70 Ibid, 30[b].

71 Ibid, 33[a], 34[a].

72 Ibid, 44[a].

pay and observes that the *mashhūr* of the Ḥanbalī *madhhab* is (like that of the Ḥanafīs) that contracts of hire are forbidden for all acts of worship.[73]

Ibn al-ʿAnnābī goes on to observe, "There are those of our later [Ḥanafī] authorities (*mutaʾakhkhirī aʾimmatinā*) whose statements suggest that they followed this [fourth doctrinal] line."[74] He illustrates this point with a quotation from the 4th century AH /10th century CE Bukharan Ḥanafī al-Zindawīstī, who states that it had become necessary to allow wages for duties such as leading prayers and calling the *adhān* when the zeal of the early Muslims abated, leaving none to undertake them without compensation.[75] While (as we have already seen) this had become a standard argument among later Ḥanafīs, Ibn al-ʿAnnābī draws distinctive conclusions from it. He argues that the arguments of the later Ḥanafīs imply

> the rationale (*ʿilla*) for the prohibition of contracts of hire for the performance of functions related to acts of worship (*waẓāʾif al-ṭāʿāt*) transmitted from our authorities in the books of *ẓāhir al-riwāya* is not based on their being acts of worship (*min qibal kawnihi ṭāʿa*); rather, it is the absence of need to hire people for [these functions] in their time.[76]

While reproducing the conventional argument that the waning of pious motivations created a new need to hire people for religious duties, he here rejects the conventional Ḥanafī assumption that this new situation creates an exception to a preexisting prohibition applying specifically to acts of worship. Ibn al-ʿAnnābī explains,

> The true analysis (*taḥqīq*) of it is that contracts of hire were legislated as a deviation from the logic [of the law of contracts] (*shurriʿat ʿalā ghayr qiyās*). The [logic of the law of contracts] precludes the permissibility of [contracts of hire] because in them the contract applies to benefits that do not [yet] exist; this involves an element of risk and gambling that is [generally] forbidden [in the Sharia]. Nevertheless, the divine law dictated that [contracts of hire] are permissible in necessary matters that are demanded by people's needs. The most obvious interpretation [*al-ẓāhir*] is that their permissibility is predicated on (*maʿlūl bi-*) need, existing wherever need exists and not existing whenever need is absent.[77]

The idea that contracts of hire are inherently anomalous with respect to the Sharia's underlying rules of economic exchange was not a novel one;

73 Ibid, 45ª-b.
74 Ibid.
75 Ibid, 45ᵇ.
76 Ibid, 46ª.
77 Ibid, 46ª-b.

indeed, it was a prevalent (although disputed) position among Ḥanafīs.[78] By bringing it to bear in this specific context, however, Ibn al-ʿAnnābī transforms a conversation about acts of worship as a distinctive class of activities into one in which the permissibility of contracts of hire depends exclusively on a case-by-case assessment of social need. Whereas (as we have seen) Ibn ʿĀbidīn briskly denies the existence of a need to hire anyone for Qur'anic recitation, Ibn al-ʿAnnābī firmly declares that 'it is something that is demanded by the needs of most people today due to the prevalence of ignorance.'[79] As far as Ibn al-ʿAnnābī is concerned, the benefits of Qur'anic recitation are multifarious and concrete, and providing them fills a genuine need; while he does not elaborate on his reference to 'the prevalence of ignorance,' he may mean that many contemporary Muslims are not capable of extensive Qur'anic recitation themselves and thus need to hire professionals.

Ibn al-ʿAnnābī's methodology in this work is distinctively comprehensive. While he unambiguously identifies as a Ḥanafī throughout and gives disproportionate space to Ḥanafī authorities,[80] his framework is a comparative one that includes all four Sunni schools of law. Furthermore, he consistently follows his presentation of the various school doctrines with discussion of relevant prooftexts from Qur'an and hadith. He treats this material as dispositive for the evaluation of the competing *madhhab* doctrines, and evaluates them directly (rather than citing the usage of those texts in school legal manuals).[81] Structurally, the entire discussion is organized not around the individual *madhhab*s but around a set of four broad interpretive approaches to the issue at hand that Ibn al-ʿAnnābī has independently conceptualized. Discussion of the Ḥanafī school tradition, which is the heart and soul of Ibn ʿĀbidīn's analysis, in *Imʿān al-bayān* occupies a relatively modest middle ground between the macro level of broad generic approaches to the problem of recitation for pay and the micro level of interpreting individual hadith texts.

This approach seems far removed from Ibn ʿĀbidīn's elaborate protestations of adherence to *taqlīd*. Indeed, Ibn al-ʿAnnābī frames his composition very differently from the outset. He writes, "The verification (*taḥqīq*) of this issue demands a great deal of elaboration and distinction,

78 See, for instance, Sarakhsī, *Kitāb al-Mabsūṭ*, 15:74.

79 Ibn al-ʿAnnābī, *Imʿān al-bayān*, 48[a]; see also 46[a], b.

80 For instance, he references 'our Ḥanafī authorities' (*mashāyikhunā al-ḥanafīya*; ibid, 6[b]); throughout, the second-person plural 'we' refers to Ḥanafī positions.

81 Compare with the description of his methodology in his most famous work, *al-Saʿy al-maḥmūd fī naẓm al-junūd*, (in Saʿd Allāh, *Rāʾid al-tajdīd*, 67, 80), and in his other fatwas (ibid, 87-88).

followed by verification and study of the bases [of arguments], supported with splendid transmitted proofs (*al-adilla al-samʿīya*) and illuminated with radiant approved citations (*al-nuqūl al-marḍīya*) and reports from the early Muslims (*al-āthār al-salafīya*)."[82] This programmatic statement suggests both that quotations from authoritative legal texts (*nuqūl*) will play a supporting role in a discussion driven by analytic arguments and that they will share this role with reports from the Prophet and the early Muslims. Both of these expectations are, of course, richly fulfilled by the content of the text.

More importantly, Ibn al-ʿAnnābī's opening statement features two terms that have been associated with distinctive approaches to Islamic thought. It twice uses the word 'verification,' *taḥqīq*, a term that Ibn al-ʿAnnābī makes use of again when introducing his argument about the non-analogic nature of contracts of hire.[83] Khaled El-Rouayheb has shown that over the centuries the term *taḥqīq* was used in contrast with *taqlīd*: '[A] scholar who was not a *muḥaqqiq* [a practitioner of *taḥqīq*] would confine himself to reiterating received views and perhaps also clarifying them.... A *muḥaqqiq*, on the other hand, would critically assess received views.'[84] El-Rouayheb shows that a strand of theology emphasizing *taḥqīq* rose to prominence in the Maghrib in the postclassical period.[85] This emphasis on independent verification of proofs certainly characterizes the content of *Imʿān al-bayān*, which scrutinizes the logic and revealed prooftexts for even the most established school doctrines. To what extent Ibn al-ʿAnnābī generally conceived himself as a *muḥaqqiq* and what the broader role of the concept of *taḥqīq* in his thought is must be questions for further research.

The other suggestive term appearing in the treatise's opening statement is *salafī* (relating to the first generations of Muslims). In this historical context, of course, the reference is not to the modern Salafi movement but to the longstanding strand of Islamic thought emphasizing adherence to the teachings of the earliest Muslims over analytic argumentation, particularly in the field of theology.[86] In the field of theology (the core area of their application), the terms *taḥqīq* and *salafī* would seem to stand in tension. As El-Rouayheb has shown, advocates of *taḥqīq* rejected the authority-based textual approach of the traditionalists.[87] However, these terms' application to the field of law is less well known, and in this field the

82 Ibn al-ʿAnnābī, *Imʿān al-bayān*, 1[b].

83 Ibid, 46[a].

84 El-Rouayheb, *Islamic Intellectual History*, 28.

85 El-Rouayheb, *Islamic Intellectual History*, chapters 5-6.

86 El-Rouayheb, *Islamic Intellectual History*, chapters 4-6.

87 C.f. El-Rouayheb, *Islamic Intellectual History*, 185-7.

two ideals may have harmonized. Ibn al-ʿAnnābī's systematic commitment to the application of hadith texts supports his independent and analytic exploration of the legal problem at hand.

Indeed, in *Imʿān al-bayān*, Ibn al-ʿAnnābī not only displays his expertise as a *muḥaddith*[88] but openly claims forms of legal authority that Ibn ʿĀbidīn considered unavailable to latter-day jurists. He describes his third chapter as involving the 'presentation of the doctrines of the ulama on that [subject], the specification of the grounds of their arguments (*maʾākhidh*) and their proofs (*ḥijāj*) and the clarification of which of their opinions is more or less preponderant (*bayān al-rājiḥ wa'l-marjūḥ*).'[89] Here, Ibn al-ʿAnnābī himself appears to propose engaging in *tarjīḥ*. In other places,[90] he explicitly states that he is performing *takhrīj* (extrapolation) based on school doctrine[91] and *istiḥsān* (juristic preference).[92] Ṣādiq Ghirrīsh points out that Ibn al-ʿAnnābī also makes use of *qiyās* at several points in his argument.[93] Indeed, as Ghirrīsh discusses in some detail, throughout the fatwa Ibn al-ʿAnnābī productively applies *ūṣūl* principles to the primary sources of Qur'an and hadith.[94] These are techniques that Ibn ʿĀbidīn, in his stance as *muqallid*, applies to the texts of the Ḥanafī canon. When Ibn al-ʿAnnābī engages in harmonization (*tawfīq*), it is between apparently conflicting revealed prooftexts, not between authority statements from *madhhab* canon.[95]

In the content of his canon as well as his unabashed willingness to engage in legal reasoning based directly on Qur'an and hadith rather than on authoritative texts of his school, Ibn al-ʿAnnābī in some ways seems to prefigure a modern Salafī approach. He displays a fondness for the Ḥanbalī jurist Abū Yaʿlā, quotes Ibn Ḥazm, and indirectly cites Ibn Taymīya.[96] At least with respect to theology, he seems to have had an affinity with the Wahhābīs; one of his students in Cairo was a grandson of Ibn ʿAbd al-Wahhāb (ʿAbd al-Raḥmān ibn Ḥasan Āl al-Shaykh), who described him

88 In addition to citing vast quantities of hadith, he second-guesses a source's impugning (*jarḥ*) of a transmitter (Ibn al-ʿAnnābī, *Imʿān al-bayān*, 21[b]) and invokes negative evaluations of another report's isnād (ibid, 41[b]-42[a]).

89 Ibid, 25[a].

90 Ibid, 53[a]; see also 42[b].

91 E.g. ibid, 53[a] (*kull hādhā takhrīj minnī*); see also 42[b].

92 Ibid, 42[b] (*wa'l-istiḥsān ʿindī jawāzuhu*).

93 Ghirrīsh, *'Qirāʾa taʾṣīlīya*, 60-61.

94 This is the main topic of Ghirrīsh, 'Qirāʾa taʾṣīlīya.

95 E.g. Ibn al-ʿAnnābī, *Imʿān al-bayān*, 31[b].

96 See, for instance, ibid, 8[a] (reference to Ibn Taymīya within quotation from Ibn al-ʿAnnābī's grandfather's Qur'an commentary), 9[b], 19[b]-20[a] (Abū Yaʿlā), 20[b] and 25[b] (Ibn Qayyim al-Jawzīya).

with the title *al-Atharī* (that is, one whose doctrines were based on the texts of Qur'an and hadith) and praised his *ʿaqīda* (creed).[97]

Ibn al-ʿAnnābī's approach of discussing doctrines across the four *madhhab*s is another distinctive feature of his legal methodology. It is possible that his engagement with fiqh across madhhabs was a feature of his scholarship more broadly. An intriguing but ambiguous anecdote suggests that Ibn al-ʿAnnābī may have been involved in an early project of cross-*madhhab* legal codification. The historian ʿAbd al-Ḥamīd Bīk (d. 1863) writes that near the end of his reign, Muḥammad ʿAlī became concerned with the phenomenon of litigants manipulating the legal pluralism of the four-*madhhab* system by obtaining fatwas representing different schools of law. Accordingly, he approached Ibn al-ʿAnnābī and 'ordered him to compose a book that would comprise all that he deemed most sound (*mā rajjaḥa*) of the doctrines of the four legal schools and harmonize [them] with the laws of *siyāsa*, so that all verdicts could follow it and seeking a fatwa from the rest of [the doctrines of] the four legal schools would be abolished.'[98] According to ʿAbd al-Ḥamīd, this initiative led to Ibn al-ʿAnnābī's removal from office after the death of Muḥammad ʿAlī, when disenfranchised muftis and shaykhs complained to his successor ʿAbbās.[99]

Abū'l-Qāsim Saʿd Allāh notes that ʿAbd al-Ḥamīd Bīk's biographical notice contains obvious factual errors but is still one of the richest sources for the thinly-documented life of Ibn al-ʿAnnābī. The information seems to derive from oral communication with Ibn al-ʿAnnābī himself or with the Algerian community in Egypt, rather than from documentary sources.[100] His account of Muḥammad ʿAlī's commission to Ibn al-ʿAnnābī thus cannot be taken literally in its details.[101] Saʿd Allāh also notes that the partial manuscript that appears to represent the results of this commission, *Ṣiyānat al-riyāsa*, is based only on Ḥanafī doctrine.[102] Without further evidence, it is difficult to know whether there were two separate commissions or whether ʿAbd al-Ḥamīd Bīk was simply incorrect about the nature of the work.

Despite the ambiguity of the evidence, it would appear that Ibn al-ʿAnnābī may have been regarded as qualified and willing to select from the school tradition (and perhaps beyond) legal doctrines appropriate to the needs of

97 ʿĀbid, 'Al-Mawsūʿīya al-ʿilmīya, 5.

98 ʿAbd al-Ḥamīd Bīk, *Aʿyān min al-mashāriqa wa'l-maghāriba*, 189.

99 Ibid, 190.

100 Saʿd Allāh, *Rāʾid al-tajdīd*, 5-6.

101 For instance, Saʿd Allāh notes that he implies in one place that Ibn al-ʿAnnābī never finished his legal manual and in another that it was actually enacted (ʿAbd al-Ḥamīd Bīk, *Aʿyān min al-mashāriqa,* p. 189, n. 2).

102 Saʿd Allāh, *Rāʾid al-tajdīd*, 99-103.

his time. Ibn al-ʿAnnābī's methodology in *Imʿān al-bayān* is just one data point, albeit a rich one, toward reconstructing the approach of this still under-studied scholar. One hopes that this exploration can be extended when more of his *fatāwā* become available.

4. The third treatise: al-Ḥamzāwī, *Rafʿ al-ghishāwa*

The final text to be considered is the treatise *Rafʿ al-ghishāwa ʿan jawāz akhdh al-ujra ʿalā'l-tilāwa,* by Maḥmūd Efendī al-Ḥamzāwī (d. 1887). Like Ibn ʿĀbidīn, al-Ḥamzāwī was born and died in Damascus; he served as the Ottoman mufti of Damascus from 1867 until his death.[103] His work on the permissibility of taking pay for Qur'anic recitation was written far later than the other two and is dated 1302/1885, long after the deaths of the other two scholars. Al-Ḥamzāwī's work is framed as a response to a questioner asking whether Ibn ʿĀbidīn's position was the currently valid doctrine of the Ḥanafī school (*al-muftā bihi fi'l-madhhab*) or not.[104] In content, it is not only a vigorous refutation of Ibn ʿĀbidīn's position but a repudiation of the very form of legal writing that Ibn ʿĀbidīn had engaged in.

Al-Ḥamzāwī opens his discussion by declaring that the Ḥanafī prooftexts (*nuqūl*) affirming the legitimacy of wages for Qur'anic recitation are so numerous that they almost reach the point of apodictic certainty (*kādat tablughu al-tawātur*). He continues, "Here I will present their citations in an epistle… that will be free of speculative legal analyses that are of no benefit (*mujarrada ʿan al-abḥāth al-latī lā tujdī*), since a mufti who is *muqallid* may only transmit what is reliably attributed to the scholars of his school."[105] Having cited several authorities on this point, he continues, 'As for entering into argumentation, legal extrapolation (*takhrīj*), and hypothetical disputation (*al-finqulāt*), none of that should be relied on because it exceeds the role of a mufti who is *muqallid*.'[106] The term *finqulāt*, which designates speculative dialogues featuring the formulation '*fa-in qulta*' ("if you were to say…"), is a particularly telling description of Ibn ʿĀbidīn's style in *Shifāʾ al-ʿalīl*.

Al-Ḥamzāwī is as good as his word; in fact, his epistle consists exclusively of a numbered list of 40 *nuqūl* supporting the validity of contracts of hire for the recitation of the Qur'an. Given the simplicity of his framework, I will not further analyze his methodology. What is most striking about the

103 On al-Ḥamzāwī's life see Ayoub, "Creativity in Continuity", 317-318.

104 al-Ḥamzāwī, "Rafʿ al-ghishāwa", 2. Note that each treatise in this collection is paginated separately; 'Rafʿal-ghishāwa' is the third treatise.

105 al-Ḥamzāwī, "Rafʿ al-ghishāwa", 2.

106 Ibid.

Ḥanafī canon he invokes is how little it overlaps with that invoked by Ibn ʿĀbidīn in *Shifāʾ al-ʿalīl*. One clear difference is in chronology. Ibn ʿĀbidīn cites a set of sources that gradually increase in number starting with the 6th century AH, peaking in the tenth century AH and dropping off rapidly after that. In contrast, the bulk of al-Ḥamzāwī's sources date from the tenth to twelfth centuries AH.[107] Although one might explain this in terms of a shift in school doctrine over time (with Ibn ʿĀbidīn prioritizing earlier sources that reject recitation for pay), in fact Ibn ʿĀbidīn (unlike al-Ḥamzāwī) cites sources representing a fairly broad range of opinion. His bibliography's earlier center of gravity thus seems to reflect his understanding of the authoritative Ḥanafī canon that needs to be accounted for.

Furthermore, while both scholars' citations peak in the 10th century AH/16th century CE, they have very few sources from this century in common. Again, one might attribute this to each author's selective citation of sources that support his case, but there seem to be other factors at work. Of al-Ḥamzāwī's tenth-century citations, no fewer than seven are from the *fatāwā* of the Ottoman Shaykh al-Islām Abū'l-Suʿūd Efendī. This is perhaps not surprising, since if one consults collections of Abū'l-Suʿūd's *fatāwa*, it emerges that he issued a number of fatwas affirming the validity of contracts involving payment for reciting the Qur'an.[108] What is perhaps more surprising is that Ibn ʿĀbidīn never mentions this figure at all, not even to refute him. This difference does not involve simply Abū'l-Suʿūd as an individual, but arguably Ottoman *shaykh al-islām*s (jurists who held the highest post in the Ottoman official hierarchy) as a category. Al-Ḥamzāwī also cites two passages from Ibn Kamāl Pasha (d. 940/1534), meaning that of his thirteen *nuqūl* from the tenth century AH, a whopping nine are from Ottoman *shaykh al-islām*s. Ibn ʿĀbidīn's opening bibliography, in contrast, appears to feature no *shaykh al-islām* from the tenth century AH.[109]

107 It should be noted that these tallies represent somewhat different things in each case. I have counted Ibn ʿĀbidīn's sources based on the bibliography he provides at the beginning of the work without weighting the number or extensiveness of citations from each source. They vary widely in this respect, but since ʿĀbidīn's analyses include reinterpretation and critique, the number and length of the quotations does not necessarily correlate with the authority Ibn ʿĀbidīn accords to each author. In contrast, since al-Ḥamzāwī structures his treatise as a numbered list of citations that he argues to be cumulatively dispositive, a quantitative comparison of the number of citations from each author seems appropriate.

108 See, for instance, Demirtaş, *Açıklamalı Osmanlı Fetvâları IV*, 2:865, 2:1126-8, 2:1165-6. I thank Fatma Deniz for her help in consulting this source; all errors are my own.

109 See Ibn ʿĀbidīn, 'Shifāʾ al-ʿalīl,' 1:151. Ibn ʿĀbidīn's sources for the 10th century AH are Ibn al-Shiḥna (d. 921/1515), al-Ṭarābulusī (d. 922/1516), Zakarīyā al-Anṣārī (Shāfiʿī, d. 926/1520), Ibrāhīm al-Ḥalabī (d. 956/1549), Ibn Nujaym (d. 970/1563),

The hypothesis that al-Ḥamzāwī accorded a special status to the fatwas of Ottoman *shaykh al-islām*s is supported by another work dating to a similar period of his life. His short treatise 'Rectification of prooftexts on the hearing of a woman's claim for her entire prompt dower after consummation' (*Taṣḥīḥ al-nuqūl fī samāʿ daʿwā al-marʾa bi-kull al-muʿajjal baʿd al-dukhūl*) is dated to 1301 AH/1884 CE,[110] just a year before *Rafʿ al-ghishāwa*. The work's overall objective parallels that of Ibn ʿĀbidīn in *Shifāʾ al-ʿalīl*: to reassert the authentic *madhhab* doctrine of *ẓāhir al-riwāya* in the face of widespread contemporary Ḥanafī agreement on a deviant interpretation.[111]

Al-Ḥamzāwī proposes to achieve this "by reviewing the authentic prooftexts (*nuqūl*)."[112] As in his *Rafʿ al-ghishāwa*, the bulk of the treatise is an enumeration of these prooftexts from a range of authorities in the school. Notable in this presentation is that he explicitly labels Ottoman muftis as a distinct category. After citing two Ottoman-language fatwas (one of them from the 'mufti of the imperial capital (*dār al-salṭana*), ʿAlī Efendī' (Çatalcalı ʿAlī Efendī, d. 1103/1692) and the other from ʿAbd al-Raḥīm Efendī (Menteshzādeh, d. 1128/1716)), he declares, 'These are the Ottoman scholars (*hāʾulāʾī ʿulamāʾ al-rūm*); as for the fatwas of the Egyptians…'[113] Al-Ḥamzāwī concludes his discussion by declaring that "The fatwas of the *shaykh al-islām*s in the exalted imperial capital (*mashāyikh al-islām fī dār al-salṭana al-ʿalīya*) and of the Kāzarūnīya[114] suffice to refute the statements in the [*Fatāwā*] *al-Khayrīya* [of Khayr al-Dīn al-Ramlī] and the [*Fatāwā*] *al-Ḥāmidīya* that a woman's claim for her entire prompt dowry after consummation is not heard."[115] Here al-Ḥamzāwī implies his recognition of a special (although certainly not exclusive) authority attaching to Ottoman *shaykh al-islām*s.

Ibn Ḥajar al-Haytamī (Shāfiʿī, d. 1566), al-Khaṭīb al-Shirbīnī (Shāfiʿī, d. 977), Muḥammad Birkevi (d. 1573), Yūsuf al-Amāsī (d. circa 1000/1592), and Muḥarram ibn Muḥammad al-Zaylaʿī (d. 1000).

110 Maḥmūd Efendī al-Ḥamzāwī, "Taṣḥīḥ al-nuqūl", 8.

111 Ibid, 2.

112 Ibid, 'Taṣḥīḥ al-nuqūl', 2; Ibn ʿĀbidīn, *al-ʿUqūd al-durrīya*, 1:49-50, 55.

113 al-Ḥamzāwī, "Taṣḥīḥ al-nuqūl", 6. For see İpşirli, "Çatalcalı ʿAlī Efendī". The fatwa cited by al-Ḥamzāwī can be found in Fetava-yi Ali Efendi ma in-nükûl, [İstanbul]: Tabʿhane-yi Amire, 1272 [1856], 1:60 (accessed online through HathiTrust). For ʿAbd al-Raḥīm Efendi see İpşirli, "Abdürrahim Efendi, Menteşzâde" in *DİA*. The fatwa cited by al-Ḥamzāwī can be found in the manuscript of Fatāwā ʿAbd al-Raḥīm Efendī available from the Prince Ghazi Trust for Qur'ānic thought online at https://www.quranicthought.com/ar/content/2374512

114 Probably the *Fatāwā al-Kāzarūnīya* of ʿAbd Allāh ibn Ḥasan al-ʿAfīf al-Kāzarūnī (d. 1102 AH/1690-1 CE).

115 al-Ḥamzāwī, 'Taṣḥīḥ al-nuqūl', 8.

This fatwa usefully illustrates both the parallels and divergences between al-Ḥamzāwī's method and that of Ibn ʿĀbidīn. Both men fervently affirm their own status (and that of their contemporaries) as *muqallid*s, and both avowedly seek to realign the current doctrine of the *madhhab* with the classical doctrines of the school. Within this framework, both men scrutinize the prooftexts of latter-day Ḥanafīs for errors and misattributions. However, from this point, their methodologies diverge sharply. While Ibn ʿĀbidīn applies the hermeneutic tools of *uṣūl al-fiqh* to parse and harmonize the texts of the Ḥanafī canon, al-Ḥamzāwī relies on the quantitative accumulation of prooftexts largely without hermeneutic engagement with their arguments (an engagement which he holds to be precluded by *taqlīd*). It should be noted that al-Ḥamzāwī's restrictive approach to *taqlīd* does not freeze Ḥanafī law into backwards-looking rigidity; on the contrary, with its overwhelming emphasis on the statements of jurists of relatively recent centuries, he frames the Ḥanafī canon as evolving in an open-ended manner over time. As Samy Ayoub has demonstrated, al-Ḥamzāwī's arguments could be quite creative.[116]

Furthermore, each man's canon of authoritative Ḥanafī texts is quite distinct. While Ibn ʿĀbidīn emphasizes the steadily diminishing interpretive authority of jurists over time, the center of gravity of al-Ḥamzāwī's canon is strikingly late; for him the collective weight of relatively recent authorities can be decisive. Even more striking is al-Ḥamzāwī's explicit acknowledgement of a special status for jurists who held the position of *shaykh al-islām* of the Ottoman empire and opined from the imperial capital.

Al-Ḥamzāwī's approach reinforces recent arguments about the distinctive role of Ottoman (*Rūmī*) jurists and of the Ottoman state in articulating Ḥanafī law.[117] However, based on the fatwas at hand, in this respect his approach appears to diverge from those of the other two authors. At least in the context of this particular legal conversation, neither Ibn ʿĀbidīn nor Ibn al-ʿAnnābī appears to accord any special authority to doctrines backed by the Ottoman state, although this would have been possible to do so given Abū'l-Suʿūd's vigorous participation in this particular legal dispute.[118]

An overall evaluation of Ibn ʿĀbidīn's attitude toward Ottoman imperial authority is a complex matter that cannot be fully explored in this article.

116 See Ayoub, "Creativity in Continuity".

117 See Burak, *The Second Formation of Islamic Law*; Ayoub, *Law, Empire, and the Sultan*.

118 It seems at least possible that Ibn ʿĀbidīn was unaware of Abū'l-Suʿūd's interventions in this debate; his references to the latter appear to be mediated by previous authors who rendered his opinions into Arabic. See Ibn ʿĀbidīn, *al-ʿUqūd al-durrīya*, 1:202; id., *Kitāb tanbīh al-wulāt wa-l-ḥukkām*, 79.

Samy Ayoub has shown that there are many references to the *Maʿrūḍāt* of Abū'l-Suʿūd (a collection of opinions officially reviewed by the Ottoman sultan)[119] and to Ottoman imperial edicts in *Radd al-muḥtār*, but also that all of them are inherited from al-Ḥaṣkafī's base text on which he is commenting.[120] In some cases, Ibn ʿĀbidīn does not seem to treat such citations as authoritative in themselves. For instance, addressing a scenario where a mosque is surrounded by homes owned by non-Muslim subjects, al-Ḥaṣkafī cites the *Maʿrūḍāt*, where the latter in turn invokes a sultanic decree.[121] For al-Ḥaṣkafī, as Ayoub has demonstrated, such citations appear to be authoritative.[122] Ibn ʿĀbidīn's commentary implicitly accepts Abū'l-Suʿūd's position but states, 'This answer is based on the doctrinal preference (*ikhtiyār*) of al-Ḥalwānī [d. 448/1056-7] and others.'[123] For Ibn ʿĀbidīn, at least in this example, Abū'l-Suʿūd is understood neither as the originator of the doctrinal judgment nor as the authority underwriting it; like other latter-day jurists, he is merely a distinguished mediator of the school tradition.

In the treatise *Tanbīh al-ḥukkām*, which deals with the question of whether the authorities should accept the repentance of a person who has insulted the Prophet Muḥammad,[124] Ibn ʿĀbidīn's hypothetical interlocutor invokes the authority of Abū'l-Suʿūd's *Maʿrūḍāt* and of a pair of relevant sultanic decrees.[125] Ibn ʿĀbidīn's response begins by arguing that Abū'l-Suʿūd's position is internally contradictory[126] but continues to a far more devastating point: Abū'l-Suʿūd, implicitly but unmistakably, is simply not a *mujtahid*. Having established to his own satisfaction that Abū'l-Suʿūd's opinion cannot be harmonized (*tawfīq*) with those of the early authorities of the school, Ibn ʿĀbidīn declares:

> If the statements of the authorities of the school who were *mujtahids* conflicts with those of other, later authorities (*mutaʾakhkhirīn*) without the latter basing themselves on prooftexts transmitted from the *mujtahids*, we follow [the opinions of] the authorities who were *mujtahids*.[127]

119 See Ayoub, *Law, Empire, and the Sultan*, 66.

120 See Ayoub, *Law, Empire, and the Sultan*, 119-120.

121 See al-ʿImādī, *Maʿrūḍāt Abī al-Suʿūd*, 101.

122 Ayoub, *Law, Empire, and the Sultan*, 86-90.

123 Ibn ʿĀbidīn, *Radd al-muḥtār,* 4:209.

124 On the history of Islamic juristic debate on this issue see Sarah Islam, *Blasphemy (*Sabb al-Rasūl).

125 Ibn ʿĀbidīn, *Tanbīh al-ḥukkām*, 79.

126 Ibid, 80.

127 Ibid, 81.

Here Ibn ʿĀbidīn seems to use the term *mutaʾakhkhir* in its ordinary, non-technical sense of 'latter-day'; he is representing Abū'l-Suʿūd not as one of the *mutaʾakhkhirūn* who (like al-Ṭaḥāwī and al-Samarqandī) can cumulatively establish an authoritative doctrine diverging from that of Abū Ḥanīfa and his two disciples, but simply as a scholar too belated to exercise independent hermeneutic authority. He underlines the point by citing the dictum, 'The statements of non-*mujtahid*s are not taken into consideration' (*lā iʿtibār bi-kalām ghayr al-mujtahidīn*).[128]

None of this is to imply that Ibn ʿĀbidīn disrespects Abū'l-Suʿūd's opinions. However, even when he endorses their content, in such cases he seems to regard them merely as channeling the authority of earlier Ḥanafī scholars who belonged to historical cohorts qualified to engaged in independent evaluation of school doctrines. Further research would be required to determine whether this is typical of his approach overall. In contrast, al-Ḥamzāwī appears willing to frame the fatwas of Abū'l-Suʿūd framed as authority statements without reference to the prior Ḥanafī tradition.[129]

5. Conclusion

Taken together, these three legal analyses of the same concrete issue display the methodological and ideological diversity of Ḥanafī law in the nineteenth century. Their variation is most notable along two axes: the different degrees and forms of independent legal reasoning that the authors represent themselves as being qualified to engage in, and the apparently different roles accorded to the Ottoman establishment in shaping the content of the law. On the first axis, one extreme is represented by Ibn al-ʿAnnābī, whose direct analysis of revealed sources and engagement with all four *madhhab*s seem to foreshadow later developments while eschewing overt invocation of the dichotomy of *ijtihād* and *taqlīd*. His approach in *Imʿān al-bayān* raises the question of how the model of *taḥqīq* may have manifested itself in his *fiqh* more broadly. It also invites us to ask how our understanding of Islamic law in this period might be enriched by incorporating less-studied geographical areas (in this case, Algeria). The other extreme of the first axis is represented by al-Ḥamzāwī, whose model of *taqlīd* eschews analysis of school texts in favor of the quantitative accumulation of prooftexts, yet envisions an

128 Ibid, 81. His dismissal applies not only to Abū'l-Suʿūd but to Ottoman *shaykh al-islām*s as a class; in his discussion of blasphemy in *al-ʿUqūd al-durrīya* he notes that 'the *shaykh al-islām*s of the Ottoman dynasty' have ruled that Shīʿites are heretics whose repentance should not be accepted (1:202), but goes on to reject this view as an expression of school doctrine (1:202-206).

129 A keyword search on the Shamela database suggests that Ibn ʿĀbidīn was far more interested in Abū'l-Suʿūd as a commentator than as a mufti, although this would require further research.

evolving school doctrine that can be authoritatively reshaped by scholars of recent centuries. It remains to be determined to what extent this approach is distinctive to al-Ḥamzāwī, or whether it might represent a broader trend in *fiqh* in the Hamidian era.

On the second axis, one extreme may be represented by Ibn ʿĀbidīn, who – at least in this specific discussion – largely ignores the contribution of the Ottoman state to Ḥanafī *fiqh*. Ibn al-ʿAnnābī, despite the fact that his work is framed as a response to an inquiry from Istanbul, appears to simply ignore the possibility that Ottoman authorities (whether sultans or *shaykh al-islām*s) might be relevant to his argumentation. Al-Ḥamzāwī, in contrast, gives pride of place to the Ottoman shaykh al-islāms. To the extent that these differences reflect the underlying attitudes of the individual authors, they may in part reflect geography: as an Algerian, Ibn al-ʿAnnābī is in touch with a broader Ottoman system but perhaps less directly shaped by it than the other two men. The personal trajectories and commitments of the authors may also be relevant; as an *amīn al-fatwā* (assistant mufti), Ibn ʿĀbidīn was at most at the very edge of Ottoman officialdom, while al-Ḥamzāwī climbed through the hierarchy of official Ottoman judicial appointments, cultivated a near-native command of Turkish, and received the highest honors and medals of the Ottoman state.[130] Nevertheless, their positions cannot be reduced to self-interest. The extent to which these patterns are sustained throughout the three scholars' works is a question for further research.

Finally, one can ask to what extent each of these scholars should be understood as representing the new conditions of nascent modernity. Is Ibn ʿĀbidīn's framework best understood as a conservative extension of a model at least as old as the Mamluk period or as a model for social and ritual change underwritten by the authority of the past? Is his approach a particularly brilliant and virtuoso example of an already widely accepted methodology, or is he pushing back against a status quo that (somewhat like al-Ḥamzāwī) values the continuing evolution of school doctrine through the accumulating authority of relatively recent sources? Does Ibn al-ʿAnnābī's methodology reflect a centuries-long North African tradition of *taḥqīq*, or is it a conscious response to the changing circumstances of his time? Does al-Ḥamzāwī's legal methodology reflect a long tradition of Ottoman jurisprudence or a distinctive development of the Hamidian era? Only further research can answer these questions, but these three works demonstrate the profound methodological diversity of nineteenth-century Ḥanafism.

130 See biographies of al-Ḥamzāwī in Muḥammad Saʿīd ibn ʿAbd al-Raḥmān al-Bānī al-Ḥasanī, *ʿUlamāʾ al-Shām kamā ʿaraftuhum*, 215-229 and al-Bīṭār, *Ḥilyat al-bashar*, 1467-1476.

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Araştırma Makalesi / Research Article

Reassessing Women's Economic Agency Through the Lens of the Shari'a Court Records: The Case of Eighteenth-Century Ottoman Tripoli

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Abstract

In recent years, historians of the Middle East have begun reassessing earlier scholarship on the social and economic dimensions of women's lives in the early modern period. As this body of research developed, historians have increasingly recognized that the portrayals of oppressed and secluded females were largely an Orientalist construct. Nevertheless, the intricate ways in which women's experiences were shaped remain underexplored, a gap this paper seeks to address.

Drawing on court records from Tripoli (in modern-day Lebanon) from the late 18th century, this paper argues that women's extensive use of the shariʿa court was not only to settle disputes and pursue legal matters but also for notarial purposes, including registering ownership of properties, lease agreements, and marital business contracts. Women mobilized assets acquired through purchase, inheritance, or dowry to generate steady sources of income through rent, and capital flows, which supplemented their cash or in-kind dowries (which were mainly gold). These sources enabled women to invest in the agricultural sector, urban real estate, highly desired silk weaving, and money lending services. Moreover, women often resorted to *takhāruj*, a mechanism for trading shares, to secure more independence and greater autonomy over their financial investments.

Keywords: Women, Tarābulus al-Shām, Ottoman Arab land, Shariʿa court registers, Tarika, Early modern, *takhāruj*.

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DOI: 10.26570/isad.1880820 • Geliş/Received 25.06.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Rafei, Reda Zafer, "Reassessing Women's Economic Agency Through the Lens of the Shari'a Court Records: The Case of Eighteenth-Century Ottoman Tripoli", *İslam Araştırmaları Dergisi*, 55 (2026): 183-214.

Şer'iyye Sicilleri Merceğinden Kadınların Ekonomik Fâilliğini Yeniden Değerlendirmek: XVIII. Yüzyıl Osmanlı Trablusu Örneği

Öz

Son yıllarda Ortadoğu tarihçileri, erken modern dönemde kadınların sosyal ve ekonomik yaşamlarına ilişkin önceki literatürü yeniden değerlendirmeye başlamışlardır. Bu araştırma alanı geliştikçe, kadınların baskı altında ve kamusal alandan tecrit edilmiş olduğu yönündeki tasvirlerin büyük ölçüde oryantalist bir kurgunun ürünü olduğu giderek daha fazla kabul görmektedir. Bununla birlikte, kadınların deneyimlerinin hangi karmaşık dinamikler tarafından şekillendirildiği halen yeterince incelenmemiştir. Bu çalışma söz konusu boşluğu doldurmayı amaçlamaktadır.

Bu makale XVIII. yüzyılın sonlarına tarihlenen ve günümüz Lübnan'ında yer alan Trablusşam'a ait şer'iyye sicillerine dayanarak, kadınların şer'iyye mahkemelerini yalnızca hukukî ihtilafları çözmek ve dava açmak amacıyla değil, aynı zamanda mülkiyet tescili, kira sözleşmeleri ve evlilik bağlamlı ticarî anlaşmaların kaydı gibi noterlik işlevleri için de yoğun biçimde kullandıklarını ileri sürmektedir. Kadınlar, satın alma, miras veya mehir yoluyla edindikleri varlıkları kira gelirleri ve sermaye dolaşımı aracılığı ile düzenli gelir kaynaklarına dönüştürmüş; bu gelirler çoğunlukla altın şeklinde olan nakdî veya aynî mehirlerini tamamlamıştır. Bu ekonomik kaynaklar, kadınların tarımsal üretim, kentsel gayrimenkul, yüksek talep gören ipek dokumacılığı ve para ödünç verme faaliyetlerine yatırım yapmalarını mümkün kılmıştır. Ayrıca kadınlar, malî yatırımları üzerinde daha fazla bağımsızlık ve özerklik sağlamak amacıyla, hisselerin değiş tokuşuna imkân tanıyan *tehârüç* mekanizmasına sıklıkla başvurmuşlardır.

Anahtar Kelimeler: Kadın, Trablusşam, Osmanlı Arap toprakları, Şer'iyye sicilleri, Tereke, Erken modern dönem, Tehârüç.

Introduction

In her conspectus of the scholarship over the past fifty years, Suraiya Faroqhi, reminds us that the enduring image of Ottoman women as secluded and wholly subject to male relatives is an Orientalist trope.[1] From the 1950s through the 1970s, a growing body of research successfully dismantled this characterization, demonstrating that it functioned largely as an Orientalist construct rather than a historical reality.[2] Nevertheless,

1 Faroqhi, *Women in the Ottoman Empire*.

2 The work of historians continued for the next four decades. Examples are the works of historians like Margaret Meriwether and Judith Tucker who indicate that images of veiled and oppressed Middle Eastern women which travelers, missionaries, and colonial administrators as well as some scholars "steeped in Orientalist tradition" perpetuated for long, have been enduring in the minds of the general public. Amira El-Azhary Sonbol notes that many Middle Eastern women writing about their own societies inadvertently reinforce these narratives. She argues that while their social backgrounds render them receptive to Western intellectual frameworks, these scholars are often simultaneously engaged in struggles for greater rights and gender equality. Some of the harshest criticism to Islamic societies comes from

Faroqui notes that this victory remains incomplete, as, outside a small community of historians with feminist sympathies, specialists in Ottoman history continue to write Ottoman political and social history with little reference to women.[3]

Thus, the scholarship of the past three decades, drawing extensively on Ottoman archival materials, has convincingly demonstrated that women in the Ottoman Empire did not conform to the image of seclusion and financial dependence.[4] However, as Faroqhi argues, scholars have paid relatively little attention to the central economic role of women in the Ottoman domain. This is true in the case of the Province of Tripoli,[5] particularly in the eighteenth century, and a gap this paper seeks to address. With the exception of Beshara Doumani's work, studies of eighteenth-century Tripoli remain limited. Doumani's influential research on family and social history in the Ottoman Mediterranean offers a comparative analysis of Tripoli and Nablus through their respective legal records, namely the shari'a court registers.[6] However, Tripoli is omitted from the late eighteenth century because corresponding archival materials from Nablus for this period are unavailable.[7]

feminist historians and thinkers who blame Islam as a religion to be culpable for the "backwardness" in societies around the Middle East; see El-Azhary Sonbol, ed., *Women, the Family, and Divorce Laws.*, 3. Only when scholars started to use innovative methodological approaches and nontraditional sources, they started to question this "traditional wisdom," see Meriwether - Tucker, eds., *A Social History of Women*, 1. Almost ten years later Mary Ann Fay also points that these ahistorical views about women in the Middle East are still so entrenched in the west. They are as old as the days when European travelers who passed through Egypt and Syria, among other places, depicted women in derogatory terms although they knew little about Islamic law and women's rights. They imagined women to be secluded inside the harem awaiting men who had a right to take four wives and unlimited slave-concubines. Fay adds that these stereotypical views of women are as recent as 2001 when waging war was justified because of the need to liberate women in the Middle East; see Fay, *Unveiling the Harem*, 4-5.

3 Faroqui, *Women in the Ottoman Empire*, 29.

4 See for example Peirce, *Morality Tales*; also see Beshara Doumani *Family Life in the Ottoman Mediterranean: A Social History* (Cambridge: Cambridge University Press, 2017).

5 Tripoli is located in present day Lebanon; In 1516, the Ottomans conquered Tripoli, the once prosperous Mamluk province, along with the rest of the Arab lands on the eastern shores of the Mediterranean which would remain under Ottoman governance until World War I. In 1595, Tripoli became an Ottoman province extending from Latakia in modern-day Syria in the north to Jbeil and Juniyeh in the south with the city of Tripoli as its provincial capital.

6 Unlike major urban centers like Damascus and Cairo, Tripoli had only one shari'a court, see Ziadeh, *Arkiyologia al-mustalah al-watha'iqi*.

7 Doumani, *Family Life*; the many volumes native scholar Khaled Ziadeh wrote about Tripoli generally allude to women, but no single monograph would be considered

In this paper, I show that women in the second half of the eighteenth-century Ottoman Tripoli had, in fact, an undisputable presence in the public domain as businesspeople. This presence is manifest in their extensive use of the Islamic shariʿa court, a forum not only for settling disputes and trying legal cases but also for notarial purposes, including property ownership, lease agreements, contracts, and money lending, as well as debt settlement. The paper engages with the work of historians and scholars from different parts of the Ottoman Empire, demonstrating that women were active participants and contributors to the economy of their societies.[8] They visited court to buy properties for investment or to sell properties that they had bought, inherited, or received as dowries. Women then used their investments to generate a steady source of income in the form of rent (when buying) and a capital flow, which supplemented their cash or in-kind dowry (mainly gold), to engage in money lending (when selling).

Litigants who used the legal system for business purposes came from diverse social backgrounds and included both Muslims and non-Muslims, all of whom appear to have fared equally well within the judicial process. Although it was very common for women to be represented by a proxy (*wakīl*) to manage their affairs, this did not seem to compromise their financial agency or the conduct of business processes. In some instances, women themselves acted as *wakīl* for family members or business partners.

My research on the shariʿa court registers from Tripoli indicates that the economic model of Tripolitan women's practices was comparable to those in other regions of the Ottoman Empire and other early modern states.[9] Margaret Meriwether also noted that evidence of women's control over their property, particularly urban real estate, is abundant.[10] Other studies of seventeenth- and eighteenth-century Ottoman cities likewise highlight the extent to which women exercised control over their wealth and participated in economic life.[11]

exclusively a study about women. The multiple theses by students at the Lebanese University, which are in Arabic, only offer a classification and indexing of the types of cases available in the shariʿa court registers.

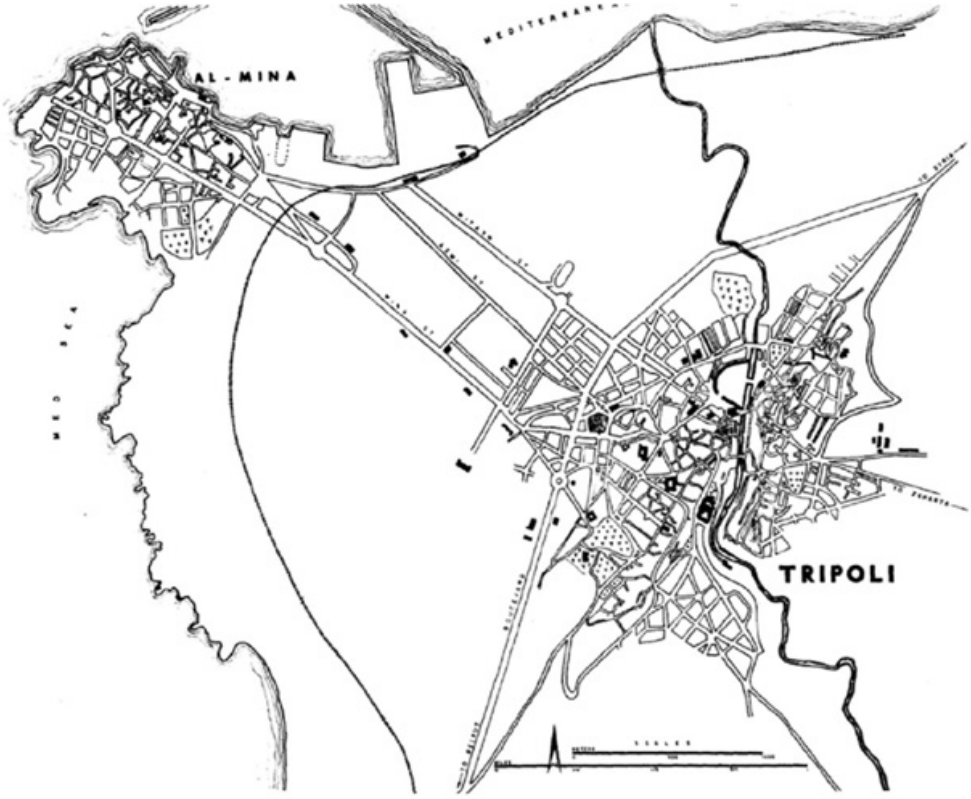
8 Meriwether - Tucker, A *Social History of Women*, 11. The list of scholarly works on different parts of the empire is extensive. Ronald Jennings is considered, for valid reasons, one of the pioneers in the Ottoman field and the father of archival research; see Ronald Jennings, "Women in the Early Seventeenth Century Ottoman Judicial Records", 53-114; Haim Gerber's work on Bursa is also relevant here, see Gerber, "Sharia, Kanun, and Custom", 131-47; Leslie Peirce work on Aintab and other cities within the Ottoman Empire, see Peirce, *The Imperial Harem*.

9 Marsot, *Women and Men in Late Eighteenth-Century Egypt*.

10 Meriwether, "Women and Waqf Revisited".

11 See above, footnote 10.

However, circumstances unique to Tripoli distinguished its women from those living elsewhere within or beyond the empire. Drawing on his comparative study of Nablus and Tripoli, Doumani demonstrates that the merchant and artisanal classes in the former relied heavily on strong ties with peasant clans in the distant countryside for the supply of raw materials, thereby limiting women's opportunities to participate in the agricultural economy. By contrast, Doumani argues that the green zone, the fertile land of irrigated orchards and groves surrounding the old city of Tripoli and extending to the coastal line (Map 1), an area densely cultivated with cash-crop groves such as olive, mulberry, and citrus, placed women at a distinct advantage.



Map 1. Source: Tripoli-Lebanon.com. The Mamelukes completely changed Tripoli's landscape. They abandoned the old location by the seashore (al-Mina) and rebuilt a city inland at the foot of the Crusaders' Citadel, two miles away from the old urban site. The green zone is the irrigated groves and gardens in between the two locations.

Building on Doumani's analysis, this study examines the economic opportunities that this fertile zone created for Tripolitan women. The proximity of these agricultural lands to residential neighborhoods

facilitated broader female participation in the agrarian economy and expanded possibilities for investment in agriculture, urban real estate, and manufactured commodities destined for export markets. Tripoli's political economy encouraged household strategies that favored the conjugal family unit, attached significant importance to affective ties, and enabled women to exercise far greater access to and management of commercially productive property, particularly irrigated orchards that formed the economic backbone of the city's middling social groups.[12] Ultimately, I argue that such economic engagement afforded Tripolitan women significant agency in financial matters, occasionally conferring a measure of independence, flexibility in making major life decisions, and autonomy in their personal affairs. I discuss elsewhere issues related to marriage, divorce, and custody of children and how women used their financial means to negotiate marital bonds and dissolutions. In this paper, I look at the business aspect of marital relationships and how it unfolded in and out of the matrimonial home and *majlis al-shar'*.[13]

This paper also delves into *tarika* (probate inventories) to gain insights into the trends, practices, and strategies women adopted in the distribution of assets, particularly the trading of shares (*takhāruj*). The analysis of the distribution of *tarika* demonstrates that, upon a husband's death, household possessions became the property of the wife. Moreover, at the time of the distribution of inheritance, women routinely resorted to *takhāruj* of the inherited assets,[14] a practice that entailed the trading or buyout of shares among heirs. More specifically, I argue that *takhāruj* gave women room to circumvent male and female domination and provided a tool for complete control over the profits from urban real estate and cultivated land.

Conducting Business in the Public Domain

Women appeared in court in person to resolve personal matters as well as to conduct business, buying, selling, renting, and frequently attending to waqf issues either as beneficiaries or managers of religious endowments (*mutawallī*). Although women had their faces covered and consequently needed a *maḥram* to identify them, the veil, I would argue, did not negate their presence in the public domain for business purposes or take away from their agency. The *maḥram*'s sole duty was to confirm their identity,

12 Doumani, *Family* Life, 33.

13 I discuss in chapter V of my dissertation the impact of financial independence on personal matters, including marriage and divorce, custody of children, and alimony.

14 According to Islamic shari'a rule on inheritance, women get determined shares of movable and immovable assets that relatives leave to their heirs. These shares vary according to gender and the degree of relationship to the deceased.

not to 'conceal' their physical presence. In September of 1751, Nayyira appeared in person, identified by her son, to settle the inheritance of her late niece (daughter of her sister) with the niece's husband.[15] Evidence from the registers indicate that women sometimes appeared with their faces uncovered (*ḥāsira ʿan wajhihā*), a rare occurrence that was explicitly noted in the text. However, they did not have any disadvantage vis-à-vis the court, which meant that the veil did not necessarily shape the court's perception of women.[16]

Examples of women, mostly belonging to the well-to-do class, conducting business in their private residence are abundant. In August of 1751, the scribe of the Tripoli shariʿa court, ʿAli Afandi, appeared at the *dār* (a larger size house which has usually multiple stories and sometimes smaller size houses, each called *bayt*) of Qasim Agha in the *mahalla* of Swayqat al-Khayl (one of Tripoli's neighborhoods) and in the presence of *Fakhr al-Moukhadarāt* (the pride of all honorable ladies) *al-sitt* (lady) Maryam bint Qasim Agha to document the sale contract she executed three years prior. *Al-sitt* Maryam, who was identified by her son Muhammad ibn al-amir Sulayman, was present in *al-majlis al-sharīʿ* (court session) in person to testify that she sold eight *qirāt*, her share of a shop she previously inherited.[17] It was not unusual for court personnel to hold *majlis al-sharīʿ* at the private homes of upper-class clients. However, the fact that *majlis al-sharīʿ* took place in Maryam's father's house does not necessary indicate that she did not appear in 'public'. This is because a designated part of the house called *manzūl* served as a 'public' space, where witnesses, dignitaries, and a representative of the qadi (judge) who were present during the session and heard her testimony, could be seated.[18]

Ottoman subjects, males and females, frequented court for all kinds of legal issues. The number of women of all social statuses who appeared in court in Tripoli in person is high, a clear indication of an undisputable presence in the public domain. A session held outside *al-maḥkama* (the official courthouse or building) was the exception, not the rule. Still, some elite females chose to govern their affairs and attend to their business

15 TSCR 12-2-50-2. Another example is when Layla bint al-shaykh Salih al-Taynali came to court in person to sell the house she previously purchased in January of 1785; her adult son accompanied her for identification purposes, see TSCR 25-1-48-1.

16 TSCR 12-4-176-2; TSCR 14-3-159-2.

17 TSCR 12-2-46-1, a clear indication that *al-sitt* Maryam belongs to the upper class is the fact that her son is an *amīr* (a prince). Any court session is called *majlis al-sharʿ* even if it did not take place in a court house.

18 I show elsewhere that some houses had a *manzūl* which served as a public space used by females to meet with family members as well as individuals who were not related to them for business purposes.

interests from the comfort of their homes. However, it should not be assumed that elite females were confined to their homes. Examples of upper-class men hosting and attending court sessions at their residences are similarly abundant. These instances suggest that the practice of holding a court session at a private home was a matter of convenience rather than an intention to seclude elite females.

Wakīl –Proxy: A Mere Business Affair?

It was very common for women to appoint a *wakīl*, a representative or a proxy to represent them in court which, I argue, did not take away from their agency or freedom to conduct business. As the registers indicate, women sometimes chose their brothers, sons, brothers' and sisters' sons, other women, husbands, and to a much lesser extent, fathers, to represent them in financial matters, including estate transactions, disputes, and other business-related matters. In 1750, Gharib represented his wife in the sale of a grove in the village of al-Minya that she and her brothers inherited from their mother (her two brothers were at court for the same purpose).[19] A woman was not necessarily obliged to have a *wakīl*, although, as I previously mentioned, the presence of a male relative/*maḥram* was required in some instances for identification purposes. As it was a matter

19 TSCR 12-1-33-1; see also TSCR 12-4-12 (161)-1, *Al-sitt* Fatima and her daughter *al-sitt* Khadija were selling the same property but were represented by two different proxies (the son of the first and the husband of the second); TSCR 12-4-16 (165)-3, two brothers (one of them also representing his minor sister in his capacity as her *wasi*) selling a property they owned with their sisters, who were represented by their respective husbands; TSCR 12-4-22 (171)-1, Safiya represented her two children in a dispute over waqf they inherited from their father; TSCR 12-4-22 (171)-2 Fatima appointed her husband (her brother was also present just to identify her) to represent her in the sale of *dār* in Bab al-Hadid- the buyer was also represented by her husband; TSCR 12-4-175-1, the buyer and the seller of a *dār* (three stories which is most likely for investment) were represented by their husbands; TSCR 12-4-30 (179)-2, Abd al-Moʿti and his sister Maryam were selling a grove they inherited from their father to the governor Saʿd al-Din Pasha although Maryam was represented by her husband; TSCR 12-4-40 (189)-2, two men *wakīl* for their wives in the sale of a grove they inherited along with their brothers; TSCR 12-4-41 (190)-1, Mustafa acted as a *wakīl* for his mother and minor brother and sisters in the sale of 80 and 62 olive trees in two remote villages; TSCR 12-4-199-1 Ali bought an upper level house inside a *dār* for his wife; TSCR 12-5-208-1, a man acted as a *wakīl* for his step mother and minor siblings in the sale of a garden; TSCR 12-5-209-2, a well-to-do lady is represented by her brother in the purchase of a garden in the village of *al-Zāwiya*; see also TSCR 12-5-213-2, TSCR 12-6-264-2, TSCR 12-6-275-2 a husband representing his wife in the sale of an orange tree; TSCR 25-1-34-1 husband as a *wakīl* for his wife.

of convenience to have *majlis al sharī'* convening at a private home, so was the appointment of *wakīl* to take care of business in lieu of some women; those who resided in Homs, Damascus, Istanbul, Doumiāt, or Beirut and needed to buy, sell, collect rent, or take care of other business-related matters, found it very practical to appoint a *wakīl*.[20] The same is true for residents of Tripoli who had to take care of business elsewhere.

As mentioned above, women chose family members as *wakīl*, but they also chose trusted members of the community for this role. This fact further strengthens the argument that the appointment of a representative emanated from practicality rather than oppression. *Fakhr al-Mukhadarāt* al-sayyida Khadija bint Ibrahim Baraka Zada appointed a *wakīl*, who was not a family member, to act on her behalf in the sale of a bakery she inherited from her father. Khadija's husband, who was present in court, authenticated the *wikāla* (power of attorney) and testified that the *wakīl* was legally present in court on behalf of Khadija.[21] Sharifa, Mu'mina, and Fatima, daughters of Yusef al-'Akkari appointed Khalid ibn al-hajj Muhammad, a total stranger, to represent them in the sale of a property they inherited from their father, although their paternal uncle Ahmad was present in court to identify them.[22]

In cases involving other family members, women made sure to appoint a *wakīl*, or more than one, who was not a family member to avoid any conflict of interest or infringement on their rights. In 1751, Badr al-Hosn designated a *wakīl* to represent her in the sale of a house in al-Askala, although her husband was present in court.[23] Also in 1751, Al-sayyid Bakri ibn al-sayyid Ibrahim acted as a proxy for Sit al-Banin bint al-hajj Yusef al-Minawi in the purchase of a house owned by her husband.[24] When 'Abd al-Mo'ti Jalabi ibn Muhammad Jawish and his sisters Maryam and 'A'isha wanted to divide their mother's *tarika* in 1755, the two women also designated two different proxies to represent them.[25] In 1769, Hanifa bint Husayn Bashi and her daughter *al-sitt* Fatimah designated two different men to represent them in the distribution of the inheritance of the family's patriarch.[26] *Al-sitt* Maryam bint Qasim Agha mentioned earlier designated al-shaykh Muhammad ibn 'Omar Bashbi to represent her in the sale of her

20 TSCR 19-3-37-1.

21 TSCR 14-1-7-3.

22 TSCR 25-1-35-1.

23 TSCR 12-6-20 (270)-1.

24 TSCR 12-5-10 (209)-1.

25 TSCR 14-2-51 (110)-3. See also TSCR 14-3-134-2.

26 TSCR 21-1-58-1. See also TSCR 12-4-194-1, TSCR 12-5-235-2, TSCR 21-1-58-1, and TSCR 14-1-59 (58)-1.

shares of a house she previously inherited, in spite of the fact that her son was in attendance when the transaction was taking place.[27]

Although less frequent, women acted as *wakīl* for their male relatives, even in high profile cases. In 1750, Haylana, a Christian woman, represented her husband Jubran Khlat in a lawsuit brought by al-amīr Sulayman ibn al-amīr Musa and secured a favorable ruling for her husband despite the opponent's high status. This legal success demonstrates the familiarity of some females with the legal system and awareness of what it takes to win in a court of law. Haylana appeared in court, prepared with sufficient witnesses to testify on her behalf, ultimately winning her case.[28] Women were also the *wakīl* for non-related males in business related cases. In 1769, Diba bint ʿAbd al-Razzaq negotiated a rental agreement of a *bustān* (garden) on her and her partner Rajab ibn Muhammad's behalf.[29] We can only speculate that a *wakīl* rendered his or her services in return for monetary compensation, especially if they were not a relative to the client. Even if the registers are completely silent on this matter, it can be presumed that some individuals made a living acting as proxies and representing their clients in a legal setting.

Regardless of who acted as *wakīl*, the registers included a detailed identification of this person, especially in cases of property acquisitions or devolutions. Moreover, the text emphasizes that the role of a representative is merely that of a middleman/middlewoman, whose legal function is to convey the wishes of his or her patron and who has no ownership of his or her clients' property, cash, or other material assets. In 1755, the honorable Muhammad Jalabi represented his stepmother *al-sitt* Ruqayya bint Iwaz Agha, in the management of her grandfather's waqf.[30] In 1777, Al-hajj Khalil ibn al-hajj ʿAbd al-Rahman represented his wife Halimah bint Khalil in the purchase of two apartments inside *dār* Shaʿban with his client/wife's money and asked the court to record the procured property in her name.[31] In cases where a *wakīl* was simultaneously representing himself, or herself, and other female relatives, or unrelated female partners, the registers distinguished between each person's shares

27 TSCR 12-2-46-1.

28 TSCR 12-2-29 (79)-1.

29 TSCR 21-1-60 (60)-1.

30 TSCR 14-1-56 (55)-1, Muhammad asked the court for permission to perform an *istibdāl* (exchange of a property) of waqf because the current property, a big house, needed maintenance while the properties that they are trying to acquire are shops "which generates more income." This practice was very common in the management of waqf to maximize the profit.

31 TSCR 19-4-12-2.

of a transaction (such as the percentage of *qirāt* and amount of money each party contributed).[32]

There is substantial evidence that representatives acted in the best interests of their clients. Accusations of representatives abusing trust or acting against their clients' will are exceedingly rare. However, this does not rule out the possibility of misconduct, where a *wakīl* might exploit the power entrusted to them. In fact, the archival sources themselves serve as evidence that such abuse could have occurred (Figure 1); if we read the case recorded in November of 1751, we think that al-hajj Mustafa ibn Hamza Bashi al-Halabi was in court to buy a *dār* in *mahalla* (neighborhood) al-ʿWaynāt, for himself, using his own money. However, upon closer examination of the document, a correction within the record becomes evident: the statement identifying him as the buyer has been struck through, and a marginal annotation, in addition to multiple amended entries in the text, indicates that he was acting as his wife's representative in the transaction, and employing funds that were her private property. The example corroborates the possibility of occasional abuse, yet also corroborates the agency of women in managing and protecting their interests and correcting any infringement on their financial assets, even when the aggressor is a husband.[33] One of the most significant financial assets for Tripolitan women was the mulberry and olive trees, which were often bought and sold independently of the land and were at the heart of the silk and olive oil industries.

32 TSCR 14-3-133-2. TSCR 25-1-41-2 which documents a property transaction indicates that a wife's role in the sale of a property she owns was not trivial; in this particular example, *majlis al-sharʿ* convened in the seller's own house where she certified that her husband acted appropriately on her behalf because he is an official representative.

33 TSCR 12-3-123-2.

Figure 1. Sample case of possible abuse of a *wikāla* (legal representation).[34]

Women and Urban Economy of Tripoli's Eighteenth-Century

Notwithstanding the misconceptions the European travelers and chroniclers propagated about gender coercion in Middle Eastern societies,[35] they made valuable observations about the importance of the region as a source of commodities in high demand in Europe. F. C. Roux, for example, a French traveler who visited Syria and Palestine at the beginning of the eighteenth-century, talked about the different laws and regulations that governed the presence of French merchants in the province of Tripoli.[36] Comte de Volney, another French author who traveled to Egypt and

34 Ibid.

35 Fay, *Unveiling the Harem*, 23.

36 Roux, *Les Échelles de Syrie*.

Syria between 1783 and 1785, also discussed the agrarian economy and commercial activities of the region.[37]

Their writings and those of other European travelers inform us that by 1667, the French merchants had returned to Tripoli after an absence of over five decades. Their quest was for white silk. Beshara Doumani writes that "after a five-decade-long absence due to French government anger at the treatment of merchants in Tripoli, French merchants returned in 1667." He also points out that in 1685, the French king Louis XIV lifted all customs on silk imported directly from the east to the port of Marseille.[38] The late seventeenth and the eighteenth centuries were thus the ideal time for the production of silk. The decline in demand at the European level later in the eighteenth century would not affect the regional and local markets, where demand continued to be high.[39] Olive oil was also in demand for the manufacture of soap.

The lucrative silk and soap industries were based on the mulberry and olive trees that Tripolitans were growing in abundance in the city and its surroundings. In this context, the green zone, the fertile land of irrigated orchards and groves between the city and the coastal line, constituted the infrastructure of the urban agrarian economy of Tripoli. "Tripoli's propertied middle and working classes generally invested their time and energy in the vast green zone, the highly commodified forest of cash-crop trees (mulberry for the silk industry, citrus for export, and olive for pressing olive oil and soap industry)."[40]

The proximity of the green zone to the residential neighborhoods in the old city allowed women easy access to commercially productive properties, especially irrigated orchards, which were the main livelihood of the middling social groups. Doumani explains that this proximity was a game changer for Tripolitan women, in comparison to women in Nablus, for example. The latter's economy depended on the relationships that merchants and investors built with the peasants in the countryside to secure the supply of raw materials. The stability of these relationships necessitated frequent trips to the countryside and sometimes extended stays during special occasions like weddings and funerals. These practices were out of the question for Nabulsi women. On the opposite end of the spectrum, women in Tripoli invested right in their backyards in an economy that was based on the urban agricultural sector.

37 Volney, *Voyage en Syrie*.

38 Doumani, *Family Life*, 265.

39 Panzac, "International and Domestic Maritime Trade", 189-206.

40 Doumani, *Family Life*, 32.

The registers reveal a notable pattern of women selling properties, including land and orchards, located at considerable distances from their places of residence, a trend that may suggest they were divesting from remote holdings in order to acquire property closer to home, and easier to manage. The sheer volume of transactions provides compelling evidence that women sought to retain direct control over their wealth. In 1750, Maryam and her stepdaughter Katrin sold the twenty-six olive trees they inherited from Maryam's husband and Katrin's father in al-Kura, a village located on the outskirts of Tripoli.[41] In 1755, ʿAdra and her two daughters Hasna and ʿA'isha (Adra also represented her other daughter Salha) sold a *ḥaqla* (small garden) they inherited in the village of al-Minya for 120 *ghursh*.[42] In 1784, *al-sitt* Tayba bint *al-Marhum* (late) Muhammad Afandi al-Yakan designated her husband to act as her *wakīl* in the sale of the 24 *qirāt* of a grove in al-Minya.[43] Also in 1784, *al-sitt* Karima and her three daughters, mentioned earlier, were probably not able to manage or have easy access to the 12 *qirāt* of olive trees they inherited from the husband of Karima and father of the girls, which were scattered between Bkiftīn, Mʿaysra, and Bqayʿa, in the hills surrounding Tripoli, and decided it was more practical to sell them.[44] The trend also applied to houses and shops. In 1750, Mansura bint Chaʿban sold the 4 *qirāt* of a shop she inherited from her father in Beirut.[45] In 1752, Amnah and her two unveiled sisters, Zamzam and Taybah, came to court to sell a house they inherited in al-Minya partly to support Amnah's minor daughter.[46]

Tripolitans were active investors in co-cultivation contracts (*ḍmān*) of the privately owned (*milk*) or leased waqf lands, as well as the olive, orange, and mulberry trees in the green zone and surrounding hinterland. Investment in trees was independent of, or combined with, the land in a type of agreement known as *musāqāt* between the owners and the cultivators or farmers. *Musāqāt* responsibilities included planning for irrigation, which followed a certain schedule despite the fact that the Abu ʿAli River and the many canals it supplied had an abundance of water. It also required the maintenance of trees and removal of old and diseased branches. All these duties fell on the shoulders of growers, though they received a larger share

41 TSCR 12-1-3-1. They sold the trees for 100 *ghursh*.

42 TSCR 14-1-58 (57)-2.

43 TSCR 25-1-34-1.

44 TSCR 25-1-35-1.

45 TSCR 12-1-16-2. This is another example where the sale of a small share of a property was the preferred practice especially that this particular property was in Beirut, necessitating some travel to manage it.

46 TSCR 12-4-44 (193)-2, the minor daughter owned some shares of the house, though it is unclear how she acquired these shares, possibly through a gift from her mother.

of the profit.[47] Both men and women used the court to notarize *ḍmān* as well as *musāqāt* contracts.[48]

Al-sitt ʿA'isha, her niece *al-sitt* Badra and ʿA'isha's brother were partners in the *ḍmān* contract for a garden with orange trees; the contract term was for seven consecutive years, which was not unusual, for a total sum of 35 *ghursh*.[49] Amnah bint al-hajj Muhammad al-Saʿid sold her shares of the garden she inherited from her husband and daughter to her husband's sister. Amna, who had true entrepreneurial skills, then used the cash she collected from the sale to get the *musāqāt* of the fruit trees in the garden she and her sister-in-law co-owned.[50]

Women rented agricultural land that was owned by individuals, including family members, or by the *awqāf*. They signed *ḍmān* and *musāqāt* contracts even with their husbands.[51] In an interesting case in 1751, Zayn al-ʿAbidin, the *mutawallī* of the waqf Mahmud Jalabi, asked the court to revoke the contract his wife, al-sitt Salha bint al-hajj Mustafa al-Kamali, held to co-cultivate the waqf's endowed garden. Zayn explained that his wife was not paying a fair rate and consequently decided to give the contract to a new tenant. Salha did not leave the deal empty handed though; Zayn and the new tenant agreed to pay her one fourth of the new rent as compensation.[52] In 1769, Diba bint ʿAbd al-Razzaq represented her partner, who was not a relative, in the lease of an empty garden.[53]

According to Doumani, Tripoli was an important center of textile production in the period under study.[54] The textile industry was flourishing due to the abundance of raw silk in the province. The volume of mulberry trees that women purchased suggests that they either took part in the sale of raw silk or in the manufacture of textiles; women and young girls might have been engaged in weaving, possibly in their homes, because the inventories of some females' *tarika* make references to the ownership of raw silk or woven handkerchiefs.[55] During the settlement of the estate of Mona bint al-shaykh Khalil al-Bastuni in 1768, her husband al-hajj Mustafa ibn Muhammad admits that he has in his possession 18 *ghursh* that he collected from the sale of *manādīl* (handkerchiefs) she owned.[56]

47 TSCR 14-1-59(58)-1, TSCR 25-1-60-2.

48 TSCR 12-2-11-2.

49 TSCR 14-2-67-1.

50 TSCR 21-1-6-1.

51 I will discuss marital partnerships later in this paper.

52 TSCR 12-6-51 (301)-3.

53 TSCR 21-1-60-1.

54 Doumani, *Family*, 27.

55 TSCR 23-1-58-2.

56 TSCR 21-1-1-1.

Whether Mona wove those handkerchiefs or was only selling them as merchandise as a peddler is unclear. Many questions remain unanswered regarding the participation of Tripolitan women in the textile industry. For example, we do not know if weaving was gender-based. If it was spread, did it take place at home or in specialized shops? There are multiple references to facilities for the manufacture of soap (*maṣbana*) but not for weaving textiles. More research is thus needed before we have a clear perception and can draw conclusions about this industry. Future inquiries are crucial to tackle the social and gender distribution of weavers or textile workers.[57] Suraiya Faroqhi argues that textiles, whether imported, locally produced, or manufactured in household settings, were among the most significant commodities. While urban workshops and guild-regulated trades remained essential to textile manufacture, Faroqhi stresses that a substantial portion of textile production also occurred in homes, especially spinning and some forms of weaving, thereby blurring distinctions between domestic consumption and artisanal labor.[58]

As mentioned above, French businessmen returned to Tripoli in the late seventeenth century. The registers contain numerous references to their presence and indicate that they were permanently residing in Tripoli. These businessmen, who were seldom in court in person, were exclusively involved in the sale and purchase of mulberry and olive trees.[59] The number of cases in which they purchased real estate, including houses and shops, is very low, though when they did, it was to buy or sell large mansions.[60] As noted earlier, there was a high demand for silk and soap from regional trade that extended from Cairo to Aleppo and Istanbul and from international trade that stretched to the French port cities, especially Marseille. Although the French businessmen did not have a monopoly over trade, because local merchants were as active as they were, the French still had a substantial share of the business.[61]

57 The collection of *tarika* cases of poor females who died inside Tripoli's khans without known heirs could offer more insights about female weavers. The (very) few cases that are available indicate that these women had one change of clothes in their possession in addition to a pillow, a mattress, and few kitchenware suggesting that they came to Tripoli, possibly from the countryside, to work in the textile industry.

58 Akçetin – Faroqhi, *Living the Good Life*.

59 TSCR 12-3-3-1; TSCR 18-1-7-2.

60 TSCR 12-3-29-3; TSCR 14-3-29 (149)-1, in this particular case two French businessmen (Charlesl? and Cauvin?) were selling through a proxy multiple properties including agricultural land and urban real estates to the governor of Tripoli Saʿd al-Dīn Pasha (1755).

61 Edhem Eldem notes that by the 1720s the French had displaced both Dutch and English merchants in the Levant trade, securing about 60% of the market by the mid-eighteenth century. He further explains that this dominance remained

French traders were almost always represented by members of the Christian community who acted as their agents for business purposes and also served as translators (tarājima, sing. turjumān, sometimes called dragomen). Based on the registers, Christian translators took advantage of the profits their clients were making and, in turn, invested in the purchase of olive and mulberry trees, leaving them as an inheritance for their families. Accordingly, we see female Christians in court very often, buying and selling mulberry and olive trees, but also notarizing *musāqāt* agreements. Muslim women were also buying, selling, and renting trees. However, with the exception of a few upper-class women, the volume of trees traded or invested in remained smaller relative to that of their Christian peers, who were associated with the translators working with French clients.[62]

Urban Real Estate

Cases of the sale and purchase of properties constitute the majority of those recorded in the registers. Women came to court, or, as noted earlier, sent their *wakīl* to buy residential buildings.[63] They also collected rent from urban real estate properties.[64] Khadija bint ʿAli Shaqas mentioned above, rented the *dār* she acquired for 130 *ghursh* of which she collected 120 *ghursh* and left the remaining 10 *ghursh* with the tenant as an allowance to repair and maintain the property during the three-year lease period.[65] In 1761, Maryam bint al-Rayyis Jirigis, a Christian woman, was appointed *wasī* for her minor daughter, and was allowed to use the rent of the house she and her daughter inherited from Maryam's husband to pay for *nafaqa*.[66] Women also collected rent as beneficiaries of multiple waqf properties.[67]

unchallenged until the end of the century, when it collapsed in the aftermath of the French Revolution. Textiles accounted for 80–90% of the total trade value, but the most significant point is that European merchants, especially the French, operated largely at the mercy of local traders. Owing to the strength and organization of their guilds, these local traders "monopolized three of the most crucial components of the market: information, distribution, and pricing." See Eldem, *French Trade*, 27-47.

62 TSCR 16-1-14 (259)-1, TSCR 25-1-60-3, TSCR 23-1-42-4.

63 TSCR 12-5-206-1; also TSCR 18-2-41-2 a woman bought part of a *dār* from her father; TSCR 18-2-55-2, a woman sold a *dār* she inherited for 300 *ghursh*; TSCR 18-2-59-1, a woman herself sold a *dār* 300 *ghursh*.

64 TSCR 12-3-120-1; TSCR 23-1-38-1, a woman buying a *dukkān hilāqa* (barber shop) which suggests that she is buying it for investment (rent); TSCR 21-1-53-2, rent of a house; TSCR 25-1-17-1; TSCR 14-4-(192) 12-1, a wife leased a cellar to her husband after she bought it from him.

65 TSCR 23-1-60-1.

66 TSCR 16-2-39 (80)-2.

67 Examples are in TSCR 12-3-142-2; TSCR 12-4-151-1; TSCR 12-4-23-1-57-1; TSCR 18-1-18-1, in this last case, Ruqayya bint Iwaz Beik collected rent from the waqf of her grandfather of which she is the sole beneficiary. TSCR 14-1-32-2, Fatima is the

In parts of the Middle East, women tended to sell property more often than to buy it, as observed by Annelies Moors, writing "They were also more prominent in the trade of residential housing than in either commercial or agricultural property."[68] We sometimes see this apply in Tripoli, but only in certain circumstances.[69] First, women did not have a desire to keep property that was not located close to where they resided, as we saw above. Second, they preferred to sell properties that were the subject of dispute. In 1750, ʿA'isha and her husband were in court to sell, to an 'ungrateful foe', their share of the garden they inherited.[70] In 1778, Safiyya bint al-hajj ʿAli, who was identified by her husband, sold a *dār* she had previously bought in *mahalla* Sāhat ʿAmīra for 100 *ghursh*.[71] Other than these special circumstances, we see women buying properties especially for investment purposes.[72] Fatima bint al-hajj Muhammad bought a *dār* that consisted of three stories, a *masyaf* (an upper level for use in the summer months), and *adab khānah* (bathroom), a sizable property, suggesting that it was for investment rather than personal use.[73]

Urban real estate investments sometimes sparked conflicts and disputes in the densely populated old city. This occured frequently because of the urban growth of the old city without any expansion of the narrow alleys that led to the city's houses and shops, and the construction of new ones that shared walls and entryways, which caused friction between neighbors. Khaled Ziadeh explains that the proximity of properties prompted neighbors to interfere with each other's alterations to the building's structures. Some neighbors disputed who lived next door or who was responsible for collectively assessed taxes. Ziadeh also points out that mobility across the region brought people from different ethnicities and social statuses to Tripoli. Migrants who were making the journey from Aleppo to Beirut, and from there to Doumiat and Alexandria, often stopped in Tripoli – and some never left the city.[74] The agreeable climate, prosperity, and quality of life enticed them to settle there.[75]

mutawallī and beneficiary of her grandfather waqf, she was in court to lease *bayād ard bustān* (agricultural land that does not have trees). TSCR 25-1-17-1.

68 Moors, "Debating Islamic Family Law", 147.

69 See example in TSCR 25-1-48-1; also look TSCR 25-1-59-1.

70 TSCR 12-2-47 (97)-1, the names of the fathers of the sellers indicate that they might be cousins who ended up with shares in the same property (with A'isha's share much smaller than her husband's -6 *qirāt* for him versus 1.5 *qirāt* for her).

71 TSCR 23-1-55-1.

72 TSCR 12-2-38 (88)-2.

73 TSCR 25-1-55-2.

74 Ziadeh, *al-surah al-taqlidiyyah*, 154-155.

75 Abdel Nour, *Introduction à L'histoire urbaine*.

These disputes did not deter women from continuing their investments. We thus see them frequently in court to protect their properties against any transgression or infringement on their access to them. Neighbors who did not want strangers to look inside their homes, erected doors or closed windows to protect their private space and prevent exposure especially of women. Access to water was probably the most important factor that led women and other property owners within the city to sue their neighbors. *Al-sitt* Amnah bint al-Marhum al-hajj Ahmad Shakʿah Zada appointed a *wakīl* to sue her new next-door neighbor who tried to limit her access to the water fountain that supplied both houses. It did not take much deliberation in court before Amnah's *wakīl* secured a favorable ruling.[76] Other comparable examples of conflicts around access to water abound in the archival records.[77] Aside from real estate investments, women often leveraged the capital they accumulated through the sale of real estate, and dowries and monetary wedding gifts to engage in moneylending, thereby participating in credit networks.

Money Lending

Margaret Meriwether connected the economic prosperity in Aleppo not only to the commercial activities but also to tax farming and moneylending.[78] In Tripoli, the evidence demonstrates that *iltizām* or tax-farming was confined to male actors, its gendered expectations effectively excluding women from the sector.[79] It entailed travel to remote areas to collect taxes and the use of firearms in some instances to either force the collection of taxes or to protect the countryside from bandits who posed a constant threat to the *ahāli* (subjects). Hypothetically, women could have hired proxies to represent them in tax-farming; however, there is no evidence in the registers in the period under study to support this argument. The involvement in moneylending was thus safer and more accessible to women. The latter gave loans to members of their own families but also to individuals they were not related to. They used cash they had accumulated from inheritance or the sale of properties they had either acquired or inherited. Married women used the dowry and jewelry

76 TSCR 12-1-10-1.

77 TSCR 12-2-76-1; TSCR 16-1-39-1; TSCR 16-2-31-2; TSCR 21-2-44-1.

78 Meriwether, *The Kin Who Count*, 45.

79 "Tax farming is the act of contracting out the collection of taxes in an attempt to maximize revenue from a taxation unit, *muqāta'a*, through competition among bidders willing to supply a given sum, often in advance, regardless of the actual yield of the tax sources. The aim of the tax farmer, *multazim* in the Ottoman case, was to collect more revenue than his total costs and enjoy a profit on his investment", see Nagata, Tax Farm Register of Damascus Province, 1.

they received at the time of marriage to offer loans. The evidence in the registers that women engaged in money lending is unequivocal, and the lending of loans is well documented.[80]

In cases of *tarika*, disputes, and property sale and purchase, the text refers to *tamassuk*, (from the verb *masaka*, hold a document), when a loan is mentioned. The *tarika* of Mustafa Bashi ibn Muhammad ʿAttar Bashi indicates that he owed 50 *ghursh* debt to his sister, although he was obviously well off.[81] The *tarika* of Jalul bint Mustafa Bashi al-Turjman documents a loan she gave to al-sayyid Ahmad Ziyada in the amount of 60 *ghursh*. Salha bint al-hajj Mustafa left a 60 *ghursh* loan she had given to *al-Muqaddim* (*askarī* or military title) Sulayman ibn Dahman as an inheritance for her nephew.[82] Sufiya bint Ibram lent money to ibn ʿAbd al-Basit, Ibram, Jirjis, ibn al-Tartuniya, and al-hajja, which were part of the inheritance she left for her minor children.[83] When Mustafa ibn al-hajj ʿAli al-Saridar died, he owed 40 *ghursh* to his wife, in addition to her *mu'akhar* worth 50 *ghursh*.[84] The *tarika* of Khadijah bint Muhammad al-Qanawati, which included an elaborate list of jewelry and personal belongings, also included 132 *ghursh* (out of a total *tarika* of 563 *ghursh*), which were loans she gave to a determined number of people, as her husband and mother testified.[85] The inheritance of Muhammad ibn al-sayyid Hasan lists a loan in the amount of 50 *ghursh* that he got from his wife; the list also includes a loan that he owed to Khadija bint Ibrahim Qasim Agha.[86] Women themselves took loans that were sometimes substantial, such as that of Tereza bint Ilyas (1700 *ghursh*), which was indeed substantial by any standards.[87]

80 TSCR 12-4-189-2, a wife lending her husband which came to be known at the time of her death and was calculated as part of the *tarika* since she had siblings who inherited her too.

81 TSCR 12-4-193-3; TSCR 12-6-265-1, this is an example that indicates that a woman took care of her husband's debt and paid it off with the understanding that it was a loan owed to her.

82 TSCR 21-1-49-1; TSCR 14-6-47-1, part of Khadra's inheritance was a loan that she gave to her brother.

83 TSCR 12-2-9-1.

84 TSCR 14-6-60-2

85 TSCR 22-5-1(33)-1.

86 TSCR 25-1-56-1, see also TSCR 18-2-59-2.

87 TSCR 12-4 (186)-2, this case documents a litigation against Teraza bint Ilyas, a *dhimmi* woman, who was accused of holding back a loan in the amount of 1700 *ghursh* she asked Jabur walad Shahaded to pay on her behalf as a *kafil* (guarantor). Tereza admits that Jabur paid the sum of money as a *kafil*. She was able to produce enough witnesses to testify that she did in fact pay back the full amount and the case was dismissed. It is worth noting here that both witnesses were Muslim men.

The Possessions of Deceased Women in *Tarika*

Women inherited and were inherited by specific family members according to *'ilm al farā'id*.[88] They also inherited their husbands, even when death occurred before the marriage was consummated.[89] In these instances, the consensus among all schools of fiqh is that the wife remains eligible for a dowry.[90] Inheritance rules also applied to non-Muslims, which attracted Christian and Jewish women to use the Islamic courts instead of their respective communal courts.[91] Inheritance included both movable and immovable assets. The *tarika* cases included a detailed list of all the properties that women left behind. It also included cash, clothing, loans they gave to both relatives and non-relatives, and jewelry which were distributed among heirs according to the Islamic rules of inheritance.[92] The *mu'akhar* of married women who died before it was paid, became part of the inheritance to be distributed among heirs.[93] One surprising set of items that appeared over and over again in the *tarika* was the household items listed as possessions of deceased women.

When Zaynab died in Askala in 1751, she was survived by her parents, her husband, and her two minor boys. Her mattress, pillows, and kitchenware were included in her inheritance.[94] Sit al-Banat's *tarika* also included kitchen utensils and furniture in addition to her clothes, jewelry, and properties.[95] *Tarika* of men sometimes included household items that went to their heirs, but that was the exception not the rule. When Hassun ibn Dib died

88 TSCR 12-5-210-1; male cousins also inherited their female cousins, look TSCR 12-5-213-1.

89 TSCR 16-2-15-1.

90 The Qur'an also touches on the right of dowry due to women who lost their husbands before intercourse (wife is still virgin), see Qur'an 4-12.

91 TSCR 12-4-8 (158)-2, Hanna bint Taniyous was in court to get her orphan children's share of the inheritance of their father's sister and won the case; TSCR 12-4-48 (197)-2, when Katub bint Ilyas died, her inheritance was distributed according to the shari'a (12 *qirat*-half of the inheritance-to her minor daughter, 1/6 each to her father and mother, and ¼ to her husband; TSCR 12-5-202-2, when Katiba bint Yusef died leaving behind a husband and a daughter, her minor nephews (sons of her brother) inherited her according to the shari'a where a female offspring does not prevent male agnates from inheritance; see also TSCR 12-5-236-2, TSCR 12-6-263-2; TSCR 25-1-60-3 case of distribution of inheritance according to shari'a rules.

92 TSCR 12-5-200-2.

93 TSCR 12-5-200-2; TSCR 12-5-236-1; TSCR 21-1-57-2; TSCR 14-6-46-1.

94 TSCR 12-3-37-1; TSCR 18-2-1 (116)-1.

95 TSCR 12-3-43 (143)-3; see also TSCR 12-5-218-1, TSCR 12-5-23 (222)-1; TSCR 12-5-224-2, TSCR 12-5-232-1, TSCR 12-6-283-1; TSCR 12-6-284-1, in this case, the deceased woman is not wealthy but she still left some household items that were distributed among her heirs (husband, children and brother); see also TSCR 28-2-7-2, TSCR 28-2-7-3, TSCR 28-2-14-1, TSCR 28-2-27-3.

in 1756, his *tarika* only included a mattress, although he resided in a house with his wife and minor daughter and most likely owned multiple personal effects.[96] In 1756, Khalil al-Shami left an inheritance worth 663 *ghursh,* of which only 6 *ghursh* was for his personal and household items.[97] In 1767, al-sayyid ʿAbd al-Rahman ibn al-sayyid Mustafa al-ʿImadi left an inheritance that amounted to 22,737 *ghursh,* which consisted of multiple gardens, oil, soap, honey, silk, loans, boats, cattle, cash, and a slave. However, his clothes, mattress, and covers were estimated at 104 *ghursh* only, suggesting that the contents of his *dār* were the property of his wife Saʿdiya bint al-sayyid Hasan Afandi Baraka Zada.[98] Interestingly, the *dār* mentioned in ʿAbd al-Rahman's *tarika* is not included as part of the inheritance. The only explanation is that it was owned by his wife Saʿdiyah Nayyira.[99] Because the household effects and, often, the home itself were owned by the wife, the death of a husband did not result in her losing her pace of residence, thereby providing a crucial measure of stability and security.

One observation in the registers is that younger, well-to-do females left sizeable jewelry, clothing, and household items but not many properties. In 1755, Maryam's *tarika* included only 7 q*irāt*, out of 24 *qirāt* of a house, her share of her mother's inheritance. This share was worth 500 *ghursh,* while the remaining 974 *ghursh* Maryam left was jewelry, clothing, furniture, and a *mu'akhar* worth 100 *ghursh*.[100] The young Katiba (the fact that she was survived by her father and a minor son suggests that she died at a young age) left jewelry, clothing, household items, and loans she gave different people worth 760 *ghursh* and not a single property.[101] *Al-sitt* Fatima bint

96 TSCR 14-6-59-1.

97 TSCR 14-6-59-2, Khalil was married with children so he must have had a house and furniture.

98 TSCR 18-2-22-1; see also TSCR 18-1-23 (42)-2, al-hajj Bakr al-Qattān left a grove worth 1000 *ghursh*, a house worth 500 *ghursh*, and two shops worth 130 *ghursh* but almost no household items beside his cloth and mattress estimated at 14 *ghursh* which implied that his wife owned the house's effects; also see TSCR 12-1-53-1 al-hajj Rajab left an orchard worth 100 *ghursh* and the clothes he was wearing at the time of death worth 3 *ghursh*; also see TSCR 25-1-20-1 Ahmad ibn Ibrahim Razouq left a long list of luxurious clothing, cash, and loans he gave to various individuals but not a single household item; TSCR 25-1-56-1, Muhammad ibn al-sayyid Hasan Dornayqa left 6 *qirāt* of a garden worth 150 *ghursh*, cash he collected from a rental property in the amount of 93 *ghursh*, leather worth 80 *ghursh*, and 4 *qirat*-his share in his father's *dār* but not a single clothing or household item; TSCR 25-1-57-1; TSCR 18-2-1 (116)-2; TSCR 18-2-35-1; TSCR 18-2-58-1, the man in this case left two clothing items worth 11 *ghursh* while his estate was worth 551 *ghursh*; TSCR 18-2-59-2; TSCR 28-2-4-1; TSCR 28-2-15-1; TSCR 28-2-63-2.

99 TSCR 12-2-50-2.

100 TSCR 14-1-35-1,

101 TSCR 14-1-49-1.

al-Marhum ʿAbd al-Mohsin ʿIzz al-Din, who may have died young because she was survived by her mother and minor daughter, left jewelry, household items, clothing, and *mu'akhar* worth 490 *ghursh* and no properties.[102] It is very possible that well-to-do women received shares of their natal families' properties much later in their lives in the form of inheritance; there is no indication in the registers that they were deprived of that right or the right to receive their inheritance from their spouses. Consequently, when they died at an early age, they left only movable wealth, not property. This does not imply that they were inactive in business, as their *tarika* includes references to cash and jewelry they lent out as loans.

Takhāruj and *Istibdāl* or "Trading Shares"

As noted earlier, *tarika* is divided into twenty-four *qirāt,* or shares, regardless of its size, and the distribution of inheritance results in the transfer of a *farḍ* (pl. *farā'iḍ*), an allotted portion or a fixed share of the total *qarārīt* to eligible inheritors. This fixed share varies according to gender, the number of inheritors, and the degree of kinship to the deceased. A female inheritor with the same degree of kinship and blood ties as a male inheritor to a deceased male or female receive half of the male inheritor's share. Consequently, some women end up owning a fraction of a share in a property, depending on the allotted portion they were entitled to inherit. *Muqāsama* is the process of dividing inherited shares among eligible heirs; it was often followed by *takhāruj* or *istibdāl* (both terms were used interchangeably but had similar meaning).[103] *Takhāruj or istibdāl* is the process of trading shares with other inheriting partners to either increase the percentage of one's shares in a property, or to dispose of smaller shares.

The evidence from the registers of Tripoli indicates that both men and women tended to resort to *takhāruj* although the latter were more likely to do so.[104] It may be claimed that this practice enabled Tripolitan females to circumvent male domination, especially if their male relatives received

102 TSCR 14-6-42-1.

103 TSCR 14-6-56-1. Also, TSCR. 12-4-186-1, there were four siblings with a brother and sister choosing to keep their share together while the other brother and sister each took his or her share; TSCR 12-6-280-2, in this case, the siblings were in court for *muqāsama* of a house and decided to open separate doors for each share and paid difference of price to partners. Look TSCR 14-2-96-1, sale of a *ḥosh* that *al-sitt* Ruqaya acquired through *istibdāl*, the buyer is ʿĀsyah bint Muhammad al-Shāmi and her husband who were also buying in an *istibdāl* transaction with 1/3 for the wife and 2/3 for the husband.

104 TSCR 12-5-227-2, TSCR 25-1-34-1 and 2, TSCR 25-1-55-2, TSCR 25-1-58-2, TSCR 25-160-3, TSCR 18-2-48-1, in this last example, a woman sold her share of all the properties that she received from her father as inheritance to her brother.

twice their share or if they inherited with male agnates, putting the latter at an advantage to dictate how the inheritance would be used. *Takhāruj* thus enabled women to remove shareholders who might impede their control over private assets, a critical concern in a male-dominated society.

As noted earlier, the court was not solely a venue for resolving disputes but also fulfilled important notarial functions; the documentation of *takhāruj* of property constitutes one such reason for its frequent use. Those who appeared before the court to exchange property were therefore present amicably in the majority of cases and strictly for business purposes. Consequently, we should not assume that family members came to court to carry out *takhāruj* against their will or that they were coerced into doing so but rather because they were acting in what they perceived as their best interests.

Al-sitt Karima and her daughters, whom I mentioned earlier, selling the olive trees they inherited, first did *takhāruj* with their husband and father's heirs.[105] *Al-sitt* Saʿdiya bint al-sayyid Ahmad al-Sayyad appointed her husband to represent her in the sale of a garden she inherited from her father, but had ownership of the entire 24 *qirāt* after she did *takhāruj* with her father's other heirs.[106] I would also suggest that *takhāruj* allowed women to circumvent another female's authority, even when the resulting division left them with equal shares, as we shall see later in this paper. In some instances, *takhāruj* allowed women who preferred to dispose of properties to liquidate their holdings and redirect the proceeds toward money lending. The economy of Tripoli in the eighteenth century was mainly agrarian, and many Tripolitans, as mentioned earlier, owned cultivated land in the surrounding villages of al-Kura, Zghorta, Akkar, and other regions that were within travelling distance by the standards of the time. *Takhāruj*, therefore, functioned as a strategy that enabled women to relinquish distant properties and secure instead urban real estate and cultivated land in the green zone, conveniently located within their reach.

Examples of *takhāruj* between siblings in the registers are abundant. In June, 1765, Muhammad Darwish Bashi ibn Muhammad Bashi al-Samman sold a house that came into his possession partly through inheritance from his father and his mother and partly through *takhāruj* with his two sisters Nafisa and Fatima.[107] Maryam bint Muhammad Jawish chose to first split

105 TSCR 25-1-35-1.

106 TSCR 25-1-39-1, as an only child, Saʿdiya would have the ownership of 12 *qirāt* of all properties her father left as an inheritance.

107 TSCR 19-2-17-2. In one of my dissertation's chapters, I show that sisters almost always chose to consolidate their inheritance choosing shares in the same properties; TSCR 12-5-215-1.

with her brother a *ḥaqla* (small garden) that they both inherited from their mother to turn around quickly, in the same session and through her *wakīl*, and sell her share to her brother. In this same case, their sister ʿA'isha preferred to have her share independent of her siblings.[108] When al-hajj ʿAbdallah Mohyidin passed away in 1750, his wife, daughter, and sister inherited him. His sister opted for a *takhāruj* in order to keep her share distinct from that of the wife and daughter.[109]

Mothers also inclined to have their inheritance separate from their children, especially if they remarried. In 1751, in the *majlis* convening in the house of 'the best of the teachers' al-sayyid ʿAbd al-Qadir Afandi, the latter's mother indicated that she did a *takhāruj* with her son.[110] In 1778, al-sayyida Fatima bint al-sayyid Muhammad Motraji sold, through a proxy, her share (12 *qirāt*) of a *dār* that came to her possession through *takhāruj* with her father's heirs for 450 *ghursh*.[111] Also in 1778, *al-sitt* Khadija bint al-hajj ʿAli Shaqaṣ designated her son to represent her in the lease of a large *dār* she acquired through inheritance and *takhāruj* with her brother.[112] Women also sold shares they inherited with other heirs to the latter and preferred to have cash instead, as the case of the sale of multiple olive trees that al-sayyida Layla bint al-sayyid ʿAbd al-Karim Afandi Baraka inherited suggests.[113]

Marital Partnerships

Married women in Tripoli looked for business partners within their own homes. The overwhelming evidence in the registers of Tripoli indicates that wives partnered with their husbands specifically in real estate investments, money lending, and rental of urban properties and agricultural land. I argue that cash funds in women's hands, either the *muʿajjal* part of *mahr,* cash received from their natal families either as inheritance or wedding gifts, and jewelry their grooms and families gifted them at the time of marriage, were sources of funds at their disposal to enter into these marital partnerships.

Women used the cash in their possession to buy shares of properties with their husbands. They also bought shares in properties that their husbands

108 TSCR 14-2-110-3.

109 TSCR 12-4-198-1, an example of a court session that took place in a private home.

110 TSCR 12-6-16 (266)-1; also see TSCR 12-6-268-1.

111 TSCR 23-1-59-1, it might be that Fatima was an only daughter since she has half of the ownership of the house.

112 TSCR 23-1-60-1.

113 TSCR 19-2-27 (88)-1; see also TSCR 14-1-10-1.

had acquired, possibly before marriage, either through purchase or inheritance. In 1784, Ahmad ibn al-sayyid ʿAli came to court representing himself and his wife al-sayyida Khadija bint al-sayyid Ibrahim Qasim Agha to sell multiple properties they co-owned. The text indicates that Khadija was selling a house she bought from her husband in two different transactions (she had two separate deeds) and 18 *qirāt* of another house she also bought from her husband, while he kept the remaining 6 *qirāt*. They collected 1900 *ghursh,* of which she received 1600 *ghursh*.[114] Also in 1784, al-sayyida ʿAisha bint al-sayyid ʿAbd al-Rahman Afandi al-Dabbusi sold the house she previously bought from her husband for 500 *ghursh*; the latter represented her in the sale.[115] In cases where married couples were selling or buying property, jointly or individually, spouses came to court to testify that the husband, or the wife, had the right to proceed with the transaction.[116] Ibrahim ibn al-sayyid Husayn al-Thamin sold 2/7 of a *qirāt* of a *dār* to al-sayyid Mustafa al-Dallal in 1763 in the presence of the wives of the buyer and the seller, who were asked by the court to approve the transaction, suggesting that both wives were most likely their husbands' partners.[117]

Wives also partnered with their husbands in leasing either urban real estate or agricultural land and trees. A case recorded in 1783 documenting the distribution of Muhammad ibn al-sayyid Hasan Dornayqah's estate reveals that he owed his wife Amnah bint al-sayyid ʿAbd al-Wahid al-Haddad 100 *ghursh* in debt, 50 *ghursh* for a loan she gave him and the other 50 *ghursh* for the *mu'ajjal* part of her dowry he did not pay.[118] The case that immediately follows in the registers details the couple's intricate investments and the financial responsibilities that fell on Amnah, as a business partner, following her husband's passing. Moreover, her actions indicate that she was anything but a passive partner, but rather a businesswoman *par excellence*. She managed to repay the rental money of a *ḥaqla* Muhammad collected before his death by selling her personal property; she was able to secure the ownership of 12 *qirāt* of a *ḥaqla* Muhammad left as an inheritance in return for the debt he owed her for the *mu'ajjal* and for a *baghmaq* (piece of jewelry) she gave him for business purposes. She received the inheritance she was entitled to under shariʿa, after her minor children and her husband's mother received their shares.[119]

114 TSCR 25-1-41-1.
115 TSCR 25-1-43-1.
116 TSCR 14-3-20 (140)-1, TSCR 12-6-269-2.
117 TSCR 18-2-41-2.
118 TSCR 25-1-56-1.
119 TSCR 25-1-56-2.

In the course of conducting these business affairs, disputes often arose, necessitating recourse to the judicial system. In this context, women appeared in court with their husbands, or were represented by their husbands as their *wakīl*, to lodge business related complaints or resolve disputes. Al-sayyid Muhammad Jalabi ibn al-shaykh ʿAbd al-Qadir al-Jurbaji agreed to resolve the dispute he and his wife, and partner, Layla bint al-hajj Ahmad (Muhammad was her *wakīl*) had with al-hajj Ahmad ibn al-hajj Ahmad al-Masri over a business matter.[120] Business-related complaints were not only directed towards outsiders. As we see in the registers, wives did not refrain from lodging these complaints against their own spouses if needed; the court often ruled in their favor if they produced the proper documentation.[121] Thus, marital status did not interfere with or adversely impact the business relationship between couples. This also applied to other family members.

Family and Business: A Distinct Affair

There is substantial evidence to demonstrate a clear distinction in ownership of assets, both movable and immovable, between members of the same family or those living in the same household. Two months after Hanifa moved to her husband's house, she came to court to sue both her parents claiming that she left in their home some personal items worth 20 *ghursh* that her mother sold without compensating her. Although she lost the case because she could not produce the required number of witnesses while her mother did, this case still suggests that Hanifa had financial independence when she was still single and living with her natal family.[122] In 1750, ʿA'isha bint Sulayman found herself with no option but to live with her late husband's grandson, ʿAbbas Agha, because of old age. ʿA'isha, who was originally from Istanbul but lived all her life in Tripoli, made a request to the judge to document her personal belongings that were moved to her new residence in ʿAbbas's house. Her old age did not curtail her prudence in documenting her ownership of an impressive list of silk and cotton clothing, jewelery, kitchenware, and the large sum of cash she possessed.[123]

The court, which was used for notarial purposes, put an emphasis on who owned what and in what percentage.[124] As discussed earlier, inheritance sometimes resulted in the distribution of properties between distant

120 TSCR 25-1-53-2.

121 TSCR 21-1-39-1; TSCR 12-3-143-1; TSCR 14-2-6-2.

122 TSCR 12-4-1-3.

123 TSCR 12-2-39-1.

124 TSCR 12-4-187-2.

cousins with each inheritor receiving a certain percentage of a total 24 *qirāt*. It was thus necessary to document the distribution and ownership of the shares and establish a financial distinction. Al-sayyid Muhammad ibn ʿAbdallah and Safiya, who was in court representing herself, her adult daughter Khadija bint ʿAbd al-Wahid in her capacity as her *wakīl*, and her minor daughter Badiʿa bint al-sayyid ʿAbdallah in her capacity as her *wasi,* requested that the court help them to perform *muqāsama* of the house they all inherited.[125] ʿOmar ibn al-shaykh ʿUthman and his sister Fatima had shares in an inheritance which enticed him to document his sole ownership of a property he previously bought with his own money.[126]

The clear distinction in ownership of properties particularly applied to spouses. Mansura bint Shaʿban came to court in January of 1751 and sold her share of the shop she inherited from her father in Beirut. Aside from being present to identify his wife to court because she was veiled, Mansura's husband played no role in this sale. The record clearly indicates that she had full ownership of the property, had every right to sell it, and collect twenty-eight *ghursh*, the price she and the buyer agreed on.[127] In August of 1765, Khadija bint ʿAbd al-Jawad came to court and sold the share she owned, through previous purchase, in a house in *mahalla* of al-Qanawati. Her husband Ibrahim ibn ʿAbd al-Rahman, who was only present to identify her to the court, also because her face was probably covered, testified that he did not have any right to the 65 *ghursh* she collected from this sale.[128] References in the records to the forms of payment used in various transactions further indicate that the joint holding of cash assets between men and women was the exception rather than the norm, even among married couples.

A clear separation of assets and property ownership was observed in cases where parents conducted business on behalf of their children, especially minors.[129] Children, in many cases minors, had their share of business endeavours, although their parents, either or both mother and father, or legal guardians acted on their behalf. Parents and legal guardians who were buying or selling properties and other goods in the name of their minor offspring made sure the court noted the adults' status as proxies.[130]

125 TSCR 12-2-45-1.

126 TSCR 12-3-35-2, this case gives another example of a woman who was in court with her adult son who was present to identify her but not to represent her.

127 TSCR 12-1-16-2, see also TSCR 12-4-192-2.

128 TSCR 19-1-50-1.

129 For further discussion, refer to chapter 5 of my dissertation.

130 TSCR 25-1-10-2, examples of parents buying properties for their children.

The *wakīl* for *al-sitt* Dawlat bint al-shaykh Yusef Raʿd represented his client, in her capacity as a *wasī*, in the purchase of a house in *mahalla* Aykouz specifically for her minor daughter, with the child's own 400 *ghursh* paid in court to the sellers.[131] When ʿAbd al-Wahid Jalabi ibn ʿAli Bashi al-Shaʿar bought a mulberry garden for his minor daughter Khadija, he first declared his intention to give her a *hiba* (gift) to pay for the property. ʿAbd al-Wahid thus used his daughter's 'own money' to pay for a garden that, according to the registers, became her sole property.[132] Ibrahim Agha ibn Mustafa Agha asked the court to record the sale of a *dār* located within his own residence, to his daughter Khadija. Ibrahim, who represented Khadija, made sure the court noted that he received full payment from her with funds she privately possessed, probably through a *hiba* from her father.[133] Rahma bint al-sayyid Ibrahim bought a house in al-Tabbana for her minor daughter Fatima bint al-sayyid Yusef, using the minor girl's own money.[134] Amna bint al-sayyid ʿOmar ʿAlam al-Din bought a cellar in Rabʿ al-Qanawati for her minor son ʿAli ibn al-hajj Ahmad with his money.[135]

Conducting Business under the Auspices of the Law

The legal system allowed women a measure of personal autonomy enabling them to freely manage and notarize their business, assert their rights to do so, and condemned any transgression against their financial interests. The court handled litigations or business-related issues fairly equally, regardless of gender, contingent upon a clear understanding of the legal process and the ability to produce proper documentation or, in their absence, the required number of witnesses, an essential tool to support a litigation.[136]

Women bought and sold houses, shops, groves, gardens, animals, mills, soap factories, and olive and mulberry trees; this last category was a particularly lucrative business in Tripoli as trees were at the center of

131 TSCR 12-2-5-2.

132 TSCR 16-2-54-2.

133 TSCR 25-1-45-3, it does not look like Khadija was a minor; however we do not have any information about her marital status. We can speculate that Ibrahim Agha wanted his daughter to live close by to take care of him because of old age or because she was not married and he was making arrangement to guarantee a decent living for her after his death.

134 TSCR 12-4-197-1.

135 TSCR 12-4-198-2, it is very possible that Amna was buying the cellar for investment purposes and for generating an additional income for her minor boy.

136 The required number of witnesses is either two men or one man and two women, see Joseph Schacht, *An Introduction,* 193. There is a clear indication in the registers that religious affiliation with Islam was not a prerequisite to be allowed to be a witness. Also see TSCR 20-1-6-1 for an example of a case where the testimony of a man and two women was used to resolve a dispute; see also TSCR 19-1-35-1.

many industries in the city and the province (olive oil, soap, and silk) and were bought, sold, and rented independently of the land.[137] Women also collected rent from the properties they acquired for investment purposes. They offered credit to family members but also to people in their social circles and acted as guarantors for creditors. Married women formed business partnerships with their husbands, which, though informal, carried legal and fiscal responsibilities on both parties. In the absence of partnerships, there was a clear distinction in ownership of couples' properties and assets and a separation of their wealth. This was also true for unmarried women or women living in their family households.

It is reasonable to assume that females who conducted their business informally, remained outside the purview of the court and consequently could not be accounted for. The text routinely refers to past transactions that made it to the registers at a later date due to an ensuing dispute or other circumstances such as sickness or old age.[138] Nevertheless, there is strong evidence in the registers that women of all social statuses conducted business in person or through proxies and engaged in economic enterprises in Tripoli's eighteenth century. Inheritance, *mahr*, and beneficiary rights in religious endowments formed the cornerstone of the resources they had at their disposal to do so.[139] These financial resources, guaranteed by Islamic law, would not have been consequential to Tripolitan females had they not been enforced by the state's legal system.

Moreover, women manifested 'a certain degree of sophistication', similar to what Ronald Jennings observed in Kayseri, for example.[140] The fact that women continuously resorted to the legal system is an indication that, on the one hand, they were aware of their legal rights and, on the other hand, the system was effective. As noted by Jennings, "it was the consistent and conscientious enforcement of the shari'a by the court that made possible the apparently good position of women."[141]

137 TSCR 12-4 (190)-2, TRC 12-4 (191)-1.

138 TSCR 12-4-40 (189)-2, a loan that Diba gave to her husband but was not registered in court at the time she gave him the money or when he supposedly paid it back according to the testimony of witnesses (a Muslim man and two women, one Muslim and one non-Muslim), comes to light only after her death because of the dispute that ensued between her husband and sibling.

139 I demonstrate in other papers to be published that women had access to these resources (dowries, inheritance, and income from *waqfs*). Meriwether and Tucker also demonstrate that inheritance, dowry, and income from waqf are the main sources for women's wealth in other parts of the Ottoman Empire, Meriwether and Tucker, eds., *A Social History of women*, 11.

140 Jennings, "Women in Early 17th Century Ottoman Judicial Records", 62.

141 Jennings, "Women in Early 17th Century Ottoman Judicial Records", 114.

This archival research debunks the images that the European travelers propagated of women, claiming they were oppressed and deprived of their basic rights to financial independence that Islam granted them. The shari'a and the imperial laws protected the rights that women were entitled to. The latter strategized and negotiated within and outside the court to buttress their financial gains.

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Araştırma Makalesi / Research Article

Diverging Paths: Transoxanian and Irāqī Approaches to *Takhsīs al-ʿilla* in the Hanafī Legal Theory

HATİCE KÜBRA KAHYA*

Abstract

This study delves into the intricate problem of *takhṣīṣ al-ʿilla* (the specification of the rationale) in Islamic legal theory, with particular focus on the Hanafī school. It explores how this issue reflects broader relationship between theology (*kalām*) and Islamic legal theory (*uṣūl al-fiqh*), revealing the interplay of theological concerns in shaping theoretical principles. The problem is analyzed through the lens of the two major Hanafī schools: the Irāqī and Transoxanian Hanafīs. By examining the evolving discourse among Hanafī jurists in Irāq and Transoxiana, this research elucidates the influence of regional theological differences on legal theories. The work traces the historical development of *takhṣīṣ al-ʿilla*, highlighting key figures, such as al-Jaṣṣāṣ, al-Dabūsī, al-Sarakhsī, and al-Bazdawī and their respective contributions to its interpretation. It situates the debate within the broader intellectual contest between Muʿtazilite and Sunnī theological frameworks, offering insights into the doctrinal and methodological diversity within the Hanafī tradition. The findings reveal how theological concerns informed theoretical principles and contributed to the divergence between these two prominent Hanafī traditions.

Keywords: *Uṣūl al-fiqh,* Hanafī, Muʿtazilite, Rationale, *Takhṣīṣ al-ʿilla*.

Ayrışan Yollar: Hanefî Fıkıh Usulünde Mâverâünnehir ve Iraklı Hanefîler'in İlletin Tahsisine Yaklaşımları

Öz

Bu çalışma, fıkıh usulünün en karmaşık konularından biri olan illetin tahsisini, Hanefî mezhebi özelinde derinlemesine incelemektedir. Çalışma illetin tahsisi meselesinin, kelam ile fıkıh usulü arasındaki derin ilişkiyi yansıtma ve usulî ilkelerin şekillenmesinde kelamî mülahazaların oynadığı rolü ortaya koymada ne kadar işlevsel

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DOI: 10.26570/isad.1735117 • Geliş/Received 05.07.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Kahya, Hatice Kübra, "Diverging Paths: Transoxanian and Irāqī Approaches to *Takhsīs al-ʿilla* in the Hanafī Legal Theory", *İslam Araştırmaları Dergisi*, 55 (2026): 215-244.

olduğunu gözler önüne sermektedir. Söz konusu mesele, Hanefî mezhebinin iki ana ekolü olan Irak ve Mâverâünnehir Hanefîliği perspektifinden analiz edilmektedir. Irak ve Mâverâünnehir'deki Hanefî fukaha arasındaki söylem farklılığını inceleyen bu çalışma, farklı kelamî anlayışların mezhep içindeki farklı usulî anlayışlar üzerindeki belirleyici etkisini izah etmektedir. Eser Cessâs, Debûsî, Serahsî ve Pezdevî gibi kilit isimlerin illetin tahsisi ilkesinin yorumlanmasına/yeniden yorumlanmasına yönelik katkılarına dikkat çekerek, meselenin tarihsel gelişimini izlemektedir. Tartışmayı Mu'tezilî ve Sünnî kelam çerçeveleri arasındaki entelektüel rekabet bağlamına yerleştiren bu çalışma, Hanefî geleneği içerisindeki doktrinel ve metodolojik çeşitliliğe dair çıkarımlar sunmaktadır. Araştırma bulguları, kelamî endişelerin usulî prensipleri nasıl beslediğini ve bu iki önemli Hanefî gelenek arasındaki ayrışmaya nasıl katkıda bulunduğunu gözler önüne sermektedir.

Anahtar Kelimeler: Fıkıh usulü, Hanefî, Mu'tezile, İllet, İlletin tahsisi.

1. Introduction[1]

The concept of the specification of the rationale (*takhṣīṣ al-ʿilla*) represents a multifaceted issue in Islamic legal theory. It provides a unique lens through which to observe the interplay between law and theological premises within juristic doctrines. This concept offers valuable insights into how *kalām*-based theological concerns influenced the formulation and justification of theoretical principles in Islamic jurisprudence, particularly within the Hanafī school. The historical trajectory of this issue, when traced chronologically through the Hanafī *uṣūl al-fiqh* (legal theory) literature, reveals the complex and, at times, contentious relationship between theology and legal theory.

The specification of the rationale has been the subject of various studies to date. For example, in their studies, Zysow, Yılmaz and Arvas examine the subject in relation to its theological premises, while Yıldırım explores it within the context of Hanafī literature on legal theory.[2] A study that also deserves mention is that of Karakuş, who, in a manner similar to

1 I am deeply grateful to my esteemed professor, Bilal Aybakan, whose encouragement during my doctoral studies inspired me to write this article, and to my dear advisor, Murteza Bedir, for his meticulous reading and insightful critique of an early draft. This article's English translation was prepared with the assistance of artificial intelligence.

2 Zysow, "Muʿtazilism and Maturidism", 235-266; Yıldırım, "İlletin Tahsisi Meselesi", 1-99; Yılmaz, "İlletin Tahsisine Cevaz Vermek", 53-71; Arvas, "Fıkıh Usûlü Kelâm İlişkisi", 201-214. In addition, the descriptive studies of Haniyah and Sulamī should also be mentioned here. Haniyah, "Takhsīs al-ʿilla", 343-366; Sulamī, "*Takhsīs al-ʿilla al-shar'iyyah,*", 14-117. There also exist several studies focusing on the writings of specific theorists on the specification of the rationale. See, for example: Rababah, "Takhsīs al-ʿillah indah al-Bazdawī", 195-218; Aydın, "İlletin Tahsîsi", 43-63; Candan, "İllet Tespit Yöntemleri (Taʿlil)", 241-252; Güner, "el-Cessâs ve es-Semerkandî", 140-158; Algül - Bölükbaş, "Cessas'a Göre İlletin Tahsisi", 1-30.

Zysow, examines the influence of the Muʿtazila on Hanafī legal theory works composed between the second and sixth Hijri centuries. Karakuş's work is noteworthy not only for this analytical perspective but also for its inclusion of several Muʿtazilī figures previously unmentioned in the existing literature.[3] Khaznah, for his part, draws attention to the emergence of sub-schools within the Hanafī tradition by devoting considerable space to the issue of the specification of the rationale, discussed in the context of the different conceptions of rationale held by the Irāqī and Samarqandī Hanafīs.[4] Başoğlu, meanwhile, approaches the same problem within the framework of *ṭard* or *iṭṭirād* a method for determining the rationale based on the consistent concurrence between the rationale and the legal ruling (*ḥukm*) and mostly from the perspective of non-Hanafī uṣūl writers.[5]

Unlike these previous studies, this article will chronologically present the impact of theological premises in the Hanafī *uṣūl al-fiqh* literature. Moreover, rather than providing an exhaustive account of the *uṣūlī* and *kalāmī* dimensions of the debate, this article aims to present a case study in discourse analysis. It seeks to illustrate the dialogue between the texts produced by Hanafī theorists on *takhṣīṣ al-ʿilla* and the social and political dynamics behind them. It will also explore, following the approach taken by Öncel,[6] the connection between *takhṣīṣ al-ʿilla* and *istiḥsān* (juristic preference or departure from analogy), in order to reveal how Hanafī scholars conceptualized the internal coherence of the body of legal rulings and how they understood the relationship between legal theory (*uṣūl*) and substantive law (*furūʿ*).

In the context of *takhṣīṣ al-ʿilla*,[7] the issue arises when a legal ruling (*ḥukm*) ceases to apply despite the continued existence of the quality (*waṣf*) or rationale (*ʿilla*, pl. *ʿilal*) due to a certain impediment in some cases.[8] This discrepancy becomes problematic when a *ḥukm* is absent even though the underlying *ʿilla* persists. To clarify, consider the example of fasting in the case of unintentional eating or drinking. In principle, the legal requirement

3 Karakuş, *Muʿtezile Fıkıh Usûlünün Hanefî Usûlüne Etkisi*, 138-144.

4 Khaznah, *Tatawwur,* 415-443.

5 Başoğlu, "İllet Tartışmaları", 137-153.

6 Öncel, "İstihsan", 124-136. Öncel presents a broader framework that encompasses other legal schools.

7 Regarding the specification of the rationale, numerous opinions distinguish between reasons determined through ijtihād (*mustanbaṭ*) and those established by scriptural text (*manṣūṣ*). However, since this distinction is not clearly maintained in the Ḥanafī works examined, the term "reason (*ʿilla*)" will be used in an absolute sense throughout the article. It should nevertheless be kept in mind that the *ʿilla* discussed in this context most often refers to a *mustanbaṭ ʿilla*.

8 Lāmishī, *Uṣūl al-fiqh*, 134; Bukhārī, *Kashf al-asrār*, IV, 46.

of fasting entails abstaining from eating, drinking, and sexual intercourse. By analogy, the act of violating this requirement—whether intentionally or unintentionally—should nullify the fast. However, within the Hanafī school, based on a specific hadith,[9] the fast of someone who unintentionally eats or drinks is deemed to remain valid. This apparent contradiction prompts two potential explanations: either the act of unintentional eating or drinking loses its status as a valid *ʿilla*, or despite the continued presence of the underlying *ʿilla*, the legal ruling does not come into effect, due to a legal impediment (*mānīʿ*). In either scenario, without a coherent explanation, the validity of these underlying *ʿilal*—often rooted in the general principles of the legal school, which serve as foundational elements shaping the substantive law—may be called into question, thereby undermining the coherence and integrity of the school's jurisprudential framework.

For Irāqī Hanafīs, as well as their representative in Transoxiana, Abū Zayd ʿUbayd Allah b. ʿUmar al-Dabūsī (d. 430/1039), the explanation is as follows: despite the presence of the *ʿilla* (violation of abstinence), the *ḥukm* (nullification of the fast) does not come into effect due to the legal impediment, in this case, the mentioned hadith. They argue that the scope of the *ʿilla* has been restricted or it is specified due to this impediment (*takhṣīṣ al-ʿilla*). In contrast, most Transoxanian Hanafīs (the Samarqand Ḥanafīs and the Bukhāran Hanafīs with the exception of al-Dabūsī) offer a different interpretation while arriving at the same conclusion (i.e., the validity of the fast). According to them, the absence of the legal ruling is attributed to the absence of the effective quality that constitutes the *ʿilla*.[10] In other words, the *ḥukm* is not void despite the *ʿilla*'s presence but rather because the *ʿilla* itself is incomplete or invalid in this specific scenario. As such, proponents of *takhṣīṣ al-ʿilla* focus on the scope and limitations of the *ʿilla*, whereas its opponents question the validity of the *ʿilla* itself. Despite their differences, both groups agree on the basic point that unintentional eating or drinking does not invalidate the fast. The divergence lies in their attempts to rationalize this outcome within the framework of the *ʿilla–ḥukm* relationship. According to the understanding of *ʿilla* shared by Irāqī Hanafīs and similar to that of the Muʿtazila, *sharʿī* rationales (*ʿilal sharʿiyya*)—unlike rational ones (*ʿilal ʿaqliyya*)—serve merely as indicators (*amārāt*) of the ruling, and there is no necessary causal relationship between the *sharʿī ʿilla* and the ruling itself. By contrast, according to the

9 The ḥadīth in question is the Prophet's declaration that one who eats or drinks forgetfully while fasting must continue and complete the fast, as it is considered that Allah has provided the food and drink.

10 Dabūsī, *Taqwīm*, II, 241; Bazdawī, *Maʿrifat*, 45; Ibn al-Sāʿatī, *Badīʿ al-nizām*, 600; Ibn Nujaym, *Fatḥ al-ghaffār*, III, 44. For more information on al-Dabūsī's legal thought, see Yetkin, *Debusi ve Usul Anlayışı*, 1-344.

Samarqand Hanafīs, both rational and *sharʻī ʿilal*, without distinction, must entail the ruling wherever they are found.[11] The subsequent sections explore the various facets of this issue in greater detail.

2. The Framework of Juristic Views on *Takhṣīṣ al-ʿilla*

An analysis of the discussions among the Hanafī legal theorists reveals that the concept of *takhṣīṣ al-ʿilla* has been the subject of extensive debate and varying interpretations over time. To explore the evolution of this concept, it is pertinent to begin with the foundational contributions of Abū Bakr Ahmad b. ʿAlī al-Rāzī al-Jaṣṣāṣ (d. 370/980), the earliest known author in Hanafī legal theory.[12] Al-Jaṣṣāṣ, representing the Hanafī *uṣūl al-fiqh* tradition that had developed over the two centuries following the establishment of the school, aligned himself with those who advocated for *takhṣīṣ al-ʿilla*. He argued that this position represented a consistent and continuous tradition within the Hanafī school, tracing back to its founders, including the eponym Abū Hanīfa and his immediate disciples in Baghdad.[13]

Al-Jaṣṣāṣ substantiated his position by analyzing numerous examples from Hanafī substantive law, demonstrating how these cases could be interpreted only through the framework of *takhṣīṣ al-ʿilla*. Despite his robust defense of this principle, al-Jaṣṣāṣ acknowledged the presence of dissent within the Hanafī school, noting that at least one prominent scholar, referred to as a *shaykh* in Baghdad, disputed the application of *takhṣīṣ al-ʿilla* in certain cases. This scholar reinterpreted instances identified as examples of *takhṣīṣ al-ʿilla* within the substantive law, rejecting the necessity of the concept. Nevertheless, al-Jaṣṣāṣ dismissed these alternative interpretations, asserting that a comprehensive understanding of Hanafī substantive law would inevitably validate the principle of *takhṣīṣ al-ʿilla*. Apparently, in al-Jaṣṣāṣ's view, it was those who opposed *takhṣīṣ al-ʿilla* who represented the minority opinion in the school. He argued that opposition to the concept either stemmed from a fundamental misunderstanding of Hanafī legal reasoning or reflected an implicit acceptance of the principle despite outward disagreement. Al-Jaṣṣāṣ further emphasized that no scholar explicitly denied the validity of *takhṣīṣ al-ʿilla*, claiming that even those who appeared to oppose it in theory ultimately acknowledged its applicability in practice.[14] Instead of employing explicit statements asserting that the earlier authorities accepted the specification of the rationale, al-Jaṣṣāṣ's

11 Khaznah, *Tatawwur,* 415-429.

12 Bedir, *Fıkıh*, 127-128.

13 Jaṣṣāṣ, *al-Fuṣūl,* IV, 255.

14 Jaṣṣāṣ, *al-Fuṣūl*, IV, 255-256.

use of substantive legal issues (*masāʾil*) to support his view indicates that his argument is grounded in *takhrīj*-based reasoning.[15]

In his work, al-Jaṣṣāṣ cited Bishr b. Ghiyāth al-Marisī (d. 218/833) and al-Shāfiʿī (d. 204/819), notable figures outside the Hanafī tradition who rejected *takhṣīṣ al-ʿilla*. Noteworthy in mentioning these names is the effort to align the intra-school opponents of the specification with the Shāfiʿī position. Conversely, he referenced Mālik b. Anas (d. 179/795) as a proponent. Although al-Jaṣṣāṣ did not explicitly mention his mentor Abū al-Ḥasan al-Karkhī (d. 340/952), it is evident from other sources that al-Karkhī held a similar position.[16] Al-Saymarī (d. 436/1045), another Irāqī Hanafī jurist whose work survives, also supported *takhṣīṣ al-ʿilla*.[17] Al-Jaṣṣāṣ not only embodied a pivotal strand of Hanafī legal thought but also served as a custodian of the Hanafī tradition rooted in Baghdad, the birthplace and early intellectual nucleus of the school, which shaped the Hanafī school during its formative period up to the fourth century.

Historically, the fifth century marked the emergence of alternative Hanafī formations outside Baghdad, influenced by a confluence of intellectual, political, and social factors. Among these, the Transoxanian Hanafī tradition emerged as the most prominent, eventually gaining sufficient prominence to significantly diminish Baghdad's influence within the Sunnī community.[18] This tradition also became the center of activity for distinguished scholars who left an enduring impact on Hanafī jurisprudence. To understand the Transoxanian response to *takhṣīṣ al-ʿilla*, it is essential to consider their theological orientations. Samarkand, a major intellectual center in the region, developed a distinctive *kalām* tradition under the influence of Imām al-Māturīdī (d. 333/944), the eponym of the Sunnī-Māturīdī theological school, initially referred to as the Samarkand school but later recognized as the Māturīdī school, becoming the post-classical Hanafī theological school.[19] It should be noted that Māturīdism is not a uniform understanding and has undergone changes over time. While it initially presented a middle ground between Muʿtazilite and Ashʿarite thought, its approach evolved over time, adapting to the broader Sunnī framework.[20] Correa argues that scholars of this period in Samarkand should not be labeled "Māturīdī" but rather "Ḥanafī-Samarqandī," as their theological and legal-theoretical orientations are shaped more by

15 Güner, *el-Cessâs ve es-Semerkandî*, 142.

16 See, for example: Bābartī, *et-Taqrīr*, VI, 296; Amir Padishāh, *Taysīr al-Taḥrīr*, III, 177.

17 Saymarī, *Masāʾil al-khilāf*, 353-358.

18 Madelung, "The Westward Migration of Hanafī Scholars", 42-43.

19 Bedir, *Fıkıh*, 153; Correa, "Theological Turn", 111-12, 122-23.

20 Bedir, *Fıkıh*, 152-153.

regional affiliation than by direct identification with al-Māturīdī himself. She points out that figures such as al-Nasafī and al-Lāmishī refer to the *mashāyikh* of Samarqand and to al-Māturīdī as "their head," not to claim a personal or doctrinal allegiance to him as an eponym, but to highlight their belonging to a regional intellectual tradition. According to Correa, while al-Māturīdī remains the master articulator of this theology, it is the broader Samarqandī Ḥanafī framework that grounds their legal theory.[21] By contrast, Bukhāra, another significant center in Transoxania, hosted scholars with diverse theological inclinations, including those more aligned with Ashʿarism. This theological diversity played a crucial role in shaping the later structure of Māturīdism.[22]

Al-Dabūsī, who played a pivotal role in the development of Hanafī legal theory, by means of his impact on Abu Bakr al-Sarakhsī (d. 483/1090) and Fakhr al-Islām al-Bazdawī (d. 482/1089), who wrote the canonical texts of the Hanafī legal theory, is a Bukhāran who lived during the late fourth and early fifth centuries. Al-Dabūsī served as a bridge between the intellectual traditions of Irāqī Hanafīs, such as al-Jaṣṣāṣ, and the later Transoxanian scholars, including al-Sarakhsī and al-Bazdawī. Although influenced by the Irāqī Hanafī tradition, al-Dabūsī's contributions exhibit a distinct intellectual perspective. Notably, despite the dominant anti-Muʿtazilite sentiment prevalent in Transoxania, al-Dabūsī in Bukhāra refrained from adopting an overtly oppositional stance toward Muʿtazilite thought.[23] On the matter of *takhsīs al-ʿilla*, he aligned with the Irāqī Hanafī tradition, endorsing its validity.

Al-Dabūsī's justification for *takhṣīṣ al-ʿilla* rested on the premise that the existential association (*iṭṭirād*) between a qualification (*waṣf*) and its consequent ruling (*ḥukm*) does not necessarily render that qualification the effective rationale (*ʿilla muʾaththir*). In other words, the absence of a *ḥukm* does not inherently invalidate the *ʿilla*. According to al-Dabūsī, legal rationales require nominal (*isman*), spiritual (*maʿnan*), and consequential (*ḥukman*) validation, which together define the effective scope of the *ʿilla*. Notably, al-Dabūsī described those who opposed *takhṣīṣ al-ʿilla* as *ahl al-ṭard* (those who overemphasize correlation between the rationale and the ruling without causation).[24]

Unlike al-Jaṣṣāṣ, who framed *takhṣīṣ al-ʿilla* within the context of *istiḥsān* (juristic preference or departure from analogy), al-Dabūsī addressed the

21 Correa, "Theological Turn", 111-12, 122-123.

22 Bedir, *Fıkıh*, 152-153.

23 Bedir, *Fıkıh*, 153.

24 Dabūsī, *Taqwīm*, II, 241.

concept through its functional implications, focusing on its theoretical underpinnings. Both jurists identified Shāfiʿī scholars as their primary opponents.[25] However, al-Dabūsī, perhaps reflecting his Bukhāran context, portrayed the Irāqī Hanafī stance on *takhṣīṣ al-ʿilla* as a unique perspective rooted in their regional intellectual tradition without mentioning any opponent within his school. His contemporary, the Muʿtazilī–Zaydī theorist al-Hārūnī (d. 424/1033), notes that the majority of Abū Ḥanīfa's followers accepted the specification of the rationale, while adding that some of the later Ḥanafīs opposed this view.[26] On the other hand, another Muʿtazilī–Zaydī theorist and theologian, Abū Yūsuf al-Qazwīnī (d. 488/1095), like al-Dabūsī, states explicitly that all Abū Ḥanīfa's followers accepted *takhṣīṣ al-ʿilla*.[27]

Al-Sarakhsī and al-Bazdawī, both prominent Hanafī theorists, made significant contributions to the maturation of the Samarkand Hanafī school. These two conscious followers of the Bukhāran Dabūsī went beyond merely repeating his work and succeeded both in systematizing Hanafī legal theory, ensuring the transformation required by the various currents of their period. They aimed to establish a Hanafī legal theory that was relatively purified of Muʿtazilite thoughts and assumptions. The most significant contribution to the completion of the maturation of Hanafī legal theory, which experienced major developments under al-Dabūsī, was indisputably made by al-Sarakhsī and al-Bazdawī. However, although this maturation advanced toward a preeminent legal theory, the idea of purifying the theory from the influences of Muʿtazilite assumptions and premises sometimes led to a tendency to disregard earlier initiatives.[28] The effect of this tendency can also be observed in discussions surrounding the specification of the rationale. Al-Sarakhsī, from the outset, demonstrates that he intends to advocate a different approach from al-Dabūsī. He examines *takhṣīṣ al-ʿilla* under the title "Corruption (*Fasād*) of the Opinion Permitting Specification for Lawful Rationales."

Al-Sarakhsī addresses *takhṣīṣ al-ʿilla* on two levels: The first level includes those who accept *tard* (*ahl al-ṭard*) as a principle and do not consider *taʾthīr* (effection) as a fundamental criterion for identifying the rationale. At this level, the Hanafīs are among the group that accepts *taʾthīr*. The second level involves a division within the Hanafīs, centered on whether the conception of *ahl al-sunnah* contradicts the acceptance of *takhṣīṣ al-ʿilla*. At the first level, al-Sarakhsī critiques the position of the *ahl al-ṭard*, who

25 Dabūsī, *Taqwīm*, II, 249.
26 Hārūnī, *el-Mujzī*, IV, 32-33.
27 Qazwīnī, *al-Wādiḥ*, 335.
28 Bedir, *Fıkıh*, 168.

assert that accepting *taʾthīr* as a true determinant of the *ʿilla* necessarily compels acceptance of the specification of the rationale. At the second level, he rejects the claim that *takhṣīṣ al-ʿilla* represents an uninterrupted Hanafī opinion passed down from predecessors, as previously declared by al-Jaṣṣāṣ and al-Dabūsī.[29]

Unlike al-Jaṣṣāṣ and al-Dabūsī, al-Sarakhsī's primary opponents include certain Hanafī scholars, likely the Irāqī Hanafīs, along with the Bukhāran al-Dabūsī, who advocate the permissibility of the specification in *sharʿī* rationales. These scholars argue that this practice aligns with the principles of *ahl al-sunnah* and the methodology of the early predecessors, grounding their stance in the interpretations of foundational Imāms. However, al-Sarakhsī firmly rejects this position, deeming it a significant error.[30] He asserts that the authentic stance upheld by the early predecessors unequivocally denies the permissibility (*ʿadam al-jawāz*) of the specification in *sharʿī* rationales. Al-Sarakhsī warns that accepting specification risks inclining toward Muʿtazilite theological frameworks, thereby deviating from the principles of *ahl al-sunnah*.[31] He explicitly labels the acceptance of such specification as tantamount to expulsion from *ahl al-sunnah* and accuses proponents of adopting Muʿtazilite tendencies.[32] This perspective aligns with the broader intellectual efforts of certain fifth and sixth-century scholars, such as al-Samarkandī, who sought to integrate the theological tenets of Māturīdism into the Samarkand Hanafī school.[33]

Al-Sarakhsī's contemporary, Fakhr al-Islām al-Bazdawī, also critiques the concept of specification, categorizing it under "The illegitimacy (*fasād*) of the specification of the rationale." Al-Bazdawī identifies certain figures whom he claims to be among Hanafīs, likely the Irāqī Hanafīs, al-Dabūsī, and their followers, as proponents of the specification in *muʾaththir* rationales. However, al-Bazdawī strongly rejects this position, highlighting its potential alignment with Muʿtazilite theology.[34] As these critiques suggest, al-Dabūsī, while continuing the intellectual trajectory established by al-Jaṣṣāṣ, faces significant opposition from both al-Sarakhsī and al-Bazdawī. Although al-Sarakhsī and al-Bazdawī generally adhere to al-Dabūsī's broader framework, they find his view on *takhṣīṣ al-ʿilla* indefensible.[35]

29 Sarakhsī, *Uṣūl*, II, 208.

30 Sarakhsī, *Uṣūl,* II, 208.

31 Sarakhsī, *Uṣūl,* II, 208.

32 Sarakhsī, *Uṣūl,* II, 208.

33 For a study examining the manifestation of this attitude within Samarkandī's framework, see Bedir, "Mâtürîdî Fıkıh Usûlü", 412-420.

34 Bazdawī, *Usūl*, IV, 46-53.

35 Bedir, "The Early Development of Ḥanafī Uṣūl al-Fiqh", 29.

Sadr al-Islām al-Bazdawī, who is a staunch opponent of the specification of the rationale, adopts even harsher language than his brother Fakhr al-Islām al-Bazdawī. He considers those who assert a rationale without a legal ruling (*ḥukm*) to be acting irrationally. According to him, such individuals fail to distinguish between general and specific circumstances, despite claiming intellectual sophistication. To illustrate this, he references the example of "unintentional eating," which does not invalidate fasting, in contrast to the general action of "intentional eating," which does.[36] Sadr al-Islām explains that the absence of a legal ruling in exceptional circumstances stems from the lack of specific qualifications of the rationale, rather than from *takhṣīṣ al-ʿilla*.

Sadr al-Islām al-Bazdawī, unlike the legal theorists mentioned thus far, refers to a group he describes as "a group from among our companions" (*jamāʿah min aṣḥābunā*) and explicitly identifies their leader as Shaykh al-Imām Zāhid Abū Manṣūr al-Māturīdī. He notes that this group, which opposed the specification of the *muʾaththir* rationale, regarded acceptance of such a notion as a mark of foolishness.[37] Sadr al-Islām's laudatory references to Imām al-Māturīdī and the commendatory remarks regarding his opinions strongly suggest that the Māturīdī school, proposed by al-Samarkandī as an alternative to the Irāqī school, is not a mere retrospectively constructed narrative. It is also noteworthy that referring to the relevant group with the designation "a group from among our companions" and mentioning Imām al-Māturīdī as "their imam" rather than "our imam" can be interpreted as an indication that the construction of the narrative had only just begun and was not yet complete. Indeed, approximately 150-200 years later, Māturīdism would evolve into a school representing all Hanafīs through the contributions of al-Bazdawī, al-Makhūl, al-Nasafī, al-Samarkandī, and al-Lāmishī.[38]

ʿAlāʾ al-Dīn al-Samarkandī (d. 539/1144), who aimed to establish an alternative identity for the Hanafī school by marginalizing the Irāqī tradition, which represented the school intellectually until his time, directly attributed a new framework to the founder Imāms of the school. The divergence between the Irāqī and Samarkandī Hanafīs is evident in his classification of opinions regarding the specification of the rationale. Al-Samarkandī explicitly associates the Irāqī scholars with the Muʿtazilites, while mentioning al-Dabūsī separately and distinctly from the Irāqīs. Al-Samarkandī explicitly lists al-Dabūsī together with the Irāqī scholars as

36 Bazdawī, *Maʿrifat*, 46-47.

37 Bazdawī, *Maʿrifat*, 45.

38 I would like to extend my gratitude to my esteemed professor, Murteza Bedir, for this final remark.

part of the faction that includes Muʿtazilīs.[39] He presents the Samarkandī tradition, led by Imām al-Māturīdī, which asserts that *takhṣīṣ al-ʿilla* is impermissible as an alternative approach within theological discourse.[40] As observed, the opposition to the specification of the rationale is rearticulated as the position held by the Samarkandī Hanafīs under the leadership of Imām al-Māturīdī.

Abu al-Mahāmid al-Lāmishī (d. 522/1128),[41] a Samarkandī-Hanafī theorist representing the sixth century Maturīdī tradition, along with the Bukhāran Hanafīs Abū al-Barakāt al-Nasafī (d. 710/1310), Abdulazīz al-Bukhārī (d. 730/1330),[42] as well as al-Nasafī's Irāqī student Ibn al-Sāʾātī (d. 694/1295) and Ibn al-Sāʾātī's student Rukn al-Dīn al-Samarkandī (d. 701/1301) express similar views.[43] Notably, Ibn al-Sāʿatī's emphasis on associating the concept of specification with the majority of Hanafīs distinguishes his perspective.[44] This approach resonates in numerous subsequent *mamzūj uṣūlī* works.[45] Another striking aspect in these works is their assertion that the Shāfiʿīs also hold this view.[46]

The alignment of al-Sarakhsī and al-Bazdawī — who were frequently criticized for adhering to the Irāqī Hanafī tradition epitomized by al-Dabūsī — with the Samarkandī Hanafīs on the matter of specification underscores the increasing influence of the Samarkand-Maturīdī movement.[47] This influence persisted for many years, and the opinions of the Samarkandī Hanafīs were widely adopted in the works of subsequent Hanafī theorists, even as the discussion itself came to be regarded as literal and redundant. Within the socio-political context of al-Jaṣṣāṣ, opposition to *takhṣīṣ al-ʿilla* — originally the heretical view of a single dissenter — came to represent the school's dominant position. By the fifteenth century, however, exceptions emerge, such as Ibn al-Humām (d. 861/1456) and his follower Muhibb Allah b. ʻAbd al-Shakūr (d. 1119/1707), who revisited and accepted *takhṣīṣ al-ʿilla* under constrained theological frameworks.

39 Samarqandī, *Mīzān*, II, 898.

40 Samarqandī, *Mīzān,* II, 899.

41 Lāmishī, *Uṣūl al-fiqh,* 134.

42 Nasafī, *Kashf al-asrār*, II, 311.

43 Nasafī, *Kashf al-asrār,* II, 312-313; Samarkandī, *Jāmiʿ al-uṣūl*, II, 235-36.

44 Ibn al-Saʾātī, *Badiʿ al-nizām,* 597.

45 Such as Taftāzānī, *al-Talwīh*, II, 194-195; Ibn Nujaym, *Fatḥ al-ghaffār*, III, 42; Baḥr al- ʻUlum al-Lakhnawī, *Fawātiḥ al-raḥamūt*, II, 328.

46 Samarkandī, *Jāmiʿ al-uṣūl*, II, 236.

47 Bedir, "The Early Development of Ḥanafī Uṣūl al-Fiqh", 2.

3. From Irāq to Transoxiana, Hanafīs' Engagement with Mu'tazilite Principles

The early Hanafī school exhibited a cosmopolitan character, particularly in its formative period, when scholars from diverse theological backgrounds, including Muʿtazilite and Murjiʾite circles, participated in Abū Hanīfa's scholarly network. Notably, al-Karkhī and al-Jaṣṣāṣ — key figures in the development of the Hanafī legal theory — are widely recognized for their Muʿtazilī tendencies, a fact highlighted by numerous scholars.[48] As a result, early Hanafī theorists from Irāq, such as al-Karkhī, al-Jaṣṣāṣ, Abū Abdullah al-Jurjānī, Abū al-Husayn al-Qudūrī (d. 428/1037) and al-Saymarī, do not exhibit a clear departure from Muʿtazilite views, particularly in their endorsement of *takhṣīṣ al-ʿilla*. For the principal argument employed by both al-Jaṣṣāṣ and al-Saymarī is the distinction between *sharʿī* and rational *ʿilal*, a distinction characteristic of the Muʿtazilite tradition.[49] The absence of resistance to Muʿtazilite influences likely reflects a deeper commitment to preserving the integrity of the Hanafī legal tradition, despite its theological implications.[50]

During the fourth century, the Irāqī Hanafī school was the preeminent representative of Hanafī legal theory. However, the initiation of the *Miḥnah* targeting Muʿtazilites marked a decline in its influence. Hanafī scholars in Irāq were closely monitored, compelled to disavow Muʿtazilite views, and threatened with severe consequences for disseminating such ideas.[51] This suppression led to a shift in Hanafī scholarship, with its intellectual center moving to Transoxiana, where it experienced a resurgence.

A Bukhāran Hanafī theorist, al-Dabūsī, while not overtly anti-Muʿtazilite, demonstrated indifference toward Muʿtazilite assumptions regarding *takhṣīṣ al-ʿilla*. He often operated within the framework of the Irāqī Hanafī tradition, aligning with its controversial positions, including the acceptance of the specification of the rationale, despite efforts by later Samarkandī scholars to marginalize such views.[52] Indeed, unlike al-Jaṣṣāṣ, who did not shy away from drawing an implicit connection between the Muʿtazilite theory of *aṣlaḥ* and *takhṣīṣ al-ʿilla*, al-Dabūsī's silence regarding

48 For example Bedir, "Klasik Hanefi Fıkıh Teorisinin Hikayesi", 81; Karakuş, "Cessâs'ın Usûl Düşüncesi", 142-169.

49 Jaṣṣāṣ, *al-Fuṣūl,* IV, 255; Saymarī, *Masāʾil al-khilāf*, 353; Erzinjānī, *el-Taqmīl*, V, 2120; Karakuş, *Muʿtezile Fıkıh Usûlünün Hanefî Usûlüne Etkisi*, 140.

50 Bedir, "Klasik Hanefi Fıkıh Teorisinin Hikayesi," 85. For Irāqī Hanafī school's tendency to Muʿtazila, see also Madelung, "The Spread of Māturidism", 112.

51 Madelung, "The Spread of Māturidism", 112.

52 Dabūsī, *Taqwīm*, II, 242-244, 249.

Muʿtazilite assumptions must itself be seen as meaningful. However, in Transoxiana, figures like al-Sarakhsī and Fakhr al-Islām al-Bazdawī adopted an explicit anti-Muʿtazilite stance while elevating the Hanafī legal tradition inherited from the Irāqī school. These scholars distanced themselves from Muʿtazilite extensions within that heritage, reflecting the prevailing intellectual climate. Consequently, discussions on *takhṣīṣ al-ʿilla* took on a theological dimension, as accepting it implied alignment with Muʿtazilite doctrines such as *taṣwīb* (the belief that all mujtahids reach correct conclusions).

For Fakhr al-Islām al-Bazdawī, the theological implications of *taṣwīb* were deeply troubling. He associated *takhṣīṣ al-ʿilla* with *taṣwīb*, framing it as a marker of theological orthodoxy or unorthodoxy. In his *Uṣūl*'s introduction, al-Bazdawī rigorously defended Abū Hanīfa's orthodoxy by attributing to him views that contradicted Muʿtazilite doctrines, such as the following:

- Affirmation of the Lawgiver's attributes,
- The belief that benefaction (*khayr*) and harm (*sharr*) occur by the Lawgiver's will,
- The precedence of capacity (*istiṭāʿah*) over action,
- Rejection of the eternal punishment of grave sinners,
- Divine creation of human actions,
- Denial that the Lawgiver is obligated to act in the best interest (*aṣlaḥ*),
- Belief in the vision of God (*ruʾyat Allah*), punishment in the grave, and the reality of heaven and hell,
- Denial of the createdness of the Qur'an (*khalq al-Qurʾan*).[53]

Al-Bazdawī connected several of these doctrines to the issue of *takhṣīṣ al-ʿilla*, which he examined following his discussion of *taṣwīb*, asserting a close relationship between the two.[54] In his view, the validity of *ijtihād* in determining the effective rationale of rulings is undermined when *naqd* (the invalidation or corruption of the connection between the rationale and the ruling) occurs. According to al-Bazdawī, *naqd* indicates the rationale fails to function as intended. If the effective rationale is considered specified (*takhṣīṣ*) due to specific evidence (*māniʿ*), the disruption introduced by *naqd* can be nullified, thereby safeguarding the validity of *ijtihād*.[55] In other words, whenever the effective rationale identified by a jurist fails to yield the expected ruling, he can claim that the rationale was subject to specification (*takhṣīṣ*), thereby shielding himself from admitting error in his *ijtihād*. This mechanism allows the rationale to be restored from

53 Bazdawī, *Uṣūl*, I, 17-22.

54 Bazdawī, *Uṣūl*, IV, 44.

55 Bukhārī, *Kashf al-asrār*, IV, 44-53.

invalidity. As a result, the *ijtihad* of all *mujtahid*s is effectively protected from error and *naqd*, ultimately supporting the conclusion that all *mujtahids* are correct in their *ijtihād* on the issue at hand.[56]

The theological debate over the belief that "every *mujtahid* is correct" originates in discussions concerning the nature of truth -specifically, whether there exists a single truth (*ḥaqq*) or multiple truths (*taʿaddud al-ḥuqūq*) in the sight of the Lawgiver.[57] Furthermore, the concepts of the specification of the rationale and felicity (*ʿiṣāba*) in *ijtihād* are tied to further theological difficulties. These issues arise from the perception that both concepts are extensions of the Muʿtazilite doctrine of the "necessity of *aṣlaḥ*" (i.e., that the Lawgiver always acts in the most optimal or beneficial way). Within this framework, what is considered *aṣlaḥ* for a *mujtahid* is equated with felicity. Thus, the second dimension of the problem, as articulated by al-Bazdawī, concerns the necessity of aligning *aṣlaḥ* with what is deemed felicitous in *ijtihād*, situated within the broader discourse surrounding the specification of the rationale.[58]

Al-Sarakhsī, likewise, explicitly asserts that accepting the concept of *takhṣīṣ al-ʿilla* reflects an inclination toward Muʿtazilite thought. He contends that such acceptance entails agreement with core Muʿtazilite doctrines, including the eternity of grave sinners' punishment, the doctrine of *al-manzilah bayn al-manzilatayn* (a state between belief and unbelief for grave sinners), the notion of felicity in *ijtihad*, and the principle of *aṣlaḥ*.[59] While al-Sarakhsī clearly articulates this position, he does not engage deeply with the theological underpinnings of these doctrines. Notably, he underscores that neither *al-manzilah bayn al-manzilatayn* nor the condition of grave sinners leads to *īmān* (correct faith) without eternal bliss in the afterlife.[60] In other words, the rationale, which is faith here, does not necessarily lead to eternal bliss and, in a sense, undergoes specification. What is particularly striking in his discussion is his apparent reluctance to engage extensively in theological debates to refute the concept of *takhṣīṣ al-ʿilla*, even though he makes nominal references to the Muʿtazilite ideas associated with it.[61]

Sadr al-Islām al-Bazdawī highlights a connection between action and capacity (*istiṭāʿah*), which emerged as a distinct theological problem linked

56 Bukhārī, *Kashf al-asrār*, IV, 53.
57 Bazdawī, *Uṣūl*, IV, 25-28.
58 Bazdawī, *Uṣūl*, IV, 53.
59 Sarakhsī, *Uṣūl,* II, 211-212.
60 Zysow, "Muʿtazilism and Maturidism", 250.
61 Bedir, "The Early Development of Ḥanafī Uṣūl al-Fiqh", 237.

to the specification of the rationale in his brother's writings. According to Samarkandī-Māturīdī scholars, proponents of this view equate the defence of *takhṣīṣ al-ʿilla* with advocating the precedence of capacity over action (*al-istiṭāʿah qabl al-fiʿl*), a Muʿtazilite position.[62] This equivalence stems from both positions' theoretical objection to the effectiveness of God's will. In contrast, Sunnī theology maintains that capacity and action coexist simultaneously (*al-istiṭāʿah maʿa al-fiʿl*).

It is noteworthy that all these issues appear in Fakhr al-Islām al-Bazdawī's list as part of his effort to demonstrate that Abū Hanīfa cannot be classified as a Muʿtazilite. The depiction of two key doctrines -the necessity of *aṣlaḥ* and the status of grave sinners- as the beliefs of *ahl al-hawā wa'l-bidʿa* in the *Declaration of Ahl al-Sunnah* issued by Abu Bakr al-Iyādī suggests that, in the fourth century Transoxania, these ideas were perceived as heretical. These doctrines, possessing significant representative potential, were deemed sufficient grounds for exclusion from *ahl al-sunnah*.[63] Notably, their association with the concept of specifying the rationale is particularly important. This association implies that *takhṣīṣ al-ʿilla* was regarded at the time as an integral characteristic of Muʿtazilite identity. Whether or not this association is coherent, what stands out is the effort of post-Dabūsī Ḥanafī theorists to establish this link. This, by itself, reflects the prevailing theological sensitivity to Muʿtazilite implications. As Sadr al-Islām al-Bazdawī explicitly states:

> I do not consider those who accept *takhṣīṣ al-ʿilla* to be Muʿtazilites because they may fail to recognize the association between this issue and *istiṭāʿah*. Nevertheless, since this doctrine has become a marker (*shiʿār*) of the Muʿtazilah in these regions, it must be avoided, just as one avoids wearing a signet ring on the right hand, as practiced by the Rāfidites, or dressing in the manner of unbelievers (*kuffār*), for these are their distinct markers.[64]

To better understand the validity of the connection -whether direct or indirect- between *takhṣīṣ al-ʿilla* and the theological issues mentioned above, several figures serve as illustrative examples. The first example is the Hanafī theologian Bishr b. Giyās al-Marīsī (d. 218/833),[65] often considered a Muʿtazilite.[66] Living during the transitional period of the third century, Bishr was classified by al-Jaṣṣāṣ among those who did not

62 Bazdawī, *Maʿrifat al-ḥujaj al-sharʿīyah*, 45.
63 Özen, "Bir Ehl-i Sünnet Beyannamesi", 69.
64 Bukhārī, *Kashf al-asrār,* IV, 55.
65 Jaṣṣāṣ, *al-Fuṣūl,* IV, 255.
66 Özen, *Ebû Mansûr el-Mâtürîdî*, 178.

accept *takhṣīṣ al-ʿilla*. He evaluated the uncertain (*ẓannī*) aspects of *fiqh* as definitive, asserted that the correct view (*haqq*) on such matters is singular, and regarded a *mujtahid* who errs as sinful.[67] However, in line with the *ahl al-sunnah* perspective, he accepted that *istiṭāʿah* (the capacity underlying moral responsibility) exists simultaneously with action. Thus, the assumed necessary relationship between the specification of the rationale, *taṣwīb* (the notion that every qualified jurist is correct), *istiṭāʿah* and adoption of the Muʿtazilite position is reversed in al-Bishr's case, provided that al-Jaṣṣāṣ's narration is accurate.[68]

Another example is the Irāqī Hanafī scholar al-Karkhī (d. 340/952), who lived at the beginning of the fourth century and is also suspected of Muʿtazilite leanings,[69] along with his student al-Jaṣṣāṣ. Many scholars claim that al-Karkhī endorsed *takhṣīṣ al-ʿilla*.[70] According to Qādī Abd al-Jabbār (d. 415/1025) and Abū al-Husayn al-Baṣrī (d. 436/1044), al-Karkhī also supported the notion that every *mujtahid* is correct.[71] Al- Jaṣṣāṣ, who likewise accepted *takhṣīṣ al-ʿilla*, used expressions that seemingly link this view with the necessity of *aṣlaḥ*. For instance, he endorsed the idea that *istiṭāʿah* precedes action and defended the notion of multiple truths for *mujtahid*s, as noted by many contemporary scholars. While the precise nature of these views remains debated, if the attributions to al-Karkhī and al-Jaṣṣāṣ are accurate, their acceptance of *takhṣīṣ al-ʿilla* aligns with the theological implications ascribed to it.[72]

According to al-Jaṣṣāṣ, the fundamental premise that allows for the specification of the rationale is the understanding that *sharʿī* rationale do not entail legal rulings with real or inherent necessity (*ījāb*). Rather, rationales are indicators (*amārāt*) designated by the Lawgiver to necessitate rulings in particular contexts. However, in these very passages — where he acknowledges that the rationale does in fact entail the ruling — al-Jaṣṣāṣ emphasizes the metaphorical nature of causality in *sharʿī* discourse. He does so to prevent a misunderstanding: that the term

67 Bukhārī, *Kashf al-asrār*, IV, 26.

68 Kılavuz, "Bişr b. Gıyâs", *DİA,* 1992, VI, 220.

69 Apaydın, "Kerhî", *DİA*, 2022, XXV, 285-286; Özen, *Ebû Mansûr*, 165-168.

70 Amir Padishāh, *Taysīr al-Taḥrīr*, III, 177.

71 Qādī Abd al-Jabbār, *al-Mugnī* (Cairo, 1963), XVII, 377; Başrī, *Sharḥ al-Umad*, II, 238.

72 Özen, *Ebû Mansûr,* 121, 132-136. Çil argues in his work that al-Jaṣṣāṣ exhibits varying tendencies regarding the issue of error and correctness in *ijtihād* within his *al-Fuṣūl*. However, based on his analysis, he concludes that al-Jaṣṣāṣ held the view that there exists a determinate truth in the sight of the Lawgiver, while at the same time adopting the *muṣawwiba* position in its *ashbah* form. Çil, *İctihadda Hata-İsabet*, 142-173.

ʿilla, in its legal usage, implies the same kind of intrinsic and necessary connection between the rationale and the ruling as it does in rational and naturalistic frameworks.[73] At a broader theoretical level, al-Jaṣṣāṣ is here concerned with establishing the legitimacy of specifying legal rationales. By emphasizing the fundamentally indicative nature of the *Sharīʿa* as a whole, he highlights that the rationales leading to legal rulings -though they may have existed prior to the advent of the divine law- only become operative through the intervention of the Lawgiver. Accordingly, he suggests that even those rationales explicitly stated or implicitly conveyed in the scriptural sources may, in certain cases, be rendered inoperative. This underscores the idea that legal causality in *Sharīʿa* is not absolute but contingent upon the Lawgiver's assignment.[74] This, too, is an explanation that accords closely with the Muʿtazilī distinction between the rational and *sharʿī ʿilal*. However, it should be noted here that al-Jaṣṣāṣ himself never established an explicit connection between *takhṣīṣ al-ʿilla* and these theological doctrines. It should also be noted that certain evaluations regarding *ijtihād*, the views of al-Karkhī and al-Jaṣṣāṣ, particularly the attribution of the doctrine of *taṣwīb* to both of them by contemporary scholars, as well as the attribution of the doctrine of *istitāʿah* before action to al-Jaṣṣāṣ, require critical examination to ascertain their validity.

Like al-Jaṣṣāṣ, al-Dabūsī adopts a comparable stance by distinguishing between two distinct planes with respect to *sharʿī* rationales: one from the perspective of the Lawgiver, and the other from the perspective of the *mujtahid*. While the connection between legal rulings and their rationales may appear necessary (*wujūb*) on the surface, this necessity does not imply that the same kind of intrinsic, binding relationship exists in the divine realm. However, on the second plane — that of the *mujtahid* — the obligation to act upon a determined reason introduces a functional proximity to rational causality, insofar as the reason becomes operative and binding in legal reasoning.[75]

Another theorist examined in this context is Shāfiī Qādī Abd al-Jabbār (d. 415/1025), a renowned theologian of the Basra Mu'tazilite school.[76] Qādī Abd al-Jabbār, who upholds *takhṣīṣ al-ʿilla*, argues that it is obligatory (*wājib*) for God to act in the best interest (*ṣalāḥ*). In his view, individuals who commit grave sins lose their status as believers but do not become disbelievers; instead, they occupy an intermediate position and are classified as *fāsiq* (sinners). He further asserts that *istiṭāʿah* exists both

73 Jaṣṣāṣ, *al-Fuṣūl,* IV, 259.

74 Jaṣṣāṣ, *al-Fuṣūl,* IV, 260.

75 Dabūsī, *Taqwīm*, I, 16.

76 Metin Yurdagür, "Kâdî Abdülcebbâr", *DİA*, XXIV, 103.

prior to and concurrent with an action, thereby enabling humans to create their own actions.[77] This perspective underscores his defense of the view that *istiṭāʿah* is present before the action takes place. By adopting these positions, Qādī affirms the conceptual link between these ideas, as previously articulated by al-Sarakhsī and al-Bazdawī, and endorses the principle that "each *mujtahid* is correct."[78] Not only these figures, but also scholars such as al-Hārūnī, al-Qazwīnī and al-Jushamī (d. 494/1101), who, in Karakuş's words, constitute the backbone of Muʿtazilite *usūl* thought, accepted *takhṣīṣ al-ʿilla*.[79]

This perspective warrants careful consideration, despite the impression of internal coherence presented by the collection of views surrounding *takhṣīṣ al-ʿilla* among the theorists discussed thus far. Notably, al-Dabūsī and al-Saymarī, who frequently assert in their works that a *mujtahid* may err, acknowledge the concept of *takhṣīṣ al-ʿilla*. Similarly, Muʿtazilī theorist Abū al-Husayn al-Baṣrī is among those who oppose the specification of the rationale. He conceives of rationales as either direct instances of benefit (*maṣlaḥa*) or as indicators (*amāra*) that imply such benefit. However, the connection between rulings and their rationales can only be known if the Prophet explicitly established this link, either through a scriptural text (*nass*) or an instructive hint (*tanbīh*). According to al-Baṣrī, the causal relationship between a ruling and its rationale does not stem from the divine will of the Lawgiver alone, but rather from the fact that the rationale entails a real benefit that, by its very nature, necessitates the ruling. Because of this approach, he rejects the possibility that the causal relationship could be disrupted by the revelation of the Sharīʿa and thus denies the legitimacy of specifying the rationale.[80] The Hanafī-Muʿtazilī legal theorist ʿAlāʾ al-Dīn al-Asmandī (d. 552/1157) likewise rejects *takhṣīṣ al-ʿilla*, due to his conception of the rationale, which closely resembles that of al-Baṣrī.[81]

The primary motivation behind our detailed engagement with the accounts of al-Jaṣṣāṣ and al-Dabūsī regarding the nature of rationale is to challenge the widespread perception that accepting *takhṣīṣ al-ʿilla* necessarily entails equating *sharʿī* rationales with rational ones, a claim that lacks firm foundation. The premise that "*sharʿī* rationale ≠ rational rationale" is not

77 İlyas Çelebi, "Kâdî Abdülcebbâr", *DİA*, XXIV, 106-107.

78 Qādī Abd al-Jabbār, *al-Mugnī* (Cairo, 1963), XVII, 356. Also see, Tahsin Görgün, "Kâdî Abdülcebbâr", *DİA*, XXIV, 111.

79 Hārūnī, *el-Mujzī*, IV, 32-61; Karakuş, *Muʿtezile Fıkıh Usûlünün Hanefî Usûlüne Etkisi*, 139.

80 Türcan, *Norm-Amaç*, 49-50.

81 Türcan, *Norm-Amaç*, 51.

only unfounded, but its presentation as a Muʿtazilī axiom is a serious misconception. The Muʿtazilīs themselves, far from being a monolithic school, display considerable variation on this issue. Indeed, among Muʿtazilī theorists, one can find scholars who reject both the notion that the rationale is inherently determinative (*mūjib*) and *takhṣīṣ al-ʿilla*.

Furthermore, no Hanafī theorist who links *takhṣīṣ al-ʿilla* with doctrines considered heretical due to Muʿtazilite associations claims that proponents of specification necessarily endorse those Muʿtazilite views. Rather, they underscore the importance of rejecting specification, suggesting that its acceptance may imply an affinity with such doctrines, even if not explicitly adopted. Theorists like al-Sarakhsī and the al-Bazdawī brothers arguably imply that acceptance of the specification by figures such as al-Karkhī, al-Jaṣṣāṣ, and al-Dabūsī (to whom al-Saymarī may also be added) reflects a broader intellectual proximity to Muʿtazilite thought. In their historical context - marked by heightened anti-Muʿtazilite sentiment - the adoption of views associated with Muʿtazilite circles naturally provoked opposition. As such, their objections may not have been aimed directly at these early figures, but rather at later adherents who, in their own time, continued to defend the notion of specification.

In the context of the rivalry between the Irāqī and Transoxanian Hanafīs for representing the school, the latter appear to leverage the specification of the rationale to marginalize their Irāqī counterparts by associating them with Muʿtazilism. This positioning enables the Transoxanians — who were more closely aligned with Māturīdī theology, itself recognized as part of *ahl al-sunnah* — to assert their legitimacy as a more orthodox expression of the tradition. This dynamic becomes particularly significant in the works of al-Samarkandī (d. 539/1144), who, while underscoring the distinction between the Samarkandī and Irāqī traditions and associating the latter with Muʿtazilism, avoids engaging in extensive theological argumentation when addressing these issues.[82]

In contrast, Abd al-ʿAzīz al-Bukhārī (d. 730/1330), writing during a period when Ashʿarism was widely accepted as the true theological school within

82 Samarqandī, *Mīzān al-uṣūl,* II, 899. However, the prevailing view on the issue of correctness in ijtihad within the madhhab differs from that of Imām Māturīdī. This is because he does not adopt the opinion, which is preferred in the madhhab, that a mujtahid is initially correct (*ibtidāʾan*) regarding action (*ʿamalan*) but ultimately mistaken (*intiḥāʾan*) in attaining the intended ruling. Instead, he holds that a mujtahid may err both at the outset and in conclusion. *Nūr al-Anwār*, II, 303. In other words, even in matters they consider directly related to the specification of the rationale, they do not fully agree with their imām.

ahl al-sunnah, challenges any intrinsic connection between *takhṣīṣ al-ʿilla*, *taṣwīb*, and *istiṭāʿah*. He contends that while specification may lead to the conclusion that all *mujtahid*s are correct, it does not necessarily entail the principle of *aṣlaḥ*. Many Sunnī scholars, though endorsing *taṣwīb*, reject the necessity of *aṣlaḥ*, instead grounding their positions in the impossibility of *taklīf mā lā yuṭāq* (the obligation of the unachievable) rather than in *istiṭāʿah* prior to action.[83] Thus, *taṣwīb* emerges from two distinct premises: the necessity of *aṣlaḥ* and the impossibility of *taklīf mā lā yuṭāq*.

The influence of Imām Abū al-Hasan al-Ashʿarī (d. 324/935-36), who supported *taṣwīb*, played a significant role in severing the link between *aṣlaḥ* and *istiṭāʿah* prior to action. Consequently, the notion that every *mujtahid* is correct shifted from being an exclusively Mu'tazilite position to becoming an acceptable view within *ahl al-sunnah*. However, some Transoxanian Ḥanafīs, such as Abū al-Barakāt al-Nasafī, continued to assert an essential link between *taṣwīb* and *aṣlaḥ*.[84] His student, Ibn al-Sāʿatī, emphasized the link between ruling and *istiṭāʿah*, maintaining that nominal, moral, and causal prerequisites must coincide with ruling itself; any delay in ruling was deemed untenable. However, according to his statement, some legal theorists (*mashāyikh*) distinguished the issue of the rationale (*ʿilla*) from the problem of the simultaneous presence of *istiṭāʿah* and action, thereby accepting that the rationale can precede the ruling. The reasoning behind their claim that *istiṭāʿah* and the rationale are distinct lies in the following argument: *Istiṭāʿah* is an accident (*ʿarad*), and accidents lack continuity of existence across two successive moments; therefore, for an act to occur, *istiṭāʿah* must be contiguous with the act. In contrast, *sharʿī* rationales possess continuity by legal decree, making their precedence (*taqaddum*) over the ruling conceivable. As observed, Ibn al-Sāʿātī acknowledges that both groups agree on the simultaneity of *istiṭāʿah* with the action, differing only in their understanding of the relationship between the rationale and *istiṭāʿah*. He does not, however, link this discussion to *takhṣīṣ al-ʿilla*, making only a passing reference to *taṣwīb*.[85] Even Omar al-Erzīncānī, who strongly opposed the specification of the rationale, presents it as a subsidiary of a Muʿtazilite principle and relates it to *taṣwīb*; yet he also explicitly notes that only some scholars actually make this connection in regard to *istiṭāʿah*.[86]

83 Bukhārī, *Kashf al-asrār,* IV, 43-44.

84 Nasafī, *Kashf*, II, 313.

85 Ibn al-Sāʿātī, *Badīʿ al-nizām,* 661-662.

86 Erzinjānī, *el-Taqmīl*, V, 2119. There are differing opinions regarding whether al-Erzīncānī's date of death corresponds to the eighth or ninth century AH. Çolak, "Erzincânî", 276.

Hanafī-Māturīdī theorist and theologian Sadr al-Sharīʿah (d. 747/1346) remains indifferent to the theological dimensions of these issues. Even Saʿd al-Dīn al-Taftāzānī (d. 792/1390), who interprets Sadr al-Sharīʿah, avoids delving into this aspect, agreeing with al-Bukhārī that the debate on *takhṣīṣ al-ʿilla* is of limited significance. While each of them specifically focused on the theological dimension of the issues they examined, their disregard for the theological implications of these matters remains a noteworthy concern. Kamāl al-Dīn Ibn al-Humām (d. 861/1456) marked a turning point in the Hanafī discourse on *takhṣīṣ al-ʿilla*. After centuries of rejection, he revisited the concept and argued for its acceptance, emphasizing its practical utility in legal reasoning. While acknowledging its potential connection to *taṣwīb*, Ibn al-Humām distinguished between practical correctness in juristic reasoning and ultimate correctness before the Lawgiver. This distinction aligned with Abu Hanīfa's statement, "Every mujtahid is correct, but the truth before the Lawgiver is one." Ibn al-Humām rejected the notion that accepting *takhṣīṣ al-ʿilla* necessitated adopting Muʿtazilite principles, such as the principle of felicity in *ijtihad*. He argued that the stance of those who reject *takhṣīṣ al-ʿilla* may also lead to the conclusion of *taṣwīb*. Accordingly, instead of asserting that there is specific evidence (*māniʿ*) preventing the legal ruling from taking effect, a jurist who identifies the rationale can claim its absence due to the addition or omission of a particular quality of it. In this way, both the validity of the rationale and the *ijtihād* are preserved, and the jurist does not err.[87] As a result of such a perception of correctness, the *wujūb al-aṣlaḥ* does not necessarily follow, since what is primarily intended here is the occurrence (*wuqūʿ*) of *aṣlaḥ*. In the same passage, Ibn al-Ḥumām reiterates his rejection of *aṣlaḥ*'s existence; however, he clarifies that this does not entail the falsity of *aṣlaḥ*'s occurrence. He justifies this position by appealing to the consensus among jurists regarding the notion that the acts of the servants (*afʿāl al-ʿibād*) and God's divine rulings (*aḥkām*) are characterized by being conditioned by consideration of the welfare of the servants.[88] It should be noted here that the influence of Ashʿarism on Ibn al-Ḥumām's intellectual stance, particularly from al-Ghazālī, is undeniable.[89] His student, Muhibbullah b. Abd al-Shakūr, expanded on this approach, asserting that *takhṣīṣ al-ʿilla* did not entail *taṣwīb* or other Muʿtazilite doctrines.[90]

As observed, a view that was indisputably accepted during the early period, as stated by al-Jaṣṣāṣ, was later rejected due to various theological

87 Ibn Humām, *al-Taḥrīr*, with the commentary of Ibn Amîr al-Hajj, *al-Taqrīr*, III, 176.

88 Ibn Humām, *al-Taḥrīr*, III, 176.

89 Bedir, *Fıkıh*, 251-52.

90 Muhibbullah b. Abd al-Shakūr, *al-Musallam al-thubūt*, II, 328-329.

concerns or political circumstances. Subsequently, its association with heretic theological doctrines was initially met with scepticism, and later, this connection was entirely severed. While Fakhr al-Islām al-Bazdawī suggests this implicitly, Abd al-ʿAzīz al-Bukhārī, al-Taftāzānī, and many other Hanafī legal theorists explicitly argue that the debate on *takhṣīṣ al-ʿilla* is purely linguistic without any legal ruling.[91] Consequently, *takhṣīṣ al-ʿilla* re-emerged as an acceptable theoretical principle in the discourse of Ibn al-Ḥumām and Muhibbullah b. Abd al-Shakūr.

4. Is *Takhṣīṣ al-ʿilla* Considered *Istiḥsān*?

Discussions about whether the specification of the rationale behind rulings is valid are fundamentally rooted in the intention of preserving the former. Theorists who either accept or reject *takhṣīṣ al-ʿilla* are expected to provide a coherent explanation for this apparent inconsistency, that is, a situation where a rationale does not yield its expected ruling due to stronger evidence. Failure to address this inconsistency would render the rationale invalid. This, in turn, threatens the integrity of the theoretical frameworks underpinning legal schools, as the universal principles represented by rationales trace back to the early Islamic period. In such cases of contradiction, one key explanatory tool used is *takhṣīṣ al-ʿilla*. However, within the Hanafī school, this concept remains contentious, with intra-school factions unable to reach consensus on its validity. Therefore, presenting the specification of the rationale as an extension of an agreed-upon principle, namely, *istiḥsān* (juristic preference), may provide a more robust internal justification.

In *uṣūl al-fiqh*, *istiḥsān* refers to the method whereby a *mujtahid*, relying on a stronger evidence — such as consensus (*ijma*), necessity (*ḍarūra*), custom (*ʿurf*), public interest (*maṣlaḥa*), or hidden analogy (*qiyās khafī*) — deviates from the general rule or the initially apparent solution followed in analogous cases, and instead issues a ruling that he deems more consistent with the higher objectives of the *Sharīʿa*.[92] Al-Karkhī attributed the founding Hanafī imāms' acceptance of the specification of the rationale to their recognition of *istiḥsān*. Al-Jaṣṣāṣ went further, equating specification with *istiḥsān* by categorizing it as a subset of *istiḥsān*. He explained that

91 Shalabī, *Taʿlīl al-aḥkām*, 176-178.

92 Bardakoğlu, "İstihsan", *DİA*, 2001, XXIII, 339. In fact, there are significant differences between the highly flexible definition of *istiḥsān* proposed by al-Karkhī and the later, more restrictive definitions framed predominantly in terms of *khafī qiyās* or based on textual evidence. However, for the purposes of the present article, it suffices to understand in broad terms what *istiḥsān* signifies within the Hanafī school. For the early application and conceptual transformation of *istiḥsān*, see Öncel, *İstihsan*, 1-524; Öncel, "İstihsan Kelimesi ve Türevleri", 1-30.

istiḥsān involves setting aside analogical reasoning (*qiyās*) in the face of more substantial evidence. Specifically, cases where a rationale is identified yet a ruling is absent due to countervailing evidence are deemed *istiḥsān*.[93] Similarly, al-Dabūsī displayed reservations, indicating an alignment with al-Jaṣṣāṣ's views on the equation of the specification with *istiḥsān*, albeit less explicitly.[94] The Muʿtazilī–Zaydī theorist al-Qazwīnī, who endorses *istiḥsān*, likewise acknowledges *takhṣīṣ al-ʿilla*, yet counts among those who regard it as equivalent to *istiḥsān*.[95] This equation is likely based on the following premise: Everything, once the *Sharīʿa* has been brought to completion, must have a ruling grounded in an effective rationale, since the rationale is the only channel through which legal rulings can be conveyed. Denying the existence of a rationale, even in some instances, in effect, means to concede that there exists a domain in which the *Sharīʿa* remains silent. This approach thus extends the *nass- ḥukm* model into a more general *ʿilla-ḥukm* framework. Equating *takhṣīṣ al-ʿilla* with *istiḥsān* implies that the framework of deriving general principles and exceptions from revealed texts is likewise operative in the domain of rulings based on effective rationales.

Hanafī scholars critical of *takhṣīṣ al-ʿilla*, such as al-Sarakhsī, argued that equating it with *istiḥsān* is erroneous. Al-Sarakhsī emphasized that analogical reasoning becomes void in the presence of stronger evidence, such as textual proofs, consensus, or necessity. For him, the absence of a ruling where a rationale exists does not imply specification but the rationale's invalidation in light of more substantial evidence. This perspective reflects a broader stance against the conflation of specification and *istiḥsān*, asserting that causality itself loses its validity under such circumstances.[96] Al-Sarakhsī illustrated this through the example of water remnants consumed by predatory birds. Unlike other predators, their remnants are not deemed impure because their beaks lack the properties — beaked and non-slobbery — deemed effective for impurity. While this appears to be a case of *takhṣīṣ al-ʿilla*, al-Sarakhsī argued instead for the absence of causality.[97]

Other scholars, such as Fakhr al-Islām al-Bazdawī, took a less definitive stance. While rejecting *takhṣīṣ al-ʿilla*, he conceded that many cases labelled as *istiḥsān* could be understood as instances of the specification of the rationale. For each instance of *istiḥsān*, it constitutes the nullification of

93 Jaṣṣāṣ, *al-Fuṣūl,* IV, 233-234, 243.

94 Dabūsī, *Taqwīm*, II, 242.

95 Qazwīnī, *al-Wādiḥ*, 336-37.

96 Sarakhsī, *Uṣūl,* II, 203-204.

97 Sarakhsī, *Uṣūl,* II, 204.

the rationale through a textual source, while in the terms of its opponents, the specification of the rationale.[98] The explanations of al-Samarkandī, al-Lamishī, al-Nasafī, and al-Taftazānī, which align with the words of al-Sarakhsī and al-Bazdawī, also firmly deny the equivalence between *istiḥsān* and the specification of the rationale.[99] Shāfiʿī legal theorists such as Fakhr al-Dīn al-Rāzī (d. 606/1210) and Sirāj al-Dīn al-Urmawī (d. 682/1283) appear to have accepted this equivalence as well, since he explicitly states that the very arguments he employs to demonstrate the invalidity of the specification of the rationale would also entail the invalidity of *istiḥsān*.[100]

In his commentary on Ibn al-Humām, who considers the specification of the rationale to be an instance of *istiḥsān*, Ibn Amīr al-Hajj, citing Fadl al-Kā'ānī (d. 775/1373),[101] points out that this issue can be resolved by distinguishing between the types of *istiḥsān*. According to him, all examples of *istiḥsān* justified by textual evidence, consensus, or necessity also serve as examples of *takhṣīṣ al-ʿilla*. Otherwise, it would be contradictory to condition the validity of reasoning (*taʿlīl*) on its non-contradiction with *qiyās* while simultaneously rejecting *takhṣīṣ al-ʿilla* and explaining instances of specification as the invalidation (*fasād*) or annulment (*buṭlān*) of the rationale. This is because interpreting the disruption of the rationale-ruling connection as the absence of the rationale would render the designation of these *istiḥsān*-based rulings as contrary to *qiyās* (*maʿdūl bihī ʿan al-qiyās*) meaningless. When the rationale is nullified, it becomes nonsensical to speak of abandoning *qiyās*. Consequently, it would no longer be meaningful to describe the Prophet's prohibition of the sale of non-existent goods (*bayʿ al-maʿdūm*) as being followed by a concession (*rukhṣa*), such as "and he permitted *salam*." This is because *rukhsa* occurs when a ruling deviates from its rationale due to an excuse or necessity. However, in the case of *istiḥsān* by implicit *qiyās* (*qiyās khafī*), *takhṣīṣ al-ʿilla* is not applicable. This is because *istiḥsān* by implicit *qiyās* involves the realization that a quality initially assumed to be the rationale is, in fact, not the rationale. Instead, the rationale is something else entirely. As a result, there is no necessity to explain the disruption of the rationale-ruling connection by invoking an impediment. For this very reason, the solution achieved through *istiḥsān* by implicit *qiyās* cannot be said to contradict *qiyās*. To clarify this,

98 Bazdawī, *Uṣūl,* IV, 56.

99 Samarkandī, *Mīzān*, II, 903; Lamishī, *Uṣūl al-fiqh*, 137; Nasafī, *Kashf al-asrār*, II, 314-315; Taftazānī, *al-Talwīḥ*, II, 196-197.

100 Urmawī, *et-Taḥṣīl*, II, 319; Başoğlu, *Râzî Mektebi*, 92.

101 Abū Muḥammad Manṣūr b. Aḥmad b. Muʾayyad al-Khwārazmī al-Kāʾānī a Hanafi legal theorist, who wrote a commentary on al-Ḥabbāzī's work *al-Mughnī*. Öncel, *İstihsan*, 135 (footnote).

he employs al-Sarahsī's example of predatory birds.[102] It may, in fact, be said that al-Jaṣṣāṣ shared the same view as al-Kāʾānī. For in the passages where he examines the relationship between *takhṣīṣ al-ʿilla* and *istiḥsān*, he explicitly states that *takhṣīṣ al-ʿilla* is not involved in the case of *istiḥsān* based on *qiyās khafī*.[103] Another point worthy of attention here is al-Kāʾānī himself. As a Hanafī-Muʿtazilī living in Irāq during the later period, he demonstrates that the Muʿtazilite influence on Hanafism in Irāq persisted to some extent even in the eighth century AH.[104]

The claim in this explanation is striking for those who oppose the specification of the rationale. For the Ḥanafī scholars, who prefer to reason within systems resembling a network of general principles, the exemplars of these principles are the rationales themselves. Each rationale essentially serves as the provider of the automatic solutions offered by this mechanism or pattern of rulings. Every exceptional disjunction in the network of rulings, however, is explained by a specific rationale. These rationales are precisely the forms of *istiḥsān*. Acknowledging the perception of inconsistency with analogy requires, in turn, acknowledging the existence of such a system in the background. This is because inconsistency can only be recognized in the context of an established system. The point emphasized in the mentioned explanation is that when the rationale is assigned exclusively, asserting its absence essentially implies the absence of either this system itself or any textual evidence contradicting it.

The intriguing aspect is that the claim in the passage had already been articulated by al-Samarqandī much earlier. He draws attention to the fact that the concept of "textual evidence contradicting analogy" is not accepted by the *mashāyīkh* of Samarqand. To him, this rejection stems from the fact that it is only compatible with a system that acknowledges *takhṣīṣ al-ʿilla*. However, for those who do not accept *takhṣīṣ al-ʿilla*, the presence of a text contradicting analogy necessitates the invalidation of the analogy itself. This is because, in their framework, the rationale is inherently tied to the ruling; if the rationale does not lead to a ruling, it ceases to qualify as the rationale in the first place. According to the *mashāyīkh* of Samarqand or al-Samarkandī himself, neither *qiyās* that contradicts a *nass* (textual evidence) nor a *nass* that contradicts *qiyās* can be posited. This is because, when both *qiyās* and *nass* are sound, the idea that one could contradict another is inconceivable. Consequently, the claim of incompatibility with *qiyās*, which leads to the acceptance of *takhṣīṣ al-ʿilla*, is untenable within

102 Ibn al-Humām, *al-Taḥrīr*, III, 177.

103 Öncel, *İstihsan*, 135.

104 Karakuş, *Muʿtezile Fıkıh Usûlünün Hanefî Usûlüne Etkisi*, 87.

the framework of the Samarkandī scholars. In such exceptional cases, the factor that prevents the application of the rulings to specific cases lies in the fact that their meanings are unintelligible (*ghayr maʿqūl al-maʿnā*).[105]

Although it is not explicitly stated here, the primary target of al-Samarkandī's criticism appears to be al-Sarakhsī-al-Bazdawī and their followers, who are frequently subjected to his critiques. This is because they accept *qiyās* contradicting *nass* and, vice versa, while rejecting *takhṣīṣ al-ʿilla*. Al-Bukhārī, who addresses al-Samarkandī's claim in his work, attempts to explain the situation by arguing that those who reject the specification of the rationale are referring not to a genuine inconsistency with *qiyās* but rather to a superficial one. However, al-Bukhārī's explanations are not particularly convincing or satisfactory.[106]

As seen, the debate over the specification of the rationale reflects the intricate interplay between established principles of causality, analogical reasoning, and textual evidence within Islamic jurisprudence. While proponents like al-Jaṣṣāṣ and Ibn al-Humām align specification with *istiḥsān*, framing it as an adaptive mechanism for resolving inconsistencies, critics such as al-Samarkandī emphasize the fundamental incompatibility of causality with rulings that contradict stronger evidence. Moreover, those who accepted *takhṣīṣ al-ʿilla* often presented the specification of the general expression (*taḫṣīṣ al-ʿāmm*) as a legitimate basis for it, a position closely tied to their tendency to seek full synchronization between rulings derived from textual evidence and those derived from the rationale. According to this reasoning, just as the general expression of a *nass* can undergo specification, so too should the rationale be able to be specified. In essence, *takhṣīṣ al-ʿilla* represents an attempt to preserve consistency, for the general premises of the Irāqī Hanafī tradition make such an explanation possible. Since Irāqīs, contrary to their opponents, accepted the generality of meaning—and it should be noted here that the rationale is regarded as meaning—they were more inclined toward the notion of a specified rationale. For the Samarqand Hanafīs, however, such a conception was impossible. Since they denied the generality of the meaning, and consequently the generality of the rationale, they therefore rejected its specification.[107] These divergent views underscore the complexity of reconciling theoretical consistency with practical jurisprudence. Ultimately, the specification of the rationale serves as both a lens for interpreting exceptional cases and a point of contention

105 Samarqandī, *Mīzān*, II, 913-916.

106 Bukhārī, *Kashf al-asrār*, III, 446.

107 Nasafī, *Kashf*, I, 176-77.

within the broader framework of Hanafī legal theory. By exploring these nuanced positions, it becomes evident that the integrity of legal reasoning hinges on a delicate balance between preserving universal principles and addressing particularities without undermining the system's foundational coherence.

Conclusion

The intricate and historical discourse surrounding the specification of the rationale reveals the nuanced interplay between theology and legal theory within the Hanafī school. This study has demonstrated how this concept became a focal point for divergent intellectual trajectories between the Irāqī and Transoxanian Hanafī traditions. Central to this divergence was the interaction of Muʿtazilite and Sunnī theological frameworks, which shaped the methodological orientations of key Hanafī scholars over centuries. From the foundational contributions of figures like al-Jaṣṣāṣ, who emphasized the utility of *takhṣīṣ al-ʿilla* in preserving the coherence of Hanafī jurisprudence, to the critical rejections by later Transoxanian scholars such as al-Sarakhsī and al-Bazdawī, the debate underscores the Hanafī school's adaptability to theological and intellectual shifts. While Irāqī scholars were more accommodating of Muʿtazilite-influenced methodologies, their Transoxanian counterparts sought to distance themselves from these associations, framing their stance as more aligned with Sunnī orthodoxy. In Correa's words, they took a theological turn in legal theory.[108] A concept that was almost unanimously accepted by Hanafī theorists during the formative period of the Hanafī legal theory was later, quite cleverly, drawn into a controversial domain and presented as a point of divergence between the Irāqī and Transoxanian Hanafīs. Moreover, proponents of *takhṣīṣ al-ʿilla*, just as their opponents, argued that this approach was in fact consistent with the views of the founding imāms.

The enduring question of whether the specification of the rationale aligns with or diverges from the principles of *ahl al-sunnah* highlights the evolving nature of Islamic jurisprudence. Theological implications, such as the potential connection to the Muʿtazilite doctrine of *aṣlaḥ* and other central concepts, were pivotal in shaping the rejection or acceptance of the specification. These theological dimensions were not merely academic but were also deeply tied to the socio-political contexts in which these scholars operated, particularly during periods of heightened anti-Muʿtazilite sentiment. Despite theoretical disagreements, the practical outcomes in Hanafī jurisprudence often remained consistent, reflecting

108 Correa, "Theological Turn", 111-126.

a shared commitment to the foundational principles of the school. This consistency suggests that the discourse on *takhṣīṣ al-ʿilla* was as much about intellectual positioning and identity as it was about substantive legal differences. The retrospective justification of rulings, rather than the prescription of new ones, underscores the importance of this debate in shaping the methodological and theological boundaries of the Hanafī tradition.

In conclusion, the debate over *takhṣīṣ al-ʿilla* exemplifies the dynamic interaction between theology and legal theory in Islamic scholarship. It highlights the Hanafī school's capacity to navigate and integrate diverse intellectual influences while maintaining its coherence and integrity. The historical and theological nuances of this debate continue to offer valuable insights into the complexity of Islamic legal traditions and their evolution over time. The debate over whether the specification of the rationale constitutes *istiḥsān* remains a contentious issue in Hanafī jurisprudence. Proponents view it as a necessary mechanism to reconcile contradictions, while opponents argue that it undermines the integrity of causal reasoning. This unresolved tension reflects broader methodological differences within the Hanafī tradition and highlights the challenges of maintaining coherence in legal reasoning amidst competing evidential hierarchies.

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Araştırma Makalesi / Research Article

A Rebellious Prince in Ottoman Fatwas: The Case of Şehzade Bayezid

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Abstract

The rebellion of Şehzade Bayezid (d. 1562) constituted a major succession crisis in the later years of Sultan Süleyman's reign (1520-1566). The immediate cause of the conflict was the rivalry between Bayezid and his brother Selim over succession to the throne. Convinced that Selim had secured their father's favor, Bayezid began to challenge imperial directives and gradually gathered a substantial military following. Although Sultan Süleyman initially pursued a strategy of extended correspondence and cautious engagement, these efforts ultimately failed to prevent the prince from initiating armed confrontation. In the battle of 1559, Bayezid's forces were defeated by Selim's army, backed by the Sultan, prompting him to seek refuge in the Safavid dynasty. His eventual extradition and execution concluded the political crisis. This study analyzes a body of fatwas issued during the height of Bayezid's activities, which illuminate the often-overlooked legal dimensions of the rebellion. These fatwas, some providing detailed rulings and others endorsing earlier opinions, uniformly situate Bayezid's actions within the Islamic legal concept of *baghy* (rebellion), thereby demonstrating a remarkable juristic consensus across the empire. The study examines the nuances of this juridical discourse and how Ottoman scholars, most notably Ebussuud Efendi, navigated the doctrinal stipulations to construct a coherent and complementary framework to address Bayezid's rebellion.

Keywords: Ottoman law, Ḥanafī jurisprudence, *Baghy*, Rebellion, Ottoman fatwas, Şehzade Bayezid, Sultan Süleyman, Ebussuud

Osmanlı Fetvalarında Asi bir Şehzade: Bayezid Vakası

Öz

Şehzade Bayezid'in isyanı, Kanûnî Sultan Süleyman'ın hükümdarlığının son dönemlerinde yaşanan ve Bayezid ile kardeşi Selim arasındaki rekabetten kaynaklanan önemli

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DOI: 10.26570/isad.1736342 • Gelis/Received 07.07.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Şimşek, Ayşegül, "A Rebellious Prince in Ottoman Fatwas: The Case of Şehzade Bayezid", *İslam Araştırmaları Dergisi*, 55 (2026): 245-266.

bir taht mücadelesidir. Selim'in babalarının desteğini kazandığını düşünen Bayezid, sultanın emirlerini göz ardı ederek kalabalık bir ordu toplamaya başlamıştır. Sultan Süleyman'ın Bayezid ile uzun yazışmaları ve ona karşı ihtiyatlı yaklaşımı, nihayetinde şehzadenin silahlı mücadeleye girişmesine engel olamamıştır. 1559 yılında meydana gelen çarpışmada Bayezid'in ordusu, Süleyman tarafından desteklenen Selim'in kuvvetlerine mağlup olmuş; Bayezid çareyi Safevî Devleti'ne sığınmakta bulmuştur. Siyasî kriz ancak Bayezid'in Osmanlı'ya iadesi ve sonrasında öldürülmesiyle nihayete ermiştir. Bu çalışma, Bayezid'in faaliyetlerinin yoğunlaştığı dönemde verilmiş olan ve isyanın çoğu zaman göz ardı edilen hukukî boyutlarına ışık tutan bir grup fetvayı ele almaktadır. Bazıları ayrıntılı hükümler ortaya koyan, diğer bir kısmı önceki görüşleri onaylamakla yetinen bu fetvalar ortak bir dille Bayezid'in fiillerini *bağy* olarak değerlendirmektedir. Bu durum, Osmanlı uleması arasında dikkat çekici bir görüş birliği örneği sergilemektedir. Bu çalışma, söz konusu hukukî söylemin nüanslarını ve başta Ebüssuûd Efendi olmak üzere Osmanlı âlimlerinin Bayezid'in isyanına yönelik olarak doktriner sınırlar içinde tutarlı ve birbirini tamamlayıcı bir çerçeve inşa etme şeklini incelemektedir.

Anahtar Kelimeler: Osmanlı hukuku, Hanefî fıkhı, *Bağy*, İsyan, Osmanlı fetvaları, Şehzade Bayezid, Sultan Süleyman, Ebüssuûd.

1. Introduction[1]

Sultan Süleyman the Lawgiver (r. 1520-1566) ascended the Ottoman throne without opposition, yet the final years of his reign were ultimately defined by intense succession struggles among his sons. In 1553, Süleyman ordered the execution of his son Şehzade Mustafa on charges of alleged treason. He later proved unable to prevent the intensifying rivalry between his remaining sons, Selim (r. 1566-1574) and Bayezid. As their conflict threatened to escalate into a civil war, the Sultan aligned himself with Selim. The confrontation compelled Bayezid to flee to Safavid Iran, where he sought refuge under Shah Tahmasp (r. 1524-1576). After prolonged diplomatic negotiations, the Shah agreed to surrender the prince, and Bayezid was executed in 1562 by his brother's agents.

Unlike the case of Mustafa, for which no explicit authorizing fatwa survives, the suppression of Bayezid's rebellion was accompanied by an extensive set of legal opinions issued by prominent Ottoman scholars. A document now held in the Veliyyüddin Efendi collection preserves a series of fatwas concerning the proper course of action against Bayezid and his followers.[2] The chief jurist, Şeyhülislam Ebussuud Efendi (d. 1574), issued the initial fatwa in this document, which appears to have served

1 This article draws on research conducted as part of the TÜBİTAK 1001 project "*Osmanlı Hukukunu Kurmak: Fetva ve Risaleler Işığında 16. Yüzyıl Osmanlı Hukuku*." I would like to thank Mürteza Bedir, Şükrü Özen, and Süleyman Kaya for their valuable contributions during the course of this research.

2 Veliyyüddin Efendi, MS 3216/6, 67^{b}-69^{b}.

as the foundation for subsequent opinions by other scholars. His fatwa is followed by fourteen additional fatwas by various jurists, some still in office and others retired, who had served in different courts or *madrasas* across the empire. First published by Şerafettin Turan,[3] this document has been treated in modern scholarship as the sole and definitive body of fatwas pertaining to Bayezid's rebellion.

This study, however, revises that assumption. It expands the evidentiary basis for analysis by introducing an important yet previously overlooked document preserved in Kastamonu Library.[4] This manuscript not only contains all the fatwas found in the Veliyyüddin Efendi copy but also includes twelve supplementary endorsements. In addition, the analysis also incorporates Ebusuud's fatwas concerning Bayezid found in other collections. Building on this expanded corpus, the central claim of this study is that Ottoman jurists did not merely provide *post hoc* legitimation for an already determined political outcome; rather, they articulated their rulings through a recognizable and internally coherent engagement with the Ḥanafī legal tradition, particularly the doctrine of *baghy* (rebellion), that they invoked in addressing Bayezid's case.

Existing scholarship has overwhelmingly approached the Bayezid affair as a political and dynastic crisis within Ottoman history. This focus has naturally drawn most of the scholarly attention from historians. Among these works, Şerafettin Turan's pioneering study remains the most comprehensive, providing a detailed account of the events leading to Bayezid's execution and reproducing several key documents, including the fatwas. Yet he treats these fatwas largely as documents of political endorsement rather than as juridical arguments requiring legal analysis.[5] Other studies have similarly focused on the historical dimensions of the affair, aiming to address aspects not covered by Turan.[6] Additionally, Bayezid's reputation as an accomplished poet has drawn attention in several works exploring his literary legacy.[7] As a result, despite their richness

3 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 202–4.

4 Kastamonu KHK, MS 1757, 71[a]-72[a]. I am deeply grateful to Bayram Pehlivan for generously drawing my attention to the Kastamonu manuscript, which has proved essential to this study.

5 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 109–112.

6 See, for example, Öztelli, "Kanunî'nin Oğlu Şehzade Bayezid'in Babasına Son Mektubu"; Deniz, "İsyan, İltica ve Ölüm". For other studies on the Bayezid affair, see, for example, Uzunçarşılı, "Babasından Sonra Saltanatı Elde Etmek İçin Kardeşi Selim'le Çatışan Şehzade Bayezid'in Amasya'dan Babası Kanuni Sultan Süleyman'a Göndermiş Olduğu Ariza"; Gülten, "Kanuni'nin Maktul Bir Şehzadesi: Bayezid".

7 See, for example, Çiçekler, "Şehzâde Bayezid ve Farsça Divançesi"; Kılıç, *Şehzade Bayezid Şâhî*. The correspondence between Sultan Süleyman and Bayezid was

and unusual collective character, the fatwas themselves have rarely been analyzed as legal texts grounded in a specific doctrinal framework.

The few scholars who do address these fatwas tend to subordinate legal reasoning to broader institutional or political questions. Richard Repp situates these fatwas within the context of public policy matters with which Ebussuud was closely associated, yet his analysis is less concerned with their juridical framework than with assessing whether Ebussuud occupied a uniquely authoritative position.[8] Colin Imber, while acknowledging the authority of *muftis* in political matters and the fact that even sultans needed their counsel, also contends that the *muftis* were fully aware of the circumstances surrounding their rulings and, in most cases, were inclined to deliver the responses desired by the sultan or other officials. He cites the fatwas concerning Bayezid as illustrative of such juristic compliance.[9] This approach, however, risks reducing legal argumentation to mere rhetoric rather than engaging with its doctrinal content. Finally, Baki Tezcan frames the episode as evidence of jurists' growing involvement in dynastic affairs, but his interpretation foregrounds the political consequences of legal consultation rather than the internal constraints of the legal tradition that shaped those consultations.[10]

In contrast, this study places legal reasoning at the center of analysis. By integrating newly identified primary sources, it offers a more complete view of the juridical discourse surrounding Bayezid's rebellion. Drawing on this expanded corpus, the article examines how Ottoman jurists conceptualized the rebellion within the Ḥanafī doctrine of *baghy* and argues that they operated within a discernible legal framework that cannot be reduced to mere legitimation. In doing so, the study aims to contribute to broader discussions about the extent to which Ottoman jurists adhered to established legal principles when addressing politically charged matters. To provide essential context for a clearer interpretation of the material, the article first presents a brief historical overview of Bayezid's rebellion before proceeding to a detailed analysis of the fatwas themselves.

2. Bayezid's Rebellion: An Historical Overview

The mid-sixteenth-century Ottoman Empire was marked by economic instability, fierce political rivalries, and widespread social unrest. The execution of Şehzade Mustafa in 1553, a popular figure among the military

sometimes conducted in poetic form. For an English translation of a representative example of Süleyman's verse, see: İnalcık, "State, Sovereignty and Law", 74.

8 Repp, *The Müfti of Istanbul*, 284–288.

9 Imber, *The Ottoman Empire*, 243.

10 Tezcan, *The Second Ottoman Empire*, 42–3.

and the leading candidate for the throne, deepened existing tensions that soon re-emerged around his half-brother, Şehzade Bayezid.[11] After Mustafa's death and the subsequent passing of Şehzade Cihangir, only two heirs remained: Selim and Bayezid, both sons of Hürrem Sultan (Roxelana). At first, Bayezid appeared the stronger contender, while Selim gradually gained the favor of his father through his compliant nature.[12]

The political landscape grew even more unstable when an impostor claiming to be the slain Mustafa raised a large following in Rumelia. While this uprising was swiftly suppressed, contemporary accounts hinted at Bayezid's secret involvement and suggested that he escaped punishment only through his mother's intervention.[13] After Hürrem's death, however, the rivalry between the two surviving princes intensified. Seeking to prevent open conflict, Sultan Süleyman reassigned Selim from Manisa to Konya and Bayezid from Kütahya to Amasya. Bayezid interpreted this transfer as a clear sign of his father's favoritism toward Selim. He resisted the order, delayed his departure for months, and gathered armed supporters as he moved eastward. Despite Süleyman's conciliatory letters and promises of reward, Bayezid's resentment hardened into defiance of both his brother and his father's authority.[14]

Bayezid's cause attracted many of the same disaffected groups that had supported earlier upheavals. This transformed Bayezid's personal grievance into a broader socio-political revolt reflective of Anatolia's deep-seated unrest. By 1559, Süleyman's distrust of his son was absolute. Imperial correspondence preserved in the *mühimme* (significant affairs) registers depicted an empire on alert: urgent dispatches ordered provincial officials to seize Bayezid if he sought refuge within their territories.[15] In these documents, he appears as *Bayezid-i bāghī*,[16] a rebel who had broken allegiance to his father,[17] belonging to the ranks of *ahl al-baghy* (people of rebellion) and *ahl al-fasād* (people of corruption).[18] The orders not only demanded Bayezid's capture but instructed officials to deal with him (and by extension, his followers) in accordance with the Sharia; suggesting that "they should be treated as *ahl al-baghy* should be treated."[19]

11 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 6.

12 Imber, *The Ottoman Empire*, 104–5.

13 Busbecq, *The Turkish Letters*, 82–4; Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 39–43.

14 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 50–65; Imber, *The Ottoman Empire*, 105.

15 See, for example, *3 Numaralı Mühimme Defteri*, 9–11, 29.

16 *3 Numaralı Mühimme Defteri*, 22.

17 *3 Numaralı Mühimme Defteri*, 29.

18 *3 Numaralı Mühimme Defteri*, 43–44.

19 *3 Numaralı Mühimme Defteri*, 152.

Despite Bayezid's repeated letters of apology and self-justification, Süleyman remained unmoved.[20] In these letters, he argued that he took up arms not against the Sultan, but in self-defense against his brother Selim, who allegedly sought to kill him.[21] When the military confrontation became inevitable in 1559, the rival armies clashed near Konya. With the Sultan's support behind him, Selim's army defeated Bayezid's troops. Pursued by his brother's forces and realizing reconciliation was impossible, Bayezid, together with his sons and remaining troops, fled and sought refuge in Iran.[22]

Shah Tahmasp I of the Safavid Empire initially welcomed the fugitive prince. In a final attempt, Bayezid pleaded for his father's forgiveness and requested that the Shah intercede on his behalf. For a brief period, Süleyman seemed inclined to pardon him, but this inclination ultimately faded - largely under Selim's influence.[23] Tahmasp, seizing the opportunity to advance his own interests, presented a series of ambitious demands to the Ottomans. Meanwhile, relations between Bayezid and his Persian hosts deteriorated as rumors of conspiracy against the Shah began to circulate. Shah Tahmasp eventually imprisoned the prince and dispersed his remaining forces.[24] After prolonged negotiations, Süleyman agreed to an exchange. In 1562, Tahmasp surrendered Bayezid and his sons to Ottoman agents, who executed them soon afterward. Their deaths brought the dynastic struggle to an end and cleared Selim's path to the throne.[25]

Recent scholarship interprets the Bayezid affair not merely as a dynastic tragedy but as an event with profound consequences. His rebellion contributed to the militarization of the Anatolian countryside, as firearms became more widely accessible.[26] Because the majority of Bayezid's followers were peasants, his rebellion foreshadowed the large-scale Celali uprisings that would erupt later in the century.[27] The execution of Bayezid and his sons was met with strong popular resentment,[28] a sentiment preserved in chronicles and folklore.[29]

20 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 107–8.

21 See, for example, Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 193.

22 Busbecq, *The Turkish Letters*, 159–61; Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 113–5, 126–8; Imber, *Ottoman Empire*, 106–7.

23 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 136–9.

24 Busbecq, *Turkish Letters*, 163–5; Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 140–2.

25 Busbecq, *Turkish Letters*, 222–6; Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 144–55, 126–8; Imber, *The Ottoman Empire*, 107.

26 Karen, *Bandits and Bureaucrats*, 168; Özel, *The Collapse of Rural Order*, 37.

27 Sariyannis, *A History of Ottoman Political Thought*, 146.

28 Daregenli, "Osmanlı Tarihinde İbret Verici Bir Taht Mücadelesi" 47. The executions provoked outrage not only among the Ottoman subjects but also among the Iranian people, who reportedly threw stones at Ottoman representatives in protest. See: Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 155.

29 For Evliya Çelebi's account of a supernatural event involving Sultan Süleyman near Bayezid's grave, see: Fisher, "The Life and Family of Süleymân I", 16.

3. Bayezid's Rebellion in Ottoman Fatwas

a. Distinguishing the Cases: Mustafa's Execution and the Absence of Rebellion

Bayezid was not the first son of Sultan Süleyman to be executed. Before turning to the fatwas concerning Bayezid's case, it is worthwhile to address briefly whether his brother Mustafa's execution was legitimized through legal opinions. As several scholars have already noted, no fatwa has yet been documented that explicitly refers to Mustafa's case.[30] Nevertheless, a contemporary account suggests that such a consultation did occur. Ogier Ghiselin de Busbecq, a European diplomat stationed in Istanbul, recorded that Süleyman sought a fatwa from his *mufti,* Ebussuud, concerning the execution of his son, Mustafa.[31] Turan has further elaborated on this account, identifying a fatwa mentioned in another European source that, while not explicitly referring to a prince, appears to address the situation metaphorically. According to this narrative, Süleyman posed a hypothetical scenario to the *mufti*: a merchant departs on a journey and entrusts his wife, children and business to his slave. If the slave then ruins his master's business, seduces his wife, traps his children and plots to kill his master, what punishment would he deserve? Ebussuud's reported response is that the slave should be executed.[32]

The reliability of these indirect European accounts, in the absence of confirming Ottoman sources on such a significant matter, is, however, questionable.[33] Even if such a fatwa did exist, its connection to Mustafa's execution remains speculative at best. To equate the sultan's own son with his slaves, even under the charge of treachery, would nonetheless be a considerable stretch. As Repp observes, although it is unlikely that Süleyman acted without any form of legal consultation, Mustafa's execution was treated primarily as a private matter and would have been probably more difficult to justify on the grounds of rebellion than Bayezid's case.[34] Consequently, the absence of a relevant fatwa in Ottoman sources suggests that Mustafa's execution was neither substantively nor publicly legitimized through formal legal opinions.

30 Repp, *The Müfti of Istanbul*, 284; Tezcan, *The Second Ottoman Empire*, 42; Atçıl, "Why Did Süleyman the Magnificent Execute His Son", 91.

31 Busbecq, *The Turkish Letters*, 31.

32 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 31.

33 Busbecq's narration of fatwas concerning Bayezid, for example, are not entirely faithful to the originals, as noted by Repp, *The Müfti of Istanbul*, 285.

34 Repp, *The Müfti of Istanbul*, 288–9.

The absence of a well-known legal justification for Mustafa's execution is understandable, given that he never actually took up arms against his father, and his actions cannot plausibly be assessed through the framework of *baghy*, unlike Bayezid's case. It is therefore crucial to clarify that this article does not seek to compare the two princes' executions on the basis of *baghy*. Rather, Mustafa's case is referenced only as a dynastic episode that closely preceded Bayezid's and represents yet another instance of Sultan Süleyman ordering the execution of a son. Beyond this basic similarity, the two cases bear no significant resemblance, least of all in their legal character.

b. Establishing the Framework: The Concept of *Baghy*

In stark contrast to Mustafa's case, a substantial corpus of fatwas addresses the case of Şehzade Bayezid, although the individual rulings, as customary, refrain from naming him directly and are framed in hypothetical terms. The titles of the two extant copies, however, remove any ambiguity about their concrete historical context. The Veliyyüddin copy is titled "The fatwas issued by the *mawālī* [high-ranking Ottoman judges] concerning the prince named Sultan Bayezid," whereas the Kastamonu copy bears the title "These are the statements that the scholars of Rūm wrote concerning Sultan Bayezid, son of Sultan Süleyman (may God have mercy on him)."[35] These two headings unequivocally establish that the fatwas were not abstract legal deliberations but specific rulings directed at a specific historical case.

Before turning to a detailed analysis of the content of these fatwas, a preliminary examination shows that their reasoning is firmly grounded in classical Ḥanafī legal doctrine, most notably in the characterization of the rebellious prince and his followers as *ahl al-baghy*, which necessitates a brief introduction of the legal concept of *baghy*. While *baghy* can be translated simply as "rebellion," its technical legal meaning is considerably more nuanced. An early yet succinct classical Ḥanafī definition is provided by Abū Jaʿfar al-Ṭaḥāwī (d. 321/933), who articulates the identity of *ahl al-baghy* as follows:

> If a group from the people of the Qiblah [i.e., Muslims] put forward an opinion (*raʾy*),[36] call [others] to it and fight over it, and have [military] strength (*manʿa*), they are asked what prompted them to go out (*khurūj*). If they cite something in which they were oppressed (*ẓulimat*), they are

35 "*Sultân Bâyezîd Nâm Şehzâde Hakkında Mevâlînin Verdikleri Fetvâlardır*." Veliyyüddin Efendi, MS 3216, 67[b]; "*Hādhihī al-ṣuwar allatī katabahā ʿulamāʾ al-Rūm fī ḥaqq al-Sulṭān Bāyezīd ibn al-Sulṭān Sulaymān raḥimahullāh*", Kastamonu KHK, MS 1757, 71[a].

36 In most *fiqh* texts on *ahl al-baghy*, a more common term than *raʾy* is *taʾwīl* (interpretation). While *taʾwīl* generally evokes a form of religious reasoning, political or social interests may also constitute a *taʾwīl*, as noted by Kopuz, *Reproduction of the Ottoman Legal Knowledge*, 274–5.

> granted justice regarding whoever oppressed them. Otherwise, they are invited to rejoin the Community and enter into obedience to the imam whose obedience is obligatory for them. If they comply, [the matter ends]; otherwise, they are fought.[37]

Ottoman scholars such as Molla Khusraw (d. 885/1480) and Ibrāhīm b. Muḥammad al-Ḥalabī (d. 956/1549), whose works became primary reference texts for Ottoman *mufti*s also address *baghy*, and the substantial commentarial tradition on their writings treats the subject in detail. In line with the earlier Ḥanafī definitions, these sources identify the core elements of *baghy* as *khurūj*, *manʿa/shawka* and *taʾwīl*, provided that the parties involved are Muslims.[38] Naturally, by the Ottoman period, the Ḥanafī approach had evolved, with certain aspects of the doctrine receiving more extensive discussion than others.[39]

The primary question that concerns us here is whether the Ḥanafī legal framework aligns with the case of Bayezid. In other words, can the concept of *baghy* be considered legally applicable to Bayezid and his followers? This study does not seek to adjudicate this question, but rather to explore the reasoning that might have guided the *mufti*s of the time. When evaluated against the criteria outlined in the definition above, it appears that the case against Bayezid – unlike that of Şehzade Mustafa, for example – could be reasonably situated within the category of *baghy*.

First, the primary attribute of *ahl al-baghy* in all Ḥanafī texts is that they are Muslims.[40] This criterion is easily satisfied in the case of Bayezid and his followers, who were never accused of holding heretical beliefs.[41] Secondly,

37 Ṭaḥāwī, *Mukhtaṣar*, 257. For a comparable technical definition of *baghy*, see Dawoody, *The Islamic Law of War*, 150.

38 See, for example, Shurunbulālī's commentary on Molla Khusraw, *Durar al-ḥukkām*, 1:305; Ḥalabī, *Multaqā al-abḥur*, 354; Bāqānī, *Majrā al-anhur* (Nuruosmaniye, MS 1637, 341[b]-342[a]); Şeyhizade, *Majmaʿ al-anhur*, 1:699. For an English translation of the definition of *baghy* from a commentary on *Multaqā*, see Kopuz, *Reproduction of the Ottoman Legal Knowledge*, 295, note 799.

39 For a detailed analysis of this development with respect to *Multaqā al-abḥur* and its *sharḥ*s, see Kopuz, *Reproduction of the Ottoman Legal Knowledge*, 268–317.

40 An important exception should be noted: if non-Muslims living under Muslim rule (*dhimmī*s) join *ahl al-baghy,* this neither affects the classification of the group as *ahl al-baghy* nor nullifies the *dhimmah* contract of the non-Muslims. See: Shaybānī, *Aṣl*, 7:515; Sarakhsī, *Mabsūṭ*, 10:128; Jurjānī, *Khizānat al-akmal*, 2:274; Bukhārī, *Muḥīṭ*, 5:153; Bāqānī, *Majrā al-anhur* (Nuruosmaniye, MS 1637, 341[b]). For a significant discussion of this issue in the Ottoman context, see Kopuz, *Reproduction of the Ottoman Legal Knowledge*, 327, note 856.

41 Compare this with the case of the Safavids, for example, who were described as heretical unbelievers (*kāfir wa mulhid*) by Sarigörez, as apostate unbelievers (*kāfir*

they undeniably possessed military strength, as Bayezid had mobilized a force of tens of thousands of soldiers. This condition is therefore clearly met. Moreover, they fought under a legitimizing interpretation, believing that their cause was righteous. As mentioned previously, Bayezid insisted in his letters to his father that he was acting only in self-defense against Selim. Crucially, the doctrinal requirement of *taʾwīl* concerns the *bāghīs*' subjective belief in their justification, not the objective validity of their claim.

An objection might be raised here: Prince Bayezid's principal military engagement was not directly against his father, the Sultan, but rather against his brother Selim, who at the time held the same title of Şehzade. On this basis, Bayezid might not be regarded as someone who had withdrawn obedience from the imam "whose obedience is obligatory." However, since Süleyman explicitly supported Selim by sending reinforcements to strengthen his army, the conflict can reasonably be interpreted as an act of rebellion against the Sultan's authority, with Selim's forces effectively representing the Sultan himself.

Finally, one might ask whether Bayezid and his supporters were questioned about the reasons for their actions and offered an opportunity for reconciliation. The correspondence between Süleyman and Bayezid reveals a period of negotiation, during which Bayezid repeatedly expressed his resentment, implying that Süleyman favored his brother Selim over him. The Sultan made several concessions to appease his son.[42] From a legal standpoint, this exchange may be interpreted as affording Bayezid sufficient opportunity to reflect on his position and choose obedience to the Sultan rather than persistence in rebellion. Moreover, although the definition mentioned above does not explicitly stipulate this point, the dominant Ḥanafī position held that the call to obedience is preferable but not strictly obligatory.[43] Consequently, having met these conditions, the legal conclusion regarding *bāghī*s becomes clear: They must be fought, as the detailed fatwas that we now turn unanimously affirm in the case of Bayezid and his followers.

wa murtadd) by Kemalpaşazade, and as unbelievers (*kāfir*), apostates (*murtadd*) and rebels (*bāghī*) by Ebussuud. See: Atçıl, "The Safavid Threat", 299–309.

42 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 63–4.

43 Shaybānī, *Aṣl*, 7:515; Jurjānī, *Khizānat al-akmal*, 2:274; Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:140; Marghīnānī, *Hidāya*, 2:411–2; Molla Khusraw, *Durar al-ḥukkām*, 1:305 (Shurunbulālī's commentary); Bāqānī, *Majrā al-anhur* (Nuruosmaniye, MS 1637, 341[b]); Şeyhizade, *Majmaʿ al-anhur*, 1:699.

c. Applying the Doctrine: Detailed Legal Rulings

The coherence of the juristic response is most clearly reflected in the detailed fatwas concerning Bayezid and his followers. These fatwas move from principle to practice and suggest the implementation of the doctrine of *baghy* by addressing its complex, concrete implications. This process begins with the first hypothetical question posed in both copies of the document, which may be translated as follows:

> If one of the sons of a just (*ʿādil*) sultan withdraws his obedience, seizes control of a fortress, extort goods from its inhabitants by force, gathers troops, and if there is no other way to repel them and they were to initiate fighting, would it be permissible, according to the Sharia, to fight and kill them until they are defeated and their assembly is dispersed?

The only direct response recorded to this question is provided by Ebussuud:

> It is permissible. This is a legal ruling of Sharia established by the decree of the Noble Qurʾān and supported by the consensus of the noble Companions. Those who are capable of fighting must do so by engaging in battle; those who are not must strive to repel sedition (*fitna*) and corruption (*fasād*) through truthful speech and prayers.[44]

In this fatwa, Bayezid is depicted as having disobeyed the just ruler by seizing certain territories, forcibly extracting funds from their inhabitants, and raising a private army, actions that lead to imminent armed conflict. Apart from the aforementioned nuance, namely, that Bayezid's confrontation was primarily directed against his brother Selim's forces rather than those of his father, the description remains largely consistent with the historical record.

Ebussuud's response begins with an absolute authorization of military action against this group. He grounds this ruling in the Qurʾān and the consensus of the Companions, thereby implicitly invoking the legal

44 *"Bir sultan-ı âdilin ebnâsından biri tâatinden hurûc edip bazı kaleye müstevlî olup ve bazı bilâdın ehline mal salıp cebr ile alıp asker cem' edip gayrı tarîkle def' mümkün olmayıp kıtâle mübâşeret eyleseler onların kıtâlleri ve sınıp cemiyetleri dağılıncaya değin katilleri şer'an helal olur mu?*

el-Cevab: Helaldir. Nass-ı Kur'an-ı Azîm ile sabit olmuş hükm-i şer'îdir ve icma-i sahabe-i kirâm dahi bunun üzerinedir. Kıtâle kâdir olanlar kıtâl ile, âciz olanlar kelam-ı hak ile ve hayır dua ile def'-i fitne ve fesâda sa'y etmek vaciptir." Veliyyüddin Efendi, MS 3216/6, 67[b]–68[a]; Kastamonu KHK, MS 1757, 71[a]. See also: Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 202. The same fatwa by Ebussuud, with almost identical wording, is also found in *Rasāʾil al-Masāʾil*, Belediye, MS B.17/1, 120[b], under the title "Concerning Sultan Bayezid, son of Sultan Süleyman."

framework of *baghy*. The primary Qurʾānic evidence cited by jurists concerning *ahl al-baghy* is found in *Sūrat al-Ḥujurāt* (49:9–10), translated by Khaled Abou el Fadl as follows:

> If two parties among the believers fight each other, then make peace between them. But if one of them transgresses (*baghat*) against the other, then fight, all of you, against the one that transgresses until it complies with the command of God. But if it complies, then make peace between the two parties with justice and be fair, for God loves those who are fair and just. The believers are but a single brotherhood. So reconcile your two [contending] brothers, and fear God so that you will receive His mercy.[45]

The consensus mentioned by Ebussuud alongside the Qurʾān likely refers to reports indicating that the Companions reached a consensus regarding the proper course of conduct in times of *fitna*.[46] Significantly, Ebussuud elevates the matter from mere permissibility to a collective obligation: those capable of fighting the rebels are required to do so, while those unable must nevertheless support the cause vocally and through prayer. In this conception, neutrality is not an option; all are expected to align themselves with the legitimate sultan to the extent of their ability. This position is consistent with the classical Ḥanafī position against *ahl al-baghy*, which obliges Muslims to side with the just imam and resist those who rise up against him.[47]

Following the first fatwa, in which Ebussuud appears to be the sole respondent, both copies of the document proceed to a second inquiry. This question, while similarly phrased with the first one, shifts the focus from the rebellious prince himself to the status of those who, while not directly participating in combat alongside the rebels, nevertheless support their cause in various ways:

> If a group abandons the obedience of a just sultan, seizes control of a fortress, gathers troops, extort goods from the inhabitants of some regions by force, and initiates war, do those who assist them by voluntarily providing goods, or through speech and deeds, or who assert that it is not lawful to draw the sword against them, fall under the same ruling as them, and is it legally permissible to fight and kill them according to the Sharia?[48]

45 Abou el Fadl, *Rebellion and Violence*, 37.

46 Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:283; Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 6:106; Sarakhsī, *Mabsūṭ*, 10:128; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:314; Kāsānī, *Badāʾiʿ al-ṣanāʾi*, 7:141; Bukhārī, *Muḥīṭ*, 5:152.

47 Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:281; Sarakhsī, *Mabsūṭ*, 10:124.

48 *"Bir taife sultan-ı âdil tâatinden hurûc edip bazı kaleye müstevlî olup asker cemʿ edip ve bazı bilâd ehline mal salıp cebr ile alıp kıtâle mübâşeret eyleseler onlara ihtiyarlarıyla mal verip muâvenet edenler veya kaville veya fiille muavenet edenler veya bunlara kılıç çekmek*

Both copies record a largely similar response to this question:

> If those who assist with goods, speech, and deeds are not present among their assembly, they must be imprisoned after being severely beaten until their repentance and good conduct are evident. However, those who assert that it is not permissible to draw the sword against them become infidels for denying the Noble Qurʾān and opposing the consensus of the Companions; thus, fighting them becomes lawful.[49]

At this point, however, a significant divergence emerges between the two copies. The Kastamonu copy again ascribes the response to Ebussuud, whereas the Veliyyüddin copy records it under the name of Hāmid Efendi (d. 1577), who at the time served as the chief judge (*Kazasker*) of Rumelia and would later succeed Ebussuud as the chief jurist (*Şeyhülislam*) following his death.[50] Furthermore, the version attributed to Hāmid Efendi contains a critical addition, concluding with the statement that "drawing the sword against them is not at the level of being immediately permissible; rather, fighting is obligatory for those who are capable."[51] This passage is noteworthy for emphasizing that the duty to fight is neither immediate nor incumbent upon every single Muslim, thereby clarifying the extent to which engaging these rebels is permissible, particularly in response to claims that such fighting is unlawful.

The discrepancy in authorship between the two manuscripts presents an important textual problem that requires closer scrutiny. A careful examination of the evidence strongly suggests that both of the initial fatwas were authored by Ebussuud and that the attribution to Hāmid Efendi in the Veliyyüddin copy results from a scribal error. First, and perhaps most decisively, a separate fatwa collection preserves a ruling by Ebussuud that is nearly identical to the second fatwa in question.[52]

helal değildir diyenler dahi onlar hükmünde olup kıtâlleri ve katilleri şer'an helal olur mu?" Kastamonu KHK, MS 1757, 71[a]. See also: Bozanzāde, *Rasāʾil al-Masāʾil*, Beledive, MS B.17/1, 120[b]. The Veliyyüddin copy omits the passage concerning assistance to the rebels through speech and deeds. Veliyyüddin Efendi, MS 3216/6, 68[a].

49 "*Malla ve kaville ve fiille muavenet edenler cemiyetlerinde olmayacak darb-ı şedîdden sonra tövbeleri ve salâh-ı halleri zahir oluncaya değin hapsolmak vaciptir. Ama onlara kılıç çekmek helal değildir diyenler Kur'an-ı Azîm'e inkar edip ve icma-i ashâb-ı izâma muhalefet etmek ile kafir olup kıtâlleri helal olur.*" Kastamonu KHK, MS 1757, 71[a]. See also Veliyyüddin Efendi, MS 3216/6, 68[a].

50 Baltacı, "Hâmid Efendi," 460.

51 "*…ve onlara kılıç çekmek hemen helal olmak mertebesinde değildir, belki kâdir olanlar kıtâlleri vâcibdir*." Veliyyüddin Efendi, MS 3216/6, 68[a]; Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 202.

52 Bozanzāde, *Rasāʾil al-Masāʾil*, Murad Molla, MS 1115, 157[b]. While Repp notes the existence of an additional external fatwa, he nevertheless concludes that Hāmid Efendi is the more likely author, "if only because it is considerably easier to imagine

This external corroboration substantially strengthens the case for his authorship. Second, the pattern of misattribution in the Veliyyüddin copy is not isolated. Possibly as a result of its initial error in attributing the preceding fatwa to Hāmid Efendi, the manuscript also appears to confuse the authorship of the subsequent two fatwas, assigning them to jurists who appear later in the Kastamonu sequence.[53] Finally, the internal logic of the document itself points to Ebussuud's primary role. Several later fatwas explicitly state their agreement with "the two fatwas," treating the first two opinions as a unified, foundational pair.[54] This mode of reference makes it more plausible that both responses were issued by a single authority, namely Ebussuud, which were then circulated among other scholars for possible endorsement and elaboration.

Proceeding on the assumption that the second fatwa should also be attributed to Ebussuud, several aspects of its content merit closer attention. While the first fatwa established that active rebels deserved to be fought and killed because of their various unlawful actions, this second fatwa adds that non-combatant supporters are liable for punishment. The prescribed beating appears to be a discretionary punishment (*taʿzīr*), since the classical legal framework does not specify a fixed penalty for assistance provided through financial means or speech. The imprisonment may likewise be interpreted as a discretionary measure proposed by Ebussuud; however, it also mirrors the ruling in classical Ḥanafī doctrine concerning *bāghī* captives[55] or hostages,[56] according to which they are to be imprisoned until their repentance or the rebels' defeat. The legal rationale is preventative: as long as the rebellious group remains active, releasing these individuals creates a tangible risk that they will resume their support.

A particularly striking feature of the fatwa is its discussion of those who maintain that armed resistance against Bayezid's forces is impermissible. Unlike ordinary supporters, these individuals justify their stance through a supposedly religious argument. The very inclusion of this question suggests the existence of factions within Ottoman society who, while not actively aiding Bayezid, nonetheless affirmed the legitimacy of his

a misattribution in favour of Ebüssu'ûd Efendi than of Hâmid Efendi." This assessment, however, was made without knowledge of the Kastamonu copy. Repp, *The Müfti of Istanbul*, 286, note 259.

53 For comparison, see Kastamonu KHK, MS 1757, 71ª and Veliyyüddin Efendi, MS 3216/6, 68ª-b.

54 Kastamonu KHK, MS 1757, 71ª-72ª.

55 Abū Yūsuf, *Kitāb al-Kharāj*, 233; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:313; Marghīnānī, *Hidāya*, 2:412; Molla Khusraw, *Durar al-ḥukkām*, 1:305 (Shurunbulālī's commentary); Şeyhizade, *Majmaʿ al-anhur*, 1:700.

56 Shaybānī, *Aṣl*, 7:516; Sarakhsī, *Mabsūṭ*, 10:129; Jurjānī, *Khizānat al-akmal*, 2:274.

cause and regarded warfare against him as unlawful. Though we lack information about who exactly voiced this claim, this form of ideological dissent was evidently significant enough to be cited in the fatwa, where it is characterized as a rejection of a clear Qurʾānic injunction. The reference is again implicit to Qurʾān 49:9, which commands believers to fight the faction that initiates aggression. One might object that these dissenters were not rejecting the verse itself, but rather disputing its applicability to this particular case, perhaps by viewing Bayezid as a legitimate leader with a just cause. Yet such an objection does not necessarily undermine Ebussuud's reasoning: if Süleyman is acknowledged as the rightful imam, as both fatwas indicate, then any opposition to his authority would, by definition, constitute *baghy* – thereby rendering this verse directly applicable.

After the initial two questions and Ebussuud's responses, the subsequent fatwas do not introduce new inquiries. Rather, they consist of opinions offered by various scholars within the hypothetical framework established by the first two fatwas concerning the rebellious prince and his followers. These additional fatwas unanimously categorize this group as *bāghī*s, either explicitly or implicitly. While some introduce further considerations regarding the appropriate treatment of this group, others simply express agreement with the earlier opinions, particularly the two foundational fatwas. It is therefore important to distinguish between jurists who advanced original legal arguments and those who merely endorsed prior fatwas, as well as to identify the specific legal nuances articulated in the original responses.

The first of these additional fatwas is attributed in the Kastamonu copy to the aforementioned chief judge of Rumelia, Hāmid Efendi, whereas the Veliyyüddin copy assigns it to the chief judge of Anatolia, Ibn Abdülkerim Mehmed b. Abdülvehhab (d. 1568), most likely as a result of the scribal error discussed above. The fatwa reaffirms that the blood of rebels (*ʿāṣī*) is lawful and further stipulates that slain members of this faction are neither to be washed nor to have funeral prayers performed for them.[57] This ruling reflects a distinctly Ḥanafī position concerning *bughāt*,[58] a view that once drew criticism from al-Shāfiʿī (d. 204/820), who maintained that funeral prayers should still be offered for slain *bughāt*.[59]

57 Kastamonu KHK, MS 1757, 71ª; Veliyyüddin Efendi, MS 3216/6, 68ª.

58 Abū Yūsuf, *Kitāb al-Kharāj*, 233; Shaybānī, *Aṣl*, 7:519; Ṭaḥāwī, *Mukhtaṣar*, 257; Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 6:104; Sarakhsī, *Mabsūṭ*, 10:131; Jurjānī, *Khizānat al-akmal*, 2:275; Zamakhsharī, *Ruʾūs al-Masāʾil*, 197; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:314; Bukhārī, *Muḥīṭ*, 5:155; Şeyhizade, *Majmaʿ al-anhur*, 1:700.

59 Shāfiʿī, *Umm*, 4:238.

The fatwa also characterizes the rebels as deserving of severe punishment in the sight of God, a position that again aligns with the established Ḥanafī doctrine. As Abou El Fadl notes, most – though not all – Ḥanafī jurists of the fourth/tenth and fifth/eleventh centuries regarded rebellion as a sinful act,[60] a view that appears to have remained authoritative among sixteenth-century Ottoman jurists as well. Finally, in a corresponding positive formulation, the fatwa declares those killed while assisting the Sultan to be martyrs,[61] a conclusion repeatedly affirmed in Ḥanafī legal sources.[62]

Following the initial mismatch between the two copies, the next fatwa in the collection is attributed to Ibn Abdülkerim, then chief judge of Anatolia, in Kastamonu manuscript, and to Abdurrahman Çelebi (d. 1575), former chief judge of Rumelia, in the Veliyyüddin copy. The substance of the fatwa largely reiterates positions already stated: the rebels deserve to be killed and merit punishment in the afterlife, while those slain in combat against them are to be regarded as martyrs.[63] After this point, the sequence of fatwas in the two manuscripts diverges entirely; however, the problem of mismatched attribution appears to be largely resolved. The subsequent fatwa in the Veliyyüddin copy is again attributed to Abdurrahman Çelebi and corresponds to a later entry in the Kastamonu manuscript bearing the same attribution. This fatwa once more affirms the obligation to fight the rebels and labels their supporters as corruptors (*mufsid*), who are to be imprisoned or killed.[64] Most significantly, these two fatwas constitute the first instances within this document that overtly designate these rebels as *ahl al-baghy*.

The subsequent fatwas in the document are, once again, uniformly confirmatory in nature. Among these, Mustafa Ibn Mimar (d. 1564), the judge of Istanbul, explicitly states that the rulings are derived from the Qurʾānic chapter *al-Ḥujurāt*.[65] An unattributed fatwa in the Veliyyüddin copy appears in the Kastamonu manuscript under the name of an Abdülbaki, most likely Mevlana Abdülbaki Efendi, former judge of Egypt who is cited by name in another fatwa in the Veliyyüddin copy.[66] This fatwa directly quotes the relevant Qurʾānic verse (*al-Ḥujurāt* 49:9) and

60 Abou el Fadl, *Rebellion and Violence*, 190.

61 Kastamonu KHK, MS 1757, 71[a]; Veliyyüddin Efendi, MS 3216/6, 68[a]-b.

62 Abū Yūsuf, *Kitāb al-Kharāj*, 233; Shaybānī, *Aṣl*, 7:519; Sarakhsī, *Mabsūṭ*, 10:131; Jurjānī, *Khizānat al-akmal*, 2:275; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:314; Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:142; Bukhārī, *Muḥīṭ*, 5:155; Şeyhizade, *Majmaʿ al-anhur*, 1:700.

63 Kastamonu KHK, MS 1757, 71[a]; Veliyyüddin Efendi, MS 3216/6, 68[b].

64 Kastamonu KHK, MS 1757, 71[a]; Veliyyüddin Efendi, MS 3216/6, 68[b].

65 Kastamonu KHK, MS 1757, 71[a]; Veliyyüddin Efendi, MS 3216/6, 69[a].

66 Kastamonu KHK, MS 1757, 72[a]; Veliyyüddin Efendi, MS 3216/6, 69[a]-b.

further invokes ʿAlī b. Abī Ṭālib's (d. 40/661) battle against the Khārijites, a precedent frequently employed in classical discussions of *baghy*.[67] Finally, Cafer Çelebi (d. 1570) observes that the permissibility of fighting *ahl al-baghy* is affirmed throughout the fatwa literature,[68] while Ruşenizade explicitly invokes *al-Hidāya* by al-Marghīnānī (d. 1197).[69]

Other jurists who expressed their agreement with the preceding fatwas in both copies include Sinan Efendi (d. 1578), former chief judge of Anatolia; Mevlana Celaleddin Efendi – most likely Celalzade Salih Çelebi (d. 1565) – a *müderris* at the Eyüp Medrese; and Mehmed b. Mehmed, described as Hāmid Efendi's son in the Veliyyüddin copy but as his brother in the Kastamonu manuscript.[70]

Significantly, the Kastamonu copy supplements this list with twelve additional endorsements. Two of these signatories, Ahmed and Mustafa, are identified as former judges of Constantinople, while the remaining ten are *müderrises* affiliated with prestigious medreses: four from the Hakaniyye, four from the Semaniyye, one from Ayasofya and one from the Sultan Selim medrese.[71] Although these scholars do not introduce new legal arguments and largely repeat earlier positions or simply express their agreement with "the two fatwas," their collective weight is nonetheless considerable. Taken together, these endorsements demonstrate that the consensus surrounding these opinions was far broader than the Veliyyüddin copy alone suggests.

Even more striking are the closing remarks preserved in the Kastamonu manuscript. A final note records that the scholars of Istanbul signed the document and declared that anyone who denied its validity would be deemed an unbeliever (*kāfir*), thereby causing the automatic dissolution of his marriage.[72] Such language underscores the collective and exceptional nature of this endorsement. The invocation of automatic divorce, a standard legal consequence of apostasy, functions here as a powerful social and religious sanction, evidently intended to prevent dissent.

67 See, for example, Shaybānī, *Aṣl*, 7:512–3; Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, 6:101; Sarakhsī, *Mabsūṭ*, 10:128; Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:140; Marghīnānī, *Hidāya*, 2:411.

68 Kastamonu KHK, MS 1757, 71[b]; Veliyyüddin Efendi, MS 3216/6, 68[b]-69[a].

69 Kastamonu KHK, MS 1757, 72[a]; Veliyyüddin Efendi, MS 3216/6, 69[b].

70 Kastamonu KHK, MS 1757, 71[a]-72[a]; Veliyyüddin Efendi, MS 3216/6, 68[b]–69[b]. For a more detailed account of the biographies of these scholars, see Repp, *The Müfti of Istanbul*, 285, note 258.

71 Kastamonu KHK, MS 1757, 71[b]-72[a].

72 Kastamonu KHK, MS 1757, 72[a].

The Kastamonu copy is especially valuable as the sole record that provides an exact date for this corpus of fatwas. While the Veliyyüddin copy is undated, the Kastamonu copy precisely dates this collective endorsement to 17 Shaʿbān 966.[73] Given that the battle between the forces of Bayezid and Selim reportedly began on 22 Shaʿbān 966,[74] the dating reveals that the juristic consensus was formalized only days before the outbreak of open battle. If Ebussuud's opinions were formulated even earlier, this chronology suggests that the fatwas were not retrospective justifications but were instead issued in anticipation of imminent conflict. The impending confrontation likely triggered this extraordinary effort to secure a unified endorsement on the eve of battle.

While the Kastamonu copy concludes at this point, thus completing the record of collective juristic agreement, a separate and highly significant fatwa attributed to Ebussuud survives in another collection. This fatwa addresses a distinct legal scenario, concerning Bayezid's former supporters who later renounced their allegiance and sought to reintegrate into society and resume their ordinary lives:

> Zayd joined Sultan Bayezid, remained with him for a few days, and then willingly departed and returned to his hometown, whereupon the townspeople, together with the local judge (*qāḍī*) gathered and killed him, saying, 'Your repentance is no longer valid.' If the judge, Amr, then refused to lead his funeral prayer and did not allow his burial in the Muslim cemetery, what is required according to the Sharia?
>
> Answer: The sincere repentance of a *bāghī* is accepted. If he sincerely repented, then his killing is unlawful. His killer is required to pay blood money (*diyya*)."[75]

The direct reference to Şehzade Bayezid, rather than to a hypothetical rebellious prince, is the first notable aspect of this fatwa. The very posing of this question suggests that it was prompted by an actual incident. Naturally, in the aftermath of Bayezid's defeat, one would expect the dissolution of his army and the desire of some soldiers to return to their hometowns. It remains unclear, however, whether this fatwa was issued following a general dispersal of rebel forces, as it focuses specifically on the

73 Kastamonu KHK, MS 1757, 72[a].

74 Turan, *Kanunî'nin Oğlu Şehzâde Bayezid*, 113.

75 "*Mesele: Zeyd Sultan Bayezid'e yazılıp varıp birkaç gün yanında durup geri ihtiyarı ile koyup gidip yerlerine geldikde şehirlisi kâdî ile cem' olup Zeyd'i senin şimden geri tövben makbul değildir diye katl eylediklerinden sonra kâdî olan Amr namazın dahi kıldırmayıp ve Müslümanlar makberesine dahi kodurmasa şer'an ne lazım olur?*
Cevab: Bâğînin tövbe-i sahihası makbuldür. Tövbe-i sahiha etti ise katli haramdır. Kâtiline diyet lazımdır." Bozanzāde, *Rasāʾil al-Masāʾil*, Murad Molla, MS 1115, 157[b]–158[a].

case of an individual who, after spending only a brief period with Bayezid, voluntarily departed. This act of deliberate return is crucial, as Ebussuud appears to interpret it as a *de facto* sign of sincere repentance. According to him, such repentance fundamentally nullifies the previously established permissibility of killing the *bughāt*. The townspeople and the local judge, however, seem to have held the opposite view, insisting that the rebels' repentance was invalid, a stance that reveals a strong loyalist sentiment within that particular locality.

The fatwa's significance lies in its faithful application of the classical *baghy* framework, which mandates that *bughāt* who sincerely repent must be granted immunity from retribution. In the broader juridical context, Ḥanafī jurists, along with other schools of law, stipulate that force against *ahl al-baghy* is permissible only so long as they continue their hostilities, that combat must cease once they surrender,[76] that enslavement of captives is forbidden,[77] that their property cannot be seized as spoils,[78] and that they are granted immunity from liability for wartime damages after the conflict.[79] These stipulations reflect a lenient and restorative stance toward former rebels. By upholding this approach, the fatwa implicitly promotes a policy of reconciliation, signaling that those who renounce rebellion may safely reintegrate into society. This mechanism encourages repentance and strategically undermines the cohesion of rebel forces.

Conclusion

The rebellion of Şehzade Bayezid represents a pivotal episode in Ottoman history, with consequences that resonated long after the event itself. Sultan Süleyman's handling of the crisis, including sustained correspondence with his son and repeated efforts to tone down Bayezid's discontent, reveals the degree of caution with which he approached the unfolding conflict.

76 Abū Yūsuf, *Kitāb al-Harāj*, 232, 234; Shaybānī, *Asl*, 7:513; Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:283–284; Sarakhsī, *Mabsūṭ*, 10:126; Marghinānī, *Hidāya*, 2:412.

77 Ṭaḥāwī, *Mukhtaṣar*, 257; Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:283; 6:104; Qudūrī, *Mukhtaṣar*, 239; Sarakhsī, *Mabsūṭ*, 10:126; Marghīnānī, *Hidāya*, 2:412; Bukhārī, *Muḥīṭ*, 5:151; Molla Khusraw, *Durar al-ḥukkām*, 1:305; Ḥalabī, *Multaqā al-abḥur*, 355; Şeyhizade, *Majmaʿ al-anhur*, 1:700.

78 Shaybānī, *Aṣl*, 7:513; Jaṣṣāṣ, *Aḥkām al-Qurʾān*, 5:283; Qudūrī, *Mukhtaṣar*, 239; Sarakhsī, *Mabsūṭ*, 10:126–127; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:313; Marghīnānī, *Hidāya*, 2:412; Molla Khusraw, *Durar al-ḥukkām*, 1:305; Ḥalabī, *Multaqā al-abḥur*, 355; Şeyhizade, *Majmaʿ al-anhur*, 1:700.

79 Abū Yūsuf, *Kitāb al-Kharāj*, 233; Shaybānī, *Aṣl*, 7:515; Ṭaḥāwī, *Mukhtaṣar*, 257–258; Sarakhsī, *Mabsūṭ*, 10:127; Jurjānī, *Khizānat al-akmal*, 2:274; Zamakhsharī, *Ruʾūs al-masāʾil*, 479; Samarqandī, *Tuhfat al-fuqahāʾ*, 3:313; Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 7:141; Bukhārī, *Muḥīṭ*, 5:152; Molla Khusraw, *Durar al-ḥukkām*, 1:305–6; Bāqānī, *Majrā al-anhur* (Nuruosmaniye, MS 1637, 342ª); Şeyhizade, *Majmaʿ al-anhur*, 1:701.

It was only when Bayezid actively raised an army and openly confronted the forces of his brother Selim, who enjoyed the Sultan's backing, that the conflict crossed a definitive legal and political threshold.

The corpus of fatwas concerning Bayezid and his followers offers a rare and unusually rich window into how Ottoman jurists framed a dynastic rebellion in legal terms. As this study has aimed to demonstrate, scholars serving in a wide range of judicial and educational posts unanimously identified Bayezid's faction as *ahl al-baghy*. The discovery and incorporation of the Kastamonu manuscript significantly expands this picture. By preserving twelve additional endorsements and providing an exact date for the collective agreement, this copy reveals that the juristic consensus surrounding Bayezid's case was broader and more deliberate than previously recognized. The scale of participation and the language of collective endorsement underscore the exceptional gravity that Ottoman jurists attached to this conflict.

Ultimately, this study has argued that the fatwas concerning Bayezid represent far more than *ex post facto* political rationalizations. Taken together, they display a meticulous and coherent engagement with the classical Ḥanafī doctrine on *baghy*. Whether through detailed rulings on specific points of law – such as the treatment of non-combatant supporters of the rebellion or slain soldiers on both sides – or concise endorsements of prior opinions, these fatwas collectively construct a complementary legal discourse. In doing so, they illustrate how Ottoman jurists engaged the established Ḥanafī legal tradition to interpret a dynastic succession struggle and provide normative closure to a crisis of political order.

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Araştırma Makalesi / Research Article

من التعليل إلى تكون النظرية الفقهية: قراءة في الأسرار للدبوسي*

**MUHAMMED ŞAHİN / محمد شاهين

ملخص

يُحلل هذا البحث من خلال قراءة في كتاب الأسرار لأبي زيد الدبوسي (ت. ١٠٣٩/٤٣٠) بنية التعليل عند الدبوسي، بوصفها نقلة تتجاوز نمط التعليل الفقهي المعتاد في المذهب الحنفي؛ إذ لا يقتصر الدبوسي على التعليل بعِلَل فقهية جزئية؛ بل يمزج في منهجه بين الفقه وعلوم أخرى كالكلام والفلسفة، ويقدّم بذلك نموذجًا موسّعًا لتعليل الفروع، يؤسس لما يمكن تسميته في تلك المرحلة المبكرة بفلسفة الفقه.

يُبرز البحث كيف ساهم هذا التعليل المتعدّد الأبعاد في بناء نظريات فقهية تتجاوز التعليل الوظيفي إلى بنى نظرية متكاملة، من أبرزها نظرية الحق وتقسيماته، والتي تُعدّ عند الدبوسي نقطة انطلاق لبناء نظريات أخرى، مثل نظرية الملك. كما يرصد البحث تطور هذه المفاهيم عبر طبقات متدرجة من الفهم تبدأ من الجزئي وتنتهي بالكلي، وتعود لتؤثر على الجزئي مجددًا.

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DOI: 10.26570/isad.1740585 • Geliş/Received 11.07.2025 • Kabul/Accepted 11.09.2025
Atıf/Citation Şahin, Muhammed, "من التعليل إلى تكون النظرية الفقهية: قراءة في الأسرار للدبوسي", *İslam Araştırmaları Dergisi*, 55 (2026): 267-301.

ومن خلال تحليل الاصطلاحات وأنساق التعليلي في الأسرار، يتضح أنَّ المقاصد عند الدبوسي ليست غاية نهائية؛ بل تشكّل حلقة انتقالية بين التعليل والفلسفة، يُمهِّد بها لبناء النظرية الفقهية، بوصفها بنيةً تدمج بين الفقه وسائر العلوم العقلية. ويبيّن البحث أن هذا المسار يضع الدبوسي في موقع متقدِّم في تاريخ صياغة البنية الفقهية الحنفية، متجاوزًا في رؤيته كتب الخلاف التقليدية، ومُمهدًا لنمطٍ نظري مركّبٍ في تأصيل الفروع.

الكلمات المفتاحية: الفقه الإسلامي، المذهب الحنفي، النظرية الفقهية، فلسفة الفقه، الدبوسي، الأسرار، التعليل، المقاصد، الحق، الملك، القانون.

Ta'lîlden Fıkhî Teorinin Oluşumuna: Debûsî'nin *el-Esrâr* Adlı Eseri Üzerine Bir Okuma

Öz

Bu çalışma Debûsî'nin (ö. 430/1039) *el-Esrâr* adlı eserindeki ta'lîl sistemini analiz ederek onun Hanefî mezhebindeki geleneksel ta'lîl tarzını aşan bir yaklaşım sunduğunu ortaya koymaktadır. Debûsî fıkhî hükümleri yalnızca cüz'î illetlerle gerekçelendirmekle yetinmemiş; fıkıh, kelam ve felsefe gibi diğer ilimleri bir araya getirerek fer'î hükümlerin ta'lîlinde genişletilmiş bir model kullanmıştır. Bu yolla Debûsî erken dönem itibariyle "fıkıh felsefesi" olarak adlandırılabilecek bir düşünce zeminini inşa etmiştir.

Çalışma, bu çok boyutlu ta'lîl anlayışının, işlevsel gerekçelendirmenin ötesine geçerek bütüncül teorik yapılar inşa etmede nasıl etkili olduğunu ortaya koymaktadır. Bu yapılardan biri olan "hak teorisi" ve onun kısımları, Debûsî'ye göre diğer teorilerin inşasında bir çıkış noktası işlevi görmektedir. Ayrıca çalışma, bu kavramların gelişimini, cüz'îden küllîye uzanan katmanlı bir anlam süreci içinde izlemekte ve bu sürecin yeniden cüz'î olanı etkileyecek biçimde döngüsel bir yapı arzettiğini göstermektedir.

el-Esrâr'da kullanılan terimlerin ve ta'lîl kalıplarının analizi üzerinden, Debûsî'ye göre makāsıdın nihaî amaçlar olmadığı; bilakis ta'lîl ile felsefe arasında geçiş sağlayan bir halka teşkil ettiği anlaşılmaktadır. Bu geçiş, fıkıh nazariyesinin aklî ilimlerle bütünleşik bir yapı olarak inşasına zemin hazırlamaktadır. Araştırma, bu yöntemin Debûsî'yi Hanefî fıkıh düşüncesinin kurumsallaşma tarihinde ileri bir konuma yerleştirdiğini; geleneksel hilaf literatürünün ötesine geçerek fer'î hükümlerin teorik temellendirilmesinde birleşik bir nazarî modelin önünü açtığını ortaya koymaktadır.

Anahtar Kelimeler: İslam hukuku, Hanefî mezhebi, Fıkıh teorisi, Fıkıh felsefesi, Debûsî, *el-Esrâr*, Ta'lîl, Makāsıd, Hak, Milk, Hukuk.

From Justification (*taʿlīl*) to the Formation of Legal Theory: A Study of al-Dabūsī's *al-Asrār*

Abstract

This study examines al-Asrār by Abū Zayd al-Dabūsī (d. 430/1039), analyzing his approach to legal reasoning (*taʿlīl*) as a departure from conventional Ḥanafī methods. Rather than confining himself to partial legal causes (*ʿilal fiqhiyya juzʾiyya*), al-Dabūsī

integrates jurisprudence with disciplines such as kalām and philosophy, creating an expanded reasoning model that constitutes an early "philosophy of law." His multidimensional approach underpins the construction of comprehensive legal theories, notably the theory of legal right (*ḥaqq*) and its classifications, which serve as a basis for further concepts such as the theory of ownership (*milk*).

The study traces the evolution of these ideas from specific applications to universal principles, which in turn reshape the particular. Analysis of al-Asrār's terminology and reasoning shows that, for al-Dabūsī, objectives of the law (*maqāṣid*) are transitional stages between *taʿlīl* and philosophical inquiry, providing a framework for integrating jurisprudence with the rational sciences. This trajectory positions al-Dabūsī as a pioneering figure in Ḥanafī legal thought, moving beyond traditional *khilāf* literature and laying the foundations for a sophisticated theoretical model in legal derivation.

Keywords: Islamic law, Hanafī school, Legal theory, Philosophy of Islamic law, al-Dabūsī, *al-Asrār*, *Taʿlīl*, *Maqāṣid*, *Ḥaqq*, *Milk*, Law.

١. مقدمة

شكّلت العِلّة الفقهية أحد أهم أدوات بناء الحكم في الفقه الإسلامي، وقد استقرّ استعمالها مبكرًا في المذهب الحنفي، حيث درج الفقهاء على تعليل الأحكام إما بعِلَل جزئية خاصة،[١] أو بمعانٍ كليّة استنبطت من مجموع الفروع، وعبّروا عنها بـ"الأصول"، وهي التي ستتطور لاحقًا إلى ما عُرف بالقواعد الفقهية. وقد كان لهذا النمط من التعليل حضور راسخ في العراق في القرن الرابع الهجري، كما يتضح في كتابات الكرخي (ت. ٣٤٠/٩٥٢) والجصاص (ت. ٣٧٠/٩٨١).

غير أن أبا زيد الدبوسي (ت. ٤٣٠/١٠٣٩) في كتابه الأسرار قدّم نمطًا مغايرًا، لا يكتفي بإسناد الحكم إلى علّة فقهية محددة؛ بل يربط الفروع الفقهية بتصوّرات كلية مستمدة من علم الكلام والفلسفة، ومتصلة بكليات الشريعة ومقاصدها، متجاوزًا بذلك النمط الشائع في التعليل —وهو بيان علّة الحكم— إلى بناء رؤية فلسفية للشريعة ذات أبعاد نظرية، يمكن وصفها بـ"فلسفة الفقه"، وهي رؤية حاضرة في معظم أبواب الكتاب.[٢]

١ انظر: الندوي، علي، **القواعد والضوابط المستخلصة من التحرير للحصيري شرح الجامع الكبير**، (القاهرة: مطبعة المدني، ١٩٩١م)، ١٥١–٢٥١.

٢ انظر على سبيل المثال: زقور، أحسن، القواعد الفقهية المستنبطة من المدونة الكبرى. (بيروت: دار ابن حزم، ٢٠٠٥م)؛ المُدَوَّر، رشيد، **معلمة القواعد الفقهية عند المالكية**، (بيروت: دار الفتح، ٢٠١١م)؛ عبد الوهاب بن أحمد، **القواعد والضوابط الفقهية في كتاب الأم للإمام الشافعي جمعًا وترتيبًا**، (الرياض: دار التدمرية، ٢٠٠٨م).

تناولت بعض الدراسات الحديثة منهج الدبوسي في النظرية الفقهية مثل كريم الصياد في كتابه نظرية الحق والذي تناول فيه الأهلية عند الدبوسي على سبيل المثال كنسق عقلي اجتماعي على حد تعبيره، وكان تعرضه له شديد الإيجاز في صفحة واحدة على الاستقلال ضمن كتابه،[٣] وكذلك تناولت ابتهال أبو الجزار نظرية الفساد عند الدبوسي في عقود المعاوضات.[٤]

ورغم تطرق هذه الدراسات إلى تكون النظرية الفقهية، فلم يركز أي منها على الطريق الموصل إلى هذه النظريات من التعليل بالفروع الفقهية، كما لم أجد دراسة ركزت على التعليل عند الدبوسي من الحيثية محل البحث، فلم تركز أي منها على استقصاء التعليل بأبعاده النظرية أو إبراز بنيته الفلسفية المتكاملة. ومن هنا تأتي أهمية هذا البحث، إذ يسعى إلى الكشف عن كيفية انتقال الدبوسي في الأسرار من التعليل الفقهي إلى بناء نظرية فقهية ذات بنية فلسفية، وبيان طبيعة هذه النظرية وأسسها.

تتمثل أهمية هذه الدراسة في أنها تلقي الضوء على جانب غير مطروق من الفقه الحنفي، وهو البعد غير الفقهي في التعليل الفقهي، بما يثري فهمنا لتاريخ تطور النظرية الفقهية المبكرة، ويكشف عن تداخل الفقه مع علوم أخرى كالكلام والفلسفة. كما تسهم في إبراز الدور الذي لعبه الدبوسي في تأسيس نمط نظري مركب في التأصيل الفقهي، تتشابك فيه العلل والمقاصد والفلسفة والنظرية، ضمن بنية طبقية متراكبة تمتزج مع التصور عن الوجود والشريعة.

وبإيجاز يمكن القول إن هذا البحث يرسم مسار الدبوسي من التعليل الفقهي إلى بناء نظرية فقهية ذات بعد فلسفي، وهو ما يمكن تسميته بفلسفة الفقه، وتقع المقاصد حلقة وصل بين التعليل والنظرية الفقهية.

تعتمد هذه الدراسة المنهج التحليلي المقارن، من خلال قراءة نصية متعمقة للتعليل في الأسرار، ومقارنتها بنصوص الجصّاص والقدوري، مع تحليل

٣ انظر: *Şahin, "The Historiography of Legal Maxims from Al-Shaybānī to Al-Karkhī"*, s. 551-576.

٤ كريم الصياد، نظرية الحق: دراسة في أسس فلسفة القانون والحق الإسلامية، (دون طبعة، ٢١٠٢م)، ٨٠٢.

الاصطلاحات والمفاهيم ذات الطابع غير الفقهية كالفلسفي والكلامي، واستقصاء الروابط التي يقيمها الدبوسي بين الجزئيات الفقهية والتصورات الكلية.

وللوقوف على هذا ينبغي التقديم بأمرين ضمن هذه المقدمة: صنعة الدبوسي في كتاب الأسرار وغرضه في الكتاب، والثاني استحضار الاستقرار المبكر للتعليل في المذهب الحنفي تحديدًا.

١.١. كتاب الأسرار والغرض منه

ألف الدبوسي العديد من الكتب، منها تقويم الأدلة والأمد الأقصى والأسرار. وقد اخترنا كتاب الأسرار ليكون موضوع هذه المقارنة، لما أن المقال أصالةً يتعلق بمنهجية تعليل الفروع الفقهية، وكيف توسع الدبوسي في التعليل عن سائر فقهاء الحنفية الآخرين. وكتاب الأمد الأقصى وإن تقاطع مع الأسرار في سرده بعض المعاني الكلية التي نثرها الدبوسي في الأسرار، إلا أنَّا لا نستطيع مشاهدة الرابط بين المعاني الكلية التي يوردها في الأمد الأقصى وبين الفروع الفقهية، وبالتالي لا نلحظ سياقها في تعليل الفروع الفقهية، وبالتالي كان التركيز على كتاب الأسرار لما هو غرض البحث من محاولة الوقوف على منهج الدبوسي في تعليل الفروع الفقهية.

يمثل الأسرار للدبوسي محطة مركزية في الأدبيات الفقهية الحنفية، من حيث البنية والهيكل والمضمون. على مستوى الهيكل ينتمي الكتاب إلى أدبيات الخلاف، والذي يعتمد على عرض المسألة، بيان الأقوال، مناقشة أدلة الخصم، ثم بيان أدلة المذهب من جهة النقل والعقل. ويركز على الخلاف بين الحنفية والشافعية، وفي مواضع قليلة الخلاف مع المالكية.[٥] وعادة ما تكون المسألة محل الخلاف مستفادة من مسائل **الأصل** للشيباني، وهذا ليس خاصًا بالدبوسي؛ بل يشترك فيه مع غيره من كتب المذهب الحنفي.[٦] بعد هذا العرض للمسألة يُلحقها بذِكر الأقوال في المسألة بإيجاز، ثم يشرعُ في بيان أدلة غير الحنفية

٥ انظر: *Abujazar, E. M. R. "Hanefilerdeki İvazlı Sözleşmelerin 'Fesad' Teorisi Üzerine Debûsî'nin Katkıları"*, s. 147–162.

٦ انظر على سبيل المثال: الدبوسي، **أسرار المسائل**، (السليمانية، آيا صوفيا، ١٠١٩) ١ظ.

والاعتراضات الواردة على قولهم وأجوبتهم المحتملة لها، ثم يأتي للكلام على قول الحنفية في المسألة، وعلى الأدلة العقلية والنقلية، ويهتم ببيان التعليلات الواردة في المذهب قبله.

يمكن فهم الغرض الفقهي ضمن ثلاثة مستويات: (١) غرض عام يشمل مدرسة فقهية داخل المذهب أو يتجاوزها إلى غيره، ومن أبرز أمثلته كتب الخلاف، التي شكّلت تيارًا في العراق امتد لاحقًا إلى ما وراء النهر؛ (٢) وغرض فردي، وهو ما يضعه المصنّف لنفسه في كتابه؛ (٣) وغرض محدود أو مناطقي، يتصل بجماعة معينة من المؤلفين دون أن يبلغ عمومية التيار أو المدرسة، كما في كتب "حكمة الشريعة"، وهي نادرة حتى زمن الدبوسي.

وفي ضوء هذا التقسيم، يقع كتاب الأسرار ضمن الغرض العام؛ إذ هو كتاب خلاف حنفي، ينتمي إلى تقليد عراقي **الأصل** في معالجة الخلاف، امتد إلى ما وراء النهر، حيث ظهرت أعمال مقارنة معاصرة أو لاحقة له، من بينها مؤلفات الناصحي (ت. ٤٤٧/١٠٥٥)، والأسمندي (ت. ٥٥٢/١١٥٧)، والصدر الشهيد (ت. ٥٣٦/١١٤١)، وغيرهم.

كما ينخرط الكتاب في الغرض المحدود أيضًا، بكونه مندرجًا ضمن أدبيات الحكمة والمقاصد، التي سبقه إليها الحكيم الترمذي (ت. ٣٢٠/٩٣٢) والقفال الشاشي (ت. ٣٦٥/٩٧٦)، وتلاه فيها أبو عبد الله البخاري (ت. ٥٤٦/١١٥١) في محاسن الإسلام. غير أن الأسرار يُعدّ —بما وصل إلينا— أقدم عمل حنفي في هذا السياق، وأوسعها بناءً.

أما الغرض الفردي للدبوسي فيظهر في عنوان الكتاب نفسه؛ فـ"الأسرار" تشير إلى خفايا المسائل، ومداراتها، لا إلى ظاهرها فقط. ويشير المؤلف إلى أن غايته ليست مجرد ذكر العلل أو الخلاف، بل إلى ما هو أعمق، إذ يقول: «هذا كتابٌ استنبطه التفكر في أسرار المسائل، والرؤية في فنون الدلائل»،[٧] ويؤكد

٧ انظر: القدوري، أبو الحسين أحمد بن محمد بن أحمد، التقريب، محق: محمد ياسر شاهين، (بيروت: دار الرياحين، ١٢٠٢م)، "الدراسة"، ١/٨٤-٩٤. انظر أيضًا: الدبوسي، أبو زيد، محق: عدنان فهد العبيات، (الكويت: أسفار، ٢٢٠٢م)، "الدراسة"، ١/٦٧.

تبعيته لا ابتداعه، فيقول: «فللسلف في كتبهم إشارات، ولعللهم عبارات، يقع بها للمتأمل الهداية، وبأمثالها للمستنبط الكفاية».[٨]

ثم يوضح أن عمله تأسس على "تفكر" و"رؤية" في "الدلائل"، لا على تكرارها بعينها: «بعد ما سبر غورها بمسبار النظر، ووقف على حقائقها بجد الفكر...».[٩]

هذا النهج الذي يتبعه الدبوسي في استبطان المعنى، يعبّر عنه بمقارنة دائمة بين مسلك الحنفية —الذي يصفه بأنه باطني وخفي— ومسلك الشافعية الذي يسميه "فقه الظاهر"، يقول:

«ما قاله الخصم أظهر يناله المجتهد بلا تكلُّفٍ، وهذا الذي قلناه أدقُّ لا يُنال إلَّا بجدٍّ وتأمُّل وعلى هذا دأبه ودأبنا في المسائل».[١٠]

فالنمط الذي يقترحه الدبوسي يعتمد على بنية فكرية مركبة، طبقية، يتدرج فيها من ظاهر الفروع إلى معانيها العميقة، وينطلق فيها من مقولة محورية: أن الشرائع مبنية على العقل والحكمة.[١١]

وبالتالي فإن الدبوسي لا يرى الجزئيات الفقهية مفصولة عن نظام العالم، أو عن الرؤية الكلية الإسلامية للعلوم، بل يسعى إلى إدماجها ضمن منظومة فلسفية كليّة. وفي حين أن ما قام به من بناء النظريات من خلال الفروع ليس مألوفًا قبله بهذه الصورة، فإن الدبوسي يصرّح بهذا الغرض الفريد على نحو متكرر، من ذلك قوله في سياق التعليل: «هذا سر المسألة وموضع مزل القدم»،[١٢] وهو تعبير يكشف عن إدراكه لعمق الطبقات المعنوية في الفقه، وعن وعيه بوجود "فقه في المسألة" وراء الحكم المجرد.

٨ الدبوسي، **أسرار المسائل**، ١ظ.

٩ الدبوسي، **أسرار المسائل**، ١ظ.

١٠ الدبوسي، أبو زيد عبد الله بن محمد، **أسرار المسائل**، (المكتبة السليمانية، آيا صوفيا، ٩١٠١)، ١ظ.

١١ الدبوسي، **أسرار المسائل**، ٣١٣ظ.

١٢ انظر: الدبوسي، **أسرار المسائل**، ١٦و.

إن ما يطرحه الدبوسي في هذا الكتاب ليس مجرد تأصيل للعلل، بل تأسيس لرؤية فلسفية تتجاوز الظاهر، وتسعى إلى تفسير التشريع من داخله، وفق سياق متكامل يربط الجزئي بالكلي، ويصل بين التعليل والنظرية.

٢.١. الاستقرار المبكر للتعليل والقواعد الكلية عند الحنفية

النقطة الثانية التي يجدر التنبيه إليها في سياق تقديم الكتاب، هي أن العلل ضمن المذهب الحنفي قد بلغت قدرًا من النضج في مرحلة مبكرة، سابقة على الدبوسي. فلا يصحّ إرجاع منظومة علل المذهب إليه، إذ تنقل عن الكرخي (ت. ٩٥٢/٣٤٠) نصوص صريحة تدل على استعمال واسع للعلل، ويبدو أن هذه العلل قد تكونت عبر طبقات فقهية سابقة.

والمتتبّع لمؤلفات الجصاص، وبخاصة شرح الجامع الكبير، يلحظ تطورًا في بنية المفاهيم والقواعد الفقهية وتكثيفًا في استخدامها وتدوينها. وتُظهر نصوص متعددة في شرح الجامع أن الجصاص ينقل التعليل صراحة عن الكرخي، من ذلك قوله: «وكان أبو الحسن يحتجّ في هذا بأنّ هذا الحقّ لا يثبت عندنا إلّا بالمطالبة»،[١٣] و«كان أبو الحسن يحكي عن أبي يوسف أنّ اللعان شهادة»،[١٤] و«كان أبو الحسن رحمه الله يقول: من أصلهم أنّ براءة الكفيل ليست بتمليك».[١٥] وهذا التواتر في النقل لا يشير فقط إلى تداول العلل، بل إلى نشأة قواعد فقهية عامة تُستخلص من تتبّع العلل في الفروع، ثم تُجرّد منها أصول كلّية، وهي ما يُصطلح عليه آنذاك بـ"الأصل" أو "الأصول".[١٦] وهذه مرحلة متقدمة من مراحل التنظير الفقهي داخل المذهب. وبناءً على هذا، فإن كتاب الأسرار لم يكن أوّل من تناول العلل أو نظّر لها داخل المدرسة الحنفية. فما الذي منحه هذه المنزلة العالية، حتى يصفه أبو بكر ابن العربي المالكي (ت. ١١٤٨/٥٤٣) بقوله: إن الدبوسي هو «ربّ النعمة على أهل خراسان وعلى أهل العلم في غابر الأزمان»![١٧]

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١٣ انظر على سبيل المثال: الدبوسي، **أسرار المسائل**، ٨ظ، ٨٧٤و، ٤١٦و.

١٤ الجصاص، أبو بكر أحمد بن علي الرازي، **شرح الجامع الكبير**، (دار الكتب المصرية، رقم: ٥٤٧)، ١٣و.

١٥ الجصاص، **شرح الجامع الكبير**، ٤٣ظ.

١٦ الجصاص، **شرح الجامع الكبير**، ٥٦٢و.

١٧ للكلام على النشأة المبكرة للقواعد الفقهية انظر:
Şahin, "The Historiography of Legal Maxims from Al-Shaybānī to Al-Karkhī", s. 551-576.

الغالب أن امتياز الدبوسي لا يقتصر على تطوير منهجية التعليل وجودة عرضه للخلاف، بل يكمن في ما وراء ذلك: في المعنى الكامن خلف العلل والخلاف، وهو ما يسعى هذا البحث إلى تحليله وبيان معالمه.

٢. تعليل الفروع الفقهية عند الدبوسي

يُعَدّ التعليل في الفروع الفقهية المدخل الرئيس الذي ينتقل منه أبو زيد الدبوسي بين الجزئيّات الفقهية والتصورات الكلية، وهو ما يبرز أهمية الوقوف على منهجه في بناء الأدلة العقلية لتأييد مذهب الحنفية في المسائل الخلافية التي يوردها، وبيان الفارق بين الاستدلال العقلي المباشر وكلامه عن المعاني الكامنة خلفه، التي يوظفها لتعضيد صحة استدلاله. ويمكن تصنيف منهج الدبوسي في التعليل إلى قسمين رئيسين:

أولًا: النمط الذي يمتد أثره إلى أبي الحسن الكرخي كما يظهر في نصوص الجصّاص في شرح الجامع الكبير؛ حيث يوظَّف المعنى الكلي —الذي يسميه العراقيون من الحنفية "الأصل" أو "الأصول"— بوصفه ضابطًا تشترك فيه فروع متعددة، وهو ما تطور عند المتأخرين إلى ما يُعرف بالقاعدة الكلية. ففي شرح الجامع الكبير وشرح مختصر الطحاوي، يقرر الجصّاص هذا النمط الموروث عن الكرخي، بما يعكس امتدادًا لتأسيس المذهب في صيغ واستعمالات متباينة.[١٨] ومن أمثلة ذلك قوله: «**الأصل** في ذلك: أنّ الجنايات إنّما تثبت في الرقاب، ثم تنتقل إلى المال»،[١٩] ويوازيه عند الدبوسي قوله: «**الأصل** في باب الصَّلاة: ألا يثبت منها رُكْنٌ ولا لها شرطٌ إلَّا بما فيه يقينٌ، ولا يُصَارُ إلى غيره إلَّا لضرورة».[٢٠]

ثانيًا: التعليلات المباشرة للفروع الجزئية، حيث ينتقل الدبوسي —بعد الاستدلال النقلي— إلى الدليل النظري الخاص بالمسألة، مناقشًا علّتها ودافعًا

١٨ انظر: ابن العربي، محمد بن عبد الله المعافري، **الاستشفا من كتاب الشفا**، محق: عبد الله التوراتي، (المغرب: دار الحديث الكتانية، ١٢٠٢م)، ص ٧٠١.

١٩ للمزيد من التفصيل انظر:
Şahin, "The Historiography of Legal Maxims from Al-Shaybānī to Al-Karkhī", s. 551-576.

٢٠ الجصاص، **شرح الجامع الكبير**، ٢١٣ظ.

الاعتراضات الواردة عليها، وقد يجمع بين هذا النمط وسابقه بربط العلة الجزئية بالمعاني الكلية التي يدير الحنفية عليها الأبواب.

ويبرز تميّز تعليل الدبوسي عند مقارنته بمن سبقه أو عاصره من فقهاء العراق وما وراء النهر، بل ومن جاء بعده في مصنفات الخلاف، إذ بينما ركّز هؤلاء على المعنى الفقهي الذي تدور عليه المسألة، أظهر الدبوسي خلفية معرفية أوسع تنفتح على علوم أخرى. ويظهر الفرق بينه وبين الجصّاص –على سبيل المثال– في ثلاثة مستويات:

١. الاصطلاحات المجلوبة من علوم أخرى كمًّا ونوعًا، ويتضح به أثر الفلسفة والكلام في توسيع منظومة الاصطلاحات عند الدبوسي مقارنة بالجصّاص والقدوري كما سيأتي عند الكلام في النقاط التالية عند التمثيل لاصطلاحات وتعليل الدبوسي بالكلام والفلسفة وغيرها.

٢. الربط النظري بين الجزئيات والتصورات الكلية: يظهر ذلك –على سبيل المثال– في تناوله لموضوع حق الله وحق العبد، حيث يحرص على تمييزهما في كل مسألة، بينما لا نجد في التجريد للقدوري سردًا أو ربطًا من هذا النوع على النحو الذي يقدمه الدبوسي.

٣. ابتكار مصطلحات تعكس فلسفة الشريعة: مثل ''حرمة الاسم'' و''خبث الإثم''، وهي تعبيرات تحمل أبعادًا فلسفية تتجاوز الإطار الفقهي التقليدي.

ويستند الدبوسي في بنائه هذا إلى ثلاثة علوم رئيسة خارج نطاق الفقه وأصوله: علم الكلام، والفلسفة –بفروعها الإلهية والطبيعية والعملية–، وطبيعة العالم والوجود في ضوء تأملاته الفلسفية، وهو ما يمكن وصفه بـ''الأنطولوجيا المبكرة'' عند فقيه حنفي محوري. وفي الأسرار، ينطلق من المسألة الجزئية إلى التصور الكلي للفقه، ثم إلى الرؤية الإسلامية العامة، وصولًا إلى تصور الوجود، رابطًا الجزئي بالبنية الفلسفية والاجتماعية التي تؤطره.

ويتبع الدبوسي مسارًا عكسيًا؛ إذ ينطلق من المسألة الجزئية نحو التصور الكلي للفقه، ثم إلى الرؤية الإسلامية العامة، وصولًا إلى تصور الوجود، رابطًا الجزئي بالبنية الفلسفية والاجتماعية التي تستند إليها الأحكام. ويتجلى ذلك في

أمثلة عديدة، منها تعليل حكمة الصيام نهارًا لا ليلًا، وتحريم اللواطة حفاظًا على نظام العالم،[٢١] أو ترجيحه الولاية والنكاح على العزلة للعبادة لما فيهما من نفع عام وحفظ لنظام العالم،[٢٢] حيث يقول «فآل الكلام فيه: إلى أن النكاح أصله لقضاء الشهوة، وغيره من المصالح تبعٌ فيه، أو أصله للمصالح الشرعية، وقضاء الشهوة تبعٌ فيه».[٢٣]

وأورد فيما يلي عددًا من النماذج التي توضّح كيفية توظيفه لعلم الكلام والفلسفة وطبيعة الوجود في تعليل الفروع الفقهية.

١.٢. علم الكلام

يمزج الدبوسي في سياق التعليل للفروع الفقهية الكلامَ ببعض الروابط الكلامية، وعادة الفقهاء قبله التطرق إلى علم الكلام عند وجود الحاجة المباشرة إلى التعليل لاتصال المسألة بمسألة كلامية، كما في مسألة اليمين بأسماء الله وصفاته وأفعاله، فاقتضاء الكلام التفرقة يستدعي من الفقيه التعرض لطرف من هذه المسألة من الحيثية الكلامية، وهو ما يمكن أن يلحظ في مسلك الجصاص والقدوري وغيرهم من الفقهاء. ولكن الدبوسي يستطرد في بيان التعليل ولا يكتفي بما سلكه الفقهاء قبله، وفي هذا الاستطراد يتجاوز التعليل الفقهي إلى الكلام في بعض مزيد من الأطراف الكلامية، التي ينتقل بها الكلام إلى كل من فلسفة الشريعة والتصور عن العالم.[٢٤]

يربط به الدبوسي التعليل بالمفاهيم الكلامية، وهو ما يعكس كذلك خلفيته الكلامية بصورة من الصور الاصطلاحات التي نراها منثورة في الكتاب، فنراه يستعمل اصطلاحات مثل: الواجب على الله،[٢٥] وخلق النار،[٢٦] موجب الحكمة،[٢٧]

٢١ الدبوسي، **أسرار المسائل**، ٢٣و.

٢٢ وسياقه يتماشى تماشيًا مذهلا مع ما يذكر المسيري (ت. ٢٠٠٨) في محاضراته عن العلمانية في جامعة القاهرة، أن هذا الفعل مداره على اللذة المطلقة، مثل صورة الأكل عند اليونان القدماء.

٢٣ انظر: الدبوسي، **أسرار المسائل**، ٢٤٠ظ.

٢٤ انظر: الدبوسي، **أسرار المسائل**، ٤٩١ظ.

٢٥ انظر: الجصاص، **شرح مختصر الطحاوي**، محق: سائد بكداش، (بيروت: دار البشائر الإسلامية، ٢٠١٠م)، ٢٩٣/٧-٣٩٣; الدبوسي، **أسرار المسائل**، ٥٦٥ظ-٦٦٥و.

٢٦ انظر: الدبوسي، **أسرار المسائل**، ٢٧ظ، ٣٩١ظ.

٢٧ الدبوسي، **أسرار المسائل**، ٤٩١و.

والجزاء، والثواب والعقاب، وألوهيته تعالى، خلق الجنة والنار، وغير ذلك من المصطلحات، والتي يوظفها في سياق الكلام على فروع ومسائل فقهية، لبيان وجه صحة التعليل الذي ساقه.

وينبغي ملاحظة أن هذه الاصطلاحات استعمل منها الجصاص: "خلق النار" في استحلاف المجوسي "بالله الذي خلق النار" ولم يوردها تعليلًا،[٢٨] واستعمل الجصاص والقدوري "الجزاء" والقدوري في سياق الكفارة[٢٩] وجزاء قتل الصيد،[٣٠] والجزاء في انتهاك الحرز،[٣١] وحرف الجزاء،[٣٢] لا في سياق كلامي. كما استعمل القدوري "الحكمة" في إطار تعليل "النهي عن بيع الثمار"،[٣٣] وفسرها في موضع آخر بالبينة.[٣٤] كما استعمل القدوري الثواب والعقاب في إيراد تعريف السنة والواجب.[٣٥] وبالتالي لا نجد عند القدوري ولا عند الجصاص استعمالًا كلاميًا لهذه المصطلحات. فالدبوسي متفرد عن معاصريه وسابقيه من فقهاء الحنفية في مستوى الاصطلاح المجلوب من علوم أخرى.

تكلم الدبوسي في دلالة العالَم على الله تعالى ووجوب الإيمان به بالعقل قبل ورود الشرع، وقد عقد في ذلك فصلًا في وجوب الإيمان قبل ورود الشرع، وهو كافٍ في بيان الاستدلال على استطراده الكلامي. ومن هذا النمط من التعليل أنه أتبع مسألة قتل أهل الصوامع بفصل الإسلام،[٣٦] وعند المقارنة في نفس المسألة

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٢٨ انظر: الدبوسي، **أسرار المسائل**، ٤٩١و. ومن اللافت للقارئ أن يقع هذا الاستطراد في كلامه في باب النكاح على أفضلية النكاح من التخلي للعبادة.

٢٩ انظر: الشيباني، محمد بن الحسن، **الأصل**، محق: محمد بينوكالن، (قطر: وزارة الأوقاف القطرية، ٢١٠٢م)، ٩٠٥/١١؛ الجصاص، **شرح مختصر الطحاوي**، ٥٠١/٨; الجصاص، **مختصر اختلاف العلماء**، محق: عبد الله نذير، (بيروت: دار البشائر الإسلامية، ٧١٤١هـ)، ٨٨١/٥; السرخسي، شمس الأئمة محمد بن أحمد بن أبي سهل، شرح السير الكبير، (القاهرة: الشركة الشرقية للإعلانات، ١٧٩١م)، ٦١٣/١.

٣٠ انظر: الجصاص، شرح مختصر القدوري، ٣٧٥/٢؛ القدوري، شرح مختصر الكرخي، ٠٣٦/٢.

٣١ انظر: القدوري، شرح مختصر الكرخي، ٣٢٦/٢.

٣٢ انظر: الجصاص، **شرح مختصر الطحاوي**، ٣٠٣/٦.

٣٣ انظر: القدوري، شرح مختصر الكرخي، ٩٢٥/٤.

٣٤ انظر: القدوري، **التجريد**، ٥٩٣٢/٥.

٣٥ انظر: القدوري، شرح مختصر الكرخي، ٨٢٥/٧.

٣٦ انظر: القدوري، شرح مختصر الكرخي، ٤٠٣/١.

بينه وبين الجصاص والقدوري في طرف نجدهما يركزان على السرد الفقهي للمسألة ولم يوردا مسألة وجوب الإيمان قبل الدعوة في هذا السياق.[٣٧] وهذا هو المسلك المعهود المتعارف في سرد هذه المسألة.

ونورد بعضًا من عبارات الدبوسي في سياق تعليل الفروع تعليلًا ذا بعد كلامي، ومنها: «ما صار حقًّا لله بألوهيَّته لا يحتمل التَّبدُّل».[٣٨] ومنها قوله:

فإن قيل: الله تعالى خلق النار وخلق خلقا لها، وإنه حكم ماض لا بد أن يكون، ولن يكون إلا بمعصية العباد، ثم لم يكن إقامة المعصية التي بها يتعلق وجود هذا الحكم مباحة ولا مأمورة. قلنا: إن الله تعالى خلق النار جزاء على المعصية زاجرة عنها لئلا يعصوه، لا حكما معلولا بالمعصية، فحُكم الفِعل ما وُضعَ الفِعلُ له، والأفعالُ التي هي من معاصي الله وضعت لأحكام لها مرغوب فيها للفاعل، حصلت لهم حين فعلوها كالوالد من الولد، وإقامة شهوة المرأة بالجماع ونحوهما. فأما الثواب والعقاب فجزاءان واجبان بحكم الأمر لا بإيجاب الفعل... ولما كان الجزاء بموجب الحكمة -وذلك على الطاعة ليكون مرغبا، وعلى المعصية ليكون زاجرا- لم يدل الجزاء الزاجر على صيرورة سبب الجزاء مطلوبا منه؛ بل دل ذلك على كونه منهيا عنه، فالزاجر ما يبين ليكون مبتغى لعينه؛ بل لينزجر وينعدم بالانزجار، فأما بقاء النسل بالوطء فحكم الفعل نفسه، والبقاء إلى يوم القيامة حكم أمضاه الله ابتداء وابتغاء لذلك، فصار سببه مبتغى كذلك؛ لأن الأحكام لا تبتغى إلا بأسبابها، والله أعلم.[٣٩]

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٣٧ ومثاله أن الدبوسي وضع فصلًا عنوانه: فصل الإسلام، مسألة وجوب الإسلام قبل الدعوة الدبوسي، **أسرار المسائل**، ٥٦٤و، ٥٦٤ظ. وفيها يستطر الدبوسي في دلالة العقل على الله تعالى، ودلالة العقل على صحة المعجزة التي هي من مؤيدات نبوة النبي، وكيف أن العقل كاف للإيمان قبل ورود الشرع، ومن ذلك قوله: «ولأن الله تعالى عاتب الكفار في غير موضع بأن لم يسيروا في الأرض فينظروا كيف كان عاقبة الذين من قبلهم فأخبرهم أن قلوبهم عمي بترك التأمل، ولو كانوا معذورين قبل الدعوة لما عوتبوا بمطلق الترك»، وهذا الفصل بتمامه استطراد على مسألة "قتل أهل الصوامع، هل يقتلون أم لا" وهذا الاستطراد استدلال منه على تصحيح قول أبي حنيفة في المسألة، واستطراده على مذهب الماتريدية. انظر كذلك في هذا السياق: النسفي، أبو المعين ميمون بن محمد بن محمد، **تبصرة الأدلة في أصول الدين**، محق: حسين آتاي، (أنقرة: رئاسة شؤون الديانة التركية، ٣٩٩١م)، ص ٧٢–٣٣.

٣٨ انظر: الجصاص، **شرح مختصر الطحاوي**، ٩٢/٧؛ القدوري، **التجريد**، ٦٤١٤/٢١–٧٤١٤؛ شرح مختصر الكرخي، ٨٢١/٩–٠٣١.

٣٩ الدبوسي، **أسرار المسائل**، ٥٦٥ظ.

ويلحظ الناظر هنا أن الكلام على خلق النار والجنة، والمعصية من حيث كونها معلولة حكمًا، والثواب والعقاب والجزاء من حيث كونه موجب الحكمة، والجزاء من حيث كونه زاجرًا، وغيرها من النقاط التي يتطرق إليها الدبوسي: كل هذا في إطار تعليله لمسألة فقهية وليس في إطار بحث كلامي!! وهذا هو التفرد الذي نتحدث عنه في إطار تعليل الدبوسي. فهو يربط المسألة الفقهية الجزئية بالمبحث الكلامي ربطًا مباشرًا، وهدف هذا الربط انتقال من تلك المسألة الجزئية إلى التصور الكلي.

٢.٢. الفلسفة

يمكن تقسم روابط الدبوسي الفلسفية إلى ثلاثة مستويات، ما يتعلق بالحكمة والفلسفة، وما يتعلق بتصوره هو عن فلسفة الدين والشريعة، وما يتعلق بطبيعة الوجود (أنطولوجي). ويمكن الاستدلال عليها جميعًا بالنظر إلى الاصطلاحات المستعملة بصورة أساسية، ونفرد هنا كلامه عن الفلسفة.

أولًا: من المعتاد أن يظهر في متن طويل بهذا الحجم: البنية الاصطلاحية المختلفة لعالم متفنن، فيَمزج مع طول الكلام اصطلاحات من فنون شتى، وهو ما يمكن ملاحظته كذلك من خلال الفقهاء الذين قبله، فلا تجد فقيهًا إلا وترى في ثنايا كلامه بعض الإشارات والتعبيرات من علوم أخرى، حيث العلوم لا تنفصل. ولكن الفريد في مسلك الدبوسي، ابتداء: المِقدار المُستعمل من هذه الاصطلاحات وخصوصًا الفلسفة، والتي سيأتي الإشارة إليها فيما يلي،

وثانيًا: سياق استعمال الدبوسي لهذه الاصطلاحات؛ حيث يستعملها في إطار التعليل للفروع الفقهية، وهو من الجديد الفريد في إطار التعليل الفقهي بقدر المقارنة.[٤٠]

٤٠ الدبوسي، **أسرار المسائل**، ٤٩١و.

نجد الدبوسي يستعمل اصطلاحات مثل: الإعدام،[٤١] والحركة والسكون،[٤٢] والجزء الشائع،[٤٣] والحلول، والحلول في مكانين،[٤٤] تولد الفرع،[٤٥] العدم والوجود،[٤٦] المغايرة بين الأجناس،[٤٧] وغير ذلك من الاصطلاحات. كما يستعمل اصطلاحات من قبيل صلاح العالم،[٤٨] وقوام العالم،[٤٩] وبقاء العالم،[٥٠] مصالح المعيشة،[٥١] والطباع، طبع الأرض.[٥٢] وبعضها يتعلق بالقسم الإلهي والطبيعي وبعضها بالتدبير وهو القسم العملي.

وعند النظر للقدوري نجده استعمل التولد بمعنى الولادة،[٥٣] والحركة في الكلام على فعل النائم،[٥٤] والجزء الشائع في إضافة الطلاق إلى جزء معين،[٥٥]

٤١ انظر: "مقارنة بين الدبوسي وفقهاء الحنفية في التعليل" من هذا البحث.

٤٢ انظر مثلا: الدبوسي، **أسرار المسائل**، ٥٨ظ، ٦٨ظ، ٣٤١و.

٤٣ انظر مثلا: الدبوسي، **أسرار المسائل**، ٦٩٢ظ. كما يستطرد الدبوسي في موضع آخر في بيان معنى العتق فيقول أثناء هذا الاستطراد: «الإعتاق إزالة رق وإتلاف ملك لا غير، فلا يكون من حكمه إلا عدم ما كان، فأما وجود غيره فلا يكون حكما له حقيقة، وإنما يثبت بحكم المضادة كالحركة لا تكون موجبة ذهاب السكون». الدبوسي، **أسرار المسائل**، ٦٧٥ظ.

٤٤ انظر مثلا: الدبوسي، **أسرار المسائل**، ٤٥٦ظ.

٤٥ انظر: الدبوسي، **أسرار المسائل**، ٢٦٣و، ٦٠٦و.

٤٦ الدبوسي، **أسرار المسائل**، ٨٠٦و. ويبين في هذا الموضع الدبوسي تبعية **الأصل** للفرع فيقول: «ولأن **الأصل** أن الفرع يتولد على شبه الأصل؛ ألا ترى أن الفروع لا تخالف أصولها بأصل التركيب والأشباه».

٤٧ انظر: الدبوسي، **أسرار المسائل**، ٦٨و. يشير الدبوسي في هذا الموضع إلى حكم اجتماع العدم والوجود: «بعض العدم لا يتصور مع بعض الوجود». وفي موضع آخر في كتاب الغصب أثناء التفرقة بين الزرع والحنطة يقول: «العدم لا يصلح أن يكون سببا للوجود»، «كما لم يستحل أن ينقلب العدم وجودا». الدبوسي، **أسرار المسائل**، ٦٠٧و.

٤٨ انظر: الدبوسي، **أسرار المسائل**، ٦٠٧و.

٤٩ الدبوسي، **أسرار المسائل**، ٣٩١و.

٥٠ الدبوسي، **أسرار المسائل**، ٣٤٥ظ.

٥١ انظر مثلا: الدبوسي، **أسرار المسائل**، ٣٩١و.

٥٢ انظر مثلا: الدبوسي، **أسرار المسائل**، ٦٠٢و. وكافة المواضع التي يذكر فيها الدبوسي مصالح المعيشة يكون في إطار الكلام على أصل النكاح وسببه.

٥٣ انظر مثلا: الدبوسي، **أسرار المسائل**، ٥و، ٧٦. يورد الدبوسي الطبع في سياقات منها طبائع الأشياء وحقائقها، مثل طبع الودي، طبع الأرض والهواء، والحرارة وغير ذلك، والتأثير بالطبع، وطهارة الماء بحكم الطبع.

٥٤ انظر: القدوري، **التجريد**، ٦٩٤٤/٩.

٥٥ انظر: القدوري، **التجريد**، ٤٦٣٥/٠١.

واستعمله الجصاص في الكلام على إضافة الطلاق إلى الأعضاء،[٥٦] واستعملا الحلول في المعاملات في التعبير عن وقت الأداء في باب السلم مثلًا.[٥٧] وبقية الاصطلاحات التي أشرت لها عند الدبوسي فلم يستعملها الجصاص ولا القدوري.

يظهر من تتبع العديد من الاصطلاحات المستعملة داخل الكتاب إلى الخلفية الفلسفية للدبوسي، والتي لا يمكن إغفالها، والتي لا يمكن أن تتوفر إلا من خلال اهتمام بكتب الفلسفة، فبالإضافة إلى ما سبق تتضمن منظومة الدبوسي اللفظية داخل الكتاب اصطلاحات أخرى يقل استعمالها في غير كتب الفلسفة مثل: الانفعال،[٥٨] الجوهر والعرض،[٥٩] الصورة، كما يستعمل الصورة في مقابلة المعنى،[٦٠] وما بالقوة،[٦١] وغيرها من الاصطلاحات. ولم يستعمل الجصاص والقدوري هذه الاصطلاحات في سياق ذا صلة بما نتكلم عنه كذلك.[٦٢]

والأسرار -بقدر تتبع الباحث له كاملًا- لم يتوفر فيه نقل حرفي من أحد المصادر الفلسفية، وهو أمر طبيعي نظرًا لطبيعة الكتاب، ولكن عند النظر يمكن بسهولة ملاحظة التأثر بكتب الفلسفة في المنظومة اللغوية المستعملة في ثنايا الكتاب. كما يمكن ملاحظة التأثر كذلك بجوانب الدبوسي الأخرى من علم الكلام وأصول الفقه وغيرهما من العلوم، فلا يمكن فصل جزء عن الآخر، إلا أن ظهور العلوم الأخرى الواقعة وقوعا مباشرًا ضمن دائرة العلوم الشرعية لا ينفرد به

٥٦ انظر: القدوري، **التجريد**، ٠٤٩٤/٠١.

٥٧ انظر: الجصاص، **شرح مختصر الطحاوي**، ٠٩/٥.

٥٨ انظر: الجصاص، **شرح مختصر الطحاوي**، ٧٢١/٣؛ القدوري، **التجريد**، ٤٦٦٢/٨.

٥٩ الدبوسي، **أسرار المسائل**، ٦٢٥ظ. يورد الدبوسي في هذا الموضع تغاير محل الانفعال من الجسم إلى الروح والحياة.

٦٠ الدبوسي، **أسرار المسائل**، ٨٥٣ظ. وفي هذا الموضع يورد الكلام عن التفرقة بين الأعراض والمحال القابلة للأعراض في إطار بيان التفرقة بين المنافع والأعيان، فيقول: «المنافع أعراض والأعيان محال قابلة للأعراض، لا أنها تتولد من الأعيان، فكانت الأعراض غير العين، خلق العين محلا لها لتقوم بها مصالحه فكانت أموالا كالأعيان التي غير الآدمي». كما يبين الدبوسي في موضع آخر في أثناء التفرقة بين العين والمنفعة كذلك أن الأفضلية للجوهر عن العرض ويوسقه دليلا: «العين خير من المنفعة: أن العين جوهر، والمنفعة عرض، والجوهر خير من العرض في ذاته». الدبوسي، **أسرار المسائل**، ٩٩٦ظ.

٦١ الدبوسي، **أسرار المسائل**، ٦٩١و.

٦٢ انظر مثلا: الدبوسي، **أسرار المسائل**، ٣٥١ظ.

الدبوسي، ولكن مزجُه للفلسفة أمرٌ يتميز به في سياق التعليل الفقهي خصوصًا، وكيفية الانتقال والربط.[٦٣]

وأورد عدة أمثلة من السياقات المستعمل فيها هذه الاصطلاحات:

ولأبي حنيفة: أن الثلاث غير الواحدة وهما مختلفان لفظا ومعنى، وكذلك الكل غير البعض، أما من حيث اللفظ فلا إشكال، والمعنى: فلأن معنى الكل ينعدم أصلا في البعض ويفوت، وهما ضدان كالوجود والعدم والسكون والحركة، وكذلك الثلاث والواحدة؛ لأنهما اسما الأعداد، فالواحد اسم لعدد ابتداء وانفرادا، والثلاث اسم لعدد مجتمع يبتني على الابتداء فصارا اسمين بمعنيين متضادين، ولا اختلاف أكثر من التضاد، وكذلك الواحد والاثنان؛ لأن الاثنين اسم موضوع لعددين، كذلك ألفان.[٦٤]

والمغايرة بين الأجناس لا تثبت إلا بالصور والمعاني. وكذلك البيض والفرخ فالصورتان مختلفتان، ومعنى أحدهما حياة، والآخر موات، وبينهما تضاد وتناف، وإذا كانا غيرين لم يتصور الثاني إلا بعد هلاك الأول؛ لاستحالة أن يكون الشيء الواحد شيئين، ولكن لا يستحيل أن يصير شيئا آخر، كما لم يستحل أن ينقلب العدم وجودا، فصار الزرع الذي هو غير الحنطة شيئا حادثا لا بد له من علة كالوجود عن العدم، ولم يجز أن تكون العلة كون الحنطة حنطة؛ فإن كونها حنطة لا يكون علة للبقاء كذلك حنطة، فكيف تكون علة للهلاك وصيرورته شيئا آخر؟ وكالعدم لا يصلح أن يكون سببا للوجود. وكذلك كل شيء نفسه لا يكون علة لتغير يحدث فيه فيضاف ذلك إلى مغير فيه، والمغير على الحقيقة طبع الأرض والهواء المحيط بالبذر إذا زرع...[٦٥]

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٦٣ للمواضع التي استعمل فيها الجصاص والقدوري تلك الاصطلاحات في سياقات مختلفة انظر على سبيل المثال: الجصاص، **شرح مختصر الطحاوي**، ٩٩/٧، ؛ القدوري، شرح مختصر الكرخي، ٠٩٢/١، ٣٨٥/٣؛ **التجريد**، ٧٧٦٢/٥.

٦٤ لم أستطع الوصول إلى مصادر الدبوسي الفلسفية المباشرة، جزء من ذلك يعود إلى قصر العبارات المستعملة داخل الأسرار، ولكن الدبوسي وإن كان معاصرًا لابن سينا، فإن من المحتمل أن يكون اطلاع الدبوسي على أعمال طبقة من الفلاسفة قبل ابن سينا، وربما يكون أحدهم الفارابي (ت. ٠٥٩/٩٣٣)، وربما آخرين أقرب له جغرافيًا مثل أبو حيان التوحيدي (ت. ٣٢٠١/٤١٤)، أو أحد أستاذته كيحيى بن عدي (ت.٥٧٩/٤٦٣). هذا وإن جرى مجرى الاحتمال، لكن آمالُ أن يفتحَ طريقَ أحد المشتغلين بالفلسفة في تلك الحقبة إلى دراسة التأثير الفلسفي على فقهاء ما وراء النهر خصوصًا.

٦٥ الدبوسي، **أسرار المسائل**، ١٢و.

ومن الأمثلة التي يوردها: كلامه في اختلاف رب المال والمستأجر في جذع في الدار عليه تصاوير، وكذلك سقف الدار، فالقول لمن؟ يبين الدبوسي أن القول قول رب الدار في حال التشابه بين تصاوير الجذع والسقف، والقول للمستأجر إن كان بينهما تفاوت. بعد هذا يستطرد في بيان التعليل الذي استند عليه للوصول إلى هذا الحكم، فيشير إلى العلاقة الواقعة بين **الأصل** والفرع، وأن الفرع يتولد على شبه الأصل، وأن الفروع لا تخالِف أصولها في التركيب وغيرها من التفاصيل.[٦٦] وأمثال هذا مبثوث في سائر الكتاب، على اختلاف الأبواب، وهو كذلك ما يشير إلى اطلاع الدبوسي على كتب الحكمة والفلسفة، بل واستعماله لها في كتاباته، وإن لم تكن بصورة مباشرة، ولكنها محرك لربط التصورات الكلية في سائر الفروع الفقهية ومعاش الناس ومعادهم. وهذا المسلك من الدبوسي يتجاوز التعليل الفقهي بالأدلة، ويتجاوز التعليل بالقواعد الكلية، بل يتجاوز كذلك التعليل بالمقاصد، وينطلق إلى ربط الفروع الفقهية في الأبواب المختلفة بالتصورات سواء عن الوجود وانتظام هذا الخلق في سلك كلي.

٣.٢. فلسفة الشريعة

قد أفرد الدبوسي كتابه الأمد الأقصى في بيان تصوره عن العالم والوجود، وصلة ذلك كله بفلسفة الشريعة، حيث هي الطريق إلى الله تعالى والآداب الموصلة إليه، وما يتعلق بهذا من البواطن ومسالك النفس وغير ذلك. كما أن أنفاسه في الكتاب أقرب لمسالك التصوف بالإضافة إلى ما سبق ذكره.[٦٧]

يسلك الدبوسي في الأسرار مسلكًا مختلفًا في ربط التعليل بالتصورات العامة عن الشريعة وما يتصل بها من أخلاق، من خلال نثر مفاهيم في خلال استطراده في تعليل الفروع، حيث تقع منظومة تصوراته عن الشريعة في إطار التصور عن العالم والصلة بالنظرية الفقهية. ويمكن أن نلحظ في إطار التعليل

٦٦ الدبوسي، **أسرار المسائل**، ٦٠٧و. ولمزيد من الأمثلة انظر: الدبوسي، **أسرار المسائل**، ١٢و، ١٦٥و.

٦٧ انظر: الدبوسي، **أسرار المسائل**، ٧٠٦ظ-٨٠٦و.

إشارته إلى مفاهيم من خلال العديد من الاصطلاحات، مثل: حرمة الدين،[٦٨] حرمة الاسم،[٦٩] أحكام الدنيا،[٧٠] وفي مقابلها أحكام الآخرة،[٧١] ضمانات الدنيا،[٧٢] مصالح الدين،[٧٣] خبث الإثم،[٧٤] وغيرها.

وقد استعمل القدوري في موضع واحد حرمة الاسم،[٧٥] كما استعمل الجصاص والقدوري في عدة مواضع أحكام الدنيا،[٧٦] واستعمل القدوري كذلك أحكام الآخرة،[٧٧] وكذلك مصالح الدين والدنيا في وصفه النكاح.[٧٨] ولم يستعمل الجصاص ولا القدوري بقية الاصطلاحات التي مثلنا بها عند الدبوسي. ويبقى استعمال الدبوسي في السياق الذي ندلل عليه متميزًا عن سائر الفقهاء الآخرين بالإضافة لتميزه عنهم بالعديد من الاصطلاحات الأخرى.

ويمكن أن يضرب مثال لسياق استعمالاته في هذا الإطار بما يلي:

> والقربات ما شرعت إلا ليجازى بما ينفعه، على أنه لا ينتفع مطلقا؛ فإنه لا يبيعه ولا ينتفع بثمنه، وإنما ينتفع به أكلا؛ لأن الله تعالى أضاف عبيده بقرابينه لطيبها، وحرم الصيام فيه فصلح لكل واحد. وفي باب الكفارات جعلها حق الفقراء؛ لأن الكفارة سببها جناية فيتمكن فيها خبث الإثم فصرف إلى الفقراء.[٧٩]

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٦٨ انظر على سبيل المثال: الدبوسي، الأمد الأقصى، محق: عبد القادر أحمد عطا، (القاهرة: دار التراث العربي، ٨٨٩١)، ٤٩١، ٤٦٢.

٦٩ الدبوسي، **أسرار المسائل**، ٦٦٥و.

٧٠ انظر: الدبوسي، **أسرار المسائل**، ٦٦٥و.

٧١ استعمل هذا التعبير الجصاص والقدوري، انظر: الجصاص، **شرح مختصر الطحاوي**، ٧٥٣/٢؛ القدوري، **التجريد**، ٦٠٠٣/٦.

٧٢ الدبوسي، **أسرار المسائل**، ٣٦٢و.

٧٣ الدبوسي، **أسرار المسائل**، ١٠٢ظ.

٧٤ الدبوسي، **أسرار المسائل**، ٢٤١و.

٧٥ الدبوسي، **أسرار المسائل**، ٤٢٧و.

٧٦ انظر: القدوري، **التجريد**، ٨١٤٦/٢١.

٧٧ انظر على سبيل المثال: الجصاص، **شرح مختصر الطحاوي**، ٧٥٣/٢؛ القدوري، **التجريد**، ٠١٠٣/٦، شرح مختصر الكرخي، ٩١٥/٣.

٧٨ انظر: القدوري، **التجريد**، ٥٠٠٣/٦، شرح مختصر الكرخي، ٨٥١/٨.

٧٩ انظر: القدوري، **التجريد**، ٦٠٥٤/٩.

ألا ترى أن رجلا لو أحرق الميت لم يضمن شيئا كما لو أحرق جيفة أخرى، ولكنه يأثم، كما لو أتلف مخاطبا أو ملكا لمخاطب؛ لأن الضمان من أحكام الدنيا والإثم من أحكام الآخرة، وهو للحياة في حق الآخرة فيعطى حكمها، وليس للحياة في حق الدنيا على ما ظهر لنا من حكم الله فلم يعط حكم الحياة لعدمها للحال، وعدم سببها في حق الدنيا، بخلاف الآخرة فإنه للحياة في حقها فأعطي حكمها، كما أعطي النطفة في الرحم حكم الحي فاستحق الإرث والوصية؛ لأنها للحياة في الوضع.[٨٠]

وأما الشبه بقوله: ''والله لا أدخل الدار'' فلما ذكرنا أن اليمين بالله إنما أوجبت الكفارة لوجوب بره فرارا عن هتك حرمة اسم الله بالحنث لا لحرمة الفعل في نفسه، ونعني بحرمة الاسم من حيث أوجبه عقده، وقد وجب البر في مسألتنا هذه فرارا عن هتك حرمة الدين من حيث يوجبه عقده، وهتك حرمة الدين مثل هتك حرمة الاسم؛ لأن أصل الدين بالتوحيد وتعظيم الله، وحرمة الاسم من حيث وجوب تعظيم الله أيضا، فكانتا حرمة واحدة في المعنى، بخلاف حرمات تثبت بمحال هي غير الله، فإنها دون حرمة الاسم، والله أعلم.[٨١]

العبادات لله تجب بنعم تلزمنا الشكر لله عليها أو تجب تعظيما لله، وجملة النعم في البدن وصفاته والمال الذي جعل ملكا له. وكذلك التعظيم لله في طاعته على الخلوص على أمره بخلاف هوى نفسه، وفي تمليك الفقير تعظيم للفقير لا تعظيم الله، فتعظيم الله فيما يرجع إليه أو تعظيم ما عظمه الله بحقه.[٨٢]

٤.٢. طبيعة الوجود (أنطولوجي)

يندرج الأنطولوجي في الفلسفة كقسم من أقسامها، ولكن أفرده هنا بالكلام لمزيد الاهتمام. والتعبير بالأنطولوجي في إطار التعبير عن تأملات الدبوسي وبحوثه عن طبيعة الوجود في إطار التعليل محاولة لبيان اتصال التعليل في الجزئيات بفهم الفقيه وتصوره عن العالم.

يستعمل الدبوسي العديد من النظرات في الاستطراد لبيان العلل في الفروع ويربطها بأسباب مباشرة تدور على وضع الوجود، وكيفية جريان العالم. فعلى

٨٠ الدبوسي، **أسرار المسائل**، ٤٢٧و.
٨١ الدبوسي، **أسرار المسائل**، ٣٦٥و.
٨٢ الدبوسي، **أسرار المسائل**، ٦٦٥و.

سبيل المثال نجده يعلل سبب تأخر النية في الصوم إلى وقت الزوال ويسرد عدة أوجه من التعليل ويستطرد في أحدها ليبين أن وقت بداية الصوم وهو طلوع الفجر وقت يشتبه دخوله فلا يوقف عليه إلا بمعرفة النجوم ومعرفة ساعات الليل المتغيرة في سائر العام، كما أنه وقت نوم وغفلة معتادة، فيصعب مقارنة النية مع أول الوقت، فأجيز تأخيره إلى الزوال.[٨٣] كما نراه عند الحديث عن كون الحدود شرعت زجرًا، وطبيعة المزجور عنه أن يميل إليه الإنسان من جهة الطبع، ولذلك ترى أنه لا حدَّ على ما لا يمال إليه طبعًا مثل شرب الدم والبول، بخلاف شرب الخمر.[٨٤] وكذلك يمكن ملاحظة استطراده في إطار الكلام على ما تجب به كفارة الصيام، أنه يستطرد في التعليل لمذهب الحنفية بالكلام على طبيعة الجوع من حيث أنه اشتهاء ووقوع الحاجة إلى الأكل، وأن الضرورة خلو المعدة عن المواد التي بها بقاء القوى الطبيعية، وغيرها من التفاصيل التي يوردها.[٨٥] ويمكن نقل العديد من العبارات الأخرى في هذا السياق:

> فإن قيل: الآدميُّ خلق بحيث ينطلق حيث شاء، وبملك اليمين يمتنع، وكذلك بملك النِّكاح يمتنع مع قيام العلَّة، وهو كونه آدميًا. قلنا: لا كذلك؛ بل الآدميُّ حيوانٌ كالبهيمة، وبهذا الاسم لا يملك نفسه ولا غيره؛ بل بصفة الحريَّة، وهذه الصِّفة تزول بالرِّق فتزول المالكيَّة، وهي علَّة ملك الانطلاق شرعًا، وبالتَّحرُّر تثبتُ، وهذه الصِّفة لا تزول بالنِّكاح؛ بل النِّكاح لحبس استعمال العلَّة هذا، كما تسقُط القوَّة الطبيعيَّة أصلًا بالموت، ويتجدَّد بالإحياء، ويحتبس بالقيد مع قيام القوة فلا يكون بين الأحياء، ورفع القيد تشاكل معنىً، وكذلك المريض يُداوى فيقوى على المشي، والموثق يرفع وثاقه فيقدر، فلا يكون بين رفع الوثاق والمداواة تشاكل معنىً.[٨٦]

> رطوبات الدَّواء تلاقي رطوبة الجرح، وهناك منفذٌ إلى أسفل فلا بُدَّ أن يسيل، أو ثَمَّ طبيعةٌ جاذبةٌ، فثبت أنَّ الظَّاهر على السيلان والوصول، وأمر العبادة مبنيٌّ على الاحتياط، فيُقال بالفساد، بخلاف اليابس؛ لأنَّ قوَّة الدواء اليابس تنشف رطوبات الجرح فلا يسيلُ ما بقيت قوَّة الدَّواء معه، وبعد سقوط القوَّة لا يبقى مغذِّيًا ولا

٨٣ الدبوسي، **أسرار المسائل**، ٢٠١و.
٨٤ انظر: الدبوسي، **أسرار المسائل**، ٧٧ظ–٨٧و.
٨٥ الدبوسي، **أسرار المسائل**، ١٢٤و.
٨٦ انظر: الدبوسي، **أسرار المسائل**، ٦٨و.

مُصْلحًا لبدنه، فوصول ما لا يُتغذَّى به –بلا اسم الأكل أو الشُّرب– لا يوجب الفساد على ما مرَّ من أنَّ الفسادَ متعلِّقٌ بالاسم والمعنى.[٨٧]

يظهر من هذه النماذج كذلك صورة جديدة يمكن أن يستند التعليل إليها، وهي أن الفقيه كما يلاحظ الأدلة الشرعية يلاحظ كذلك الواقع الذي يعيش فيه، والوجود الذي يحيط به، وكيف تتصل الشريعة بهذا الواقع وتنتظم في سلك العالم نظامًا لهذا العالم. ويمكن هنا دراسة هذا القسم بالانفراد، وهو كيف أنَّ التعليل يتصل كذلك بعلوم مختلفة، الفلسفة أحدها.

٥.٢. عودة إلى العلة

من خلال انتقال الدبوسي من العلة إلى الفلسفة وطبيعة الوجود، وبملاحظة أنَّ سياق ذلك جميعًا يندرج تحت مسألة فقهية فرعية، وهو معقِد الكلام في هذا البحث: يمكنُ القول أنَّ العلة الفقهية في الجزئيات هي مجموعٌ مِن مراعاة الفقيه للقواعد الفقهية، ومراعاته للمقاصد المندرجة والفلسفة العليا للفقه، كلٌّ هذا يمكن أن يُسلَّم مِن خلال إشارات العلماء اللاحقين الذي تكلموا عن القواعد الفقهية والمقاصد، لكن الجديد الذي يظهر مِن خلال الدبوسي أنَّ العلة الفقهية لا تنفك عن ملاحظة الفقيه لحال الناس وفهمه للوجود وتصوراته عن العالم، وبالتالي يمكن ملاحظة أنَّ التطور الفقهي لا ينفك عن استيعاب واقع الحياة وديناميكيتها، وأنَّ تشابكًا واتصالًا مباشرًا بين العلة وبين فلسفة الفقه وما وراء ذلك من النظريات الفقهية.

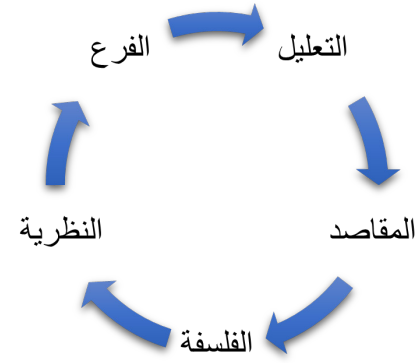
٣. النظرية الفقهية عند الدبوسي

فوق التصور الذي ينطلق منه الدبوسي المازج فيه بين تصوراته للفلسفة والعالم والوجود، ومزجه بين العديد من العلوم والتأملات: يبني العديد من النظريات المركبة، على طبقات ومستويات شتى، وينثر هذه النظريات في سائر الفروع، ولكنها ترتبط بخيط يسهل تعقبه عند القصد. ويمكن أن نلحظ فيما يلي مثالًا بارزًا عن التطور المبكر للنظريات الفقهية في القرن الخامس، فهو يتكلم عن "نظرية الحق"، فيقسم الحقوق كما سيأتي إلى حقوق الله وحقوق العباد، ويتصل بحقوق العباد عدة نظريات

٨٧ انظر: الدبوسي، **أسرار المسائل**، ٢٢٣و.

من أهمها "الملك"، ثم يبني على الملك عدة مفاهيم أخرى. والدبوسي كما ظهر من الإشارات السابقة ينتقل من التعليل المبني على الفلسفة بأقسامها كما بينا وعلم الكلام والتصور للوجود إلى بناء نظريات مختلفة، ونظرياته يمكن تقسيمها إلى قسمين، نظريات مركزية ومؤسسة، ونظريات أدنى رتبة يمكن أن نسميها نظريات فقهية. فأحد النظريات المؤسسة والتي يمكن الكلام عليها في هذا السياق هي "نظرية الحق"، وهي ليست تتصل أصالة بمعرفةِ الحِكمة والبيانِ النظري للحقوق؛ بل تتصلُ أصالةً بالبناء التطبيقي للحقوق، ولذلك سنرى أنَّه يبني على قسمٍ منها وهو حق العبد عدة نظريات، منها الملك. والملكُ نظريةٌ من النظريات الفقهية بمعنى كونها مندرجة تحت النظريات المؤسسة أو الكلية، ويبني تحتها العديد من المفاهيم التي ينثرها في طول الكتاب، وكذلك تتدرج هذه المفاهيم التي يتكلم عنها الدبوسي على طبقات وصولًا إلى الجزئيات.

هذا النهج من الدبوسي لا يجعل تصوره الفلسفي للفقه والشريعة منبتًّا عن المسائل الجزئية؛ بل نرى مباشرة ومن خلال منهجيته في الكتابة أنه بنى هذه النظريات من خلال المسائل الجزئية المختلفة، وما نفعله هو محاولة قراءة عكسية لمنهجه في الجزئيات والكليات. وبالتالي ومن خلال هذا النمط من التأليف فقد بين كيفية اتصال كلٍّ من الفلسفة والنظريات المبنية عليها، والاتصال كذلك بسائر العلوم: بالجزئيات الفقهية المختلفة، وكيفية اتصالها بالخلاف الفقهي بين الحنفية والشافعية. وبالتالي يمكن تصور عود النظرية إلى الفرع الفقهي من خلال المرور بمراحل مختلفة، يمكن فهمها بصورة دائرة أولها الفرع والتعليل، وآخرها النظرية المؤسسة والفقهية، كما سيأتي بيانه بعد قليل.



١.٣. نظرية الحق

إن الكلام على حق الله وحق العبد وأحيانا يعبر عنه بحق الآدمي سبق الدبوسي إليه العديد من الحنفية، ابتداء من الشيباني (ت. ١٨٩/٨٠٥)،[٨٨] وكذلك الجصاص في شرح مختصر الطحاوي.[٨٩] كما أكثرَ استعمالها القدوري المعاصر للدبوسي في كتابه التجريد.[٩٠] ولسنا بصدد التتبع التاريخي لنشأة تقسيمات هذه النظرية، لكن بالمقارنة مع ما ذكره السابقون على الدبوسي، فإننا نجد التطور النظري من جانب والتطور في الاستعمال، يستوي في ذلك الكم والكيف. ولكن كذلك لا شك أنَّ هناك العديد من النصوص السابقة التي يمكن أن تكون منطلقًا للدبوسي في إنشاء وتطوير هذه النظريات، من نصوص مختلفة منثورة ضمن المسائل المختلفة. ومن ذلك النص على أن العبادات من حقوق الله تعالى وشرائعه، وكذلك الكفارة.[٩١]

والدبوسي لا يستعمل فقط تلك النظريات ولا ينص على بعض الجوانب الخاصة بأقسامها، مثل التقسيم الذي سيأتي لحق الله تعالى، بل كذلك يبني نظريات على هذه الحقوق، فنظرية الحق عنده من النظريات المركزية التي يديرها في الفروع. ومن أبرز النظريات التي بناها على نظرية الحق نظرية الملك، والتي ينص أنها تحت حق العبد.

يقسم الدبوسي الحقوق إلى ثلاثة أقسام: حق الله وحق العبد، وما اجتمع فيه الحقان.

حق الله: يقسم الدبوسي "حق الله" إلى ثلاثة أقسام:

أ. عبادات محضة، وهي تتعلق بأسباب مباحة، كالنصاب في الزكاة.

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٨٨ الدبوسي، **أسرار المسائل**، ٤٨و.

٨٩ انظر: الشيباني، **الأصل**، "المقدمة"، ١٤٢; الشيباني، محمد بن الحسن، **الكسب**، محق: سهيل زكار، (دمشق: عبد الهادي حرصوني، ١٠٤١هـ)، ص ١٦.

٩٠ انظر على سبيل المثال: الجصاص، **شرح مختصر الطحاوي**، ١٨٢/٢، ٧٥١/٥.

٩١ انظر على سبيل المثال: القدوري، **التجريد**، ٣٠٣٦/٢١.

ب. عقوبات محضة، وتتعلق بمحظورات محضة؛ لأن **الأصل** في العقوبة الزجر، والزجر يتوجه إلى المعصية لا المباح.

جـ. كفارات، وهي مترددة بين العقوبة والعبادة، فالعقوبة لا تجب إلا جزاء مثل الحدود، وهي تنكيل وخزي وتطهير، والعبادات تجب لتعظيم الله وتتأدى بالشيء وبدله كالصوم والطعام في كفارة اليمين. وبالتالي تتنازع أسبابها جهتي الحظر والإباحة.[٩٢] يضرب الدبوسي كذلك مثالًا لحق الله تعالى بالعتق على قول الصاحبين.[٩٣]

حق العبد: يبين الدبوسي في حق العبد مباشرة في المسائل وعبر نظريات ومفاهيم عديدة، ومن أبرز هذه المفاهيم ما سيأتي بيانه وهو نظريته في "المِلك" الذي ينص أنه "حق العبد"، والتي أطال الكلام عليها. يعبر الدبوسي أحيانا عن حق العبد بحق الآدمي. ويضرب مثالًا لحق العبد بالقصاص على قول أبي حنيفة.[٩٤]

يبين الدبوسي أن حق العبد لا يتأدى بعبادة خالصة لله تعالى، ويضرب مثالًا على ذلك بالكفارة المالية عند عدم الصوم والتي تشير إلى كونها عبادة لله، وأن الأصل عدم استحقاق الفقير لهذه الكفارة، بل إن المستحق هو الله تعالى ثم الفقير يأخذها نيابة عن الله حال انقطاع حق العبد عن المال، وقد تمت الكفارة بإخراجها لله تعالى خالصا. ثم يبين أن الفقير ليس له استحقاق على الغني بالفقر، لأن حاجة الفقير سبب لاستحقاق الرزق على مولاه، ولم تكن سبب استحقاق ابتداء على إنسان آخر بسبب الفقر؛ بل تجب بأسباب أخرى شرعت صلة، كما في حق الزوجية والقرابة.[٩٥]

يبين كذلك أن ما يجب حقًا للعبد فإنما يجب جزاء لما فات العبد، سواء كان هذا الفوت بإتلاف حر أو عبد. أما إذا كان الجناية من العبد فإنها توجب

٩٢ انظر: الجصاص، **شرح مختصر الطحاوي**، ٥٩٣/٧؛ القدوري، **التجريد**، ٥٠٧٥/١١.
٩٣ انظر: الدبوسي، **أسرار المسائل**، ٩٦٥و.
٩٤ انظر: الدبوسي، **أسرار المسائل**، ٧٢٣ظ.
٩٥ انظر: الدبوسي، **أسرار المسائل**، ٧٢٣ظ.

غير ما توجبه جناية الحر بسبب عذر في الجاني، وإلا فالأصل ألا توجب جنايته نقصانًا في حقوق العباد بسبب الرق.[٩٦]

كما يبين أن انجبار حق العبد بمثل ما فاته صورة ومعنى أو معنى كما في حال تلف المال، وبالتالي فالأصل ألا يجب له حق إذا فاتت المماثلة بين التالف والواجب، كما في الدية والجلد فالقياس ألا تجب حقًا للعبد لانعدام المماثلة.[٩٧]

ما كان فيه الحقان: لا يذكر الدبوسي هذا القسم صراحة -في حدود بحثي- والمفهوم من كلامه أنه يعود إلى القسمين السابقين، فيسعى الدبوسي في بيان المساحة المشتركة في العديد من المسائل بين حق الله تعالى وحق العبد، وما يترجح فيه أحد الجانبين على الآخر، أو حيثية هذا الترجيح. وقد يرجع عدم إفراده هذا كقسم مستقل إلى ملاحظته التمايز في حيثيات اعتبار الحقين في محل واحد، أو في رجحان أحد الحقين على الآخر عند تنازع المحل لهما، وبالتالي فإنه يمكن إرجاع هذا القسم إلى القسمين الآخرين، لرجحان حق الله في حال وحق العبد في حال، أو ثبوت كل منهما مع اختلاف في الاعتبار والحيثية. ومن أمثلة ذلك قوله: «لأنَّ في الآدمي حقَّين حقًّا للآدمي ضُمن بالدِّيَة للآدمي، وحقًّا لله تعالى ضُمِن بالكفَّارة، والحقَّان جميعًا قائمان حال القتل عمدًا، فلم يجز أن يهدر حقُّ الله كما لم يهدر حقَّ العبد».[٩٨]

يبين الدبوسي تبعية حق الله لحق العبد في النفس. ومن أمثلة ذلك قوله في العدة وترجيح معنى الحيض في القروء لأنه في ترجيح الحيض الدلالة على البراءة، والبراءة في هذا المعنى تترجح لترجح حق العبد في الاستبراء.

يبين أن سبب رجحان حق العبد حين يرجح هو جعل الله تعالى، بصيرورة معظم الحق للعبد. ويمثل لذلك بحد القذف. فيقول:

٩٦ انظر: الدبوسي، **أسرار المسائل**، ٧١١و-٧١١ظ.
٩٧ انظر: الدبوسي، **أسرار المسائل**، ٢٣٤و-٢٣٤ظ.
٩٨ انظر: الدبوسي، **أسرار المسائل**، ٢٣٤و-٢٣٤ظ.

ولمَّا وجب لتغطية أثر الزنا –وحرمة الزنا خالصًا لله تعالى، حتى كان الحدُّ على الزنا خالصًا لله– وجب أن يخلص الحدُّ على إظهاره بوجهٍ حرامٍ يجب عنه الكفُّ لله تعالى، ولكن هتك بهذه التُّهمة حرمة عِرض المقذوف؛ ولله تعالى في عِرضه حقٌّ، وللمقذوف حقٌّ على ما قال الشافعي: إنَّه يجب بقتله ضمانان: أحدهما لله تعالى، والآخر للعبد: ثبت للعبد فيه ضربُ حقٍّ بهذه الطريقة. فالوجه الأول: أوجب الحقَّ لله تعالى خالصًا. والوجه الثاني: أوجب الحقَّ لله تعالى وللعبد فصار المعظم للّاه تعالى. بخلاف ضمان القتل فمَا سببه إلَّا القتل، وإنَّه أتى على النَّفس وفيها حقٌّ لله تعالى وحقٌّ للعبد، وحق العبد أرجحُ بجعل الله تعالى له ذلك فصار معظم الحقِّ فيه له، فهذا دليلٌ من حيث سبب الوجوب.[٩٩]

١.١.٣. نظرية الحق كنقطة بداية

يضع الدبوسي نظرية الحق في المركز، وليس كما يمكن أن يعتقد في الحديث عن المقاصد أنها منتهى الكلام؛ بل يجعلها الدبوسي منطلق العديد من النظريات، كما سبق الإشارة إليه. فبداية الدبوسي من نقطة ما قبل الحق، ثم ينتقل إلى تقسيم الحقوق، ثم من تقسيم الحقوق يبني نظريات عديدة متشعبة، وأحدها نظرية الملك، وكذلك نظرية اليد، والضمان، والجزاء، وغيرها. وبناء على البنية التي يسوقها الدبوسي لا يمكننا أن نفهم حقوق الله وحقوق العباد في إطار المقاصد؛ لأن المقاصد مرحلة لا تتعلق بما يتكلم عنه بصورة مباشرة. ولكن عند جمع ما تفرق في ثنايا كتابه نرى أنه يتكلم عن بناء النظرية الفقهية، والتي صارت مؤخرًا محط التأليف عند المعاصرين. وليس هذا المقال محل المقارنة بين مسلك الدبوسي وما كتب في نظرية الحق والملك، فمحله ورقة بحثية تالية إن شاء الله.

٢.٣. نظرية المِلك

نظرية الملك أحد النظريات الطويلة الذيل في كتاب الدبوسي الأسرار، ولم أعقد هذا المبحث لاستقصاء تفاصيلها، وأبعادها في الأبواب المختلفة

٩٩ انظر: الدبوسي، أسرار المسائل، ٨٤٥و.

عند الدبوسي، وإنما أردت أن أسلط الضوء أصالة حول ابتنائها على نظرية الحق السابقة الذكر. وهو ما سيضع تراكيبة بنية الفلسفة الفقهية عند الدبوسي، وجريانها على طبقات مختلفة، وأن هذه الطبقات النظرية متصلة وليست متباينة.

يوضح الدبوسي كما ذكرنا حق الله وحق العبد، وينص في غير موضع على أن الملك حق العبد.[١٠٠] ويتكلم عن الملك في مواضع تقارب الألف موضع في كتابه الأسرار في مناح مختلفة: ما ينافي الملك،[١٠١] بيان الملك،[١٠٢] سبب الملك،[١٠٣] زوال الملك،[١٠٤] بطلان الملك بخبر الواحد،[١٠٥] كما يفرق بين زوال الملك واليد،[١٠٦] وأن أصل الملك باليد،[١٠٧] وقوع الملك وعدم وقوعه،[١٠٨] وبقاء الملك وابتدائه،[١٠٩] ويتكلم كذلك عن صِلات الملك الواجبة بالإسلام والحرية،[١١٠] وحقوق الملك كإباحته للأخذ،[١١١] والمالكية ويعرفها بأنها القدرة والقوة.[١١٢] وما ذكر هنا تمثيل فقط لأطراف نظريته في الملك، والكلام فيها طويل جدا عند الدبوسي.

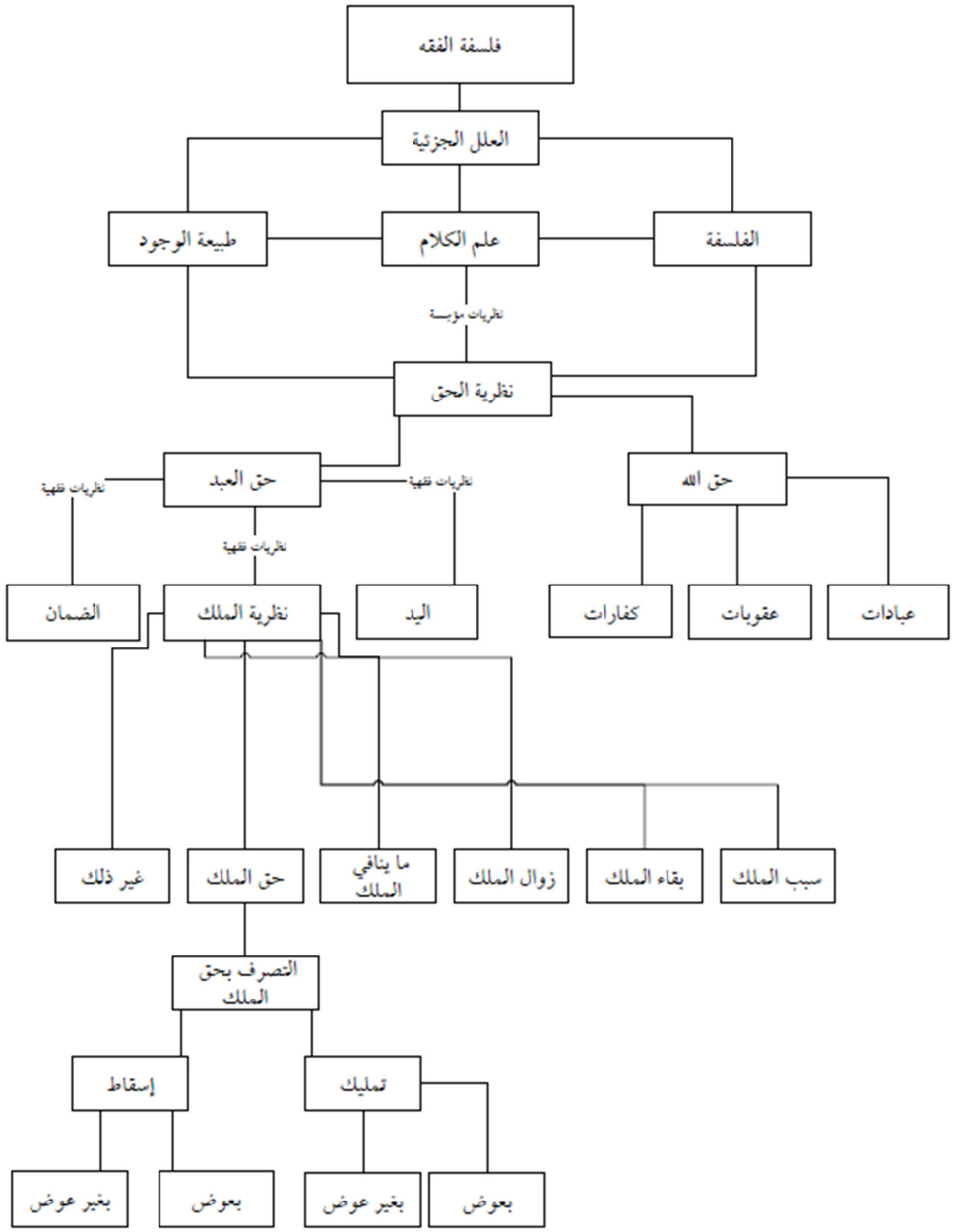
وكما يظهر من الأمثلة المذكورة أن الدبوسي في بنائه لنظرية الملك بناها على صورة مركبة، فاستعمل العديد من المفاهيم التي جردها واستعملها في فروع شتى ومن تلك المفاهيم حق الملك، ويميز بينها وبين "الملك" فنجده مثلا يقول: «وصحة الاستيلاد تفتقر إلى الملك أو حقِّ الملك أو التأويل بسببٍ

١٠٠الدبوسي، **أسرار المسائل**، ١٣٤ظ-٢٣٤و.
١٠١انظر: الدبوسي، **أسرار المسائل**، ٨٣١و، ٨٣١ظ، ٩٣١ظ.
١٠٢انظر: الدبوسي، **أسرار المسائل**، ٣٧ظ.
١٠٣انظر: الدبوسي، **أسرار المسائل**، ٨٣١و.
١٠٤انظر: الدبوسي، **أسرار المسائل**، ٨١١ظ.
١٠٥انظر: الدبوسي، **أسرار المسائل**، ٨٣١ظ.
١٠٦انظر: الدبوسي، **أسرار المسائل**، ٩٣١ظ.
١٠٧انظر: الدبوسي، **أسرار المسائل**، ٣٠١و.
١٠٨انظر: الدبوسي، **أسرار المسائل**، ٣٠١ظ.
١٠٩انظر: الدبوسي، **أسرار المسائل**، ٩٧٥ظ.
١١٠انظر: الدبوسي، **أسرار المسائل**، ٧٥٣و-٧٥٣ظ.
١١١انظر: الدبوسي، **أسرار المسائل**، ٨٠١ظ.
١١٢انظر: الدبوسي، **أسرار المسائل**، ١٤٤و.

صحيح».[١١٣] كما يبين مستويات أخرى أدق في مفهوم حق الملك: فيبين أن للتصرف بحق الملك أنواع فيقول: «التصرف بحق الملك نوعان: [١] تمليكٌ [٢] وإسقاطٌ، ثم ما هو إسقاط يستوي حين ثبوت حُكمه بعوضٍ وغير عِوَضٍ فكذلك التمليك».[١١٤]

فعند محاولة ربط مفهوم التصرف بحق الملك عند الدبوسي في الصورة الكلية التي يوردها هو في الأسرار نرى ما يلي: الفلسفة ← الحقوق ← حق العبد ← الملك ← حق الملك ← التصرف بحق الملك ← تمليك / إسقاط ← بعوض وبغير عوض. ويمكن توضيح العلاقات المذكورة في البحث ضمن التشجير التالي:

١١٣ انظر: الدبوسي، **أسرار المسائل**، ٣٣٣و.
١١٤ الدبوسي، **أسرار المسائل**، ٩١٦و.


فلسفة الفقه
العلل الجزئية
طبيعة الوجود
علم الكلام
الفلسفة
نظريات مؤسسة
نظرية الحق
حق العبد
حق الله
نظريات فقهية
نظريات فقهية
نظريات فقهية
الضمان
نظرية الملك
اليد
كفارات
عقوبات
عبادات
غير ذلك
حق الملك
ما ينافي الملك
زوال الملك
بقاء الملك
سبب الملك
التصرف بحق الملك
إسقاط
تمليك
بغير عوض
بعوض
بغير عوض
بعوض

٤. إعادة تموضع المقاصد

يمكن في سياق هذه السردية –من التعليل إلى الفلسفة إلى النظرية الفقهية– إعادة اكتشاف الموضع الحقيق بالمقاصد، لا باعتبارها فهمًا منقطعا عن الواقع وتقديرات لأسباب التي شرعت الأحكام لأجلها، وما يتغيا الشارع من المكلف؛ بل يمكن وضع المقاصد كنقطة وسيطة بين التعليل الجزئي وبناء الفلسفة للفقه الإسلامي وما يتصل بها من نظريات تعود إلى الجزئيات كذلك، في إطار من الربط بين الكلي والجزئي. وهذه النظرة إلى المقاصد ربما تكون تطويرًا لمفهوم المقصد لا من حيث هو فهم مجرد؛ بل نقطة تحول لإعادة اكتشاف النظريات المبكرة، وكيف أن هذه المقاصد نقطة الوصل بين الفقه وفلسفة الفقه وعلم اجتماع الفقه. كما يمكن من خلال هذه القراءة القيام بالعديد من الدراسات الفقهية البينية، وكيفية اتصال المعارف الإنسانية، خصوصًا في تلك الحقب المبكرة للفقه الإسلامي.

٥. النتائج

يظهر من خلال البحث أنَّ الاستقرار المبكر للقواعد الفقهية ساهم في توسيع مفاهيم كلية في مرحلة متقدمة في بداية القرن الخامس الهجري، وهو ما يظهر من خلال كتاب الدبوسي الأسرار، حيث ربط الدبوسي التعليل الجزئي بالعديد من التعليلات ذات الصلة بعلوم عديدة، كالكلام والفلسفة، مما ساهم في توسيع نطاق التعليل، فتنوعت طرق التعليل التي يتبعها الدبوسي، وهو يخرج من الربط الجزئي إلى نطاق كلي عن طريق استحضار أبعاد كلامية وفلسفية وكلية في السياق الفقهي. وبالتالي فإن التعليل عند الدبوسي يمكن وصفه إجمالًا بالتعليل المتجاوز للمعهود من حيث نطاق النظر والأبعاد. ويتجاوز الدبوسي في هذا النمط من التعليل الفقهاء السابقين عند المقارنة بينه وبين الجصاص والقدوري. وفي هذا السياق يلاحظ أنَّ المقاصد تمثل جزءًا من البنية الفقهية، وأنها تتصل مباشرة بالفروع الفقهية بناء وتركيبًا، وليست بناء غائيًا منفصلًا عن المسائل. كما يظهر أن المقاصد تتصل بفلسفة الفقه بصورة أساسية.

كما نلحظ تنوع تشكلات المعاني الكلية في عمل الدبوسي وعلى مستويات عدة، ما بين قواعد كلية، ومفاهيم، ونظريات فقهية، ونظريات أساسية وصولًا إلى فلسفة الفقه بالعموم. ويمكن أن نلحظ أن النظريات الفقهية –كنظرية الملك التي تم التمثيل بها– تشكل أحد الصلات المركزية بين الأبواب الفقهية، والتي تركبت من فروع وأبواب مختلفة. وعلى هذا النسق فإنه يمكن ملاحظة النظريات الفقهية كأحد وسائل الربط الفقهي في تخريج الأصول على الفروع.

يظهر من خلال هذا السرد استقرار تعليل الجزئيات الفقهية ليتجاوز ذلك إلى عدة مستويات في النصف الأول من القرن الخامس الهجري: التعليل بعلوم أخرى، إنشاء مفاهيم مجردة وهو ما عبر عنه في سياق هذا البحث بفلسفة الشريعة، وتطوير نظريات فقهية في حقبة متقدمة، وهذا التطوير لم يكن على مستوى واحد؛ بل تطويرًا في مستويات مركبة. تساهم هذه السردية في الكشف عن تطور التعليل داخل المذهب الحنفي، كما تكشف عن ترابط العلوم الإسلامية، الفقهية والعقلية، ومن جانب آخر تكشف اتصال الفقه بتصور الفقيه عن العالم والوجود.

أثناء سعي الدبوسي في بناء النظرية الفقهية والنظريات المؤسسة (الحق)، نلاحظ التداخل العلمي على مستوي الدبوسي معرفيًا وعلى مستوى التأليف والاصطلاح المستخدم في أثناء الكتاب. وهو ما يلقي بظلال حول أهمية إعادة بناء صلات الدبوسي العلمية ونشأته وعصره في إطار مخرجاته العلمية.

البنية المعقدة الطبقية تربك مقدار التجريد والتركيبية والاتصال في البنية التي ينشئها الدبوسي، كما تربك تطور فلسفته الفقهية ونظرياته، وتقود إلى شك في أوهام ثابتة حول الحالة الفقهية المتقدمة عند فقهاء الحنفية إلى القرن الخامس الهجري، وينقلنا الدبوسي والكتابات التي بدأت في الظهور قبله إلى يقين تام بالتطور الهائل البعيد للتصورات والنظريات الفقهية في القرن الخامس الهجري، هذا التطور الفقهي في العلل والقواعد الفقهية –ناهيك عن المسائل والتقعيد– الذي إذا افترضنا عدمه لن يمكننا فهم ما يورده الدبوسي في كتابه هذا بصورة طبيعية؛ بل سيكون الدبوسي حينئذ حالة ناشزة شاذة ضمن محيط غريب عنه،

وهو ما لا تقتضيه طبيعة الأشياء، كما تدل على خلافه الكتابات والنصوص المتوفرة لدينا.

وبذلك يكشف هذا البحث عن البنية المعرفية المركبة لفكر الدبوسي، ويعيد تموضعه في سياق تطور الفقه الحنفي بوصفه حلقة وصل بين التعليل الجزئي والفلسفة الفقهية، فاتحًا آفاقًا جديدة لدراسة تداخل العلوم وتكون النظريات في الفقه الإسلامي المبكر.

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Extended Summary

This study examines the methodology of justification in Abū Zayd al-Dabūsī's *al-Asrār*. It delves into the intricacies of these justifications and attempts to uncover the underlying patterns that, according to this study, transcend the conventional jurisprudential justifications employed by earlier scholars. While Iraqi jurists, as reflected in the available texts, focused primarily on two aspects, namely, identifying the specific cause of a jurisprudential decision or applying general legal principles, al-Dabūsī goes beyond these by incorporating justifications from various disciplines, including theology and philosophy. By moving beyond conventional grounds, he offers an alternative conceptualization of jurisprudence and justification. Al-Dabūsī links jurisprudence to a holistic perception of *sharīʿa* and the world, reflected in his terminology and justifications.

Al-Dabūsī does not merely aim to illustrate the wisdom and virtues of *sharīʿa* as elaborated by earlier scholars such as al-Tirmidhī and al-Shāshī, nor does he limit himself to presenting the reasons for legal disagreements or identifying the prevailing opinion within or outside the school. Rather, he expands his account of justification to include theological, philosophical, and ontological dimensions.

Following this introduction, the research question is defined as a descriptive study of the methodology of justification in *al-Asrār* and how it differs from previous approaches, especially those of Iraqi predecessors such as al-Jaṣṣāṣ. Through an in-depth examination of al-Dabūsī's discourse in *al-Asrār* and al-Jaṣṣāṣ's writings, this study provides an overview of the dynamics and goals of justification, highlighting the distinctive features of al-Dabūsī's work.

An analysis of al-Dabūsī's approach to rationalization reveals several levels. First, he introduces a notable level of conceptual abstraction, which I call "the philosophy of *sharīʿa*." This includes concepts such as "the sanctity of sin" and jurisprudential concepts such as benefit (*maṣāliḥ*), ownership (*milk*), possession (*qabḍ*), and liability (*ḍamān*). By integrating these concepts, al-Dabūsī constructs an underlying jurisprudential theory that rationalizes various legal decisions.

Within his rationalization framework, al-Dabūsī uses several interrelated sciences to develop a comprehensive legal conception. At the level of individual arguments, his concepts are interwoven to reveal a sophisticated, multi-layered theory. These layers include foundational legal theories, such as the theory of rights, and subsidiary theories, such as the theory of property. He divides rights into the rights of God (*ḥaqq Allāh*) and the rights of the servant (*ḥaqq al-ʿabd*). While this division existed before al-Dabūsī, as in the works of al-Jaṣṣāṣ, he provides a more detailed articulation across different branches of law. He further divides *ḥaqq Allāh* into three categories: pure acts of worship, punishments, and expiations, illustrating their justifications with examples.

In addition, al-Dabūsī categorizes *ḥaqq al-ʿabd*, specifying what falls under the servant's rights and what does not. In cases of conflict between the two types of rights, either God's right or the servant's will prevail. However, he presents this division as a derivative of the broader legal framework.

Having established the first layer of his jurisprudential theory, al-Dabūsī further explores *ḥaqq al-ʿabd* by linking it to property. He asserts that ownership is a fundamental right of the servant and addresses related issues throughout *al-Asrār* within an interrelated framework. Under the broader concept of ownership, he discusses subsidiary theories such as the right of ownership and its implications for the disposal of property. He elaborates on various subcategories, which this study analyzes to outline his construction of this theory. Consequently, his jurisprudential system can be understood as follows: at its foundational level, he presents a worldview shaped by rationalizations that go beyond traditional legal reasoning to include theology, philosophy, jurisprudential philosophy, and ontology. Al-Dabūsī then develops the theory of rights, with property as a subsidiary aspect of *ḥaqq al-ʿabd*. In this framework, rights appear not as abstract principles but practical legal constructs. This approach does not treat legal philosophy as an isolated

teleological theory; rather, through its scattered presentation, al-Dabūsī demonstrates the intricate connections between foundational and subsidiary legal theories in all branches of jurisprudence.

By tracing al-Dabūsī's methods of justification, this study highlights the early development and stabilization of jurisprudential theory. His extensive use of legal theories, particularly the theory of rights and property, illustrates how jurisprudential reasoning is inextricably linked to his understanding of various sciences, especially theology and philosophy. Furthermore, his justifications show that legal purposes (*maqāṣid*) are not merely intended to highlight the virtues of *sharīʿa*; rather, he uses them to demonstrate the consistency of *sharīʿa* with the nature of existence and the world. Moreover, *maqāṣid* do not represent the ultimate goal of jurisprudence, nor do they function as independent theoretical constructs; instead, they remain embedded in the practical application of decisions, as evidenced by his extensive legal justifications. Notably, his work builds on a stable, pre-existing framework of jurisprudential reasoning, allowing him to develop and systematize these theories.

In conclusion, this study marks the beginning of an investigation into early jurisprudential theory, which is not always explicitly stated in legal texts, but can be discerned through legal justifications. The findings remain dependent on the sources available at the time of this research and may evolve with further textual discovery and analysis. The examination of legal justifications provides critical insights into the construction of legal decisions and the underlying legal reasoning, offering a direct window into the jurist's intellectual framework.

Keywords: Islamic law, Hanafī school, Legal theory, Philosophy of Islamic law, al-Dabūsī, *al-Asrār*, *Taʾlīl*, *Maqāṣid*, *Ḥaqq*, *Milk*, Law.

Araştırma Makalesi / Research Article

تقييم جديد حول التكييفِ الفقهي لمسائل الحِيَل الشّرعيّة وصحّةِ نسبتها إلى أئمّة الحنفيّة*

OKAN KADİR YILMAZ**

الملخص

الحِيَل الشرعية –التي تثير الانتباه بسبب الدلالة السلبية التي يحملها اسمها– هي نوع من المسائل الفقهية التي كانت محل جدل من حيث شرعيتها في الفترة الكلاسيكية. وقد تم تدوين هذه المسائل التي ارتبطت بمذهب الحنفية منذ القرن ٢هـ/٨م في مصنفات مختلفة للأئمة المُؤسِّسِين وأتباعِهم، حتى نسِب إلى كل من أبي حنيفة (ت. ١٥٠/٧٦٧) وأبي يوسف (ت. ١٨٢/٧٩٨) والشيباني (ت. ١٨٩/٨٠٥) كتاب في الحِيَل. وقد تمّ تقييم نسبة هذه الكتب تقييمًا مختلفًا مِن قِبَل العديد من الأشخاص قديمًا وحديثًا، وطُرحت آراء إيجابية وأخرى سلبية فيما يتعلق بنسبة هذه الكتب. وبعض الآراء السلبية التي طُرِحت بحسن نية كانت ناجمةً مِن أفكار سلبية حول طبيعة مسائل الحِيل نفسِها. وفقًا لنتائج الأبحاث التي قمتُ بها، هناك ارتباط وثيق بين الطبيعة الفقهية لمسائل الحِيَل وبين نسبة مسائلِ الحِيل وكُتُبِها إلى أئمة الحنفية. وعلى هذا، فمن المهم أن يُكشَف عن الطبيعة الفقهية للحيل الشرعية من وجهة نظر أئمة الحنفية المؤسِّسِين.

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* تم إعداد هذه المقالة استنادًا إلى أطروحة الدكتوراه التي أتممتُها بتاريخ ٢٠٢٣/١٠/٢٤ تحت إشراف الأستاذ الدكتور نجم الدين كِيزِيلْكايا، بعنوان "*Orta Asya Hanefî Fetva Literatürünün Gelişimi ve İcâre-i Tavîle* (4/10-6/12. Yüzyıllar)" (تطور أدبيات الفتاوى الحنفية في آسيا الوسطى والإجارة الطويلة نموذجا)، أطروحة دكتوراه، جامعة إسطنبول، إسطنبول، تركيا، ٢٠٢٣. لقد قمتُ بعرضها سابقًا كورقة بحثية في الورشة السنوية الرابعة لمذهب الحنفية، ٤–٧ يونيو ٢٠٢٤، سمرقند، أوزبكستان.

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DOI: 10.26570/isad.1729941 • Geliş/Received 30.06.2025 • Kabul/Accepted 25.11.2025

Atıf/Citation Yılmaz, Okan Kadir, "تقييم جديد حول التكييفِ الفقهي لمسائل الحِيَل الشّرعيّة وصحّةِ نسبتها إلى أئمّة الحنفيّة", *İslam Araştırmaları Dergisi*, 55 (2026): 303-322.

في مقالتي هذه قمتُ أوّلًا بتحديد طبيعة مسائل الحِيَل الشرعية وتكييفها الفقهي من خلال مثالين مشهورين من أمثلة الحِيل المتعلقة بإسقاط الزكاة وحقّ الشفعة. ثم قمتُ بتقييم نسبة هذه المسائل إلى الأئمّة الحنفية، وذلك بناء على ملاحظة لأبي بكر الإسكاف (ت. ٣٣٣/٩٤٤) –أحد فقهاء الحنفية من أهل بلخ– حول المصدر الأصليّ لمسائل **كتاب الحِيَل** المنسوب للشيباني. وتقييمي هذا ركّز على مسائل الحِيَل نفسِها بدلا مِن **كُتُب الحيل**، خلافًا لِما فعله العلماء الكلاسيكيون والمعاصرون الذين اختلفت آراؤهم في نسبة هذه الكتب إلى الأئمّة. وتهدف هذه المحاولة إلى استكشافِ الطبيعة الفقهية لمسائل الحيل الشرعية في تصورات الأئمة المؤسِّسِين، وتقديمِ حَلٍّ لمشكلةِ نسبتها إليهم، مع تفسير سبب ظهور هذه المسائل في المذهب الحنفي.

الكلمات المفتاحية: المذهب الحنفي، القياس، الحِيَل الشرعية، كتاب الحِيَل، حيلة إسقاط الزكاة، حيلة إسقاط حقّ الشفعة.

Hiyel Meselelerinin Fıkhî Niteliği ve Hanefî İmamlara Âidiyetleri Hakkında Yeni Bir Değerlendirme

Öz

İsminin sahip olduğu olumsuz çağrışımla dikkat çeken hiyel-i şeriyyeler, klasik dönemde daha çok meşruiyeti açısından tartışmalara konu olmuş bir fıkhî mesâil türüdür. 2/8. yüzyıldan itibaren Hanefî mezhebiyle özdeşleşen bu meseleler, kurucu imamlar ve müntesipleri tarafından çeşitli telif faaliyetlerine konu edilmiş hatta Ebû Hanîfe, Ebû Yusuf ve Şeybânî'den her birine hiyel konusunda bir eser nispet edilmiştir. Bu nispetler gerek klasik gerekse modern dönemde birçok kişi tarafından farklı şekillerde değerlendirilmiş ve eserlerin aidiyetleriyle ilgili hem olumlu hem de olumsuz kanaatler ortaya konmuştur. Aidiyet konusunda iyi niyetle ortaya konan olumsuz kanaatlerin bir kısmı, bizzat hiyel meselelerinin mahiyeti konusunda sahip olunan benzer düşüncelerden kaynaklanmaktadır. Tespitlerime göre, hiyel-i şeriyyelerin fıkhî mahiyetleriyle, hiyel meselelerinin ve kitaplarının Hanefî imamlara aidiyeti arasında sıkı bir bağ vardır. Bu nedenle hiyel-i şeriyyelerin fıkhî mahiyetinin ne olduğunu Hanefi imamların perspektifinden ortaya koymak önemlidir.

Makalemde öncelikle zekât ve şüfa hakkının düşürülmesiyle alakalı meşhur iki hiyel-i şeriyye örneği üzerinden bu tür meseler hakkında bir mahiyet belirlemesi ve fıkhî niteleme yapacağım. Ardından Belhli Hanefî fakihlerden Ebû Bekr el-İskâf'ın, Şeybânî'ye nispet edilen hiyel kitabındaki meselelerin kaynağı hakkında yaptığı bir tespitten hareketle bunların Hanefî imamlara aidiyetiyle ilgili bir değerlendirmede bulunacağım. Hiyel kitaplarının Hanefi imamlara nispeti hakkında farklı kanaatler ortaya koyan klasik ve çağdaş isimlerin aksine benim değerlendirmem hiyel meselelerini merkeze alacaktır. Hiyel-i şeriyyelerin kurucu imamların tasavvurlarında sahip olduğu fıkhî niteliği keşfetmeyi ve aidiyet problemine dair bir çözüm sunmayı hedefleyen bu çaba, aynı zamanda bu meselelerin niçin Hanefî mezhebinde ortaya çıktığına dair bir açıklama ortaya koymayı da hedeflemektedir.

Anahtar Kelimeler: Hanefî mezhebi, Kıyâs, Hiyel-i şer'iyye, Kitâbü'l-hiyel, Zekât hilesi, Şüf'a hilesi.

A New Assessment of the Jurisprudential Qualification of Legal Stratagems and Their Attribution to Ḥanafī Scholars

Abstract

The legal stratagems (*ḥiyal sharʿiyya*) have gained attention due to the negative connotations associated with their name, and represent a category of jurisprudential issues that were predominantly debated in terms of their legitimacy during the classical period. These issues, which became associated with the Ḥanafī madhhab from the 2nd/8th century onward, were the subject of various compilation efforts by the founding imams and their followers. In fact, books on *ḥiyal* have been attributed to each of the prominent Ḥanafī jurists, namely, Abū Ḥanīfa, Abū Yūsuf, and Shaybānī. The attribution of these books has been evaluated in diverse ways, both in the classical and modern periods, leading to a range of opinions, both positive and negative, about their authenticity. Some of the negative views, expressed in good faith, are rooted in shared misconceptions about the nature of the *ḥiyal* issues themselves. This study's findings show there is a strong connection between the jurisprudential nature of *ḥiyal al-sharʿiyya* and the attribution of *ḥiyal* issues and books to the Ḥanafī imams. This connection underscores the importance of examining the jurisprudential nature of *ḥiyal sharʿiyya* from the perspective of the Ḥanafī imams.

In this article, I first define the nature of these issues and provide a jurisprudential qualification of them by examining two well-known examples of *ḥiyal al-sharʿiyya* related to the abolition of zakāt liability and the abolition of the right of pre-emption (shufʿa). Following this, I assess the attribution of the *ḥiyal* books to the Ḥanafī imams, drawing on the critical observation made by Abū Bakr al-Iskāf, a prominent Ḥanafī jurist from Balkh, regarding the sources of the *ḥiyal* issues in the work attributed to Shaybānī. Unlike previous classical and contemporary scholars who have offered divergent views on the attribution of these texts, our analysis will focus on the core issues of *ḥiyal* themselves. This study aims to uncover the jurisprudential nature of *ḥiyal sharʿiyya* as envisioned by the founding Ḥanafī imams and to provide a resolution to the attribution problem, as well as an explanation of why these issues emerged in the Ḥanafī madhhab.

Keywords: Ḥanafī school, Analogy (*qiyās*), Legal stratagems (*ḥiyal al-sharʿiyyah*), Book of stratagems (*Kitāb al-Ḥiyal*), Stratagem for the abolition of zakāt liability, Stratagem for the abolition of the right of pre-emption (*shufʿa*).

مدخل

منذ القرن الثاني الهجري/الثامن الميلادي ارتبطت مسائل الحِيَل الشرعية بالمذهب الحنفي، فكانت موضوعًا لتأليفات متعدّدة مِن قِبَل الأئمّة المؤسِّسِين وتلامذتِهم، حتى نُسب إلى كلٍّ مِن أبي حنيفة وأبي يوسف ومحمد بن الحسن

الشيباني مصنَّفٌ في الحِيَل. غير أنّ هذه النِّسَب كانت محلَّ نقاشٍ مستمرٍّ سواء داخل المذهب الحنفي أو خارجه. وقد استمرّ الخلاف في مسألة النسبة، الذي بدأ في العصر الكلاسيكي إلى العصور الحديثة؛ حيث تبنّى باحثون معاصرون مواقف متباينة إزاء هذه الكتب ودرجة ارتباطها بالأئمّة المؤسِّسين.

ويُعَدّ كتاب **الحِيَل** المنسوب إلى الشيباني في قلب هذه المناقشات؛ إذ انقسمت آراء تلامذته منذ البداية بين مثبتٍ لهذه النسبة ونافٍ لها. غير أنّ إدراج هذا الكتاب ضمن **مختصر الكافي** للحاكم الشهيد -وهو اختصار **الأصل** للشيباني الذي هو الكتاب الأول لكتب ظاهر الرواية- قد أضفى على النقاش الكلاسيكي بُعدًا جديدًا، وجعل الكتابَ يُعَدّ من النصوص المُمثِّلة للمسائل المؤسِّسة للمذهب الحنفي، وأدّى إلى قبول نسبته إلى الشيباني.

تتناول هذه المقالة الطبيعةَ الفقهيّة لمسائل الحِيَل الشرعية، وتبحث في مدى انتسابها إلى الأئمة المؤسِّسين كأبي حنيفة وأبي يوسف وبالأخصّ محمد بن الحسن الشيباني. وعلى خلاف الدراسات المعاصرة السابقة، فإن هذه الدراسة لا تُركِّز على كتب الحِيَل بذاتها؛ بل تجعل مسائل الحِيَل ذاتها محورًا للبحث. في هذه المرحلة، سيتمّ أوّلًا إثبات أنّ مسائل الحِيَل هي في الأساس مسائل قياسيّة، ممّا يكشف عن طبيعتها الفقهية. وفي النهاية سيتمّ الاستدلال على صحّةِ نسبة هذه المسائل -التي تحتويها **كتاب الحيل** إلى الأئمة المُؤسِّسين- مِن خلال أَشهَر أمثلة مسائل الحِيَل في المذهب الحنفي، وهي حيلة إسقاط الزكاة وحيلة إسقاط حق الشُّفعة.

١. التعريف بالحيلة

مِن أشهر أسماء مسائل الحِيَل الشرعية الشائعة في المذهب الحنفي هما الحيلةُ (ج. الحِيَل) والمَخرَجُ (ج. المَخارِج) على ترتيب الشهرة. والحيلة في اللغة الحذق، وجودة النظر، والقدرة على دقة التصرف؛ وكل ما يتلطف به لدفع المكروه أو لجلب المحبوب. قال ابن تيمية: «ثم غلبت بعرف الاستعمال على ما يكون من الطرق الخفية إلى حصول الغرض، وبحيث لا يتفطن به إلا بنوع

من الذكاء والفطنة، فإن كان المقصود أمرًا حسنًا كانت حيلة حسنة، وإن كان قبيحًا كانت قبيحة».[1] وقال العيني: «الحيلة: ما يُتوصَّل به إلى المقصود بطريق خفيّ».[2] وجاءت في معناها اللغوي في موضع واحد من **القرآن الكريم**: وقال تعالى ﴿لَا يَسۡتَطِيعُونَ حِيلَةٗ وَلَا يَهۡتَدُونَ سَبِيلٗا﴾ [النساء: ٤/٩٨]. وأما كلمة "المَخرَج" -التي تستعمل بمعنى مشابِهٍ للحيلة وأحيانًا تُذكر بجانبها، مثل: "الحِيَل والمَخارِج"- فمعناها "مكان الخروج". فنرى أنّ كلًّا مِن كلمتي "الحِيَل" و"المَخارِج" استُخدِمتا بنفس المعنى في عناوين الإبرازَتَين اللّتَين هما مِن أقدم أعمال الحِيَل المنسوبة إلى الشيباني (ت. ١٨٩/٨٠٥)، أعني: النسخة المُستقِلّة بعنوان **المخارج في الحيل**،[3] والنسخة غير المُستقِلّة بعنوان **كتاب الحيل** ضمن كتاب **الأصل**.[4]

على حدّ علمي، إنّ أقدم تعريفٍ لمفهوم الحيلة هو للخَصّاف (ت. ٢٦١/٨٧٥)، أحدِ مشايخ العراق من الحنفية في القرن الثالث الهجري/التاسع الميلادي وأحدِ مُؤلِّفي الحِيَل. واختار الخَصّاف في كتابه الشهير في الحِيَل تعريفًا يُرَكِّز فيه على غاية الحِيَل الفقهيّة؛ فالحيلة عنده: "شيء يَتخلَّص به الرجلُ مِن المآثِم والحرام، ويَخرُج به إلى الحلال".[5]

بعد هذا التعريف لمعاني الحيلة اللغويّة والفقهيّة سأتناول أوّلًا مشكلة نسبة كتب الحِيَل إلى أئمّة الحنفية، ثمّ أُقدِّم مقترحي في حَلّ هذه المشكلة بالاستناد إلى ملاحظة توصّلتُ إليها في شأن الطبيعة الفقهية لمسائل الحِيَل.

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١ انظر: ابن منظور، لسان العرب، ١١/١٨٥؛ قاسم القونوي، أنيس الفقهاء، ١١٤.

٢ ابن تيمية، الفتاوى الكبرى، ٦/١٠٦. انظر: الخلوتي، الحيل الفقهية، ص ١٥-١٦؛ Saffet Köse, *İslâm Hukuku Açısından Kanuna Karşı Hile ve Hile-i Şer'iyye*, s. 81-82.

٣ العيني، عمدة القاري، ٢٤/١٠٨.

٤ الشيباني، **كتاب الحيل**، لايزيغ: ١٩٣٠.

٥ الشيباني، **كتاب الحيل** (ضمن كتاب الأصل) ٩/٤٠٤-٥٠٥.

٢. كتاب الحِيَل ومشكلة النسبة

في المذهب الحنفي نعلم أنه نُسِب إلى كُلٍّ من أبي حنيفة (ت. ١٥٠/٧٦٧) وأبي يوسف (ت. ١٨٢/٧٩٨) والشيباني كتاب باسم "الحِيَل". كما نجد في النصف الثاني من القرن الثاني الهجري/الثامن الميلادي العديد من الكوفيّين قد تحدّثوا بشكل سَلبِيٍّ للغاية عن محتوى كتابٍ في الحِيَل غيرِ معروفِ المؤلِّف. وقد نُسِب هذا الكتاب في بعض الروايات إلى أبي حنيفة، إلا أنّ حمزة البكري مِن الباحثين المعاصرين نفى صحةَ هذه النسبة في دراسته المُتعلِّقة بهذا الموضوع باتّباع منهج النّقد الحديثي. وباتّباع نفس المنهج فيها قد أثبَت كذلك أنّ نسبة **كتاب الحيل** إلى أبي يوسف -الذي بين أيدينا اليوم منسوبا إلى الشيباني كجزء من كتاب **الأصل**، والمنشور مستقلًّا أيضًا مع اختلافات طفيفة بينهما- هي غير صحيحة.[٦]

فالكتاب الذي وصل إلى يومنا باسم **كتاب الحيل** كجزء مِن كتاب **الأصل** نُسِب كذلك إلى الشيباني، ونسبة هذا الكتاب إلى الشيباني منذ عهد تلاميذه ما تزال محلَّ خلاف؛ على قول أبي سليمان الجزجاني (ت. ٢٠٠/٨١٦ [؟]) -وهو أحد أهم رواة **الأصل** للشيباني- فإنّ نسبة هذا الكتاب إلى الشيباني غير صحيحة، بينما أنَّ أبا حفص البخاري (ت. ٢١٧/٨٣٢) -وهو الآخَر مِن أهم رواة الأصل- يؤكِّد صحةَ هذه النسبة إليه.[٧]وأما اسم راوي **كتاب الحيل** الذي في **الأصل** عن الشيباني فهو محمد بن هارون الأنصاري. لعل المقصود به هو أبو عبد الرحمن محمد بن هارون الأنصاري القُهُنْدُزِي البخاري الذي له رحلة علميّة إلى العراق كما قاله السمعاني في ترجمته؛[٨] إلا أنّه لَم تذكره المصادر مِن بين تلاميذ الشيباني، لكنّي لم أقع على شخص آخر بهذا الاسم في تلك الفترة.

٦ الخصاف، **كتاب الحيل**، ص ٤.

٧ انظر: البكري، **توظيف النقد الحديثي**، ص ٧٢-٧٥.

٨ أبو الليث السمرقندي، **كتاب النوازل** (نور عثمانية ٢٠٦٧) ٢٨٢و؛ السرخسي، **المبسوط**، ٣٠/٢٠٩.

فقد اختُصِر **كتاب الحيل** الذي يضمُّه **الأصل** مع الكتب الأخرى فيه من قِبَل الحاكم الشهيد في كتابه الكافي، وتمّ شرحه مع باقي الكتب في شروحه. بالإضافة إلى ذلك، فإن كونَ راوي **كتاب الحيل** الوارد في **الأصل** من أهل بخارى، وتأكيدَ أبي حفص الكبير البخاري نسبة هذا الكتاب إلى الشيباني كتلميذٍ له كانا مُؤَدِّيَيْن لقبول نسبته إلى الشيباني في منطقة ما وراء النهر. واختصار الحاكم الشهيد **كتاب الحيل** ضمن **الكافي** يعتبر مهمًّا أيضًا في ذلك، لأنه يعني تصنيف **كتابِ الحيل** ومسائلِها ضمنَ ظاهر الرواية التي تُمثِّل المسائلَ الأساسيّة للمذهب.

لكن هناك رواية عن الشيباني نفسِه، منقولة عن طريق مشاهير الحنفية في عدم صحة نسبةِ **كتاب الحيل** إليه، ومَن هو مؤلفه الحقيقي:

[أحمد بن محمد بن عبد الله:] حدثنا أبي [محمد بن عبد الله] قال: ثنا أبي [عبد الله بن محمد المعروف بابن أبي العوام] قال: سمعت أحمد بن محمد بن سلامة [الطحاوي] يقول: سمعت أحمد بن أبي عمران يقول: قال محمد بن سماعة: سمعتُ محمد بن الحسن يقول: «هذا الكتاب -يعني **كتاب الحيل**- ليس مِن كُتُبِنا، إنما أُلقِي فيها». قال ابن أبي عمران (ت. ٨٩٣/٢٨٠): «إنما واضعه إسماعيل بن حماد بن أبي حنيفة».[٩]

ويتوافق اسم إسماعيل بن حماد بن أبي حنيفة (ت. ٢١٢/ ٨٢٧)، -وهو حفيد أبي حنيفة- مع ما لاحظه الأستاذ حمزة البكري مِن أنَّ الكتاب ليس من تأليف الشيباني، وما أشار إليه من خصائص مؤلِّفه الحقيقي باتّباع طريقة النقد الحديثي بقوله: «إنما هو مِن تأليف رجل متأخِّر الطبقةِ عن محمد بن الحسن قليلًا، شاركه في الأخذ عن أبي يوسف، كما شاركه في الرواية عن بعض شيوخه، وأخذ عن محمد نفسه».[١٠]

٩ «والمشهور بهذه النسبة أبو عبد الرحمن محمد بن هارون الأنصاري القهندزي، من أهل بخارى، كان من أهل العلم، سمع عبد الله بن المبارك وسفيان بن عيينة والفضيل بن عياض ومحمد بن مسلم الطائفي وعيسى بن موسى غنجار، وكانت له رحلة إلى العراق والحجاز، روى عنه سعيد ابن جناح وأسباط بن اليسع البخاريان». انظر: السمعاني، **الأنساب**، ٥٢٤/١٠.

١٠ ابن أبي العوام، **فضائل أبي حنيفة**، ص ٣٦٥. انظر: البكري، **توظيف النقد الحديثي**، ص ٩٣-٩٤.

٣. الطبيعةُ الفقهية لمسائل الحِيَل وحَلُّ مشكلة النسبة

وقد ذكرتُ فيما قبلُ تعريفَ الخصّاف للحيلة الشرعية المُرَكِّز على الغاية منها بأنّها "شيء يَتخلَّص به الرجل من المآثم والحرام، ويخرج به إلى الحلال".[١١]

يمكنني القول بأنّ تعريفه المذكور يعطي فكرةً عن ماهيّة الحِيَل الشرعية باعتبار غايتها. ومع ذلك، فإنّي أعتقد أنّ طبيعةَ الحِيَل الشرعية وتكييفَها الفقهي في المذهب الحنفي تبقى على غموضها على الرغم مِن وجود هذا التعريف لها. ولرفع هذا الغموض إلى حدٍّ ما، أَودُّ التركيز على سؤال: ما هي طبيعةُ الحِيَل الشرعية وتكييفُها الفقهي في تصوّرات أئمّة الحنفيّة المُؤسِّسين، والتي تُعتبر في عصرنا الحاضر كأنّها مسائل فقهيّة مختلفة عن المسائل الفقهيّة الأخرى؟ وأثناء محاولتي عن الإجابة على هذا السؤال، سأذكر وأَدرُس مثالين مِن أشهَرِ الحيل الشرعية في المذهب، وهما "حيلة إسقاط الزكاة" و"حيلة إسقاط حق الشفعة".

مِن الروايات التي تُظهر أنّ مسائل الحِيَل ليست في الأساس مختلفة عن غيرها مِن المسائل الفقهية، وأنّها نتيجة اتّباع أئمة الحنفية فيها بابَ القياس ونَمَطَه: هي قول أبي بكر الإسْكَاف (ت. ٣٣٣/٩٤٤) أحد مشايخ بلخ من الحنفية في القرن الرابع الهجري/العاشر الميلادي: «قال أبو بكر: جميع ما أورد محمد بن الحسن في **كتاب الحيل** كلُّه موجودٌ في **المبسوط** [أي: الأصل] إلا مسألة واحدة...».[١٢]

هذا التقرير الذي أخذ به أيضًا صدر الشّهيد حسام الدين (ت. ٥٣٦/١١٤١) ونقله في **فتاواه**[١٣] هو تقريرٌ مهمّ مِن ناحية أنه يُظهِر لنا أنّ هذه المسائل المُلقَّبة بالحِيَل ما ذُكِرت إلا حَلًّا قياسِيًّا لمشكلة فقهيّة مفترضة ومُقدَّرة. فإنَّ عدم إطلاق الشيباني سواء كلمة "الحِيلَة" أو مُشتقّاتها على هذه المسائل في الكتب والأبواب

١١ انظر: البكري، **توظيف النقد الحديثي**، ص ٩٣.

١٢ الخصاف، **كتاب الحيل**، ص ٤.

١٣ أبو الليث السمرقندي، **كتاب النوازل**، ٢٨٢و؛ صدر الشهيد حسام الدين، **كتاب الواقعات**، (مكتبة بيازيد ١٨٩٧٩) ٢٣٧و؛ الكشي، **مجموع الحوادث** (المكتبة السليمانية، جورلولي ٢٧٨)، ١٧٩ظ.

ذوات الصلة من كتابه **المبسوط**/**الأصل** له معنى ودلالة من نفس الجهة؛ لأنّ هذه المسائل لا تختلف عنده عن المسائل الأخرى التي وردت في نفس كتب وأبواب **المبسوط**/الأصل، والتي تخضع لنفس القياس الفقهي. ولذلك أوردها الشيباني جميعَها في كتابه **المبسوط**/**الأصل** له مع مسائل أخرى -لا تحمل طبيعةَ/ماهيّةَ الحيلة- بدون أيّ تفرقة بينهما.

وقد ذهب بعض الكُتّاب المعاصرين إلى أنّ بعض صور الحِيَل، كحِيلة الزكاة، تُعدُّ غير مشروعة، ومن ثمَّ زعموا أنّ أمثال هذه الحِيَل لم تُذكر في مؤلَّفات أعلام الحنفية كالشيباني والخصّاف. بل ذهب هو إلى أبعد مِن ذلك، فادّعى أنَّ كتاب سعيد بن علي الحنفي السمرقندي (عاش في القرن السادس الهجري) في الحِيَل -وهو **جنة الأحكام**- يشتمل على حِيَل غير مشروعة لا يقبلها حتى الحنفية أنفسهم، ومِن ثمّ لا يُمثِّل كتابُه هذا مذهبَ الحنفية.[١٤] إلا أنّ الواقع -كما سنبيّن لاحقًا- أنّ الشيباني قد ذكر مسألة الحيلة المعروفة بحيلة الزكاة في كتابه **الأصل** نفسِه، فضلًا عن كتابه في الحِيَل. وكذلك فعَل الخصّاف، حيث تناول حيلة إسقاط الزكاة في كتاب الحِيل له، بل أصَّلَ مِن خلال هذه المسألة مشروعيّةَ أمثال هذه الحِيَل وصحّتَها مِن حيث أحكامها الفقهية القضائيّة في المذهب الحنفي.[١٥]

وقبل الشروع في دراسة مسائل الحِيل أودّ أوّلًا تلخيص مكانة هذه المسائل في المذهب الحنفي؛ لأبيّن أنّ هذه التقييمات المعاصرة التي استندت إلى بعض مسائل الحِيَل كإسقاط الزكاة لا تجد لها أساسًا في المذهب.

لقد اعتمد فقهاء الحنفية في إثبات مشروعيّة الحِيل الشرعيّة -أي: الحلول الفقهية الموصوفة بالحيلة- على أدلة من الكتاب، والسنة، والإجماع، والقياس، ودرسوا نتائج هذه الحيل من جهتين: جهة الشرع والقضاء، وجهة الدِّين والدِّيانة.

١٤ ونصه: «وهذه المسألة من مسائل **كتاب الحيل**، وجميع مسائل الحيل يوجد في **المبسوط** إلا هذه». صدر الشهيد حسام الدين، **كتاب الواقعات**، (مكتبة بيازيد ٩٧٩٨١)، ٧٣٢و.

١٥ الخلوتي، **الحيل الفقهية**، ص ٢٩.

فذهب أئمة الحنفية عمومًا إلى أنّ مسائل الحِيل تُعدّ تصرفات نافذة وجائزة من حيث النتيجة الشرعية/القضائيّة، بمعنى أنّ لها نتائج شرعية/قضائية معتبرة.

إلا أنّ هذه الحِيل، إلى جانب نفاذها الشرعي/القضائي، لها أيضًا اعتبار دينيّ وديانيّ، ولم يُسوِّ الحنفية بين جميع مسائل الحِيَل في هذا الجانب؛ فقد اعتبروا بعض الحِيَل محظورة في الدين/الديانة وإن كانت نتائجها الشرعيّة/القضائيّة نافذة؛ فلم يُجيزوها ديانة. ونجد أنّ أئمة الحنفيّة قد تبنّوا في تحديد الضابط لمشروعيّة هذه الحِيَل ديانة اتّجاهين رئيسِيَّين:

الاتجاه الأول: اعتبار ثبوت الحق أو الواجب الذي تُسقطه الحيلة. ووفقًا لهذا الاتجاه الذي تبنّاه الإمام أبو يوسف، فإنّ الحِيَل التي تُسقط حقوقًا أو واجباتٍ ثابتةً تُعدّ مكروهة؛ أما تلك التي تمنع ثبوت الحقوق أو الواجبات التي لم تثبت بعد، فلا تُعدّ مكروهة. ووفق هذا الرأي، فإنّ الحِيَل التي تُستخدم لإسقاط حقّ الشفعة أو الزكاة قبل ثبوتها تُعدّ صحيحةً وغيرَ مكروهة.

الاتجاه الثاني: النظر إلى كون الحيلة تُلحِق ضررًا بالغير أم لا. ويُعبِّر هذا الاتجاه عن وجهة نظر الإمام الشيباني، وقد تبنّاه الخصّاف أيضًا. ومفادُهُ أنّ الحِيَل التي تُلحِق ضررًا بالغير، كحِيَل إسقاط حقّ الشفعة والزكاة تُعدّ مكروهة رغم نفاذها الشرعيّ/القضائيّ؛ أمّا الحِيَل التي لا تُلحِق ضررًا بالغير كحِيَل اليمين والربا فتُعدُّ مشروعة مِن جميع الجهات؛ قضاءً وديانةً.[١٦]

ومن ثمّ، فإنّ أبا يوسف والشيباني يتّفقان في أنّ مسائل الحِيَل، بما فيها حِيَل إسقاط حقّ الشفعة والزكاة، تُنتج نتائج شرعيّة قضائيّة، وتُعدُّ صحيحة ونافذة من هذه الجهة؛ وإنّما يختلفان في حكمها من حيث الديانة، وبعبارة أخرى: في كونها مكروهة أم لا؟

بعد هذا التأكيد على أنّ الحِيَل الشرعيّة هي مسائل فقهيّة ذات طبيعة قياسيّة، وعلى أنّ دعوى عدم مشروعيّة الحِيَل قضاءً بما فيها "حِيَل إسقاط حقّ

١٦ الخصاف، **كتاب الحيل**، ٥-٦.

الشفعة والزكاة" عند الأئمة الحنفية دعوى غير صحيحة: يمكنني الآن الانتقال إلى دراسة حِيَل إسقاط الزكاة وحق الشفعة.

١.٣. حِيَل إسقاط الزكاة

مِن الجدير بالذكر أنّ الشيباني لم يذكر المسائل المعروفة بـ "الحيلة في إسقاط الزكاة" في كتاب الحِيَل؛ ولكنّ الأهمّ منه أنّه ذكر ثلاثًا مِن هذه "الحِيَل" مباشرة في كتاب الزكاة من **المبسوط/الأصل** له دون إطلاق كلمة "الحيلة" وما شابهها. هذه الحِيَل الثلاث وتفريعاتها هي كالآتي:

الحيلة الأولى:

[١] **قلت:** أرأيت الرجل يكون له الإبل، فإذا خاف أن تجب عليها الصدقة باعها قبل [وجوب] ذلك بيوم بغنم أو بقر أو دراهم، يريد بذلك الفرار من الصدقة؟ قال: ليس عليه صدقة حتى يحول عليها الحول وهي عنده.

[٢] **قلت:** فإن باع الإبل بإبل قبل أن تجب عليه فيها صدقة يريد بذلك الفرار من الصدقة؟ **قال:** ليس عليه صدقة حتى يحول الحول على ما بقي في يديه، وهذا والباب الأول سواء.

[٣] **قلت:** فإن باعها ولا ينوي الفرار من الصدقة؟ قال: ليس عليه صدقة حتى يحول الحول على ما في يديه.[١٧]

الحيلة الثانية:

[١] **قلت:** أرأيت الرجل تكون له الغنم فإذا خاف أن تجب فيها صدقة باعها قبل ذلك بيوم بإبل أو ببقر أو بدراهم يريد بذلك الفرار من الصدقة؟ **قال:** ليس عليه شيء حتى يحول عليه الحول وهي عنده.

١٧ انظر: Yılmaz, *Orta Asya Hanefî Fetva Literatürünün Gelişimi ve İcâre-i Tavîle* (4/10-6/12. *Yüzyıllar*) 241-250.

[٢] **قلت**: فإن باع ذلك بغنم قبل أن تجب عليه صدقة بيوم يريد بذلك الفرار من الصدقة؟ **قال**: ليس عليه شيء، وهذا والباب الأول سواء.[١٨]

الحيلة الثالثة:

[١] **قلت**: أرأيت الرجل تكون له البقر التي تجب في مثلها الزكاة، فإذا خاف أن تجب عليها صدقة باعها قبل ذلك بيوم بإبل أو غنم أو دراهم، يريد بذلك الفرار من الصدقة؟ **قال**: ليس عليه شيء حتى يحول الحول عليها وهي عنده.

[٢] **قلت**: أرأيت إن باع ببقر قبل أن تجب عليه الصدقة بيوم، يريد بذلك الفرار من الصدقة؟ **قال**: ليس عليه فيها شيء، وهذا والباب الأول سواء.[١٩]

وذكرُ الشيباني هذه الحِيَل الثلاث في كتاب الزكاة من **الأصل**، وإجابتُه عليها كان تمامًا ضمن إطار القياس الذي تخضع له مسائلُ الزكاة وبابُها. وعلى هذا القياس يجب أن يَحُولَ حولٌ كاملٌ على المال حتى تجب فيه الزكاة؛ فإذا خرج المال مِن ملك الشخص قبل تمام الحول فلا تجب فيه الزكاة. بالإضافة إلى ذلك، فإنّ المالك سواء أَخرَجَ المال مِن ملكه بنيّة الفرار مِن الزكاة أو بدون تلك النيّة: فنيّة الفرار من الزكاة لا تؤثّر على انقضاء "الحول"؛ بل بإخراج ماله مِن ملكه انتهى الحول، وسقطت عنه زكاة تلك السنة. وهذا هو الحكم الفقهيّ للمسألة عند أئمة الحنفية: أبي حنيفة، وأبي يوسف، والشيباني.

ثم إنّه لا يتغير الحكم أيضًا إذا تمّ إخراجُ المال من الملك عن طريق البيعِ واستبدالِه بمالٍ مِن جنسه أو مِن غير جنسه؛ فينتهي حولُ المال بمجرد خروجِه مِن الملك في مقابلة أيّ مالٍ، ثم يبدأ لهذا المالِ حولٌ آخرُ مِن جديد.

وبعبارة أخرى، إنّ المسائلَ -التي تسمى "حِيلَة" في المُصنَّفات المتأخِّرة- هي عند الشيباني نتيجةُ القياس الذي يُتَّبَع في بابِ الزكاة ومسائلِها. ولذلك أدرج

١٨ الشيباني، **الأصل**، ٨٥/٢.

١٩ الشيباني، **الأصل**، ٩٦/٢.

الشيباني هذه المسائل في كتاب الزكاة من كتابه **الأصل** كغيرها من المسائل، وأخضعها لحكم واحد؛ ولَم يُفرِّق بينها وبين المسائل الأخرى بذكرها بكلمة "الحيلة" ونحوها، ممّا يُشعِر بأنّها غير مختلفة عن غيرها من المسائل من الناحية الفقهية، وإن شئتَ قُلْ: "مِن ناحية القياس الفقهي".

٢.٣. حِيَل إسقاط حق الشفعة

ومثل ذلك ينطبق أيضًا على حيلة أخرى مشهورة في المذهب الحنفي، وهي حيلة "إسقاط حقّ الشفعة". وقد أورد الشيباني في كتاب الشفعة من **المبسوط**/**الأصل** حيلتين -بدون تسميتهما "حيلة"-: إحداهما تُصعِّب على الشفيع (صاحبِ حقِّ الشفعة) فِعلَ الشراء، والثانية تمنع ثبوت حقّ الشفعة له أصلًا. وفي كلتا الحِيلَتَين لم يَعتبر الشيباني بنيّةِ البائع أو غرضِه المتمثلين في "تصعيب طلب حقّ الشفعة" أو "منع ثبوت هذا الحقّ"، بل حَكَمَ فيهما أخذًا بالقياسِ الذي تتبع له مسائلُ كتاب الشفعة:

الحيلة الأولى:

[١] وإذا أراد الرجل أن يشتري دارًا بخادم فخاف عليها [من] الشفيع، وقيمة الخادم ألف درهم فباع الخادم بألفين من رب الدار، ثم اشترى الدار بالألفين، كان ذلك جائزًا، ولا يأخذها الشفيع إلا بالألفين.

[٢] ولو أعطاه من ذلك ألف درهم وأعطاه أثوابًا لا تساوي ألف درهم بألف أخرى كان مثل ذلك، ولا يأخذها الشفيع إلا بالألفين.[٢٠]

الحيلة الثانية:

ولو كان لرجل دارٌ فأراد أن يتصدق على رجلٍ بقطعة منها صغيرة وبطريقها إلى باب الدار ويقبض ذلك ويحوز القطعة للمتصدق بها عليه، ثم يشتري ما بقي من الدار، لم تكن للشفيع فيها شفعة، فإنَّ ذلك جائز.

٢٠ الشيباني، **الأصل**، ٨٠/٢.

إنْ يَتصدَّقْ بالقطعة عليه وقبضها بطريقها، ثم اشترى بقية الدار لم يكن للشفيع فيها شفعة؛ لأنه قد صار [المتصدق عليه بالقطعة الصغيرة] شريكًا في الدار، والشريك أحقّ بالشفعة من الجار. ألا ترى أنه لو اجتمع شريك وجار يطلبان الشفعة قضيت بها للشريك.[٢١]

أما في الحيلة الأولى فإنّه لمَّا كان ثمن الدار المدفوع ألفي درهم كان للشفيعِ أن يشتريها بنفس الثمن. بينما العبد الذي تساوي قيمتُه ألفَ درهم قد بيع أوّلًا بـ"ألفي درهم" لتصعيب طلب حقّ الشفعة على الشفيع، ثمَّ تمَّ شراء الدار بنفس الثمن. هنا، رغم أنَّ الصفقة الأولى (أي بيع الخادم -الذي قيمته ألف درهم- بألفي درهم) إنما كانت لرفع سعر الدار، لكن لَم يتمّ الاعتبار بذلك، وكان الحكم مبنيًّا على الثمن الذي اشتُرِيت به الدارُ، وهو ألفا درهم. وينطبق نفس الأمر على بيع أثوابٍ لا تساوي ألفَ درهم كتعويض عن الألف درهم المتبقية من بيع الدار. وفي هذين المسألتين يمكن للشفيع شراء الدار بـ"ألفي درهم" لو أراد.

أما في الحيلة الثانية فقد تمَّ إزالة هذا الإمكان من خلال هبة جزءٍ صغيرٍ مِن الدار للمشتري قبل بيع الدار له مما جَعَل المشتري شريكًا له في الدار، وقَطَع جِوارِيّة الشفيع للدار. وبذلك أصبح الشريك الجديد أحقَّ بشراء بَقِيّة الدار مِن الجار. فالغرضُ مِن هذه الهبة الأولى كان منعَ ثبوت حق الشفعة للجار. ولكن بِغضِّ النظر عن هذا الغرض والنيّة، اعتُبرت نتائجُ عقد الهبة صحيحةً، وتمّ تطبيق القياس عليها الجاري في باب الشفعة المتعلقة بحقّ الشفعة للشريك والجار. رغم أنّ الحيلة الثانية ذُكرت في **كتاب الحيل** للشيباني[٢٢] فإنّ حكم هذين الحيلتين مبنيّ على القياس، ولذلك أدرجها الشيباني في كتاب الشفعة من **المبسوط/الأصل** مع مسائل أخرى المتعلقة بالشفعة.

٢١ الشيباني، **الأصل**، ٧٤٢/٩.

٢٢ الشيباني، **الأصل**، ٧٤٢/٩.

والحكم في كلتا المسألتين هو أنّ النتائج الفقهيّة القضائيّة لهذه التصرفات "جائزة"، وبتعبير أكثر تقنية أنّها "نافذة"، وبالأغلب هذا هو معنى "الجواز" في كلام الشيباني في كتبه عندي. ولا خلاف بين أئمّة الحنفيّة في أنّ التصرفات المذكورة في هذه المسائل تؤدّي إلى سقوط وجوبِ الزّكاة وحقِّ الشفعة، ولم يُشِر الشيباني إلى أيّ خلاف في هذا في **الأصل**. وقد طُبِّق هنا مبدأ "الحكم على وفق النَّمَط القياسي" الذي هو مِن أهمّ مبادئ فقه أبي حنيفة ممّا أدّى تطبيقه إلى الإتيان بنفس النتيجة عند جميع أئمة الحنفية.

ومِن هنا إنّ كون الشيباني لا يفصل ما يسمى مسائل الحِيَل عن غيرها من المسائل الفقهية، وإدخالَها في الكتب والأبواب المتعلقة بها على السواء: يدلّ على أنّ انطلاقه كان مِن نفس المبدأ. وبعبارة أخرى، فكما أنّ المسائل الثابتة بالعُرف مخالفةً للقياس هي مسائل "الاستحسان"، فكذلك المسائل المسماة بـ"الحِيَل" هي بالعكس مسائل على وفق "القياس". ونظرًا إلى أنّ بسبب كون حكم القياس في هذا الموضوع لم يتغير بين أئمة الحنفية فإنّهم لم يختلفوا كذلك في جواز ونفاذ النتائج الفقهيّة الدنيويّة والقضائيّة الناتجة عن هذه التصرفات.

اختلاف أئمة الحنفية (أبي يوسف والشيباني) في هذه التصرفات إنّما هو في حكمها الأُخرَوي/الديانِي وليس في حكمها الدنيوي/القضائي. فإنّ التصرفات التي تُسقِط الحقوق الثابتة تُعتبر مكروهة **عند أبي يوسف**، في حين أنّ التصرفات التي تمنع ثبوت الحقوق التي لم تثبت بعدُ ليست مكروهة عنده. وبناءً على ذلك، فإن الحِيَل المستخدمة لإسقاط حقّ الشفعة والزكاة قبل أن تثبت هي حِيَل صحيحة وليست مكروهة عنده. و**أما الشيباني** فيَعتبر الحيلَ التي تُلحِق ضررًا بالآخَرين في مسائل الشفعة والزكاة وغيرِهما مكروهةً دينيًّا رغم جوازِها ونفاذِها الدنيوي/القضائي، بينما الحِيَل التي لا تسبب ضررًا مثل الحِيَل المتعلقة باليمين والرِّبا فيعتبرها هو مشروعة تمامًا؛ دينيًّا ودنيويًّا/قضائيًّا، ونرى الخصاف قد اعتمد في الحكم الديني لمسائل الحِيَل على قول محمد.[٢٣]

٢٣ الشيباني، المخارج في الحيل، ص ٤٨؛ الشيباني، **كتاب الحيل** (ضمن كتاب الأصل)، ٤٩٠/٩.

ونعتقد أنّ موقف الإمام الشافعي –الذي يُولِي مكانة خاصّة للقياس في منهجه الفقهيّ– يُعدّ مُؤشِّرًا مُهِمًّا في الكشف عن الطبيعة القياسيّة لمسائل "الحِيَل الفقهيّة". فالشافعي –الذي انتقد أبا حنيفة وأصحابه في العديد من المسائل– شاركهم نفسَ الرأي في حكم المسألة المعروفة بـ"حيلة إسقاط الزكاة". فالسبب الوحيد لذلك هو حتمية حكم "سقوط الزكاة" في تلك المسألة، إذ هو من مقتضَيات القياس الساري في باب الزكاة. وقد أكّد الشافعي على هذا الاقتضاء القياسي بقوله في هذه المسألة:

> وإذا كانت لرجل ماشية من إبل فبادل بها إلى بقر أو إبل بصنف من هذا صنفًا غيره، أو بادل معزى ببقر، أو إبلًا ببقر، أو باعها بمال عرض أو نقد فكل هذا سواء: فإن كانت مبادلته بها قبل الحول فلا زكاة عليه في الأولى ولا الثانية حتى يحولَ على الثانية الحولُ مِن يوم ملكها، وكذلك إن بادل بالتي ملك آخر قبل الحول إلى ماشية أخرى لم يكن عليه فيها زكاة، وأكره هذا له إن كان فرارًا من الصدقة، **ولا يوجِب الفرارُ الصدقةَ؛ إنما يوجِبها الحولُ والمِلكُ**.[٢٤]

إنّ هذه الطبيعة القياسيّة لمسائل الحِيَل الفقهيّة تُفسِّر أيضًا سببَ ظهور هذه المسائل بشكل مُكثَّف في المذهب الحنفي (وفي المرتبة الثانية في المذهب الشافعي).[٢٥] فالمذهب الحنفي هو مذهب فقهيّ يقوم ويَعتمد بشكل أساسيّ وشموليّ على دليل القياس والنَّمَط القياسي. ولهذا السبب، صار المذهب عرضة للعديد مِن الانتقادات مِن قِبَل أهل الحديث في التاريخ. فإن النهج الفقهي القائم على القياس –الذي وضعه أبو حنيفة وتابعه أصحابه وأتباعه– هو السبب الرئيس لوجود هذه المسائل المعروفة **بالحِيَل الشرعية** في هذا المذهب.

النتيجة

المسائل ذات طبيعة الحِيلَة –كغيرها من المسائل التي ليست من هذا النوع– قد تمّ حَلُّها كما يقتضيه دليل القياس، وفقًا للخصائص العامّة للمذهب

٢٤ انظر للتفصيل في الحكم الفقهي لمسائل الحيل: Yılmaz, *Orta Asya Hanefî Fetva Literatürünün Gelişimi ve İcâre-i Tavîle* (4/10-6/12. Yüzyıllar) 241-250.

٢٥ الشافعي، الأم، ٦٢/٢. وقد قال الشافعي في حيلة تتعلق بإسقاط حق الشفعة للشريك بقول مماثل. انظر: الجويني، نهاية المطلب، ٢١٣/٧.

وأصولِ اجتهاده؛ وليست بأسرها تَدخُّلًا خارجًا عن الفقه وغيرَ أخلاقي كما هو في تصوّرات بعض المعاصرين. ولذلك لم يختلف الأئمة الثلاثة في جواز ونفاذ هذه المسائل؛ وإنّما اختلفوا في الحكم الديني/الأُخرَوي لهذه المسائل في أنّ أيَّ هذه المسائل مكروهة وأنّ أيَّها غير مكروهة. وقد أدّت الطبيعة القياسية لهذه المسائل بشكل طبيعي إلى ظهورها داخل المذهب الحنفي، بل وتماثلِها مع الحنفية؛ كما كان لجمع هذه المسائل في أعمال مستقلّة مِن قِبَل العلماء الحنفيّين تحت عناوين مثل "الحِيَل" و"المخارج" دور كبير في نسبة هذه المسائل إليهم.

ومن المسائل المعروفة بالحِيَل الشرعية هي "حِيَل إسقاط وجوب الزكاة وحقّ الشفعة" التي تمّ تضمينها في كتاب الزكاة وكتاب الشفعة من **الأصل** للشيباني دون ذكر أيّ صفة وعنوان تُميّزها عن غيرها من المسائل في الباب. والواقع أنّ جميع مسائل **كتاب الحيل** المنسوبة إلى الشيباني -باستثناء مسألة واحدة- موجودة في **المبسوط/الأصل** له، وذلك حسب ملاحظة وتحديد أبي بكر الإسكاف (ت. ٣٣٣/٩٤٤) أحد مشاهير مشايخ الحنفية في بلخ. فعلى هذه الملاحظة يمكنني القول بأن نسبة مسائل الحِيَل إلى أئمّة الحنفيّة صحيحة في درجة "ظاهر الرواية". ولذلك، فإنّ عدم اعتبار صحّة نسبة الكتب الموسومة بـ**كتاب الحيل** أو المخارج في الحيل إلى أئمّة الحنفيّة أو اعتبارَها موضعَ خلاف يفقد بعضًا مِن أهميته في هذه النقطة. ويبدو أنَّ جمعَ هذه المسائل المنسوبة إلى أئمة الحنفية في كتاب مُستقلّ وقع بعد جِيلٍ من الشيباني، وربما مِن قِبَل إسماعيل بن حماد بن أبي حنيفة (ت. ٢١٢/٨٢٧). ومع ذلك، فإن هذا لا يُحدِث أيّ إشكال في صحة نسبة "هذه المسائل" إلى أئمّة الحنفيّة؛ فنسبةُ **كتاب الحيل** إلى أئمّة الحنفيّة -باعتبار جمعه في كتاب مستقلّ- ليست صحيحةً، ولكن نسبةَ مسائل الحِيَل صحيحةٌ. ويمكن حَملُ كلام النافين -مثل الشيباني نفسِه، وتلميذِه الجوزجاني- لنسبته إلى الأئمّة -خصوصًا إلى الشيباني- على أنه إنما نفوها باعتبارها "كتابًا"، وحَملُ كلام المُثبِت منهم على أنه إنَّما أثبتها باعتبارها "مسائل".

Extended Summary

A New Assessment of the Jurisprudential Qualification of Legal Stratagems and Their Attribution to Ḥanafī Scholars

From the 2nd/8th century onward, issues of legal stratagems (*al-ḥiyal al-sharʿiyya*) that became associated with the Ḥanafī school were the subject of various works authored by its founding imams and their followers; indeed, separate works on *ḥiyal* have been attributed to each of Abū Ḥanīfa, Abū Yūsuf, and al-Shaybānī. In the second half of this century, many scholars from Kufa mentioned an anonymous work on *ḥiyal* in their reports, and in some of these traditions, this work was attributed to Abū Ḥanīfa. One of the oldest surviving classical fiqh works, al-Shaybānī's *al-Aṣl*, contains a main section (*kitāb*) titled *Kitāb al-Ḥiyal*, which has been attributed to both Abū Yūsuf and al-Shaybānī. However, some contemporary studies using hadith-critical methods have demonstrated that the *ḥiyal* books attributed to Abū Ḥanīfa or Abū Yūsuf cannot actually be their works.

The situation of *Kitāb al-Ḥiyal*, attributed to al-Shaybānī and transmitted to us as a section within his *al-Aṣl*, is more complex. One of *al-Aṣl*'s most important transmitters, al-Jūzjānī (d. 200/816 [?]), claimed that the work did not belong to al-Shaybānī, whereas Abū Ḥafṣ al-Kabīr (d. 217/832), a jurist from Bukhara and one of *al-Aṣl*'s most important transmitters, affirmed this attribution. Again, some contemporary research, based on content analysis, has shown that a jurist of a later generation is more likely to have compiled this work than al-Shaybānī. This individual was probably Ismāʿīl b. Ḥammād b. Abū Ḥanīfa (d. 212/827), Abū Ḥanīfa's grandson. On the other hand, since the *ḥiyal* book attributed to al-Shaybānī appears as a section within *al-Aṣl*, it was accepted within the madhhab tradition and included by al-Ḥākim al-Shahīd (ö. 334/945) in his *al-Kāfī*, which is an abridged compilation of the foundational Ḥanafī legal texts known as al-Ẓāhir al-Riwāya. In this way, *Kitāb al-Ḥiyal* became one of the texts representing the foundational legal issues of the Ḥanafī school and acquired doctrinal legitimacy. All of this reveals a rather complex situation regarding the actual authorship of the *ḥiyal* book.

The present study examines the legal nature of *al-ḥiyal al-sharʿiyya* issues and their attribution to the imams of the madhhab, particularly Abū Ḥanīfa, Abū Yūsuf, and especially al-Shaybānī. Unlike earlier contemporary studies, this research examines the question of attribution not through *ḥiyal* books themselves, but by directly focusing on *ḥiyal* issues. This shift in perspective was greatly influenced by Abū Bakr al-Iskāf's (d. 333/944) remark demonstrating that *ḥiyal* issues are, in essence, no different from other legal issues and are the result of the *qiyās*-based framework followed in Ḥanafī legal doctrine: "All the issues mentioned by Muḥammad b. al-Ḥasan in *Kitāb al-Ḥiyal*, except for one, are present in *al-Mabsūṭ* (i.e., *al-Aṣl*)." Taking al-Iskāf's claim as its basis, this article attempts to explain the legal nature of *ḥiyal* issues and to demonstrate their attribution to the founding imams by analyzing the most famous examples of stratagems in the Ḥanafī school, namely those concerning zakāt and shufʿa.

Al-Shaybānī evaluates sales transactions carried out to avoid zakāt obligations independently of the person's intent. In the examples found in the *Kitāb al-Zakāt* section of *al-Aṣl*, a person can avoid the zakāt obligation by selling their goods one day before the completion of a full year of ownership. These transactions were evaluated by the founding Ḥanafī imams not in terms of intention (*niyya*), but in terms of *ḥawl*—that is, whether the year had fully passed after ownership was established. It was stated that zakāt is not due on property that leaves one's ownership before the year's completion, and that good or bad intentions have no effect at this point. Instead of mentioning these issues in *Kitāb al-Ḥiyal*, al-Shaybānī preferred to discuss them directly under the zakāt section, along with other issues that do not have the character of stratagem. Similarly, in *al-Aṣl*, it is seen that in issues of pre-emption (*shufʿa)*, intent is not decisive and rulings are based on the formal nature of the transaction. For example, it was ruled that the *shufʿa* right is eliminated

by making the buyer a partner in advance through giving them ownership of a small part of the house. Al-Shaybānī states that such transactions are valid and that they invalidate the shufʿa right. Through expressions such as "this issue is the same as the first," al-Shaybānī demonstrates that he sees no difference, in terms of legal validity and ruling, between transactions carried out with the intent of *al-ḥiyal al-sharʿiyya* and those without such intent.

Al-Shaybānī's approach, which does not distinguish between these two types, reflects the central position of analogical reasoning (*qiyās*) within the Ḥanafī school. For all of these transactions, validity was gained as a direct result of the *qiyās* to which they were subject. On the other hand, it is noteworthy that imams of other schools—such as the Shāfiʿī school, which also makes extensive use of *qiyās*—reach the same conclusions as the Ḥanafīs on certain issues involving *ḥiyal*. For example, although al-Shāfiʿī disapproved of a certain transaction seen as a zakāt stratagem, he nonetheless accepted that its legal validity was inevitable by virtue of *qiyās*. This fact is another indication that *ḥiyal* issues were approached by Ḥanafī and Shāfiʿī imams through a systematic framework based on *qiyās*. The *qiyās*-based character of these issues is also the most important factor explaining why they found such prominence in these two schools. Indeed, there is a close link between the legal nature of *al-ḥiyal al-sharʿiyya*, their attribution to Ḥanafī imams, and the question of why they developed such issues. For this reason, it is important to understand from the Ḥanafī imams' perspective that *al-ḥiyal al-sharʿiyya* have a *qiyās*-based legal nature.

Within the Ḥanafī school, there is consensus not on the *religious* rulings for these issues but on their *legal* rulings. The Ḥanafī imams agree that the legal consequences arising from such transactions are valid (*nāfidh*). Their debate concerns not the legitimacy of these transactions, but their moral dimension. According to Abū Yūsuf, transactions that prevent the birth of a not-yet-established right are not *makrūh*, but those that extinguish established rights are *makrūh*. For al-Shaybānī, transactions that do not harm others are legitimate, while those that do cause harm are *makrūh*. Considering this distinction, it will be understood that there is no contradiction between certain negative assessments transmitted from the founding imams about particular stratagem issues and the validity judgments they rendered concerning those very same cases, and that their negative views do not pose any problem for the attribution of *ḥiyal* issues and therefore *ḥiyal* books to them.

In conclusion, although the authorship of *Kitāb al-Ḥiyal* remains disputed, the attribution of the issues it contains to the Ḥanafī school and its founding jurists is certain. The *qiyās*-based nature of *ḥiyal* issues explains their legal legitimacy in the Ḥanafī doctrine. Within this framework, our study concludes that even if the authors of works titled *Kitāb al-Ḥiyal* are not the founding imams themselves, the issues they contain belong to the Ḥanafī imams.

Keywords: Ḥanafī school, Analogy (*qiyās*), Legal stratagems (ḥiyal al-sharʿiyyah), Book of stratagems (Kitāb al-Ḥiyal), Stratagem for the abolition of zakāt liability, Stratagem for the abolition of the right of pre-emption (*shufʿa*).

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Araştırma Notu / Research Note

Birmingham Varakları

TAYYAR ALTIKULAÇ*

Giriş

Oryantalist dünyanın bir asrı aşkın zamandan beri kadim mushaf ve varaklarıyla özel olarak ilgilendiğini biliyoruz. Aslında bu ilgi genel anlamıyla kadim yazma eserler boyutunda Avrupalı bilim adamı ve diplomatlarının asırlardır hep gündeminde oldu. Bugün itibariyle sadece Paris Bibliothèque Nationale'in veya Berlin Staatsbibliothek'in kataloglarını şöyle bir karıştırmamız ve bunların sayfalarında yer alan binlerce eski yazmayı gözden geçirmemiz halinde bu söylediğimizin ne kadar doğru olduğu anlaşılacaktır.

Bundan önemlisi, Batılı kataloglarda gördüğümüz her şeyi ilgili kütüphanelerin raflarında eksiksiz olarak bulmanızdır. Bu eserler Avrupa coğrafyasında yazılmış da değildir. Londra mushafı, Paris mushafı, Berlin mushafı gibi adlarla yayımladığımız mushafların hiçbiri Paris, Londra, Berlin vb. şehirlerde veya çevrelerinde yazılmamıştır. Diğer kadim yazma eserlerin çoğu için de durum aynıdır. Her biri Şam, Kahire, Bağdat, İstanbul gibi şehirlerden şu veya bu şekilde ele geçirilip Avrupa coğrafyasına taşınmışlardır.

Ma'rifetü'l-kurrâi'l-kibâr ale't-tabakāti ve'l-a'sâr adlı eserin tahkiki sırasında ücretini ödeyerek mikrofilmini Berlin Staatsbibliothek'ten (nr. 3140) temin ettiğimiz yazma nüshanın kapağında اشتراه الفقير محمد الفائق المفتي بمدينة عينتاب (Bu kitabı Gaziantep Müftüsü Muhammed Faik satın almıştır) yazdığını görmüş ve şaşırmıştık. Herhalde Müftü Faik Efendi bu kitabı Berlin'e yaptığı bir seyahat vesilesiyle satın alıp üzerine bu notu düştükten sonra Berlin Kütüphanesi'ne bırakmamıştı. Kitap Türkiye'de bir yerlerde veya Antep'te bulunuyordu, satın alıp bu notu düşmüştü. Ama ne olmuşsa olmuş, kitap bir şekilde Berlin'e ulaşmıştı.

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DOI: 10.26570/isad.1808210 • Geliş/Received 22.10.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Altıkulaç, Tayyar, "Birmingham Varakları", *İslam Araştırmaları Dergisi*, 55 (2026): 323-337.

Bizim kütüphane kataloglarımıza gelince: Onun sayfalarında da pek çok kadim yazma eserin bulunduğunu görsek de ne yazık ki bunların epeyce bir kısmının sadece isimleri bu katalogların sayfalarında yerlerini korurken raflardaki yerleri boş kalmıştır. Yani birileri gelip bunları müslüman ülkelerin idarecilerinden bir şekilde almasını becermiştir. Bu birilerinin kim oldukları, bunun için kime/hangi idareye ne ödedikleri de belli değildir. Biz ise ecdat yadigârı bu değerlerimizi korumada başarısız olduğumuz gibi onlardan istifade edebilmek için bugünkü adreslerine başvurmak durumunda kalıyoruz.[1]

Konumuz "Birmingham varakları" olduğuna göre, herhalde bu varaklar ve onun aslı olan mushaf-ı şerif de Birmingham'da veya çevresinde yazılmamıştı. Hiç şüphe yok ki onu yazan müslüman bir hat ustasıydı; sahabe neslinden olmasa da bir sonraki nesilden biri idi. Bir oryantalist (Alphonse Mingana) onu bir İslam coğrafyasında görmüş, ilgilisine üç beş kuruş vererek satın almış ve Birmingham'a götürmüştü; biz onu şimdi bu Batılı şehre nispet ederek zikretmek zorunda kalıyoruz.

İlerideki sayfalarda göreceğimiz söz konusu varaklar ilk defa 22 Temmuz 2015 tarihinde dünya gündeminde yerini aldı. Duyuru Birmingham Üniversitesi tarafından yapılmıştı. İlgi çekici yanı, varaklar üzerinde yapılan karbon 14 incelemesine göre, bunların miladi 568-645 yılları arasında bir tarihte yazılmış olduklarının ileri sürülmesi idi.

Türkiye'de de BBC kaynak gösterilerek birçok basın yayın kuruluşu tarafından haber yapıldı.[2] Bu haberden yola çıkarak *New York Times* gazetesi Kur'an'ın Hz. Peygamber'den önce yazılmış olabileceği spekülasyonunda bulundu. Varaklar üzerinde yaptığımız ilk değerlendirmeye göre, yapılan testin tartışmaya değer olduğunu gösteren bir durum vardı ortada. Zira bu test kolektif bilgiyi altüst etmiş oluyordu. Şöyle ki, 568 rakamı Hz. Peygamber'in doğduğu tarihten öncesini gösterdiği gibi 645 de Hz. Osman'ın hilafetinin birinci yılını işaret ediyordu. Yani bu varaklar Hz. Osman'ın yazdırdığı ve bugün itibariyle bu ümmetin elinde bulunan mushafların esası olan orijinal mushaf nüshalarından çok önce yazılmış oluyordu. Belki de

1 Günümüzün ve yakın geçmişimizin idarecilerini bu beceriksizlik ve başarısızlıktan elbette tenzih ederiz.

2 SUPERHABER kaynaklı ve 31 Ağustos 2015 tarihli bir haber şöyle idi: **İngiliz basınından şoke eden iddia!** İngiltere'de geçen ay bulunan ve dünyanın en eskisi olduğu iddia edilen Kur'an-ı Kerim ile ilgili çarpıcı bir iddia ortaya atıldı. İngiltere'deki tarihçi ve uzmanlar, bulunan Kur'an-ı Kerim sayfaları üzerinde yaptıkları araştırmalara göre söz konusu Kur'an'ın Hz. Muhammed'den daha önce yazılmış olabileceğini söylediler. Uzmanların iddiasına göre Birmingham'daki Kur'an parşömeni 568 ile 645 yılları arasında yazılmış... Hz. Muhammed 571 ile 632 yılları arasında yaşadığından dolayı söz konusu iddiaya göre, bulunan parşömenler Hz. Muhammed'den daha eski.

Hz. Peygamber'in doğumundan da önceki bir tarihte yazıldığı ileri sürülmüş bulunuyordu. Diğer taraftan varaklar üzerinde yaptığımız yüzeysel incelemeye göre, onların Hz. Osman mushaflarıyla ilişkili olduğunu, yani o mushaflardan biri örnek alınarak yazıldığını gösteren izler mevcuttu. Buna göre Hz. Osman'dan çok sonra yazılmış olmalılardı. Ama söylenen söylenmiş, ok yaydan çıkmış, dünya kamuoyunun dikkatinin Birmingham'a çevrilmesi sağlanmıştı.

Daha sonraki süreçte konu Birmingham Üniversitesi'nin yaptığı çalışmalarla sınırlı kalmadı ve kapanmadı. Zaman zaman sanki yeni bir mesele imiş gibi sosyal medyada gündem olmaya devam etti. Belli aralıklarla dünya kamuoyu önüne getirilen bu iddia karşısında söz konusu karbon 14 testinin gerçeği ne kadar ifade edip etmediğini doğru anlamamıza ihtiyaç vardı. Bilim adamlarının kadim varaklar üzerinde yapılan bu işleme ne kadar güvenle bakıp bakmadıklarını da öğrenmemiz gerekiyordu. Ayrıca söz konusu iddiaları çeşitli aralıklarla sosyal medyadan takip edenlerin -neymiş, ne olmuş- türünden meraklarını ve beklentilerini kendi açımızdan karşılamaya çalışmanın önemli olduğu anlaşılıyordu.

Bu vesile ile Birmingham varaklarının tahkikli neşrinin faydalı olacağını ve bu konudaki spekülasyonları biraz olsun önleyeceğini düşündük. Tahkik sırasında onun imlasını kadim mushaflardan dördünün imlasıyla karşılaştırdık. Karşılaştırma uygulamasına, günümüzün matbu mushaflarından Suudi Arabistan'da basımı sürdürülen Fehd b. Abdülazîz mushafını da kattık. Nüshalar arası yazım farkları tespit edilirken Birmingham varaklarına ب, Türk ve İslam Eserleri Müzesi mushafına ت, Topkapı mushafına ط, San'a mushafına ص, Kahire el-Meşhedü'l-Hüseynî mushafına ق, Fehd b. Abdülazîz mushafına ف rumuzlarıyla işaret ettik.

Yaptığımız bu çalışma ve değerlendirmelerin, konunun meraklılarının beklentilerine bir ölçüde de olsa açıklık getirmiş olacağını umuyorum. Bu mütevazi çalışmanın okuyucu ile buluşmasına katkı sağlayan herkese teşekkür ediyorum.

Mevlâ hep bizimle olsun.

Dr. Tayyar Altıkulaç

19.10.2025

Birmingham Varakları (Mingana 1572[a])

İngiltere'nin Birmingham şehrinde bu şehrin adıyla anılan üniversitenin kütüphanesindeki iki mushaf yaprağı (Birmingham varakları) on yıla yakın bir zamandan itibaren çeşitli aralıklarla Kur'an ilimleriyle meşgul olanların ve Kur'an meraklılarının hep gündeminde oldu; olmaya da devam edeceği anlaşılıyor.

2015 yılında konu Birmingham Üniversitesi tarafından dünya kamuoyuna duyurulunca gündemde yerini alması normaldi. Adı geçen üniversite bu varakların tanıtımını sağlamada başarılı da oldu. Ama çeşitli aralıklarla konunun sosyal medyada yeni bir habermiş gibi servis edilmesi veya yeni bir haber algısı meydana getirecek şekilde ekranlarımıza düşmesi anlaşılır gibi değildi. En son 14 Ocak 2025 tarihinde bana göre sonuncu defa söz konusu varaklar sosyal medyada karşımıza çıkıyor, Hz. Peygamber zamanında yazılmış olduğu ileri sürülüyordu. Konu daha fazla ilgisiz kalacağımız bir konu olmaktan çıkmıştı.

Duyduğumuz ilginin gereğini yapabilmek için bu varaklar üzerinde vaktiyle ilgili üniversite tarafından yapılan çalışmaları hatırlamamıza ihtiyaç vardı. Ayrıca onların tarihi, şeceresi, Hz. Peygamber zamanında yazılmış olmasının bilimsel olarak mümkün olup olmadığı gibi hususların değerlendirilmesi gerekiyordu.

İlgili Üniversitenin Yaptığı Çalışma

Birmingham Üniversitesi 22 Temmuz 2015 tarihinde Cadbury Araştırma Kütüphanesi Mingana Koleksiyonu'nda yer alan el yazması iki Kur'an yaprağının en eski Kur'an nüshalarından biri olduğunu açıkladı; BBC'nin web sayfası aracılığı ile bunu dünya kamuoyuna duyurdu.

1. Varaklar Oxford Üniversitesi'nde karbon 14 testine tâbi tutuldu. Buna göre bu varakların (onların da içinde yer aldığı mushaf-ı şerifin) milattan sonra 568-645 yılları aralığında yazılmış olduğu böylece ileri sürülmüş oldu.

2. Adı geçen üniversite 30 Eylül 2015 tarihinde açtığı sergi ile onu tanıtmaya çalıştı. Sergi, İngiltere'deki müslümanlar arasında ilgiyle karşılandı.

3. Adı geçen üniversite 21 Ekim 2015 tarihinde bir toplantı düzenledi. Bu toplantıya İngiltere, Almanya, Rusya, Mısır ve Türkiye gibi çeşitli ülkelerden yaklaşık otuz kadar bilim adamı ve araştırmacı katıldı. Rusya'dan Prof. Efim Rezwan, Oxford Üniversitesi'nden Prof. Keith Small, Birmingham Üniversitesi'nden Prof. David Thomas ve British Library'den Dr. Muhammed Isa Waley bu isimlerden bazıları idi. Doç.Dr. (şimdi Prof.) Necmettin Gökkır ile araştırma görevlisi (şimdi Dr. Öğretim Üyesi) Elif Behnan Karabıyık da bu toplantıda İstanbul 29 Mayıs Üniversitesi Kur'an Araştırmaları Merkezi'ni (KURAMER) temsil etti. Dört oturumda gerçekleştirilen bu toplantıda çeşitli konuşmalar yapıldı, katılımcılara bilgiler verildi ve özellikle karbon 14 testi konusu üzerinde duruldu.[3]

Varaklar Hakkında Tarihi Bilgi

Toplantıya katılanlardan ve aynı zamanda Paris'te Bibliothèque Nationale'deki BnF Arabe 328c varaklarını doktora tez çalışmaları çerçevesinde inceleyen Dr. Alba Fedeli'ye göre bu varaklar (Birmingham varakları, Mingana, 1572[a]), söz konusu 328c kayıt numaralı on altı varakla benzerlik göstermektedir. Buna göre Fustat'tan getirilmiş olmaları mümkündür. Bu yorumun dışında bu varakların nereden geldiğine dair herhangi bir bilgi bulunmamaktadır.

Dr. Fedeli'nin Fustat'la ilgili sözü, daha önce tahkik edip *Mushaf-ı Şerîf* (*Bibliothèque Nationale de France*) adıyla yayımladığımız 328[a] ve 328[b] varaklarının da Birmingham varakları ile muhtemel ilişkilerini hatıra getirmiştir. O çalışmamız vesilesiyle belirttiğimiz gibi matbaacı Jean Joseph (1776-1856), Fustat'ta korunmakta olan bir miktar varak grubunu bir şekilde elde ederek Fransa'ya götürmüştü. Daha sonra bu varaklar 1864'te

3 Ayrıntılar için bk. Gökkır raporu (Toplantıya katılan her iki Türk bilim insanının hazırladıkları raporlar KURAMER Arşivi'nde bulunmaktadır).

Rus Millî Kütüphanesi'ne (St. Petersburg) intikal etti. Birkaç yıl sonra Mısır'daki Fransa konsolos yardımcısı oryantalist Asselin Cherville'in (1772-1822) elde ettiği varaklar da onun ölümünden sonra 1833 yılında Paris Millî Kütüphanesi'ne (Bibliothèque Nationale de France) satıldı.[4]

Bu bilgileri Dr. Fedeli'nin söyledikleriyle birlikte ele almamız gerektiği değerlendirilmiş; Fustat'tan şuraya buraya yolcu edilen varaklar grubu ile Birmingham varaklarının herhangi bir ilişkisinin bulunup bulunmadığı üzerinde durmamıza ihtiyaç duyulmuştur. İleriki sayfalarda birkaç satırla da olsa bu muhtemel ilişkiden söz edilecektir.

Varaklar Üzerinde Yapılan Karbon İncelemesi

Yukarıda da sözü edilen ve 2015 yılında Birmingham Üniversitesi'nde gerçekleşen toplantıda Prof. Igno Kottsieper, Mingana 1572[a] varaklarının karbon 14 test sonuçlarının kesin bilgi kabul edilmemesi üzerinde durmuş, bunun sadece bir varsayım olduğunu iddia etmiştir.

1. Karbon 14 testlerinin tek bir merkezde (Oxford Üniversitesi) yapılmış olması ve farklı test merkezlerinde tekrarlanmaması sebebiyle, ilan edilen milattan sonra 568-645 tarihinin güvenli bir tarih aralığı olmadığını ileri sürmüştür.

2. Kullanılan derinin menşeinin neresi olduğuna kadar sorgulanması gerektiğine dikkat çekmiş; derinin Hicaz bölgesinden veya Mısır, Hindistan gibi ülkelerden getirilmiş olmasına kadar birçok hususun, karbon 14 testini etkileyen önemli faktörler olduğunu belirtmiştir.

3. Hicaz bölgesinde derinin işlenme yöntemiyle Mısır ve Hindistan'daki yöntemlerin farklı olabileceğini söylemiş, derinin işlenmesi sürecinde kimyasal maddelerin kullanılıp kullanılmamasının da tarihlendirmede sonucu etkileyebileceğine dikkat çekmiştir.[5] Bu itibarla Prof. Igno Kottsieper'e göre söz konusu varaklarla ilgili test sonucu kesin olmadığı gibi ilan edilen sonuçların bilimsel değerinden de söz edilemeyeceği anlaşılmış olmaktadır.

4. Deri ile üzerindeki yazının farklı tarihler vereceğine dair görüşler de zaman zaman ileri sürülmüştür. Katılmadığımız bu görüşler konusunda o tarihlerde gündemde tartışılan bir başka deri örneği ile ilgili olarak şunları not etmiştik: "29-56 (649-675) yılları ve hatta daha sonraki dönemler, üzerine yazı yazılabilecek nitelikte malzeme temininin fevkalade zor olduğu dönemlerdir. Bu tür malzemenin yıllarca değil, birkaç yıl dahi bekletilmesi düşünülemez. Zira hayvan derisinden olan bu varaklar belli ihtiyaçlar için

4 bk. *Mushaf-ı Şerîf: Bibliothèque Nationale, Paris*, s. 15.

5 bk. *Gökkır raporu*.

üretilmiş ve hemen kullanılmıştır. Onların stoklanıp onlarca yıl bekletilmesi ihtimal dışıdır. XX. asrın ortalarında devlet dairelerine gelen resmî yazıların zarflarının çöpe atılmadığı, idareciler tarafından müsvedde kâğıdı olarak kullanıldığı bizim yaşımızda olanların çok iyi hatırladığı bir Türkiye ve belki de bir dünya gerçeğidir. Bu durumu dikkate aldığımızda on dört asır önce Arabistan gibi bir coğrafyada mushaf yazımı için hazırlanan derilerin senelerce stoklarda bekletilmesi gibi bir uygulamanın ne kadar ihtimal dışı olduğu daha kolay anlaşılacaktır. Ayrıca bir koyun veya sığır derisinden kaç varak üretilebileceğinin, eldeki örneklerine bakıldığında mesela 500 veya 900 varaklık bir mushaf için kaç hayvan derisine ihtiyaç duyulduğunun da dikkate alınması gerekir."[6]

Bugün itibariyle değişen bir şey yoktur. Birmingham varakları (Mingana 1572[a]) üzerinde aşağıda yapacağımız değerlendirmeler de dikkate alındığında sözü edilen testin inandırıcı hiçbir tarafı bulunmadığı anlaşılmış olacaktır. Testin değişik laboratuvarlarda tekrarlanması zorunludur. Ancak ilgili üniversitenin böyle bir şeye tevessül etmeyeceğini tahmin etmek zor değildir. Zira bu üniversite yöneticilerinin, konunun dünya kamuoyu üzerinde oluşturduğu ilginin ve merakın devam etmesinden yana olduğu düşünülmektedir.

Varakların Muhtevası ve Yazım Özellikleri

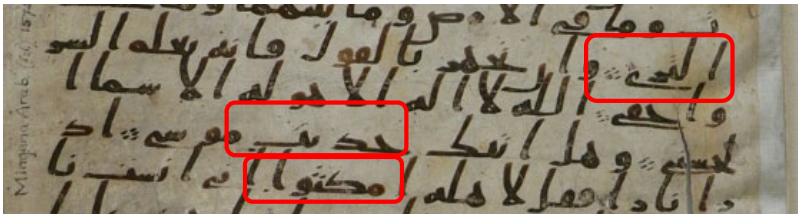
Birmingham varaklarında -Kur'an-ı Kerim'de ardarda yer alan- üç sûreden âyetler bulunmaktadır. Birinci varakın iki yüzünde Kehf sûresinin 17- 31. âyetleri, ikinci varakın birinci yüzünde Meryem sûresinin 91-98. âyetleri ile Tâhâ sûresinin 1-12. âyetleri, ikinci yüzünde ise aynı sûrenin 13-39. âyetleri yer almaktadır.

Varakların yazım özelliklerine geçmeden önce Dr. Alba Fedeli'nin bir sehvine işaret etmemizde fayda var. Yazarın belirttiğine göre 2[a] sayfasının 16 ve 18. satırlarında yer alan الثرى kelimesindeki ث harfi ile حديث kelimesindeki ث harfi, ت olarak noktalanmıştır. Eskiye ait bazı papirüslerde de ت yazıldığı halde ث olarak okunan başka örnekleri de kanıt gösteren Fedeli, aşağıdaki resimde ikinci satırda yer alan الثرى kelimesiyle dördüncü satırdaki حديث kelimesinde ث harflerinin ت olarak yazıldığını ifade etmiştir. Ancak kanaatimizce bu doğru bir değerlendirme olmamıştır.

Kadim mushaflar içinde sınırlı da olsa -burada görüldüğü gibi- bazı harflerin noktalandığına dair örnekler bulunmakla birlikte bunlardan bazılarında zamanla rutubetlenme ve benzer sebeplerle bu noktalarda farkedilemez hale gelenler vardır. Dr. Fedeli'nin verdiği örneklerde de durum böyledir. Yani bu kelimelerdeki ث harflerinin iki noktalı olarak görülmesinin sebebi,

6 bk. Altıkulaç, *Günümüze Ulaşan Mesâhif-i Kadîme*, s. 336.

onların tercihen ve isteyerek ت şeklinde yazılması değil, asırlar içinde noktalarda meydana gelen bozulmalardır. Bir metinde ث harflerinin tamamı üç nokta ile yazılırken sadece iki kelimede isteyerek ت şeklinde yazılmasının bir anlamı yoktur. Nitekim aynı varakların aynı veya diğer sayfalarına baktığımızda ث harflerinin açık şekilde üç noktalı oldukları görülmektedir. Mesela Dr. Fedeli'nin zikrettiği حديث kelimesinin hemen altındaki satırda geçen امكثوا kelimesinde ث harfinin üç noktası belirgin bir şekilde kendini göstermektedir. Kezâ 1[a] sayfasının 6, 7, 9 ve 14. satırlarındaki بعثناهم، لبثتم، لبثنا، فابعثوا، اعثرنا örneklerinde ث harflerinin üç nokta ile noktalandığını açıkça görmek mümkündür. Bu durum karşısında Dr. Fedeli'nin söz konusu örnekleri niçin zikrettiğini anlamak mümkün olmamıştır.[7]



Birmingham Varaklarında:

1. Dört sayfadan ibaret söz konusu varaklarda شى kelimesi bir defa geçmiş ve شاى şeklinde elif ile yazılmıştır. Kehf sûresinin diğer âyetleri Fustat menşeli yazmalardan olan 328[a-b] ve 328c varaklarında yer almadığından bu âyette kelimenin onlarda nasıl yazıldığını söylemek mümkün değildir. Ancak 328[a]'da geçtiği her yerde شاى olarak yazılırken (sonradan yazılan varakları hariç) 328[b]'de elifsizdir. Dr. Fedeli'nin üzerinde çalıştığı 328c'de ise kelime hep elif ile yazılmıştır.[8] Bu örnek de konumuz olan Birmingham varaklarının, Fustat kaynaklı metinlerle benzerliğinin bulunduğunu göstermektedir.

2. قال، قائل، قلوا kelimeleri قل، قتل، قلوا şeklinde elifsiz yazılmıştır. Ancak bir defa geçen فقالوا kelimesinin (Kehf 18/21) -uzak bir ihtimal olmakla birlikte- başına ف harfi geldiği için elif ile imla edilmiş olabileceği akla gelmektedir. Varakların ait olduğu mushafın bütün varaklarında bu kelimelerin aynı şekilde elifsiz yazıldığını tahmin etmek mümkündür. Bibliothèque Nationale nüshası diye tahkik ettiğimiz mushafta da (328[a-b]) -bazı istisnaları

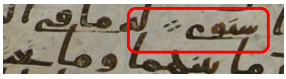
7 Fedeli, *Early Qur'anic Manuscripts: Their Texts and the Alphonse Mingana Papers*, s. 148.

8 328[a-b] ile, *Mushaf-ı Şerîf*: *Bibliotheque Nationale* adıyla tahkik edip neşrettiğimiz (İstanbul 1436/2015). Mushaf; 328c ile ise Dr. Alba Fedeli'nin doktora tezi olarak çalıştığı varaklar kastedilmektedir.

dışında- قالت، قالوا، قال kelimeleri elifsiz yazılmıştır (قلت، قلوا، قل). British Library nüshası diye tahkik ettiğimiz mushafta ise bu kelimeler kırk dört yerde elif ile yazılırken yüzlerce yerde elifsiz olarak imla edilmiştir. Gerekli inceleme ve değerlendirmelerden sonra bu her iki mushafın da Hz. Osman'ın Şam'a gönderdiği mushafın özelliklerini taşıdığı (köken itibariyle Şamlı olduğu) kanaatine varılmıştır.

3. Çoğu belirsiz olmakla birlikte ب، ت، ث، ز، ذ، غ، ن harflerinde noktaların kullanıldığı görülmektedir. Harflerin noktalanmasındaki bu durum, günümüz matbu mushaflarıyla birliktelik göstermektedir. Fustat kaynaklı varaklardan olup Dr. Fedeli'nin incelediği 328c'de de nokta uygulaması yapılmış, 328[a-b] harflerinde ise bu uygulama yapılmamıştır.

4. Âyet sonlarını belirtmek üzere konan durak işaretleri -aşağıdaki resimlerde görüldüğü gibi- genelde iki sıra olarak üst üste istif edilmiş kısa fetha benzeri işaretlerden oluşmaktadır. Bunlar 4'lü, 5'li ya da 6'lı işaretler olarak görülebilmektedir. Bu özelliği ile Birmingham varakları, 328[a-b] ve British Library nüshası varaklarıyla benzerlik göstermekte olup bu tür durak işaretleri Hz. Osman mushaflarından sonra yazılan kadim mushaflarda yaygın olarak kullanılmıştır.



5. Durak işaretlerinin yerleri genel anlamda bugünün matbu mushaflarıyla birliktelik göstermekle birlikte az sayıda farklılık da görülmektedir. Şöyle ki:

a) Günümüz mushaflarının aksine sûre başındaki besmeleden sonra durak işareti görülmekte, طه kelimesinden sonra ise durak işareti bulunmamaktadır.

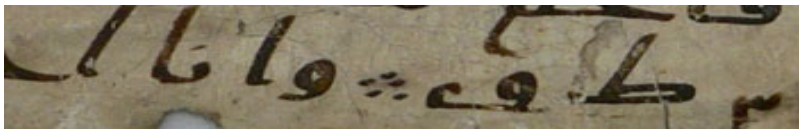
b) Kehf sûresinin 18. âyeti ikiye bölünmüş, بالوصيد kelimesinden sonra durak işareti konmuştur. Benzer bir durum Tâhâ sûresinin 39. âyeti için de söz konusu olmuş, فى اليم'den sonra durak işareti konmuş ve âyet ikiye bölünmüştür.

c) Tâhâ sûresinin 25. âyetinde ise farklı bir durum söz konu olmuş, صدري kelimesinden sonra durak işareti konmamıştır.

6. Diğer kadim mushaflarda olduğu gibi kelimelerin ortasında ve sonlarındaki hemze işaretlerine yer verilmemiştir. Mesela ليتساءلوا kelimesi ;ليتسالوا بيضاء kelimesi بيضا şeklinde imla edilmiştir.

7. Tâhâ sûresinin 12. âyetinde طُوى kelimesi طاوى şeklinde elif ile yazılmışsa da elifsiz yazılacağını düşünen bir okuyucu onu silmeye çalışmıştır (aş.

bk. ayrıca bk. 2ª sayfasının son satırı). Bu kelimenin elif ile yazılmasına bakarak bu durumu mukaddes metnin güvenilirliği üzerine düşen bir gölge gibi değerlendirmeye heveslenen oryantalist yaklaşımlarla karşılaşmamız mümkündür.[9] Hemen belirtelim ki, buradaki yazılım konusunda diğer kadim mushaflarda da kâtiplerin farklı tercihlerde bulunduğu görülmektedir. Mesela Topkapı Sarayı Müzesi, Medine nr. 1, Berlin Stadbibliothek mushaflarında kelime طُوى şeklinde elifsiz yazılırken Kahire el-Meşhedü'l-Hüseynî, Londra British Library ve Kahire İslam Sanatları Müzesi nüshalarında da kelime elif ile طاوى diye imla edilmiştir. Kıraat ilmi açısından baktığımızda kelimeyi tenvin ile طُوًى diye okuyanlar varsa da elif ile okuyan hiç yoktur. İslam coğrafyasının her yerinde kelime asırlar boyunca (sahabe neslinden itibaren) hep elifsiz okunagelmiştir.[10] Bu çalışmamızın metin tahkikli kısmının 41 numaralı dipnotunda işaret ettiğimiz gibi kelime Ebû Amr ed-Dânî'ye göre burada (bu âyette) elif iledir ve Kur'an'da başka örneği yoktur. Dânî ayrıca Iraklılar'ın mushaflarını ve diğerlerini incelediğini söyleyerek -Nâziât sûresinin 16. âyetinde olduğu gibi- onlarda kelimenin ى ile yazılı olduğunu belirtmiştir.[11]



Metin Tahkikimize Dair Notlar

1. Varakların imlası, dördü kadim/yazma, biri matbu olmak üzere beş mushafın imlası ile karşılaştırılmış, aralarındaki yazım farkları için elli beş dipnot yazılmıştır. Bunlardan üçü, varakları karşılaştırmada dikkate aldığımız diğer mushafların sûre başlarına ait olup, bu farklılıkların asıl metinle ilgileri bulunmamaktadır. Geriye kalan elli bir farklı yazım konusunda diğer mushafların hepsinden on altı yerde ayrılmaktadır. Bu on altı yerin onu قائل ـ قئل / قالوا ـ قلوا / قال ـ قل kelimeleriyle ilgili olup bunları dikkate almadığımızda, diğer mushafların hepsinden sadece altı kelimenin imlasında ayrılmaktadır.

2. Dipnotlarda kelimelerin imlası konusunda söz konusu beş mushaf arasındaki farklılıkları tespit ettikten sonra bu kelimelerin resm-i Osmânî'deki benzerleriyle aynılığı veya farklılığı açısından kaynakların verdiği bilgiler

9 Resimdeki طاوى kelimesinin, muhtemelen yanlış yazıldığını düşünen biri tarafından silinmeye çalışıldığı tahmin edilebilir.

10 bk. Dânî, *et-Teysîr*, s. 150; İbnü'l-Cezerî, *en-Neşr*, II, 319; Bennâ, *İthâfü fudalâi'l-beşer,* II, 245.

11 bk. Dânî, *el-Mukni'*, s. 64-65.

not edilmiştir. Böylece hangi yazım şeklinin doğru olabileceği hususunda araştırmacılara yardımcı olunmaya çalışılmıştır.

3. Varaklarda (özellikle birinci varakın alt kenarlarında) çürüyüp dökülmeler mevcut olduğundan okunması mümkün olmayan kelimeler bulunmaktadır. Tahkik çalışması sırasında bu yerlerde olması gereken kelimelerin her harfi için bir nokta kullanılmıştır.

4. Metnin bilgisayarda yazılması sırasında orijinal metindeki satır düzeni aynen korunmuştur. Mesela orijinal metinde ليتسالوا kelimesi yazılırken onun ليتسا kısmı satırın sonuna, لوا ise bir sonraki satırın başına yazılmış, bilgisayar yazımında da buna aynen uyulmuştur.

Birmingham Varakları 568-645 Yılları Aralığında Yazılmış Olabilir mi?

Konuyu değerlendirirken başlıktaki milattan sonra 568 yılının Hz. Peygamber'in doğumundan da önceki bir tarihi gösterdiği, 645 yılının ise Hz. Osman'ın hilafetinin birinci yılı olduğu, onun çeşitli merkezlere gönderdiği bilinen mushafların yazım çalışmalarının ise, halife oluşundan yıllar sonra ele alındığı ve uzun bir yazım süreci yaşandıktan sonra söz konusu mushafların belli merkezlere gönderildiği yönündeki bilgi göz önünde bulundurulmalıdır. İlgili pek çok kaynağın bugüne taşıdığı bu bilgilere rağmen bugün karşılaştığımız iddiaya göre bu iki varak ve herhalde onların içinde yer aldığı mushaf, Hz. Osman mushaflarından çok önceki tarihlerde yazılmıştır.

Birmingham Üniversitesi söz konusu varakların bu tarihler aralığında yazıldığı görüşünü benimsiyor olsa da varaklar üzerinde gördüklerimiz bunun hiç de doğru olmadığını göstermek için yeterlidir. Üniversite idaresi bunu tartışmaya açık olan karbon 14 testiyle ispat etmeye çalışsa da kanaatimizce bu böyledir. Şöyle ki:

1. Tarihen sabittir ki, günümüzün ve İslam tarihi boyunca bütün insanlığın elinde bulunan mushafların esası olan Hz. Osman mushaflarının yazılması, onun halife oluşundan yıllar sonra gündeme gelmiş ve bir ihtiyaçtan doğmuştur. Birmingham varakları ve onların esası olan nüsha ise Hz. Osman mushaflarının birinden yazılmıştır veya ondan yazılmış bir nüshadan istinsah edilmiştir. Çünkü;

a) Birmingham varaklarında yer alan âyetlerdeki kelimeler, Hz. Osman mushaflarındaki karşılıklarıyla aynıdır. Aralarında herhangi bir ayrılıktan söz etmek mümkün değildir.

b) Birmingham varaklarında bazı âyetleri yer alan sûrelerin (Kehf, Meryem, Tâhâ) Kur'an-ı Kerim içindeki sıralaması da Hz. Osman mushaflarındaki

sıralama ile aynıdır. Yani 18, 19 ve 20. sûrelerdeki âyetler bu varaklarda arka arkaya yazılmıştır.

c) Birmingham varaklarındaki âyetlerin sûreler içindeki sıralamaları da Hz. Osman mushaflarındaki gibidir. Hiçbir farklılık yoktur.

d) Âyetlerin sonlarını gösteren durak işaretleri -iki yerde âyetin ikiye bölünmesi durumu istisna edilecek olursa- Hz. Osman mushaflarını esas alan günümüzdeki matbu mushaflarda gördüklerimizle bire bir aynıdır (âyetlerin ikiye bölünmesi ya da iki âyetin birleştirilerek bir âyet gibi yazılması ve benzeri bazı ayrıntı uygulamalar kadim mushafların hepsinde görülen şeylerdir).

2. Bütün bu benzerlikler karşısında isterseniz bir de şu iki ihtimali göz önünde bulundurarak sonuca gitmeyi deneyelim: Birinci ihtimale göre Hz. Osman mushafları Birmingham varaklarının esası olan mushaftan yazılmış olup sözü edilen karbon 14 incelemesinin gösterdiği 568-645 yılları doğrudur ve söz konusu mushaf (keza Birmingham varakları) bu tarihler arasındaki bir zaman diliminde yazılmıştır. İkinci ihtimal ise Birmingham varaklarının esası olan mushaf Hz. Osman'ın mushaflarından biri esas alınarak imla edilmiştir. Hangi ihtimal kabul edilirse edilsin, değişmeyen bir şey var ki o da bu varaklarla Hz. Osman mushaflarındaki karşılıklarının bire bir aynı metinler olmalarıdır.

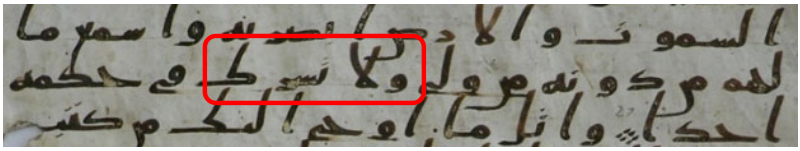
a) Bu durum karşısında dikkatten kaçırmamamız gereken husus şudur: Hz. Osman mushaflarının Birmingham varaklarından sonra ve belki de ondan yazılmış olabileceğine dair -tartışmalı karbon 14 testi dışında- hiçbir delil yoktur.

b) Hz. Osman mushaflarının yazılmasının ise kocaman ve göz ardı edilmesi mümkün olmayan bir arka planı vardır. Bu arka planda neler ve hangi olaylar yaşanmamıştır ki? Bu çalışma hangi tarihî zaruretlerden gündeme gelmiştir? Hangi şartlarda oluşturulan bir heyet tarafından yazılmıştır? Bu heyette kimler yer almıştır? Heyet başkanı kimdir? Yazım sürecinde heyet üyeleri arasında tartışma yapıldığına dair herhangi bir bilgi mevcut mudur? Mevcutsa bu tartışma veya tartışmalar nasıl sonuçlanmıştır? Bütün bu soruların cevaplarından oluşan arka planı görmezden gelmek akıl dışılıktır; ilginç bir ön yargı örneğinden başka bir şey değildir. Bütünüyle bu arka plan en eski kaynaklardan itibaren günümüze taşınmış, -olaylardaki bazı ayrıntılar tartışmalı olsa da- Doğulu, Batılı bilim dünyasının ayan beyan gözü önünde yer almıştır.

c) Buna göre Birmingham varaklarının ve onun esası olan mushafın Hz. Osman mushaflarından sonra ve onlardan biri esas alınarak yazıldığında

şüphe yoktur (Konuyla ilgili olarak yapılan karbon 14 testi hakkında söyleyeceklerimizi yukarıda söyledik).

d) Birmingham varakları -kanaatimizce- Hz. Osman'ın Şam'a gönderdiği mushaftan veya ondan yazılmış bir nüshadan istinsah edilmiştir. Söz konusu varakların bütün harflerinde noktalama uygulaması bulunmamakla birlikte gözümüze ilişen bir kelime ve ondaki iki nokta bu varakların yazıldığı bölge konusunda önümüzü aydınlatmaya yetecek önemde ve değerdedir. Şöyle ki: Meşhur kıraat imamlarından Şam kıraat imamı Abdullah b. Âmir el-Yahsubî (ö. 118/736) dışında bütün kıraat imamları Kehf sûresinin 26. âyetindeki يُشْرِكُ kelimesini يـ ile okurken sadece İbn Âmir -aşağıdaki resimde görüldüğü üzere- bu kelimeyi تـ ile ve son harfini de cezm ile تُشْرِكْ diye okumuştur.[12] Kelimeyi bu şekilde noktalamanın bize gösterdiği adres bellidir ve Şam'dır yani Hz. Osman'ın Şam mushafıdır.



Sonuç

Birmingham Üniversitesi 22 Temmuz 2015 tarihinde üniversite kütüphanesinin Mingana Koleksiyonu'nda yer alan el yazması iki Kur'an yaprağının en eski Kur'an nüshalarından biri olduğunu açıkladı; BBC bu bilgiyi dünya kamuoyuna duyurdu. Varaklar karbon 14 testine tâbi tutuldu ve buna göre bu varakların milattan sonra 568-645 yılları aralığında yazıldığı açıklandı.

Birmingham Üniversitesi varakların tanıtılması konusunda başarılı çalışmalar yaptı. 21 Ekim 2015 tarihinde düzenlediği toplantıya çeşitli ülkelerden bilim adamlarının katılımını sağladı. Türkiye'den de iki bilim insanı bu toplantıda hazır bulundu. Yapılan karbon 14 testinin sonuçları da toplantıda tartışılan konular arasında yerini aldı.

Tarafımızca yapılan değerlendirmelere göre Birmingham varaklarının Hz. Osman mushaflarından önceye ait bir zaman diliminde yazılmış olma ihtimali yoktur. Aksi bir durumun, tarihî ve ilmî gerçeklerle bağdaşmayacağı -yaptığımız inceleme ve değerlendirmelerden sonra- açıkça anlaşılmıştır. Toplantıya katılan bilim adamlarından Prof. Igno Kottsieper'in karbon 14 testinin tekrarlanması yönündeki uyarısı, Birmingham Üniversitesi yönetimi tarafından dikkate alınmamış olsa da önemlidir.

12 bk. Dânî, *et-Teysîr*, s. 143; İbnü'l-Cezeri, *en-Neşr*, II, 310.

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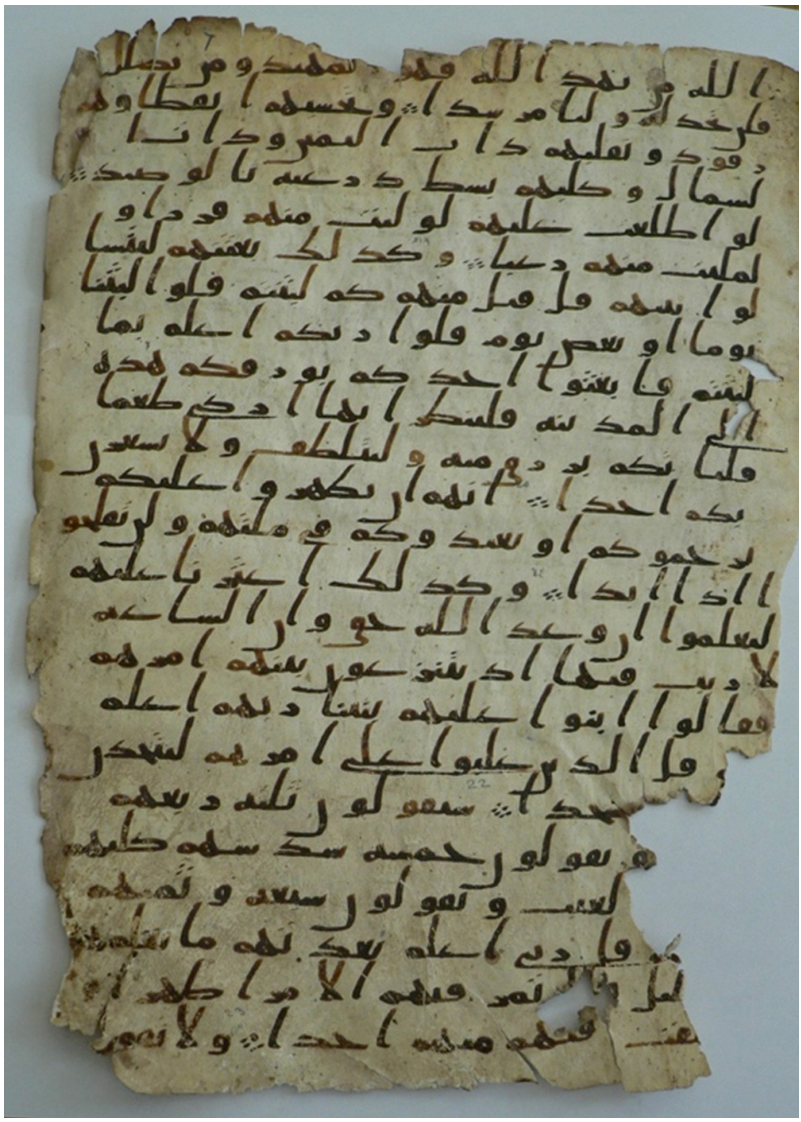
Kısaltmalar

bk.	Bakınız
BBC	Britanya Yayın Kuruluşu
KURAMER	İstanbul 29 Mayıs Üniversitesi Kur'an Araştırmaları Merkezi
s.	Sayfa
ts.	Tarihsiz

EKİ: Birmingham varak sayfaları (resimler) ve metin tahkiki çalışmaları.



1ª

[سورة الكهف ـ (18) ـ عدد اياتها 110][1]

[1/أ]

الله من يهد الله فهو المهتد ومن يضلل

فلن تجد له وليا مرشدا **[17]** وتحسبهم ايقظا[2]

وهم

رقود ونقلبهم ذات اليمين وذات ا

لشمال وكلبهم بسط[3] ذرعيه[4] بالوصيد

لو اطلعت عليهم لوليت منهم فرارا[5] و

لملئت منهم رعبا **[18]** وكذلك بعثنهم ليتسا

لوا[6] بينهم قل[7] قل[8] منهم كم لبثتم قلوا[9] لبثنا

يوما او بعض يوم قلوا[10] ربكم اعلم بما

لبثتم فابعثوا احدكم بورقكم هذه

الى المدينة فلينظر ايها ازكى طعما[11]

فلياتكم برزق منه وليتلطف ولا يشعرن

بكم احدا **[19]** انهم ان يظهروا عليكم

يرجموكم او يعيدوكم فى ملتهم ولن تفلحو

ا اذا ابدا **[20]** و كذلك اعثرنا عليهم

ليعلموا ان وعد الله حق وان الساعة

لا ريب فيها اذ يتنزعون بينهم امرهم فقالوا

ابنوا عليهم بنينا ربهم اعلم

قل[12] الذين غلبوا على[13] امرهم لنتخذن ...

مسجدا **[21]** سيقولون ثلثة ربعهم[14] .....

ويقولون خمسة سدسهم[15] كلبهم .....

لغيب ويقولون سبعة وثمنهم[16].. ....

قل ربى اعلم بعدتهم ما يعلمهم .....

..ليل فلا تمر[17] فيهم الا مرا ظهرا و. ...

تفت فيهم منهم احدا **[22]** ولا تقولن..

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١ الكهف مائة واحدى عشرة اية: ت // سورة الكهف: ف // –: ب ، ص، ط، ق (وما بين القوسين المعقوفين من عندنا).

٢ ايقظا: ب، ت، ص، ط، ق // ايقاظا: ف (هذه الكلمة من الكلمات التي سكت عنها أبو داود، ولكن تثبت ألفها عند الداني، لأنها زائدة للبناء؛ انظر: المقنع ٤٤؛ وقال الأزكاني في نثر المرجان ١١٢/٤: "بإثبات الألف بعد القاف على الأكثر، وحذفها الجزري"؛ ونقل ابن عاشر عن التجيبي أن هذه الكلمة بغير ألف؛ انظر: إرشاد القراء والكاتبين ٥٠٩/٢).

٣ بسط: ب، ف // باسط: ت، ص، ط، ق (بحذف الألف عند أبي داود؛ انظر: مختصر التبيين ٧٣٨/٣، ٨٠٤؛ ولكن تثبت ألفها عند الداني، لأنها على وزن فاعل؛ انظر: المقنع ٤٤؛ وفي نثر المرجان ١١٣/٤: "باسط اسم فاعل، وبإثبات الألف بعد الباء الموحدة كما ضبطه الداني، وهو الأكثر، وحذفها الجزري").

٤ ذرعيه: ب، ص، ق // ذراعيه: ت، ط، ف (سكت عنه أبو داود؛ وتثبت ألفه على ضابط الداني والمهدوي، لأنه على وزن فِعال، انظر: المقنع ٤٤؛ هجاء مصاحف الأمصار ٨٤؛ وفي نثر المرجان ١١٥/١: بإثبات الألف بعد الراء).

٥ فرارا: ب، ص، ط، ق // فرارا: ت، ف (بإثبات الألف بين الراءين عند الداني، لأنه على وزن فِعال؛ انظر: المقنع ٤٤؛ نثر المرجان ١١٤/٤؛ وسكت أبو داود عنه، لكن نقل ابن عاشر عن التجيبي أن هذه الكلمة بغير ألف؛ انظر: إرشاد القراء والكاتبين ٥٠٩/٢).

٦ ليتسالوا: ب، ت، ط، ق، م // ليتسلوا: ص (وفي نثر المرجان ١١٤/٤: "بإثبات الألف بعد السين وفاقا، وبحذف صورة الهمزة المفتوحة بعد الألف").

٧ قل: ب // قال: ت، ص، ط، ق، ف (ذكر المصار إثبات الألف بعد القاف في كلمة قال، واستثنوا في مواضع ليست هذه منها، انظر: معجم الرسم العثماني ٢٧٢١/٥؛ نثر المرجان ١١٤/٤).

٨ قل: ب // قابل: ت، ص، ط، ق، ف (اسم فاعل، وبإثبات الألف بعد القاف وفاقا، انظر: نثر المرجان ١١٤/٤).

٩ قلوا: ب // قالوا: ت، ص، ط، ق، ف (بإثبات الألف بعد القاف على ضابط الداني، لأنها منقلبة من الواو، انظر: المقنع ٤٤؛ وانظر أيضا: نثر المرجان ١١٥/٤.

١٠ قلوا: ب // قالوا: ت، ص، ط، ق، ف (كما تقدم).

١١ طعما: ب، ص، ط // طعاما: ت، ق، ف (بألف ثابتة بين العين والميم أينما أتى؛ انظر: المقنع ٤٤؛ مختصر التبيين ١١٦، ١٤٦، ٢٤٧؛ الجامع ٣٤؛ نثر المرجان ١١٦/٤).

١٢ قل: ب // قال: ت، ص، ط، ق، ف (كما تقدم).

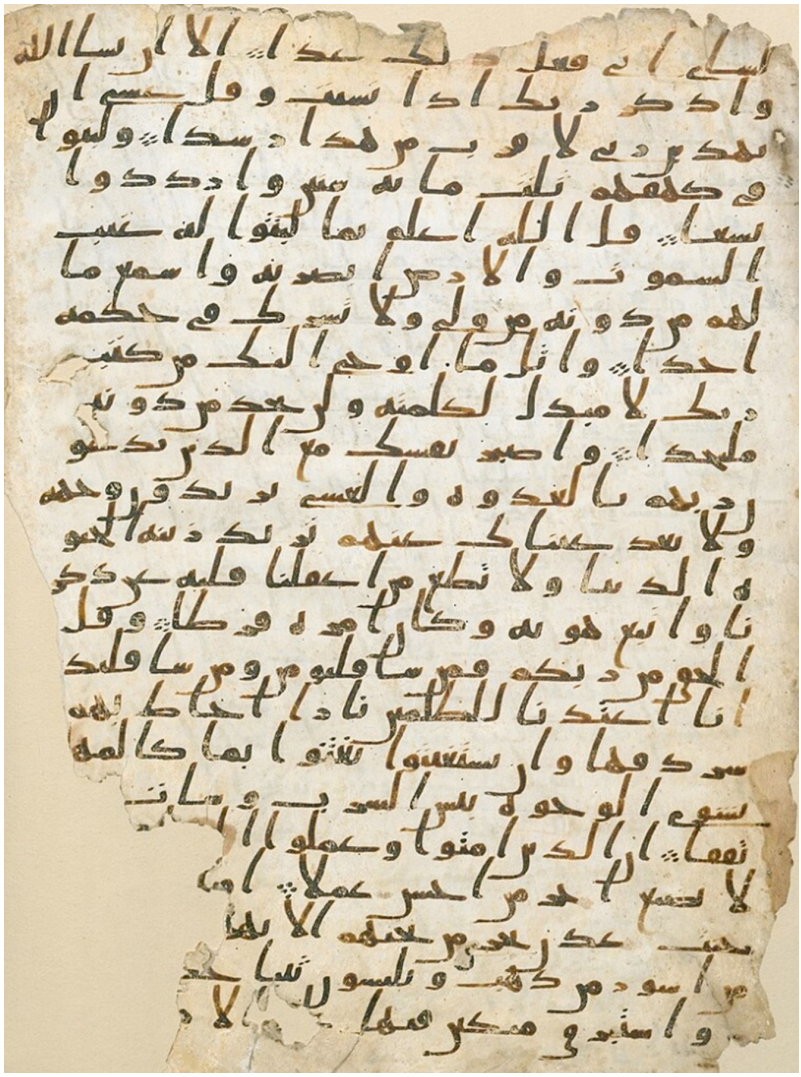
١٣ على: ب، ت، ق، ف // علا: ص، ط (رسموها بالياء أينما أتت إذا كانت حرفا، انظر: المقنع ٦٥؛ مختصر التبيين ٧٥/٢؛ نثر المرجان ١١٨:٤.

١٤ ربعهم: ب، ص // رابعهم: ت، ط، ق، ف بإثبات الألف بعد بعد الراء وفاقا، لأنه على وزن فاعل، انظر: المقنع ٤٤؛ مختصر التبيين ١١٦/٢؛ نثر المرجان ١١٩/٤).

١٥ سدسهم: ب، ت، ص، ط، ق // سادسهم: ف (بإثبات الألف بعد السين الأولى، انظر: المقنع ٤٤؛ مختصر التبيين ١١٦/٢؛ نثر المرجان ١١٩/٤؛ ونقل ابن عاشر عن التجيبي أن هذه الكلمة بغير ألف؛ انظر: إرشاد القراء والكاتبين ٥٠٩/٢).

١٦ ثمنهم: ب، ت، ص، ط، ق // ثامنهم: ف (مثل: سادسهم).

١٧ تمر: ب // تمار: ت، ص، ط، ق، ف (ذكر أبو داود أنه بالراء من غير ياء: تمار، انظر: مختصر التبيين ٨٠٥/٣؛ وتثبت ألفه بعد الميم على ضابط الداني، لأنه زائدة للبناء، انظر: المقنع ٤٤؛ قال النائطي في نثر المرجان ١٢٠/٤: "بإثبات الألف بعد الميم وفاقا").



1b

[1/ب]

لشاى[1] انى فعل[2] ذلك غدا [23] الا ان يشا الله

واذكر ربك اذا نسيت وقل عسى ان

يهدين ربى لاقرب من هذا رشدا [24] ولبثوا

فى كهفهم ثلث مائة[3] سنين وازددوا[4]

١ لشاى: ب، ق، ف // لشى: ت، ص، ط (قال أبو عمرو الداني في المقنع ٤٢: "قال محمد بن عيسى: رأيت في المصاحف كلها شئ بغير ألف، ما خلا الذي في الكهف [٢٣/١٨]، يعني قوله ولا تقولن لشاي، قال: وفي مصحف عبد الله رأيت كلها بالألف شاي". وقال أيضا في نفس المصدر: "ولم أجد شيئا من ذلك في مصاحف أهل العراق وغيرها بألف"؛ ووافقه أبو داود في مختصر التبيين ٣/٨٠٥؛ وانظر أيضا: هجاء مصاحف الأمصار ٦٣؛ الجامع ٥٤؛ البرهان ١/٣٨٥؛ نثر المرجان ٤/١٢١).

٢ فعل: ب، ص، ق // فاعل: ت، ط، ف (بإثبات الألف بعد الفاء عند الشيخين، لأنه على وزن فاعل؛ انظر: المقنع ٤٤؛ مختصر التبيين ٢/١١٦؛ نثر المرجان ٤/١٢٢).

٣ مائة: ب، ت، ط، ق، ف // مئة: ص (كتبوا مائة ومائتين بالألف بين الميم والياء المهموزة بلا خلاف حيثما وقعتا، انظر: المقنع ٤٢؛ مختصر التبيين ٢/٣٠٢، الجامع ٥٣؛ نثر المرجان ٤/١٢٣).

٤ وزددوا: ب، ص، ط، ق // وزدادوا: ت، ف (ذكر أبو داود أنه بإثبات الألف في كلمة "فزادهم" بين الزاي والدال أين ما أتى لفظ الزيادة،

تسعا **[25]** قل الله اعلم بما لبثوا له غيب
السموت[٥] والارض ابصر به واسمع ما
لهم من دونه من ولى ولا يشرك فى حكمه
احدا **[26]** واتل ما اوحى اليك من كتب[٦]
ربك لا مبدل لكلمته ولن تجد من دونه
ملتحدا **[27]** واصبر نفسك مع الذين يدعو
ن ربهم بالغدوة والعشى يريدون وجهه
ولا تعد عيناك عنهم تريد زينة الحيو
ة الدنيا ولا تطع من اغفلنا قلبه عن ذكر
نا واتبع هويه[٧] وكان امره فرطا **[28]** وقل
..الحق من ربكم فمن شا فليومن ومن شا فليكـ
انا اعتدنا للظلمين نارا احاط بهم

سردقها[٨] وان يستغيثوا يغثوا[٩] بما كالمهل
.. يشوى الوجوه بئس الشرب[١٠] وسات
... .تفقا **[29]** ان الذين امنوا وعملوا ا
...لا نضيع اجر من احسن عملا **[30]** او
....[١٢].جنت[١١] عدن تجرى من تحتهم الانها
....من اسور[١٣] من ذهب ويلبسون ثيبا[١٤] خضـ
... ..واستبرق متكين فيها على[١٥] الار

انظر: مختصر التبيين ٩٢/٢؛ وتثبت ألفها على ضابط الداني، لأنها زائدة للبناء، انظر: المقنع ٤٤؛ قال النائطي في نثر المرجان ١٢٤/٤: "بإثبات الألف بين الدالين وفاقا على الأكثر، وبزيادة الألف بعد واو الجمع").

٥ السموت: ب، ت، ص، ط، ف // السماوت: ق (بحذف الألفين قبل الواو وبعدها في جميع القرآن سواء كان معرفا أو غير معرف، إلا موضعا واحدا في حم السجدة [فصلت ١٢/٤١]؛ انظر: المقنع ١٩؛ مختصر التبيين ١١١/٢).

٦ كتب: ب، ت، ص، ط // كتاب: ق، ف (اتفق الشيخان على أن "كتاب" بغير ألف بين التاء والباء، سواء كان معرفا أو غير معرف، إلا في أربعة مواضع، فإنهن بألف ثابتة، أولاهن في الرعد [٣٩/١٣]، والثاني في الحجر [٤/١٥]، والثالث في الكهف [٢٧/١٨]، والرابع في النمل [١/٢٧]؛ انظر: المقنع ٢٠؛ مختصر التبيين ٦١/٢-٦٢؛ ٨٠٦/٣؛ الجامع ٣٥؛ وقال الأزكاني في نثر المرجان ١٢٥/٤: "إن الجزري كتب الألف بالصفرة إشارة إلى الاختلاف في الإثبات والحذف").

٧ هويه: ب، ت، ص، ق، ف // هواه: ط (بالياء بعد الواو؛ قال الداني في المقنع ٦٣: "إن المصاحف اتفقت على رسم ما كان من ذوات الياء من الأسماء والأفعال بالياء على مراد الإمالة وتغليب الأصل، وسواء اتصل ذلك بضمير أو لم يتصل أو لقي ساكنا أو متحركا". وانظر أيضا: مختصر التبيين ٦٣/٢-٦٦، ٢٤٧-٢٤٨؛ ٦٨٢/٣-٦٨٣، ٧١٦؛ ١٠٥٨/٤، ١١٩١؛ نثر المرجان ١٢٨/٤).

٨ سردقها: ب، ص، ط، ق // سرادقها: ت، ف (سكت عنه أبو داود، وتثبت ألفه على ضابط الداني، لأنها زائدة للبناء، انظر: المقنع ٤٤؛ قال النائطي في نثر المرجان ١٢٩/٤: "بإثبات الألف بعد الراء على الأكثر، وحذفها الجزري").

٩ يغثوا: ب // يغاثوا: ت، ص، ط، ق، ف (بإثبات الألف بعد الغين على ضابط الداني، لأنها زائدة للبناء، انظر: المقنع ٤٤؛ وانظر أيضا: نثر المرجان ١٢٩/٤).

١٠ الشرب: ب // الشراب: ت، ص، ط، ق، ف (بإثبات الألف بعد الراء على ضابط الداني والمهدوي، لأنه على وزن فُعال، انظر: المقنع ٤٤؛ هجاء مصاحف الأمصار ٨٤؛ انظر أيضا: نثر المرجان ١٣٠/٤).

١١ جنت: ب، ف // جنات: ت، ص، ط، ق (بحذف الألف بعد النون حيث ما ورد باتفاق الشيخين لأنه جمع مؤنث سالم؛ انظر: المقنع ٢٢؛ مختصر التبيين ٣٢/٢-٣٤، ١٠٧؛ الجامع ٣٧؛ نثر المرجان ١٣٠/٤-١٣١).

١٢ الانهار: ب // لانهر: ت، ص، ط، ق، ف (ذكر الداني وأبو داود أنه بحذف الألف حيثما وقع، انظر: المقنع ١٨؛ مختصر التبيين ١٠٧/٢؛ ١١٢٤/٤؛ وفي نثر المرجان ١٣١/٤: "بحذف الألف بعد الهاء بالاتفاق كما نص عليه الداني وغيره).

١٣ اسور: ت، ب، ص، ط، ق // اساور: ف (سكت أبو داود هنا، وذكره في سورة الحج ٢٣ بألف بين السين والواو؛ انظر: مختصر التبيين ٨٧٢/٤؛ وتثبت ألفها على ضابط الداني، لأنها زائدة للبناء؛ انظر: المقنع ٤٤؛ وفي نثر المرجان ١٣١/٤: "بحذف الألف بعد السين المهملة، لأنه جمع يوازن مفاعل"؛ ونقل ابن عاشر عن التجيبي أن هذه الكلمة بغير ألف؛ انظر: إرشاد القراء والكاتبين ٥٠٩/٢).

١٤ ثيبا: ب، ص، ط، ق // ثيابا: ت، ف (وردت هذه الكلمة في ثلاثة مواضع (الكهف ٣١؛ الحج ١٩؛ الإنسان ٢١)، ولم يُشر في المصادر أنها بغير ألف إلا في الوسيلة ٢٣٥، فإن السخاوي نقل عن المصحف الشامي أنها بغير ألف في موضع الإنسان؛ وقد روى الداني عن قالون حذف الألف من كلمات، منها قوله تعالى: "عاليهم ثياب" في الإنسان ٢١؛ وقد فهم بعضهم، وهو محمد أحمد دهمان محقق كتاب المقنع أن الألف محذوفة من عاليهم وثياب كليهما، هذا وقد رسم ثياب في مصحف الجماهيرية بالألف؛ انظر: المقنع ١٢؛ والظاهر أنها ترسم بإثبات الألف بعد الياء في جميع المواضع على ضابط الداني، لأنها على وزن فِعال؛ انظر: المقنع ٤٤؛ نثر المرجان ١٣١/٤؛ وسكت أبو داود عنها في جميع القرآن).

١٥ على: ب، ت، ق، ف // علا: ط، ص (رسموها بالياء أينما أتت إذا كانت حرفا، انظر: المقنع ٦٥؛ مختصر التبيين ٧٥/٢؛ نثر المرجان ١٣٢/٤).

2ª

[2/أ]

[سورة مريم ـ (19) ـ عدد آياتها 98][1]

دعوا للرحمن ولدا [91] وما ينبغى للرحمن
ان يتخذ ولدا [92] ان كل من فى السموت وا
لارض الا اتى الرحمن عبدا [93] لقد احصيهم
وعدهم عدا [94] وكلهم اتيه يوم القيمة
فردا [95] ان الذين امنوا وعملوا الصلحت
سيجعل لهم الرحمن ودا [96] فانما يسرنه
بلسنك[2] لتبشر به المتقين وتنذر به قوما لدا [97] و
كم اهلكنا قبلهم من قرن هل تحس منهم من احد او
تسمع لهم ركزا [98]

[سورة طه ـ (20) ـ عدد آياتها 135][3]

بسم الله الرحمن الرحيم[4] طه[5] [1] ما انزلنا
عليك القران لتشقى [2] الا تذكرة لمن يخشى [3]
تنزيلا ممن خلق الارض والسموت[6] العلى [4]
الرحمن على[7] العرش استوى [5] له ما فى السمو
ت وما فى الارض وما بينهما وما تحت
الثرى [6] وان تجهر بالقول فانه يعلم السر
واخفى [7] الله لا اله الا هو له الاسما ا
لحسنى [8] وهل اتيك حديث موسى [9] اذ
را نارا فقل[8] لاهله امكثوا انى انست نا
را لعلى اتيكم منها بقبس او اجد على[9] ا
لنار هدى [10] فلما اتيها نودى يموسى [11]
انى انا ربك فاخلع نعليك انك با
لواد المقدس طاوى[10] [12] وانا اخترتك

١ سورة مريم تسعون وثمنى ايت: ت // سورة مريم: ف // –: ب، ص، ط، ق (وما بين القوسين المعقوفين من عندنا).

٢ بلسنك: ب، ص، ق // بلساك: ط (سقوط النون من الكلمة سهو من الكاتب) // بلسانك: ت، ف (سكت عنه أبو داود، وتثبت ألفه على ضابط الداني والمهدوي، لأنه على وزن فِعال؛ انظر: المقنع ٤٤٤؛ هجاء مصاحف الأمصار ٨٤؛ وفي نثر المرجان ٢٦٢/٤: "بإثبات الألف بعد السين على ضابط الداني وهو الأكثر، وحذفها الجزري").

٣ سورة طه مائة وثلثون وايتان: ت // سورة طه: ف // –: ب، ط، ق (وما بين القوسين المعقوفين من عندنا).

٤ عُدَّت بسم الله الرحمن الرحيم آية، لأنّه قد رمز لها بأربع نقاط.

٥ طه آية عند الكوفي وحده (انظر: الفرائد الحسان ٤٧)، ولكن لم تُعدّ في هذا المصحف آية، لأنها لم يرمز لها بعلامة.

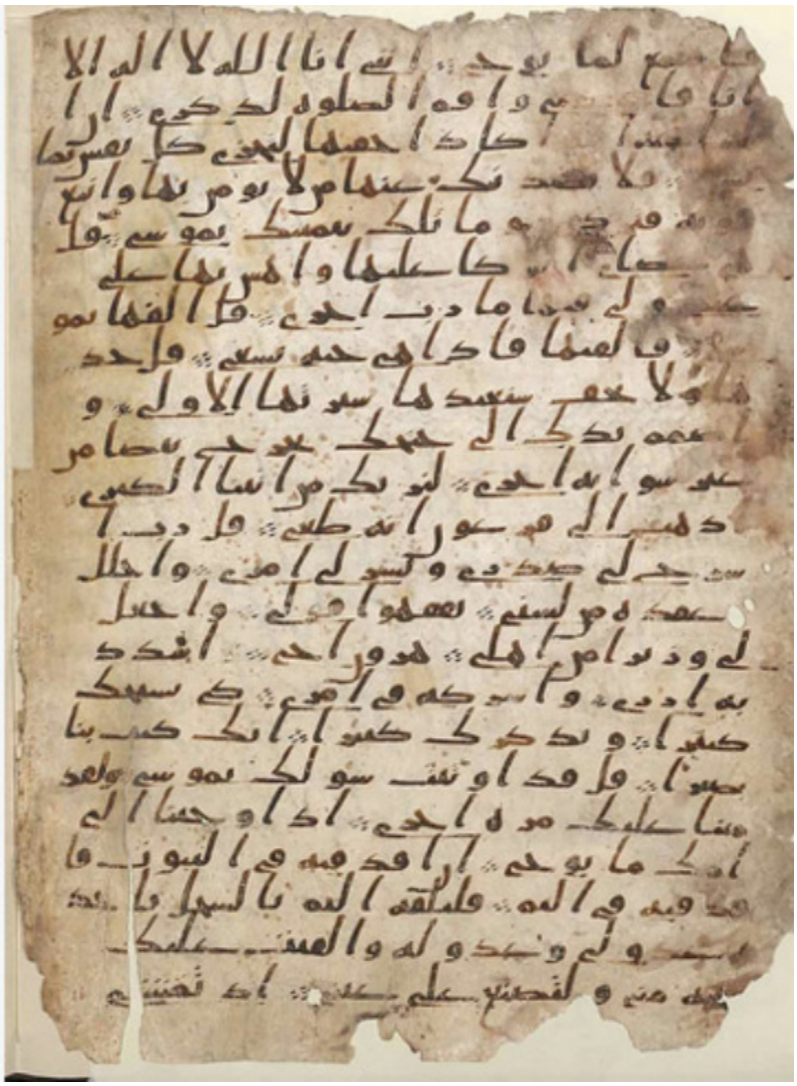
٦ السموت: ب، ت، ص، ط، ف // السماوت: ق (بحذف الألفين قبل الواو وبعدها في جميع القرآن سواء كان معرفا أو غير معرف، إلا موضعا واحدا في حم السجدة [فصلت ١٢/٤١]؛ انظر: المقنع ٤١٩؛ مختصر التبيين ١١١/٢).

٧ على: ب، ت، ف، ق // علا: ص، ط (رسموها بالياء أينما أتت إذا كانت حرفا، انظر: المقنع ٤٦٥؛ مختصر التبيين ٧٥/٢؛ نثر المرجان ٢٦٦/٤).

٨ فقل: ب // فقال: ت، ط، ق، ف (ذكر المصار إثبات الألف بعد القاف في كلمة قال، واستثنوا في مواضع ليست هذه منها، انظر: معجم الرسم العثماني ٢٧٢١/٥؛ وقال النائطي في هذه الآية: "بإثبات الألف بعد القاف: انظر: نثر المرجان ٢٦٨/٤).

٩ على: ب، ت، ف // علا: ص، ط، ق (كما تقدم).

١٠ طاوى: ب، ق // طوى: ت، ط، ف// الكلمة غير مقروءة في نسخة ص (هنا وفي النازعات [١٦/٧٩] بالياء بعد الواو وبغير ألف قبلها؛ انظر: المقنع ٤٦٥.٦٤؛ مختصر التبيين ٨٤١/٤؛ الجامع ٥٩).



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[2/ب]

فاستمع لما يوحى **[13]** اننى انا الله لا اله الا
انا فاعبدنى واقم الصلوة لذكرى **[14]** ان ا
لساعة اتية اكاد اخفيها لتجزى كل نفس بما
.... **[15]** فلا يصدنك عنها من لا يومن بها واتبع
هويه[1] فتردى **[16]** وما تلك بيمينك يموسى **[17]** قل[2]
هى عصاى اتوكا[3] عليها واهش بها على[4]
غنمى ولى فيها مارب اخرى **[18]** قل[5] القها يموسى **[19]**
فالقيها فاذا هى حية تسعى **[20]** قل[6] خذ
ها ولا تخف سنعيدها سيرتها الاولى **[21]** و
اضمم يدك الى جنحك[7] تخرج بيضا من
غير سو اية اخرى **[22]** لنريك من ايتنا الكبرى **[23]**

اذهب الى فرعون انه طغى **[24]** قل[8] رب ا
شرح لى صدرى **[25]** ويسر لى امرى **[26]** واحلل
عقدة من لسنى[9] **[27]** يفقهوا قولى **[28]** واجعل
لى وزيرا من اهلى **[29]** هرون اخى **[30]** اشدد
به ازرى **[31]** واشركه فى امرى **[32]** كى نسبحك
كثيرا **[33]** ونذكرك كثيرا **[34]** انك كنت بنا
بصيرا **[35]** قل[10] قد اوتيت سولك يموسى **[36]** ولقد
مننا عليك مرة اخرى **[37]** اذ اوحينا الى
امك ما يوحى **[38]** ان اقذفيه فى التبوت[11] فا
قذفيه فى اليم فليلقه اليم بالسحل[12] ياخذ
ه عدو لى وعدو له والقيت عليك
محبة منى ولتصنع على[13] عينى **[39]** اذ تمشى

١ هوبه: ب، ت، ص، ق، ف // هواه: ط (بالياء بعد الواو؛ قال الداني في المقنع ٦٣: "إن المصاحف اتفقت على رسم ما كان من ذوات الياء من الأسماء والأفعال بالياء على مراد الإمالة وتغليب الأصل، وسواء اتصل ذلك بضمير أو لم يتصل أو لقي ساكنا أو متحركا". وانظر أيضا: مختصر التبيين ٢/٦٣-٦٦، ٢٤٧-٢٤٨؛ ٣/٦٨٢-٦٨٣، ٧١٦؛ ٤/١٠٥٨، ١١٩١؛ نثر المرجان ٤/٢٧٣).

٢ قل: ب // قال: ت، ص، ط، ق، ف (ذكر المصار إثبات الألف بعد القاف في كلمة قال، واستثنوا في مواضع ليست هذه منها، انظر: معجم الرسم العثماني ٥/٢٧٢١؛ نثر المرجان ٤/٢٧٣).

٣ اتوكا: ب // اتوكوا: ت، ص، ط، ق، ف (بالواو والألف، انظر: المقنع ١٠٠؛ مختصر التبيين ٤/٨٤٢؛ نثر المرجان ٤/٢٧٤).

٤ على: ب، ت، ق، ف // علا: ص، ط (رسموها بالياء أينما أتت إذا كانت حرفا، انظر: المقنع ٦٥؛ مختصر التبيين ٢/٧٥؛ نثر المرجان ٤/٢٦٩).

٥ قل: ب // قال: ت، ص، ط، ق، ف (كما تقدم).

٦ قل: ب // قال: ت، ص، ط، ق، ف (كما تقدم).

٧ جنحك: ب // جناحك: ت، ص، ط، ق، ف (بإثبات الألف بعد النون على ضابط الداني والمهدوي، لأنه على وزن فَعال؛ انظر: المقنع ٤٤؛ هجاء مصاحف الأمصار ٨٤؛ وفي نثر المرجان ٤/٢٧٦: "بإثبات الألف بعد النون بالاتفاق كما ضبطه الداني").

٨ قل: ب // قال: ت، ط، ص، ق، ف (كما تقدم).

٩ لسنى : ب // لسانى: ت، ص، ط، ق، ف (بإثبات الألف بعد السين على ضابط الداني والمهدوي، لأنه على وزن فِعال؛ انظر: المقنع ٤٤؛ هجاء مصاحف الأمصار ٨٤؛ وفي نثر المرجان ٤/٢٧٨: "بإثبات الألف بعد السين بالاتفاق").

١٠ قل: ب // قال: ت، ص، ط، ق، ف (كما تقدم).

١١ التبوت: ب، ت، ص، ق، ط // التابوت: ف (سكت الشيخان عن حذف الألف بعد التاء الأولى أو إثباتها؛ وقال النائطي في نثر المرجان ٤/٢٨١: "بإثبات الألف بعد التاء الفوقانية الأولى بالاتفاق").

١٢ السحل: ب، ت، ص، ق، ط // الساحل: ف (بإثبات الألف بعد السين عند الشيخين، لأنه على وزن فاعل؛ انظر: المقنع ٤٤؛ مختصر التبيين ٢/١١٦؛ وقال النائطي في نثر المرجان ٤/٢٨١: "بإثبات الألف بعد السين بالاتفاق كما ضبطه الداني").

١٣ على: ب، ت، ق، ف // علا: ص، ط (كما تقدم).

Fatma Yüksel Çamur, Anlatıbilim ve Hadis

Ankara: Türkiye Diyanet Vakfı Yayınları, 2024, 240 sayfa.
ISBN 978-625-428-628-5

NİLÜFER KALKAN YORULMAZ*

Dr. Fatma Yüksel Çamur'un 2020 yılında Ankara Üniversitesi'nde tamamlanan *Anlatıbilim ve Hadis* isimli doktora tezi[1] 2024 yılında Türkiye Diyanet Vakfı Yayınları tarafından Prof.Dr. Mehmet Emin Özafşar'ın takriziyle yayımlanmıştır. Çalışma, genellikle Batılı araştırmacıların kullandığı bir yöntemi tarihî arka planı, felsefî alt yapısı ve unsurlarıyla birlikte açıklaması ve bunun hadis ilmiyle ilişkisini kurması yönüyle alana önemli bir katkı sunmaktadır. Özellikle modern dönem hadis çalışmaları ekseninde düşünüldüğünde, yenilik arayışları düşüncesi, metodolojik anlamda konuşulması ve işlenmesi gereken bir husustur. "Usulsüz vüsul olmaz" ilkesinden hareketle hadis alanındaki yeni arayışların yöntem üzerinden gerçekleşmesi beklenebilir. Bu anlamda *Anlatıbilim ve Hadis* isimli eserin alana öncülük eden bir çalışma olduğunu söylemek gerekmektedir. Gerek klasik ve modern dönemde telif edilmiş farklı dillerdeki kaynakları analiz etmesi gerekse de dil/üslup açısından çalışmanın dikkat çektiği görülmektedir. Bu anlamda hadislerin anlaşılması ve yorumlanması hususuna -kabul edilebilir veya reddedilebilir- bir bakış açısı kazandırması, bazı sorgulamaları beraberinde getirmesi ve en önemlisi metodolojik bir değerlendirme yapması önem arzetmektedir.

Hadis ve anlatı ilişkisini incelemesi hasebiyle alanında konuya öncülük eden çalışma, hadis ilminin kendine özgü şartları ve gelişim sürecini göz

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1 2021 yılında hadis ve siyer araştırmaları ödülleri kapsamında doktora kategorisinde birincilik ödülü almıştır.

DOI: 10.26570/isad.1880829 • Geliş/Received 23.10.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Yorulmaz, Nilüfer Kalkan, "Fatma Yüksel Çamur, Anlatıbilim ve Hadis", *İslam Araştırmaları Dergisi*, 55 (2026): 347-352.

ardı etmeden hadisi bir anlatı biçimi olarak ele almaktadır. Bu minvalde çalışmanın temelde iki sorusu bulunmaktadır. Birincisi, hadisin nasıl bir anlatı olduğu sorusudur. Bu bağlamda Hz. Peygamber'in ilk telaffuzundan itibaren rivayet süreci boyunca hadislere bir anlatı olgusu olarak yaklaşıldığı görülür. İkincisi ise hadis anlatısı incelenirken gerek İslam düşüncesinden gerekse Batı'da ortaya çıkan metodolojilerden nasıl istifade edilebileceği üzerinedir. Sorulan sorunun mahiyeti hadislerin anlaşılması ve yorumlanması hususunda anlatı bilimi tekniklerinin uygulamasının yapılacağını çağrıştırmaktadır. Ancak yazar konuyla ilgili uygulama hususunu kendisinden sonraki çalışmalara bırakmaktadır. Eserdeki uygulamalar ise anlatı biliminin temel unsurlarını ortaya koyan tikel örnekler ve modern kaynaklardaki çözümlemeler üzerinedir. Belirlenen amaç ve araştırma soruları doğrultusunda kitap dört ana bölümden oluşmaktadır. Çalışmanın birinci bölümünde "Temel Tartışma Alanları" başlığı altında sözlü kültür üzerinde durulmuştur. Bu bölümde, hadislerdeki cennet-cehennem tasvirleri, iman-islam-ihsan gibi kavramların benzetmeler ve örneklendirmeler yoluyla anlatılması, beden dili vurguları, geçmiş ümmetlerin kıssaları ve destansı anlatım biçimleri üzerinden sözlü kültürle hadis arasında ilişki kurulmaktadır. Nitekim bilgi kaynaklarını sözlü ve yazılı kaynaklar olarak kabul ettiğimizde anlatının sözlü kültürün önemli bir parçası olduğu gerçeği yadsınamaz.

"Bilgi, Düşünce, Muhayyile: Anlatı" başlığını taşıyan ikinci bölüm, anlatının anlamı, unsurları, işlevleri, tarihî arka planı ve İslam düşüncesindeki yerine odaklanmaktadır. Bu bölümde anlatının "bir ya da birden fazla gerçek ya da kurgusal olayın bir, iki ya da daha çok anlatıcı tarafından, bir, iki ya da daha çok muhataba temsil yoluyla aktarımı" şeklinde tanımlandığı görülür. Bu minvalde daha sonraki bölümlerde hadisle ilişkisi kurulacak olan anlatının neliği meselesi okuyucunun zihninde belirginleştirilmeye çalışılmıştır. "Anlatının Unsurları" başlığında ise olay örgüsü, odaklanma, anlatıcı, kişi, zaman ve mekân konuları üzerinde durulmaktadır. "Anlatının İslam Düşüncesindeki Yeri" başlığı ise özellikle Arap dili ve edebiyatındaki anlatının mahiyeti üzerine yoğunlaşmaktadır. Anlatının bir söz, sözün ise dilin bir ürünü olduğu düşünüldüğünde anlatı ve dil arasındaki ilişkinin kurulması da kaçınılmazdır. Nitekim İslam düşüncesinde de özellikle hadislerin anlaşılması ve yorumlanması noktasında en çok başvurulan alanlardan birinin dil olduğu söylenebilir. Ancak bu ilişkinin varlığını kabul etmekle birlikte dilin hadislerin kabulü/reddi veya şerhi konusundaki belirleyici etkisinin tartışmaya açık olduğunu burada ifade etmek gerekmektedir. Ayrıca bu başlıkta Aristo'dan başlayarak Cürcânî ve İbn Sînâ gibi filozofların suret-tahyil-temsil gibi kavramlarla anlatıya yaptıkları katkının disiplinler arası bir şekilde anlatılması ve tefsircilerin de konuyla ilgili yaklaşımlarının ele alınması dikkat çekmektedir.

"Anlatıbilim ve Hadis" başlığını taşıyan ve kitabın ana omurgasını oluşturan üçüncü bölümde ise anlatı biliminin hadis ilmiyle ilişkisi kurulmuş ve Batı'da yapılan konuyla ilgili çalışmalarda hadisin yeri üzerinde durulmuştur. Burada hadislerde anlatı meselesini ele alan araştırmaların oldukça sınırlı olduğu ve yapılanların da hadislerdeki edebî tasvirleri anlatan/onları şerheden veya üslup, dil ve ifadelerini vahy-i gayr-i metlüv konusu nazarında açıklayan çalışmalardan ibaret olduğu belirtilmektedir. Günümüzde ise Iftikhar Zaman, Mehmet Emin Özafşar ve Mehmet Apaydın'ın çalışmalarının rivayetin senedinden metnin analizi, metin inşası ve bütünsel yaklaşım metotlarıyla hadis anlatısallığına sunmuş oldukları katkı dikkate değer bulunmuş ve açıklanmıştır. Mesela Iftikhar Zaman, 1991 yılında Chicago Üniversitesi Yakındoğu Dilleri ve Medeniyetleri Bölümü'nde yaptığı doktora tezinde Sa'd b. Vakkas'ın vasiyeti hakkındaki rivayetlerin tariklerini incelemek suretiyle metnin oluşum süreçleri hakkında bilgiler vermektedir. Isnad-cum-matn analysis (ICMA) türünde de kabul edilebilecek olan çalışma, ilgili rivayetin bütün tariklerini bir araya getirir, metinlerdeki farklılıkları belirler ve bu farklılıkların hangi râvilerden kaynaklandığını tespit eder. Bütün isnat ve metinlerin tespiti neticesinde uygulanan form, stil ve tema analiziyle yapılan gruplandırmalar sonucunda rivayetin zamanıyla ilgili bir çelişki tespit edilmiş ve rivayetin Veda haccı yılında mı yoksa Mekke'nin fethi senesinde mi olduğu konusunda bir çözüm ihtiyacı doğmuştur. Metinlerden birinde geçen "umre" ve "ci'râne" kelimeleri esas alınarak olayın Mekke'nin fethi sırasında gerçekleştiği sonucuna varılmıştır. Ancak Iftikhar Zaman 1994 yılında *Journal of Islamic Studies* isimli dergide yayımladığı "The Science of Rijāl As a Method in the Study of Hadiths" isimli makalesinde konuyu bu kadar netleştirmemektedir. Bu makalede Zaman, meseleyi Beyhakī, Aynî ve İbn Hacer ekseninde işlemektedir. Beyhakī ile Aynî'nin konuyla ilgili kanaati, olayın Mekke'nin fethi sırasında gerçekleştiği yönündeki Süfyân rivayetinin hatalı olduğudur. Nitekim onların dayanağı, rivayeti Zührî'den aktaranlar arasında Süfyân'dan daha güvenilir kabul edilen râvilerin nakillerinde olayın Veda haccında meydana gelmesidir. Bu durumda Süfyân, güvenilir bir râvi olmasına rağmen daha güvenilir râvilere muhalefet etmektedir. Dolayısıyla daha güvenilir râvilerin aktardığı Veda haccı ibaresi esas alınır. Nitekim hadis usulündeki şâz/mahfuz diye ifade edilen bir tasnifi Iftikhar Zaman burada aktarmaktadır. İbn Hacer ise rivayetlerin râvilerinin güvenilir olması hasebiyle iki nakle de temkinli yaklaşır ve meseleyi olayın iki defa gerçekleşmiş olma ihtimaline dayandırdığını belirtir.[2] Çamur'un Iftikhar Zaman'ın doktora tezinden verdiği bu örneğin değerlendirmemize konu olmasının ise bazı sebepleri bulunmaktadır. Öyle ki özellikle yazarın meramını anlama konusunda bu

2 Iftikhar Zaman, "The Science of Rijāl As a Method in the Study of Hadiths", *Journal of Islamic Studies*, 5/1 (1994): 18-19.

örneğin belirleyici olacağı düşünülmektedir. Nitekim yazarın burada yaptığı vurgu her ne kadar tamamen bağımsız olmasa da Zaman'ın ulaşmış olduğu sonuçla ilgili değildir. O, Iftikhar Zaman'ın çalışmasında anlatı biliminin unsurlarına dayalı bir sınıflamaya gitmesini ve buradan hareketle bir sonuca ulaşmaya çalışmasını örnek olarak zikreder. Ancak özellikle rical çalışmalarına katkı sunmak amacıyla kaleme alınan bu araştırmada kullanılan anlatı bilimi unsurlarının hadisin metninin anlaşılması konusunda sunduğu katkının sınırlılığından da bahsetmek gerekmektedir. Nitekim bu değerlendirme yazısının amacı pek tabii Zaman'ın yöntemlerini incelemek değildir. Ancak konu tarafımızca anlatı biliminin sınırlılığına da işaret etmesi açısından örnek olarak kullanılmaya elverişlidir. Nitekim klasik hadis kaynaklarında bu meselenin tartışmaya açıldığı görülür. Buradaki tartışmanın odak noktasını ise hadisin metni değil isnadı oluşturmaktadır. İsnatlarda yer alan râvilerin güvenilirlikleri veya birbirine kıyasla daha güvenilir oluşları temelde durmaktadır. Dolayısıyla konuyla ilgili yapılan açıklamalar isnat devre dışı bırakıldığında hadis ilmi açısından herhangi bir zemine oturmayacaktır. Başka bir ifadeyle hadis ilminin isnat temelli oluşu ve metne gereken önemi vermemesi konusu modern dönemde çalışmalara konu olmaktadır. Ancak isnat devre dışında bırakıldığında metinden hareketle bir sonuca varılması anlatı biliminin teknikleri kullanıldığında dahi mümkün görünmemektedir. Nitekim yukarıda ifade edildiği gibi Zaman da anlatı biliminin unsurlarını kullanmasına rağmen konuyla ilgili isnat bağlamında yapılan açıklamalardan bağımsız kalmamış ve ilgili makalesinde bunları dikkate almıştır.

Son bölüm ise "Hadislerde Anlatı Olgusu" başlığı ile anlatı biliminin hadislerin Hz. Peygamber'den sonra rivayet edilmesine kadar nasıl bir anlatı olduğunu aktarır. Burada Hz. Peygamber döneminden itibaren hadis anlatısı ele alınmış ve birinci bölümde kullanılan olay örgüsü, odaklanma, anlatıcı, kişi, zaman, mekân unsurları hadisler üzerinde işletilmiştir. Anlatıcı/râvi meselesi üzerinde durulması gerekirse yazar, hadisi nakleden her bir râvinin metne bazı katkılarının bulunduğunu ve kendisini yansıttığını belirtir. Mesela İbn Mes'ûd'un aktardığı Sa'd b. Muâz ile Mekkeli müşrik Ümeyye b. Halef arasında geçen diyalog ele alınabilir (s. 175). Buna göre Sa'd, Ümeyye b. Halef'e gider ve ona "Hz. Muhammed seni öldürecek; o hiç yalan söylemez" sözünü aktarır. Ümeyye ise bu sözden korkar ve karısına konuyu anlatır. Buradaki mesele, İbn Mes'ûd'un bu diyaloga nasıl muttali olduğu ile ilgilidir. Hadis şârihlerinin konuyla ilgili yaptıkları açıklamalarda bu hususa temas etmedikleri ifade edilmektedir. Yazar ise konuyla ilgili iki ihtimali gündeme getirir. Bunlardan birincisi, İbn Mes'ûd'un rivayeti Ümeyye'nin karısından dinlemiş olma ihtimali, ikincisi ise İbn Mes'ûd'un karısına anlatma ayrıntısını, tahmine dayalı olarak nakletmesi olasılığıdır. Konunun burada ele alınmasının temel sebebi, anlatı bilimi teknikleriyle

anlatıcıdan hareketle problemin nasıl çözüleceği beklentisinin oluşmasıdır. Nitekim bu haliyle şârihlerin üzerinde durmadığı mesele, çözümsüzlüğünü korumakta ve tahmine dayanan iki seçeneğe bina edilmektedir. Öncelikle ifade edilmesi gerekir ki yazarın bu çalışmada örnek çözümlemelere gitme gibi bir amacı bulunmamaktadır. Zikri geçen örnekteki tikel çözümlemeyle yazar, klasik kaynakların metne sormadığı bir soruyu anlatı bilimi tekniklerinin sorabileceğini göstermek istemektedir. Öyle ki, bu soruların sorulması oldukça kıymetlidir. Alana öncülük eden bu çalışmada değinilen bu örneklerin anlatı bilimi teknikleri çerçevesinde sonraki çalışmalara konu olması gerektiği ve ulaşılan sonuçların dayanaklarının araştırılmayı beklediği açıktır.

Bütün bunların akabinde çalışmada hadisin bir anlatı olarak kabul edilmesi hususundan hareket edilecek olursa, bu konu üzerine bazı mülahazalarda bulunulması gerekebilir. Nitekim kitabın giriş bölümüne ve eserin bütününde kullanılan başlıklara bakıldığında yazar tarafından hadisin anlatı olarak kabul edildiği anlaşılmakta ve doğası gereği râvinin bakış açısını yansıttığını düşündürmektedir (s. 122). Çalışmanın sonuç bölümünde "Hz. Peygamber'in her türlü beyanı sahabenin dilinden rivayet edildiği andan itibaren anlatıya dönüşmüş olmaktadır" (s. 210) ifadesi de yazar tarafından hadis rivayetlerinin bir anlatı olarak kabul edildiğini göstermektedir. Ancak kitabın genel muhtevası takip edildiğinde, bu konuda yer yer bazı ayırımlara gidildiği de söylenebilir. Nitekim konuyla ilgili ilk tespitimiz "hadis anlatısı" ifadesinin başlık ve içeriklerde sık sık tekrar etmesidir. Bu tabirin tercih edilmesi zihinlerde "anlatı" ve "hadis" anlatısı arasında bir fark gözetildiğine dair bir düşünceyi uyandırmaktadır. İkisi arasında bir fark olduğu düşüncesini destekleyen bir başka husus ise çalışmada rivayetlerin ne kadarının anlatı olarak kabul edilebileceğine dair yapılan incelemelerdir. Bu incelemeler neticesinde bir hadisin anlatı olarak kabul edilebilmesi için zaman, mekân, perspektif gibi özellikler taşıması gerektiği belirtilir (s. 121-125). Kanaatimizce hadislerin anlatı olarak kabul edilmesi meselesindeki anlaşılma zorluğu bazı sebeplerden kaynaklanmaktadır. Kendine has kavramları, metodolojisi, literatürü ve tartışma konuları olan bir ilim dalını Batılı kavram, metodoloji, literatür ve tartışmalar ekseninde anlamlandırmak ve bunlar içerisinde bir yere oturtmaya çalışmak aslında hadislerin anlatı olup olmadığı meselesindeki zihnî karmaşanın temel sebebi olarak gösterilebilir. Burada şu da ifade edilmelidir ki, ilimler arasında kavramsal ve metodolojik benzerlikler pek tabii olabilir. Nitekim bunların birbirinden tamamen ayrılması veya tamamen birleşmesi söz konusu değildir. Bu farklı özellikler birbirine katkı sunabilecek hususiyetler de taşıyabilir. Ancak XX. yüzyılda bir disiplin haline geldiği ifade edilen anlatı bilimine göre çok daha erken dönemlerde sistemli bir hüviyete kavuşmuş olan hadis ilmine, anlatı bilimi metodolojileri içerisinde bir yer bulmak

veya hadisin anlatı bilimindeki karşılığını tespit etmek mümkün görünmemektedir. Özellikle hadis ve anlatı bilimi metodolojilerinin farklılaştıkları veya benzeştikleri noktalara sonraki çalışmalarda odaklanılması konunun ayrıntılandırılması adına oldukça faydalı sonuçlar verebilir. Başka bir açıdan hadis ilminin anlatı bilimiyle benzer yönleri olmasına karşın oldukça farklı bir formu olduğu akılda tutularak ilmin ortaya çıkış gayesi üzerinde durulması gerekmektedir. Nitekim hadis ilmi isnatlı bir bilgi aktarımıdır ve isnat, aktarılan bilginin merkezinde durmaktadır. Senedin bu kadar merkezde durduğu bir ilim dalını metin merkezli bir metodolojiyle çözümlemek mümkün görünmemektedir. Ancak yazarın da ifade ettiği gibi metinle ilgili geliştirilebilecek metodolojilere, bir araç olarak anlatı biliminin bazı katkılar sunabilecek özellikler taşıdığı açıktır. Ancak bu katkıların dahi isnattan bağımsız bir şekilde gerçekleştirilmesi, hadis ilminin bilgi formu ve metodolojisi ekseninde düşünüldüğünde bazı anlama zorluklarını beraberinde getirecektir.

Khaled Abou El Fadl, *The Palestine Sermons*

ed. Josef Linnhoff, Ohio: Usuli Press, 2024, 303 sayfa.
ISBN: 9781957063188

AYŞEGÜL ŞİMŞEK*

The Palestine Sermons, University of California Los Angeles'ta (UCLA) hukuk profesörü olan Khaled Abou El Fadl'ın 2018-2024 yılları arasında çeşitli tarihlerde verdiği ve Filistin meselesi etrafında şekillenen yirmi beş hutbe ile belediye meclisi konuşmasından oluşan bir derlemedir. Klasik İslamî ilimler eğitiminden geçmiş, akademik çalışmalarını ise ağırlıklı olarak İslam hukuku alanında sürdüren yazarın en çok bilinen eserleri arasında *Rebellion and Violence in Islamic Law* (Cambridge University Press, 2001), *Speaking in God's Name: Islamic Law, Authority and Women* (Oneworld, 2001) ve *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Rowman & Littlefield, 2014) zikredilebilir.

Akademisyen ve din âlimi kimliğinin bir arada bulunması, Türkiye'de özellikle İlahiyat çevrelerinde alışıldık bir durum olsa da Batı'da bunun oldukça nadir bir eşleşme olduğunu söylemek yanlış olmaz. Abou El Fadl, Türkiye'de yeterince tanınmamakla birlikte Amerika'daki bu istisnaî isimlerden biridir. Onun cuma hutbelerinde Müslümanlığın ritüel boyutunun ötesinde bir dünyayı anlamlandırma biçimi olduğu vurgusu ve etik yönü ön planda İslamî bilinç inşası amacı göze çarpar. Bu hutbelerden seçmeler, daha önce *The Prophet's Pulpit: Commentaries on the State of Islam* başlığı ile üç cilt olarak yayımlandı.[1] *The Palestine Sermons* ise bu serinin ardından gelen tematik bir derlemedir. Filistin meselesini sıklıkla minbere taşıyan Abou

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1 Abou El Fadl, Khaled, *The Prophet's Pulpit: Commentaries on the State of Islam*, ed. Josef Linnhoff, I-III, Ohio: Usuli Press, 2022-2024.

DOI: 10.26570/isad.1880837 • Geliş/Received 20.10.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Şimşek, Ayşegül, "Khaled Abou El Fadl, The Palestine Sermons", *İslam Araştırmaları Dergisi*, 55 (2026): 353-356.

El Fadl'ın hutbeleri arasından temsil gücü yüksek olanlar, özenli bir seçme ve editöryal süreçten geçerek bu kitapta bir araya getirilmiştir.

Human Rights Watch sivil toplum kuruluşunun ilk müslüman danışma kurulu üyesi olan Abou El Fadl, özellikle Vehhâbî geleneğinin etkili olduğu ülkelerin emperyalizmle yakın temasını ve insan hakları ihlallerini sıkça hedef alması sebebiyle Suudi Arabistan'da eserleri yasaklanan, Mısır'da hapis ve işkenceye maruz bırakılan, ancak buna rağmen hutbelerinde siyasî meselelerden uzak durmak yerine müslüman kimliğinin siyasî bir tavır alış olmadan anlamını yitireceğini ısrarla vurgulayan bir isimdir.[2] Bu doğrultuda o, cuma namazının, günümüz Hristiyanlığındaki pazar âyininden farklı olarak, cemaatin hayatın gerçeklerinden kaçtığı bir rahatlama anı değil; müslümanların bir araya gelerek durum değerlendirmesi yaptığı bir muhasebe vesilesi olduğunun altını çizer (s. 12).

Eserin öncelikli hedef kitlesinin, yazarın kendisi gibi Batı'da yaşayan müslümanlar olduğu söylenebilir. Bu hutbelerin ait olduğu bağlam, standartlaştırılmış hutbelere alışık olduğumuz Türkiye tecrübesinden oldukça farklıdır. Zira Amerika Birleşik Devletleri'nde camiler üzerinde otorite sahibi ortak bir kurumun olmayışı, her bir cemaatin farklı bir hutbeye muhatap olmasını da beraberinde getirir. İlk nesil göçmenlerin Batı'da sessizce var olma ve kabul görme çabasının artık yeni kuşaklarca kırılması gerektiğinin farkında olan yazar, bu yönde verilecek tavizlerin gençlerde uyandıracağı tatminsizliğin, onları İslam'dan uzaklaştıracağına sıklıkla dikkat çeker. Bu yönüyle o, apolojetik veya konformist tutumlardan kaçınan ilkeli bir Müslümanlık çağrısı yapar.

Kitabın dinî içerikli bir metin olmasının ötesinde aynı zamanda güçlü bir kolonyalizm ve emperyalizm eleştirisi sunduğu da gözden kaçırılmamalıdır (bk. chapter 11, chapter 20, chapter 23). Bu sebeple eser yalnızca müslümanların dinî uyanışına değil, Filistin meselesine dair derinlikli bir perspektif arayan herkese hitap etmektedir. Yazarın Filistin hakkındaki ilgisi ve birikimi, onun referans yaptığı olaylarda kendini gösterir: Filistinli gazeteci Shireen Abu Akleh'nin Batı Şeria'da İsrail güçleri tarafından öldürülmesi (chapter 9), İsrailli işgalcilerin Mescid-i Aksâ'yı yıkma planları (chapter 10), İsrail ile başta Birleşik Arap Emirlikleri olmak üzere çeşitli müslüman ülkeler arasında normalleşme süreci başlatan Abraham Accords/ İbrahim Anlaşmaları (chapter 11), Birleşik Arap Emirlikleri'nin Kudüs'te Filistinliler'den mülk alıp İsrailliler'e satmak suretiyle Kudüs'ün işgalciler

2 Yazarın hayatı ve düşünce dünyası hk. ayrıntılı bilgi için bk. Josef Linnhoff, "Khaled Abou El Fadl: The Life and the Legacy," *The Promise of Sharī'a: Studies in Honor of Professor Khaled Abou El Fadl*, ed. Rami Koujah - Josef Linnhoff, Berlin: De Gruyter, 2025, s. 227-253.

tarafından ele geçirilmesine aracılık etmeleri (s. 82), Suudi Arabistan yönetiminin Harem'de Gazze için dua eden müslümanları tutuklatması (s. 222), yine Suudi Arabistan'ın Trump'ın damadı Jared Kushner'a yaptığı 2 milyar dolarlık ödeme aracılığı ile İsrail'de dolaylı yatırım yapması (s. 69), Amerika Birleşik Devletleri'nde Filistin yanlısı öğrenci protestoları (chapter 25) bu örneklerden bazılarıdır. Bu atıflar, tarihsel bağlamı güçlendirdiği gibi geleceğe dönük bir tanıklık işlevi de görmektedir. Hutbelerin entelektüel düzeyinin yüksek olması, mesajın dinleyicilere ve okuyuculara ulaşması için bir engel ya da zorlaştırıcı bir faktör olmamakta; aksine içselleştirilmesini kolaylaştıran bir derinlik sağlamaktadır.

Eserdeki hutbelerin birçoğunun halen devam eden Gazze soykırımı için dönüm noktası kabul edilen 7 Ekim 2023'ten erken tarihli olduğu da dikkatten kaçmamalıdır; çünkü bu, yazarın Filistin'i sadece büyük katliamlar olduğunda gündeme getirmenin ötesinde sürekli bir vicdanî sorumluluk olarak ele aldığını göstermektedir. Bu hutbelerin incelikli ve etkileyici yönlerinden biri de zulüm altındaki kişilerin isimleriyle anılmasıdır. Özellikle Batı medyasında müslüman mağdurların istatistik düzeyine indirgenmesine karşılık Abou El Fadl, hem Filistin'de hem de Suudi Arabistan ve Birleşik Arap Emirlikleri gibi ülkelerde zulüm gören birçok kişiyi isimleriyle zikrederek her birinin insanlığını, bireyselliğini ve mücadelesini görünür kılar (örnekler için bk. s. 63-64, 87, 167, 172, 177, 245, 257-258).

Eserin eleştirel tonu baskın olmakla birlikte bu yaklaşımın ümitsizlikle karıştırılmaması gerekir; zira yazara göre müslümanların mevcut durumunun iyileştirilmesi zor olsa da imkânsız değildir. Bunun için Abou El Fadl'ın belki de en dikkat çekici teklifi, hilafet kurumunun ihya edilmesidir. Ancak onun tasavvurundaki hilafet, emperyal ya da şekilci bir karakterde olmayan, müslümanların birliğini temsil eden sembolik bir kurumdur. Ona göre müslümanlar, diğerlerinin aksine sömürüye ve tahribe dayalı kapitalist bir ümmet olmamalı; Allah'ın isimlerinin yansıması olarak dünyaya ahlakî ve etik bir umut sunmalıdır (s. 72-4). Bu, aynı zamanda Abou El Fadl'ın Batı tarafından yaratılmış modern kurumların tarafsızlığına duyduğu eski inancını sorguladığı, bunların Batı'nın hiçbir zaman gerçek anlamıyla yüzleşmediği ırkçılık ve sömürgeciliği gizlemek için bir kılıf olduğunu yeni fark ettiği itirafıyla birlikte okunabilecek bir yaklaşımdır (s. 236). Ona göre müslümanların özgürlüğü bu yapılar üzerinden değil, kendilerini sömürgeci güçlerin işine yarayacak şekilde baskılayan despot yönetimlerden kurtularak sağlanabilir (s. 239).[3]

3 Abou El Fadl'ın düşünce yapısının son yıllarda geçirdiği dönüşüm hk. bk. Linnhoff, "Khaled Abou El Fadl", s. 246-247.

Neticede *The Palestine Sermons* Filistin meselesinin çağdaş Müslümanlık ve insanlığın en fazla aciliyet gerektiren imtihanlarından biri olduğunu güçlü biçimde hatırlatan bir metindir. Eserin bu yönü, kimileri için sindirilmesi güç bulunarak hak ettiği ilgiye ulaşmasına engel olabilir; ancak Abou El Fadl'ın aktardığı şu çarpıcı anekdot eserin ruhunu veciz biçimde yansıtmaktadır: Kudüs'ün Haçlılar tarafından işgali sırasında Iraklı bir fakih, ramazan ayında Kudüs'e gider ve insanların önünde kasıtlı şekilde orucunu bozarak kadı huzuruna çıkarılır. Fakih, kendisini sorgulayan kadıya Kudüs için bir şey yapmamanın mesuliyetinin, oruç bozmanın mesuliyetiyle kıyaslanamayacak derecede ağır olduğunu yüksek sesle ifade eder (s. 9–10). *The Palestine Sermons* tarihin en görünür soykırımlarından biri sürerken "Müslüman âlimler bu süreçte ne dediler ve ne yaptılar?" sorusuna karşı en azından farz-ı kifâyeyi yerine getirir niteliktedir.

Son olarak, eserde yer alan hutbelerin seçimi, sıralaması, tekrarlardan arındırılması ve yeniden düzenlenmesinde editörün ince emeği farkedilmektedir. Gerekli yerlerde okuyucuyu yormayacak düzeyde eklenen dipnotlar bağlam, kişi ve olayları açıklayarak metni zenginleştirmiştir. Kitabın sonunda yer alan terimler sözlüğü ile seçme biyografiler bölümü, Arapça veya İslamî terminolojiye aşina olmayan okurlara kolaylık sağlamaktadır. Neticede ortaya çıkan, bilgilendirici olmanın yanı sıra okuması kolay, sade ve akıcı tematik bir metindir. İlgili okuyucular, Khaled Abou El Fadl'ın bu seride yer almayan diğer seçme hutbelerine online olarak ulaşabilirler.[4]

4 https://theusuliinstitute.substack.com/

Marinos Sariyannis, *Ottomans and the Supernatural: Nature and the Limits of Knowledge in the Early Modern Ottoman Empire*

Oxford: Oxford University Press, 2025, 367 sayfa.
ISBN: 9780198954774

FARUK AKYILDIZ*

Yunanistan'da bulunan Institute for Mediterranean Studies/FORTH'un Osmanlı tarihi biriminde yöneticilik yapan ve yakın zamanda Türkçe'ye tercüme edilen *Osmanlı'nın Üç Harflileri: Hortlaklar, Hayaletler, Cinler Arasında* (FOL Kitap, 2023), *Osmanlı Siyasal Düşünce Tarihi* (Selenge Yayınları, 2025) gibi kitaplarıyla tanınan Marinos Sariyannis'in kaleme aldığı *Ottomans and the Supernatural: Nature and the Limits of Knowledge in the Early Modern Ottoman Empire* başlıklı eser, müellifin *Avrupa Araştırma Konseyi (ERC)* tarafından finanse edilen *GHOST: Geographies and Histories of the Ottoman Supernatural Tradition: Exploring Magic, the Marvelous, and the Strange in Ottoman Mentalities* (2023-2018) adlı projesinin temel çıktılarından biridir. Eser, gizli bilimler çalışmaları alanında önemli bir boşluğu doldurarak Osmanlı Devleti özelinde meseleyi kapsamlı bir şekilde incelemiştir.

Yazar, çalışmasının temelini "doğa" (*nature*), "doğa üstü" (*supernatural*) ve "tabiat üstü" (*preternatural*) kavramlarıyla büyü, okültizm ve bilim pratikleri üzerine kurmaktadır. Sariyannis, modern kategorileri kullanarak, Osmanlı bilim dünyasının bu olgulara dair özgün kavrayışlarını ortaya çıkarmaya çalışır. Bunu yaparken Osmanlılar'ın mezkûr kavramlardan ne

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DOI: 10.26570/isad.1880840 • Geliş/Received 25.10.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation Akyıldız, Faruk, "Marinos Sariyannis, Ottomans and the Supernatural: Nature and the Limits of Knowledge in the Early Modern Ottoman Empire", *İslam Araştırmaları Dergisi*, 55 (2026): 357-359.

anladıkları, bunları ifade ederken hangi zihinsel kategorileri kullandıkları gibi soruların peşine düşer.

Üç ana bölüm ve bir son sözden müteşekkil eserin ilk bölümü olan "Doğa Üstü Alan" (The Supernatural Field) başlığında evrenin işleyişi ele alınır, maddi ve manevi dünyanın mekaniği, melekler, insanlar ve cinler incelenir. Devamında mucizeler ve bunların sınırlarıyla ölüm ve rüyalar üzerinden ruhun seyahati ele alınır. Bu "olağanüstü, mucizevi ve harika" olayların, doğa üstü olanın görünür gerçeklik dışında veya üstünde (ya da içinde) bir varlığı olduğunu ve bunu anlık olarak da hissettirdiğine vurgu yapılır.

"İnsanın Kontrolü Ele Geçirmesi" (Establishing Human Control) başlıklı ikinci bölümde ise yazar, okült bilimlerin teorisi ve pratiğine odaklanır. Okült bilimlerin doğa üstü ile bağlantı kurma, onu kavrama, açıklama ve hatta kontrol etme yollarını ve pratiklerini inceler. Bu bölümde ayrıca astroloji ve tılsım tekniklerinin Osmanlı ansiklopedilerindeki yeri ve bu tekniklerin nasıl icra edildiğine değinilerek cinlerin eylemlerinden astral etkilere ve huruf ilmine kadar çeşitli konular analiz edilir, büyü, astroloji, kehanet ve simya gibi pratik uygulamalar ele alınır. Bu meselelerle kimlerin ilgilendiği ve bu ilgilerindeki esas amacın ne olduğu gibi sorulara cevap aranır.

"Tabiat Üstü Alan ve Yok Oluşu" (The Preternatural Field and Its Demise) başlıklı son bölümde ise harikalar ve doğanın mucizeleri yani *acâib* ve *garâib* literatüründe ele alınan kavramlar ve bu bilinemez dünyanın bilgisine ulaşma yolları (deney, vahiy, Hermetik gelenek) incelenir. Bu literatürün Osmanlı'daki konumu ve nesnelerin deney yoluyla kavranan gizli ve hayret verici özellikleri hakkındaki teoriler ele alınır. Bu bölümde yazar, Osmanlı bilimlerinde gerçekleşen değişim ve hassaten aklî bilimlerin genişlemesini ve "Osmanlı tarzı" Aydınlanma ve "Dünyanın Büyüsünün Bozulması" (Disenchantment) tezini tartışır. Kâtip Çelebi'nin (ö. 1657) eski kozmografyalara karşı sert eleştirileri, aklî bilimin sınırlarının genişlemesinin bir örneği olarak sunulur. Ancak Sariyannis bu sürecin tek bir yoldan ilerlemediğini, mesela İbrâhim Hakkı Erzurûmî'nin (ö. 1194/1780) *Mârifetnâme*'sinde sufi tecrübe ile bilimsel bilginin (astronomi, anatomi) nasıl bir arada ele alındığını gösterir. Nitekim bu örnek, yazarın temel tezinin belirginleştiği önemli bahislerden biridir.

Son Söz: "Ezoterizmin Sosyal ve Küresel Boyutları" başlığında ise Sariyannis, XV ve XVI. yüzyıllarda dünyanın çoğu bölgesinde revaçta olan okült bilimlere Osmanlılar'ın da rağbet ettiğini söyler ve oldukça geniş bir çerçevede çoğu âlim ve bürokratın bu bilimlerle iştigal ettiğini vurgular. Her ne kadar XVII ve XVIII. yüzyıllarda bu bilimlere yönelik eleştiriler artsa da hassaten astroloji ve cifir gibi pratik olarak kullanılabilenlerin, saray çevresinde mevcudiyetini ve itibarını koruduğunu ifade eder.

Sariyannis bu çalışmasında, Osmanlı entelektüel tarihinin sınırlarını genişleterek, onu dinamik ve kültürel açıdan karmaşık bir yapı içinde ele almanın önemini göstermektedir. Erken modern dönemde Osmanlı dünyasında bilginin sınırlarının nasıl yeniden çizildiğini, birincil kaynaklardan iktibasla gösterir. Yazarın Osmanlı tarih yazımında genellikle göz ardı edilen bir alana odaklanması ve bunu muazzam bir birincil kaynak yelpazesini inceleyerek yapması kitabın en güçlü taraflarından biridir. Eser Osmanlı entelektüel yaşamının sadece fıkıh veya felsefe gibi ana akım disiplinlerden ibaret olmadığını, aynı zamanda astroloji, simya, kehanet ve harf ilmi gibi okült bilimler ve halk inançlarının da her toplumsal tabakada bir karşılığının bulunduğunu gösterir.

Bu alanların zaman içindeki dönüşümünü de ele alan Sariyannis, Batı'da Aydınlanma ve *büyünün bozulması* olarak tanımlanan sürecin, bu türden keskin bir kopuş yaşamayan Osmanlı tecrübesinde tam bir karşılığının bulunamayacağını iddia eder. Böylece mevcut tartışmalara okült bilimler özelinde yeni bir boyut kazandırır ve bu sürecin Osmanlı Devleti'nde bilginin kaynağı ve sınırları üzerine süregelen bir tartışma (vahiy, akıl ve *tecrübe* arasındaki dinamik) içinde gerçekleştiğini öne sürer.

Özellikle Taşköprizâde'nin (ö. 968/1561) ve Kâtip Çelebi'nin eserlerinde sundukları ayrıntılı tasnifleri kullanarak okült bilimlerin epistemolojik konumunu incelemesi, okuyucunun erken modern Osmanlı dünyasındaki entelektüel hiyerarşiyi kavramasına imkân tanır. Bu eser, erken modern Osmanlı zihninin, kapıları farklı bilgi edinme yollarına açılan, karmaşık ve çok katmanlı doğasına atıf yapmakta ve bir yanda gök cisimlerinin etkileri tartışılırken, diğer yanda cinlere itaat ettirmek için dualar yazılan bir bağlamdan bahsetmektedir.

Sariyannis konuyu oldukça bütüncül bir yaklaşımla ele alarak çok sayıda Osmanlı âlimi tarafından yazılmış ve okunmuş geniş bir kaynak yelpazesini dikkate almıştır. Bu da yazarın tezinin ve iddiasının tek bir kaynak grubuna dayanmadığını ve farklı bilim dallarına ve yazın türüne ait kaynakları ustalıkla bir araya getirerek bütüncül ve zengin bir bakış açısı sunduğunu gösterir.

Kitap Osmanlı toplumunun doğa üstü algısını statik bir inançlar bütünü olarak değil, sosyal ve kültürel gelişmelerle sürekli değişen, dinamik bir alan olarak sunarak, alanında oldukça önemli bir boşluğu doldurmaktadır. Bu açıdan sadece Osmanlı bilim ve entelektüel tarihi uzmanları için değil, erken modern, okültizm ve kültür tarihi çalışan bütün akademisyenler için temel bir referans eser niteliğindedir.

Bagus Riyono, Tazkiya Therapy in Islāmic Psychotherapy

New York, Routledge, 2024, 82 pages
ISBN: 978-1032714691

SONDOSS ALDIMASI*

Tazkiya therapy, developed by Bagus Riyono, is presented as a Qurʾānic-rooted, multidimensional psychotherapeutic approach that centres on purification (*tazkiya*) — articulated in early Islamic epistemology as a continuous practice of purifying the heart — as the basis for psychological well-being.[1] At its core, it defines therapeutic change as a knowledge-driven process in which cognitive reorientation toward Divine signs and moral purpose precedes and reshapes emotion, behavior, and the health of the soul. The model conceptualizes the human being as an integrated whole whose flourishing depends on restoring and cultivating the heart (*qalb*), conscience, and the innate disposition toward God. His structured yet flexible framework provides a spiritually grounded alternative to secular therapies, is primarily theoretical and practice-oriented, and also lays the foundation for future empirical refinement.

The book, consisting of seven chapters and recently translated into Russian, offers a concise yet conceptually rich presentation of a holistic, therapeutic approach grounded in Qurʾānic guidance and an Islamic understanding of the human being as a multidimensional creature encompassing the physical, psychological, social, and spiritual domains. The text outlines the purpose, scope, mechanisms, and boundaries of tazkiya as a therapeutic method and demonstrates how it integrates diverse theoretical frameworks to promote the growth of the soul, cognition, emotion, and behavior. The author also

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1 Bagus Riyono, *Tazkiya Therapy in Islāmic Psychotherapy* (London: Routledge Focus, 2024).

DOI: 10.26570/isad.1825711 • Geliş/Received 18.11.2025 • Kabul/Accepted 25.11.2025
Atıf/Citation AlDimasi, Sondoss, "Tazkiya Therapy in Islamic Psychotherapy", *İslam Araştırmaları Dergisi*, 55 (2026): 360-365.

includes case vignettes, practical guidelines, and a brief exploration of training pathways for future directions. The work's inclusion in the Islamic Psychology and Psychotherapy focus series edited by G. Hussein Rassool underscores its relevance to ongoing developments in the field.

This publication is particularly remarkable for placing the spiritual relationship with Allah — transcendent is He — at the core of psychological change, a feature that is likely to resonate with Muslim clinicians and clients seeking an explicitly Islamic therapeutic paradigm. Dr. Bagus Riyono, a psychologist and senior lecturer at Universitas Gadjah Mada and President of the International Association of Muslim Psychologists, brings both academic expertise and a long-standing engagement with Islamic psychology to the volume. He is known for advancing integrative approaches that connect spiritual principles with contemporary motivational psychology. The book represents a meaningful contribution to Islamic psychotherapy by articulating a framework that coherently links Qurʾānic and some Prophetic teachings with contemporary psychological theory and clinical practice.

Riyono begins with the proposition that "knowledge is the fundamental aspect of healing."[2] From this starting point, he introduces seven theoretical frameworks that together form a multidimensional conception of psychological well-being and human development. Therapeutic aims are not merely symptom reduction but teleological; human beings exist with a divinely ordained purpose, and worldly life functions as the context for moral, psychological, and spiritual refinement. Psychological health, within this perspective, is oriented toward cultivating preparedness for the Hereafter (*falāḥ*) while nurturing resilience, optimism, hope, and patience. The therapeutic sequence proposed by the author begins with cognitive shifts, which then influence emotional states and ultimately spiritual functioning.

In the therapeutic relationship, the tazkiya therapist's responsibility is to guide clients toward recognizing and understanding Allah's signs through Qurʾānic verses, natural phenomena, and reflective understanding of the soul, using an approach grounded in empathy, reason, and spiritual pedagogy. Knowledge acquisition is presented as the primary route to wisdom, and the therapist's role is to equip clients with the resources needed for sustained self-regulation and relapse prevention. The author outlines a general therapeutic protocol framed as "empathetic directives,"[3] which provide structure for session processes and therapist conduct.

2 Riyono, *Tazkiya Therapy*, 1.

3 Riyono, *Tazkiya Therapy*, 5.

Riyono's conceptual model is coherent, well-integrated, and successful in weaving together Qurʾānic exegesis (*tafsīr*) and other classical Islamic constructs — such as repentance (*tawbah*) and vicegerency (*khalīfa*) — with modern psychological theories, including his own Anchor Personality Theory.[4] There are notable resonances with Muslim classical works, particularly Imam Al-Ghazālī's *Minhāj al-ʿĀbidīn*,[5] especially in the emphasis on knowledge and repentance as prerequisites for spiritual progress. Riyono operationalizes many of these Islamic classical insights into clinically applicable principles. Still, the bridge between Qurʾānic messages and specific clinical procedures would benefit from more explicit methodological clarification. For instance, the book would be strengthened by demonstrating how individual Qurʾānic verses directly translate into concrete therapeutic interventions. Additionally, the sections summarizing Qurʾānic messages would carry greater scholarly weight if supported by precise citations and engagement with primary exegetical sources.

Methodologically, the text offers illustrative cases rather than controlled empirical data. As a result, questions concerning empirical validation, outcome measurement, and long-term effectiveness remain open. Riyono defines therapeutic success in normative Islamic terms such as *falāḥ* (improved well-being), but the book would benefit from clearer operational definitions and proposals for empirical measurement using validated psychological instruments. Readers with a research orientation will likely need to supplement this book with Riyono's theoretical groundwork in relevant articles and await future studies.[6] His reference to Barrett's work as an accomplished empirical study in emotion construction is used to support the theoretical grounding of the soul's existence, contrasting contemporary neuroscience positions that deny the soul.[7] This serves as an important distinguishing feature of the model as it emphasizes the heart (*qalb*) and soul(*rūḥ*), or psyche (*nafs*), as primary loci of dysfunction and healing, diverging from mainstream models that center on the brain.

4 Bagus Riyono and F. Himam, "In Search for Anchors: The Fundamental Motivational Force in Compensating for Human Vulnerability," *Gadjah Mada International Journal of Business* 14, no. 3 (2012): 229–52, https://doi.org/10.22146/gamaijib.5475

5 Abū Ḥāmid al-Ghazālī, *Minhāj al-ʿĀbidīn ilā Jannat Rabb al-ʿĀlamīn*, ed. Muḥammad ʿAlī Maḥmūd Bahrī (Damascus: Maktabat Ibn al-Qayyim, 2002).

6 Bagus Riyono, "Constructing the Theory of Human Basic Potential Based on Quranic Messages: Study with Maqasid Methodology," *Minbar Islamic Studies* 16, no. 2 (2023): 449–75, https://doi.org/10.31162/2618-9569-2023-16-2-449-475

7 Lisa F. Barrett, *How Emotions Are Made: The Secret Life of the Brain* (Boston: Houghton Mifflin Harcourt, 2017).

Several strengths distinguish this work. Its clarity and organization allow for ease of comprehension, with the sevenfold structure and visual figures providing intuitive entry points for clinicians and students. Its integration of Islamic epistemology with contemporary psychology is particularly commendable, grounding therapeutic goals in Qurʾānic aims while engaging major psychological theorists from Freud to Maslow. The practical orientation of the case vignettes and empathetic directives offer concrete examples of how the model is implemented in real-life scenarios. The text's language is accessible without oversimplifying theoretical content, and the author's engagement with existential psychology, including comparisons to theories such as Frankl's logotherapy and Riyono's "theory of meaning" (Figure 2.4, Theory 4), expands its interdisciplinary relevance.

The book's integration of Qurʾānic aims with psychological constructs makes it practical for Muslim therapists. While its use of hadith and examples from the Companions (*ṣaḥābah*; may Allah be pleased with them) is noteworthy, the analysis would benefit from deeper engagement with the sunnah of the Prophet Muhammad (peace be upon him) and with Muslim classical scholars, such as Ibn Qayyim al-Jawzīyah, al-Ghazālī,[8] and Zarruq.[9] Its inclusive framing, "that all human beings are Alláh's creatures who will live forever beyond this worldly life,"[10] gives the model broader applicability.

Several limitations merit attention. The claim that tazkiya therapy is applicable to non-Muslim clients is insufficiently defended, as the model is grounded in theological commitments to monotheism (*tawḥīd*) and eschatological foundations, rendering its adaptation for clients who reject theistic premises unclear. Empirical specifications, such as standardized protocols and outcome measures, require further development to enable research and clinical replication. In addition, the referencing would benefit from more rigorous engagement with classical Islamic scholarship, particularly through the conceptual situating of primordial disposition (*fiṭrah*), interpreted as the natural predisposition toward belief in divine Oneness.[11] Cross-referencing Islamic psychological taxonomies is also

8 Abū Ḥāmid al-Ghazālī, *Kitāb Sharḥ Aǧāʾib al-Qalb (Marvels of the Heart), in Iḥyāʾ ʿUlūm al-Dīn*, vol. 3 of 4, Book XXI (Jeddah: Dar al-Minhāj, 1444 AH / 2023 CE, 2nd ed.).

9 Aḥmad al-Zarrūq al-Fāsī, *Muqaddimat al-tasawwuf wa ḥaqīqatuh wa natījatuh*, ed. Nizār Ḥamadī (Kuwait: Dār al-Diyaʾ, 2025).

10 Riyono, *Tazkiya Therapy*, 2.

11 Gowhar Quadir Wani, "Islamic Perspectives on Human Nature: Ibn Āshūr's Fitrah-Based Theory of Maqāsid al-Shariʿah," *Islam and Civilisational Renewal* 8, no. 2 (April 2017): 230–43, https://doi.org/10.52282/icr.v8i2.197

essential for clarifying key constructs, such as spiritual insight (*basīrah*) or conscience (*ḍamīr*). Moreover, systematic analysis of Qurʾānic discourse is vital for understanding tazkiya therapy; therefore, incorporating *tafsīr* sources would enhance the credibility of interpretations of relevant verses and terminology.

The model does not sufficiently address the specific qualification of a tazkiya therapist beyond standard psychological training. Given the spiritually integrated nature of the model, practitioners would ideally possess grounding in Islamic jurisprudence (*uṣūl al-fiqh*, *ḥukm sharʿī*), a creedal primer (*ʿaqīdah matn*), and balanced Islamic spirituality (*taṣawwuf*). Such grounding is necessary to ethically and safely navigate spiritual concepts — including reliance upon Allah (*tawakkul*), total entrustment to Allah (*tafwīḍ*) in dealing with uncertainty, and positive expectancy of Allah (*ḥusn al-ẓann billāh*, implicitly reflected in the author's discussion of hope) — while refraining from issuing religious rulings (*fatāwā)* within the therapeutic setting. Furthermore, although the author briefly acknowledges the necessity of medical intervention in cases of physical illness,[12] the work would be strengthened by outlining collaborative pathways between tazkiya therapy and medical practitioners.

This work contributes significantly to the growing field of Islamic psychology by providing a clinician-facing model that integrates Islamic anthropology with therapeutic practice. It bridges the gap between classical spiritual literature and contemporary therapy manuals, offering practitioners in the Muslim community a theologically resonant and psychologically structured approach. Riyono's emphasis on empathetic and directive engagement, coupled with his assertion of the soul's ontological reality, positions this work as an important reference for further dialogue between Islamic and contemporary psychological paradigms, including conventional and state-of-the-art frameworks. Future comparative analyses with other Islamic psychotherapy models, such as the TIIP model,[13] could further clarify the distinctive procedural, empirical, and training-related dimensions of tazkiya therapy.

In conclusion, the book provides a valuable introduction to a Qurʾānic-based therapeutic approach, serving as a theoretical and practical foundation for

12 Riyono, *Tazkiya Therapy*, 41.

13 Hooman Keshavarzi and Bilal Ali, "Foundations of Traditional Islamically Integrated Psychotherapy (TIIP)," in *Applying Islamic Principles to Clinical Mental Health Care: Introducing Traditional Islamically Integrated Psychotherapy*, ed. Hooman Keshavarzi, Farid Khan, Bilal Ali, and Rania Awaad (New York: Routledge, 2020), 25–49, https://doi.org/10.4324/9781003043331

broader training and future empirical development. Its conceptual clarity and applied examples will benefit interdisciplinary researchers, though systematically validated protocols remain pending. The core premise that tazkiya therapy fosters wisdom, spiritual maturity, and closeness to Allah, enabling clients to sustain their own psychological and spiritual growth, is promising when applied by practitioners well-versed in both psychology and Islamic sciences.

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