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ARTICLE

Shariʿa and Governance in Ottoman Egypt: The Waqf Controversy in the Mid-Sixteenth Century

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Abstract

In the mid-16th century, the Ottoman government sought to expand its tax revenue from Egypt through a controversial initiative to levy taxes on endowments (waqf). The controversy produced a diverse range of responses from Ottoman scholar-bureaucrats, such as Ebussuud Efendi, who supported the initiative; Egyptian scholars, including Ibn Nujaym and al-Ghayti, who opposed it; and the Ottoman governor, who worked to resolve it. Despite the opposing positions of the diverse actors, shariʿa served as the common medium for the articulation and negotiation of their opinions and helped produce a compromise that became foundational for the Ottoman tax regime in Egypt. In this episode, shariʿa constituted an instrument of governance. Such a role for shariʿa differs from its conception as an autonomous field of scholarly interpretation, or the understanding of it as an inclusive normative system encompassing rules emerging from both the interpretative activities of scholars and the definitive edicts and orders of rulers. Shariʿa did not constitute the endpoint of rulemaking; rather, it provided the shared language of terms and concepts through which different actors participated in the process of formulating rules.

Keywords: Islamic law; *kharāj*; land law; Ottoman Egypt; shariʿa; taxation; waqf

In his panegyric epistle in praise of the Ottoman dynasty, the Egyptian Hanbali scholar Marʿi b. Yusuf al-Karmi (d. 1624) devoted an entire chapter to the respect Ottoman sultans showed toward the endowments of Egypt established prior to Ottoman rule. In this epistle completed during the reign of Osman II (r. 1618–22), al-Karmi reflected on a century of Ottoman rule initiated by Selim I (r. 1512–20) in 1517 and noted this sultan's laudable restraint in leaving untouched the endowments of the Mamluk era, including those of the penultimate Mamluk sultan, Qansuh al-Ghawri (r. 1501–16):

> And among the virtues of the Ottoman sultans is their leaving in place the endowments (*awqāf*, sing. waqf) of past rulers and commanders and their running of them according to the conditions of their endowers and their noninterference with them in any manner. See [for example] the blessed virtues of Sultan Selim! When he came to rule Egypt, he did not interfere with its endowments, including those of his enemies. Rather, he confirmed them, had them run according to the terms [recorded in the endowment deeds], and refrained from interfering with them by altering or exchanging [their endowed properties]. I marvel at the fact that he did not interfere with the endowment of his enemy al-Ghawri nor with his madrasa in any adverse way. Rather, he confirmed it as an endowment and maintained it in the way that it was in the time of its endower

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> even though he endured great troubles and hardships . . . on account of Sultan al-Ghawri.[1]

On one level, al-Karmi's focus on endowments is perhaps not all that surprising. After all, Egypt became a country of *awqāf* through the great movement to create endowments in the 14th and 15th centuries. This movement, or *waqfization* in the parlance of modern scholarship, resulted, according to the estimate of one 17th-century observer, in the endowment of approximately 40 percent of agricultural lands in Egypt by the time of the Ottoman conquest.[2] Such endowments funded a wide range of charitable institutions and activities, but their great proliferation also supported materially a large rentier class, among whom many scholars numbered, including perhaps al-Karmi.[3]

Despite this full-throated endorsement of Ottoman policy by al-Karmi, a much more complex and contested waqf terrain existed in the mid-16th century. During these years, the Ottoman central government attempted repeatedly to reclaim endowed lands or their revenues in Egypt in an effort to maximize the tax receipts from the province. Enormous sums were at stake. In 1527–28, for example, revenue from Egypt destined for the Imperial Treasury amounted to 70 million aspers, a figure representing almost 15 percent of the entire imperial revenue, including the substantial timar revenues, most of which remained in the provinces.[4] On the other hand, the beneficiaries of these *awqāf*, consisting of a wide segment of Egyptian society, claimed rights of exemption from taxation, rights that had been recognized by the Mamluk sultans and the earliest Ottoman governments after the conquest.

More than money was at stake, because the contested resources of Egypt concerned fundamental questions of good governance and the application of just laws. Significantly, the parameters of these questions were informed, to a large degree, by the pre-Ottoman political history of Egypt and its demographic structure. Unlike the Turkmen principalities in Anatolia under the Ottomans, for example, Egypt had a long tradition of independent

[1] Marʿi b. Yusuf al-Karmi, *Qalaʾid al-ʿIqyan fi Fadaʾil al-ʿUthman*, ed. Abu Yahya ʿAbd Allah al-Kunduri and Walid al-Munis (Kuwait: Gheras, 2004), 105. For another similar 17-century testimony about Selim's preservation of *awqāf* (sing. waqf), see Muhammad b. Abi al-Surur al-Siddiqi al-Bakri, *al-Tuhfa al-Bahiyya fi Tamalluk al-Uthman al-Diyar al-Misriyya*, ed. ʿAbd al-Rahim ʿAbd al-Rahman ʿAbd al-Rahim (Cairo: Dar al-Kutub wa-l-Wathaʾiq al-Qawmiyya, 2005), 102–3.

[2] Muhammad ʿAfifi, *al-Awqaf wa-l-Haya al-Iqtisadiyya fi Misr fi al-ʿAsr al-Uthmani* (Cairo: al-Hayʾa al-Misriyya al-ʿAmma li-l-Kitab, 1991), 27; Daisuke Igarashi, *Land Tenure, Fiscal Policy and Imperial Power in Medieval Syro-Egypt* (Chicago: Middle East Documentation Center, 2015), 177. See also Carl F. Petry, *Protectors or Praetorians? The Last Mamlūk Sultans and Egypt's Waning as a Great Power* (Albany, NY: State University of New York, 1994), 190–210; Adam Sabra, "The Rise of a New Class? Land Tenure in Fifteenth-Century Egypt: A Review Article," *Mamlūk Studies Review* 8, no. 2 (2004): 203–10; and Albrecht Fuess, "The Urgent Need for Cash: Thoughts on the Taxation of Land in the Late Mamluk Sultanate," *Mamlūk Studies Review* 25 (2022): 5–8. On the proportion of agricultural land controlled by *awqāf*, see Daisuke Igarashi, *Land Tenure and Mamluk Waqfs* (Berlin: EB-Verlag, 2014), 8.

[3] Al-Karmi, *Qalaʾid al-ʿIqyan*, 105–13. See also Kenneth M. Cuno, "Ideology and Juridical Discourse in Ottoman Egypt: The Uses of the Concept of *Irṣād*," *Islamic Law and Society* 6, no. 2 (1999): 136–63; Adam Sabra, *Poverty and Charity in Medieval Islam: Mamluk Egypt, 1250–1517* (Cambridge, UK: Cambridge University Press, 2000), 69–100. For the Ottoman government's attempts to limit the number of beneficiaries and the reactions to them in the 17th century, see Muhammad b. Abi al-Surur al-Siddiqi al-Bakri, *al-Nuzha al-Zahiyya fi Dhikr Wulat Misr wa-l-Qahira al-Muʿizziyya*, ed. ʿAbd al-Razzaq ʿAbd al-Razzaq ʿIsa (Cairo: al-ʿArabi li-l-Nashr wa-l-Tawziʿ, 1997), 188–97.

[4] In this year, the total expected tax revenue, including from timars, amounted to 477 million aspers, while Egypt remitted 70 million to the Imperial Treasury after accounting for the administrative expenditures of the province; Ömer Lûtfi Barkan, "H. 933–934 (M. 1527–1528) Mali Yılına Âit Bir Bütçe Örneği," *İstanbul Üniversitesi İktisat Fakültesi Mecmuası* 15, no. 1–4 (1953), 280, 293. Historians differ on the significance of Egypt for the overall Ottoman imperial budget. For a discussion of the Ottoman revenues from Egypt in the 16th century, see Nicolas Michel, *L'Égypte des villages autour du seizième siècle* (Leuven, Belgium: Peeters, 2018), 91–96; and Gábor Ágoston, *The Last Muslim Conquests: The Ottoman Empire and Its Wars in Europe* (Princeton, NJ: Princeton University Press, 2021) 132–33. For revenues from the end of the 16th century, see Stanford J. Shaw, *The Financial and Administrative Organization of Ottoman Egypt, 1517–1798* (Princeton, NJ: Princeton University Press, 1962), 182–83.

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rule, since the 10th century, and nurtured well-established bureaucratic cultures and scholarly cadres. Different from the Ottoman conquests of Christian territory in the Balkans, Egypt was a country governed by Muslims since the 7th century. As a result, shariʿa norms, derived from or inspired by Islamic scriptural sources, had long been the basis of judicial administration.[5] In contrast with many other lands under Muslim rule—including, for example, Anatolia and the Balkans under Ottoman rule—the past rulers of Egypt had embraced judicial plurality with respect to the diverse views articulated by jurisprudential schools (*madhhab*, singular). From the 13th century, four legal *madhhab*s (Hanafi, Shafiʿi, Maliki, and Hanbali) had equal status in the judicial courts.[6] The religious demography, past political realities, and particular legal landscape of Egypt all shaped Ottoman policies and, in some respects, inhibited Ottoman efforts to overturn existing governing arrangements. In such a context, Ottoman officials found it difficult to sweep aside established proprietary rights benefiting entrenched interests, because these were substantiated firmly with reference to shariʿa principles and court decisions.

Most of these features came to the fore in an intense controversy concerning *awqāf* that unfolded in the early 1550s. The Ottoman Imperial Council ordered the governor of Egypt to impose *kharāj* (a land tax) on waqf lands.[7] In support of this position, the Ottoman chief jurist Ebussuud Efendi (d. 1574) penned a series of fatwas defending the order from a shariʿa perspective (Fig. 1).[8] In response, two Egyptian scholars, the Hanafi Ibn Nujaym (d. 1563) and the Shafiʿi Muhammad b. Ahmad al-Ghayti (d. 1575/76 or 1576/77), represented the local reaction to this imposition through two scholarly treatises opposing Ebussuud's position.[9] As this scholarly controversy developed, the Ottoman governor of Egypt, Semiz `Ali Pasha (d. 1565), was actively involved. He relayed the imperial command to those concerned and then mediated the reaction through a meeting with Egyptian scholars from whom he solicited expert opinions. Following this consultation, he incorporated aspects of their views and rejected others in the policies and rules that he, in collaboration with the central government, formed and implemented.[10] Although the treatises of the Egyptian scholars are known to modern scholarship, the writings and activities of Ebussuud and `Ali Pasha are largely unknown, even as their work was central to the unfolding of both the legal discourse and the administrative outcome.

Indeed, modern scholarship on Islamic law has shown considerable interest in the theoretical legal questions and the concerns raised by the Egyptian scholars. In doing so, it focuses on their arguments and interprets them as part of and in dialogue with the evolving jurisprudential doctrines on taxation and the land regime from the centuries before the

[5] There are several different historical and contemporary understandings of shariʿa that range from general principles of religion to more restricted contemporary legal enactments. See Ovamir Anjum, *Politics, Law, and Community in Islamic Thought: The Taymiyyan Moment* (New York: Cambridge University Press, 2012), 236; Engin Deniz Akarlı, "The Ruler and Law Making in the Ottoman Empire," in *Law and Empire: Ideas, Practices, Actors*, ed. Jereon Duindam et al. (Leiden: Brill, 2013), 89; Wael B. Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2014), 110–35; Shahab Ahmed, *What Is Islam? The Importance of Being Islamic* (Princeton, NJ: Princeton University Press, 2016), 453–82.

[6] Joseph H. Escovitz, "The Establishment of the Four Chief Judgeships in the Mamluke Empire," *Journal of the American Oriental Society* 102 no. 31 (1982): 529–31; Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford, UK: Oxford University Press, 2011), 34–35.

[7] Additional information and further discussion regarding the *kharāj* tax will be provided.

[8] Topkapı Sarayı Müzesi Arşivi (hereafter TSMA), E.0704.45.1.

[9] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," in *Rasaʾil Ibn Nujaym al-Iqtisadiyya,* ed. Muhammad Ahmad Saraj and ʿAli Jumʿa Muhammad (Cairo: Dar al-Salam, 1998/1999), 123–24; Muhammad b. Ahmad al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf al-Misriyya," ed. ʿUmar ʿAbd ʿAbbas al-Jumayli, *Majalla Bayt al-Mashwara* 7 (2017): 141–97.

[10] A copy of the document, including a summary of the reforms, entitled "Recueil de décisions juridiques," is located in the Bibliothèque nationale de France (Turc 114). This document was transliterated and translated in Stanford J. Shaw, "The Land Law of Ottoman Egypt (960/1553): A Contribution to the Study of Landholding in the Early Years of Ottoman Rule in Egypt," *Der Islam* 38 (1962): 106–37.

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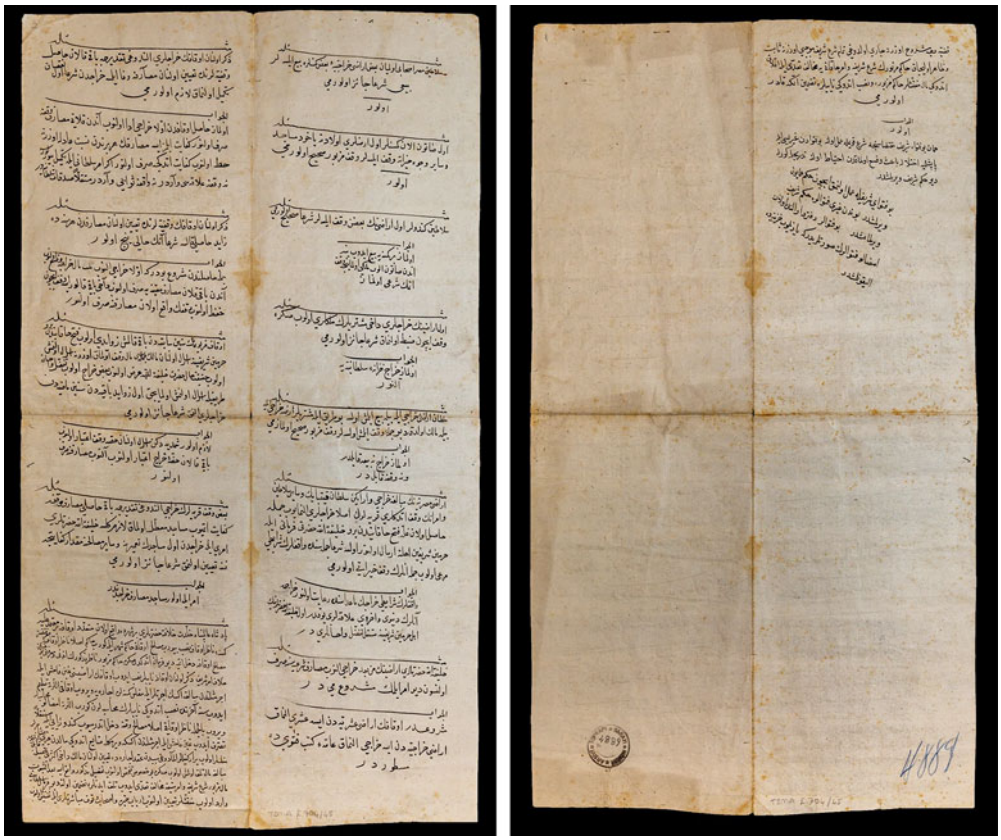

FIGURE 1. Ebussuud's fatwas concerning the waqf lands of Egypt (Topkapı Sarayı Müzesi Arşivi, E.0704.45.1).

Ottoman conquest. For example, Baber Johansen examined the views of Ibn Nujaym on land tax in Egypt as the culmination of several centuries of Hanafi jurisprudence that departed significantly from the canonical position of Hanafi scholars of the "formative period," defined loosely as the 8th to 10th centuries. For Johansen, this departure and Ibn Nujaym's central role in forging a new canonical position were significant because they underscored the extent to which Hanafi doctrine evolved in the "post-classical period."[11] Kenneth M. Cuno also investigated the views of Ibn Nujaym and al-Ghayti and their place within Hanafi and Shafiʿi doctrines respectively. Although Cuno touches on the relationship of the jurisprudential doctrines with the sociopolitical context in abstract terms, he does not discuss how they interacted in actual practice.[12] Recently, Samy Ayoub dealt with Ibn Nujaym's opinions under discussion.[13] Although Ayoub notes that Ibn Nujaym criticized Ottoman policy—including levying taxes on waqf—he does not explore the relationship between Ibn Nujaym's ideas and the political context that informed them. Overall, this line of scholarship is not especially concerned with how sociopolitical developments affected these arguments, nor with how these arguments shaped or constrained sociopolitical realities, because the focus of analysis is solely on the normative statements of jurists.

[11] Baber Johansen, *The Islamic Law on Land Tax and Rent: The Peasants' Loss of Property Rights as Interpreted in the Hanafite Legal Literature of the Mamluk and Ottoman Periods* (London: Croom Helm, 1988), 1–4.

[12] Cuno, "Ideology and Juridical Discourse," 136–63.

[13] Samy Ayoub, *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (Oxford, UK: Oxford University Press, 2019), 28.

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Whereas the fatwas of Ebussuud and the actions of `Ali Pasha in this controversy are little studied, a separate strand of the scholarship focuses on the concrete historical developments of the period to trace the government acts, local reactions, and policy changes associated with the early decades of Ottoman rule in Egypt. For example, in several studies, Stanford J. Shaw introduced the main features of Ottoman financial administration, including *awqāf*, in Egypt in the 16th century.[14] In addition, Muhammad ʿAfifi undertook an in-depth study of the *awqāf* in Egypt under the Ottoman administration from the beginning of Ottoman rule in 1517 until the mid-17th century. In this work, ʿAfifi showed the sensitivity and quick responsiveness of Egyptians to the government regulations concerning *awqāf*.[15] Moreover, by closely examining the survey registers, Nicolas Michel offered fresh perspectives and clarified several confusing points related to the development and changes in the administration of lands and taxation in Ottoman Egypt during the 16th century.[16] These studies increased our knowledge about the management of *awqāf* in Egypt. However, they either ignored or only tangentially touched upon the juristic opinions that are the focus of modern scholarship on Islamic law.

Even so, there is much to be gained by integrating these two scholarly strands. In this article, in addition to introducing Ebussuud's hitherto unstudied fatwas, we seek to show the relationship of these fatwas with the opinions of Ibn Nujaym and al-Ghayti, and the relationship of all this discourse with the specific historical context of Ottoman tax reform in Egypt in the mid-16th century. Such an approach makes it possible for us to look at the controversy with a consideration of the sociopolitical circumstances that drove it and from the perspectives of the different actors in Egypt. It also allows us to pursue questions about Ottoman governance concerning the process of rulemaking, as well as the functions of its central, local, and intermediary actors.

More broadly, however, examination of the controversy calls us to engage another strand of scholarship that explores the roles of political and scholarly authorities in the production of shariʿa as a normative body of rules. A group of scholars working along these lines, including Ira Lapidus, Patricia Crone, and Wael B. Hallaq, have argued that the articulation of Islamic religious knowledge, including shariʿa, was, ideally, the preserve of Muslim scholars (ʿulamaʾ). In their view, scholars, as experts on scriptural sources and their interpretation, produced shariʿa norms, whereas rulers, as the guarantors of security and order, implemented them.[17] Other modern scholars challenge this view by emphasizing the involvement of rulers in the production of shariʿa norms in different ways. Muhammad Qasim Zaman showed the continuing collaboration of Abbasid caliphs with scholars in the production of shariʿa norms even after scholars supposedly succeeded in excluding the caliphs from this field following the Abbasid inquisition (*miḥna*) of the 9th century.[18] Others, such as Kirsten Stilt, Mohammad Fadel, and Ovamir Anjum, call for an understanding of shariʿa that encompasses both the interpretive activities of scholars and the edicts and orders of rulers.[19]

[14] Shaw, *Financial and Administrative Organization*; Shaw, "Land Law of Ottoman Egypt," 106–37.

[15] ʿAfifi, *al-Awqaf wa-l-Haya al-Iqtisadiyya*.

[16] Nicolas Michel, "Les *Rizaq Iḥbāsiyya*, terres agricoles en mainmorte dans l'Égypte mamelouke et ottomane, Études sur les *Dafātir al-Aḥbās* ottomans," Annales *Islamologiques* 30 (1996): 105–98; Nicolas Michel, "Les Circassiens avaient brûlé les registres," in *Conquête ottomane de l'Égypte (1517) arrière-plan, impact, échos*, ed. Benjamin Lellouch and Nicolas Michel (Leiden: Brill, 2013), 225–56; Michel, *L'Égypte des villages*. See also Wakako Kumakura, "Who Handed over Mamluk Land Registers to the Ottomans? A Study on the Administrators of Land Records in the Late Mamluk Period," *Mamlūk Studies Review* 18 (2014–15): 279–98.

[17] Ira M. Lapidus, "The Separation of State and Religion in the Development of Early Islamic Society," *International Journal of Middle East Studies* 6, no. 4 (1975): 363–85; Patricia Crone and Martin Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam* (Cambridge, UK: Cambridge University Press, 1986), 97–110; Hallaq, *Impossible State*, 37–73.

[18] Muhammad Qasim Zaman, *Religion and Politics under the Early ʿAbbāsids: The Emergence of Proto-Sunnī Elite* (Leiden: Brill, 1997), 70–118.

[19] Stilt, *Islamic Law in Action*, 24–37; Anjum, *Politics, Law, and Community*, 93–136; Mohammad Fadel, "State and Sharia," in *The Ashgate Research Companion to Islamic Law*, ed. Rudolph Peters (London: Routledge, 2014), 93–107. See also Sherman A. Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarafī*

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The waqf controversy of the 1550s offers a different perspective altogether. Within it, shariʿa functioned as a tool of governance by facilitating the participation of different actors and the articulation of their views. Knowledge of shariʿa articulated by any of the actors did not constitute the endpoint of rulemaking. Rather, shariʿa as a collection of norms provided the shared language of terms and concepts through which different actors participated in the process of formulating rules. Our aim in highlighting this role of shariʿa is not to support or undermine one or the other of the views presented above, but to identify the mode of interaction in Ottoman Egypt. Both the government and other actors mobilized shariʿa knowledge to express their opinions and to negotiate rules and policies as they were being formulated. To be more concrete, in the controversy under examination here, Ottoman administrative decisions and the resulting rules were justified and propagated through shariʿa. Local actors resisted this imposition and responded in kind, also utilizing shariʿa, and the Ottoman governor mediated the resolution. Here, shariʿa notably provided the language for articulating opposing views and negotiating a compromise. This reliance on shariʿa was somewhat distinctive to Egypt and arguably influenced by the above-mentioned features of the region, including its political past, demographic composition, and judicial plurality rooted in *madhhab* diversity.

To explore these issues, we begin with a general overview of the historical development of the *awqāf* in Egypt until the 1550s, including a discussion of the Mamluk heritage and the Ottoman attempts to cope with it in the first three decades of their rule in Egypt. After setting the background, we introduce the controversy, its development, and the identities and stances of different participants. Then, we analyze the opinions of Ebussuud, Ibn Nujaym, and al-Ghayti on the main questions relating to the status, administration, and taxation of land. Finally, after discussing the contours of the compromise that emerged under `Ali Pasha's aegis, we reflect on the process of policymaking and rule formation, and shariʿa as a tool of governance in Egypt.

Waqfization, Shariʿa, and Ottoman Rule in Egypt

Egypt was large, wealthy, and predominantly Muslim. Therefore, the Ottoman imperial government naturally expected to extract significant revenue, ideological support, and manpower from the region. However, Egypt had its own features that posed special challenges and caused complications distinct from those the government encountered in incorporating, for example, Turkmen principalities in Anatolia or Christian kingdoms in the Balkans.

During the first century of Mamluk rule, up until the latter decades of the 14th century, the tax revenue of most land in Egypt was controlled by the state, or the sultan as its head. The sultan assigned the rights of tax collection to members of the military class in exchange for service—through a grant known as *iqṭāʿ*—or otherwise maintained direct control of the revenues on lands known as *khāṣṣ*, that is reserved for the expenditures of the state by the sultan.[20] During the reign of the sultan al-Nasir Muhammad (r. 1310–41), the proportions of *iqṭāʿ* and *khāṣṣ* lands were fixed, with approximately 58 percent of the land distributed as *iqṭāʿ* and the remainder left under direct sultanic control.[21] The arrangement was relatively short-lived, because the demographic and social turmoil wrought by the Black Death and the political upheaval precipitated by succession struggles challenged the system beginning in the middle decades of the 14th century.[22] By the latter decades of the century and

(Leiden: Brill, 1996), 185–224; Frank E. Vogel, *Islamic Law and Legal System: Studies of Saudi Arabia* (Leiden: Brill, 2000), 169–221; Yossef Rapoport, "Royal Justice and Religious Law: Siyāsah and Shariʿah under the Mamluks," *Mamlūk Studies Review* 16 (2012): 71–102; Christian Müller, and "Mamluk Law: A Reassessment," in *Ubi sumus? Quo vademus? Mamluk Studies: State of the Art*, ed. Stephan Conermann (Bonn, Germany: Bonn University Press, 2013), 263–83.

[20] Fuess, "Urgent Need for Cash," 3–4.

[21] Sabra, "The Rise of a New Class?" 204; Igarashi, *Land Tenure and Mamluk Waqfs*, 6–9.

[22] Igarashi, *Land Tenure, Fiscal Policy*, 10–17. On the Black Death in Egypt and Syria, see Michael Dols, *The Black Death in the Middle East* (Princeton, NJ: Princeton University Press, 1977) 143–235; see also Stuart Borsch, *The Black Death in England and Egypt: A Comparative Study* (Austin, TX: University of Texas Press, 2005), 24–54.

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throughout the 15th century, state lands—whether *iqṭāʿ* or *khāṣṣ*—were sold to individuals, who in most cases converted them to *awqāf*.[23]

This massive growth in *awqāf* expanded the charitable activities and institutions to which they were devoted. Yet it also augmented earnings of the founders and their descendants, who mostly came from Mamluk or Egyptian scholarly families, or their agents and protégés.[24] In this vein, for example, Mamluk sultans used *awqāf* for their own political purposes, endowing lands and property whose revenue far exceeded the required sum for declared charitable aims and using this excess revenue to finance their political endeavors.[25] By the early 16th century, 40 percent of the land of Egypt was controlled by *awqāf*.[26] Therefore, when the Ottomans arrived in Egypt in 1517, they took over a land regime that had in the previous century witnessed a massive transition from a system of state control to a much more complex terrain in which property—and the rights to revenue produced through it—was highly contested both by the beneficiaries of the *awqāf*, whether the Mamluk or scholarly families who administered them, and agents of the government who sought to identify and extract productive sources of revenue from the lands of Egypt.[27]

The administration of waqf in Egypt was all the more complicated as a consequence of the Mamluk policy of recognizing all four Sunni jurisprudential schools (Hanafi, Shafiʿi, Maliki, and Hanbali) in legal procedures in the courts. Accordingly, the Mamluk sultans appointed judges from each of these schools to Egypt, Syria, and Arabia. The four appointed judges acted independently of each other. They were expected to hear legal cases and validate transactions according to the doctrines of their own schools. This policy was probably conceived to preempt the competition, as each of the schools had a significant following in all Mamluk lands.[28] Equally, it made diverse doctrines of the schools available for the litigants and court users.[29] People, regardless of their personal commitment to follow one legal school or another, had the right to freely select the judge to hear their cases or to validate their contracts. They could have recourse to one judge in one case and another in a different case. In this way, they could construct a hybrid law for themselves by practicing what Ahmed Fekry Ibrahim calls "pragmatic eclecticism," that is, choosing among and combining the doctrines of different schools on the basis of practical considerations.[30] Therefore, the

[23] Petry, *Protectors or Praetorians?* 131–219; Albrecht Fuess, "Mamluk Politics," in Conermann, *Ubi sumus? Quo vademus?* 95–117; Igarashi, *Land Tenure and Mamluk Waqfs*, 10–16. See also Muhammad Muhammad Amin, *al-Awqaf wa-l-Haya al-Ijtimaʿiyya fi Misr (648–923 H/1250–1517 M)* (Cairo: Dar al-Nahda al-ʿArabiyya, 1980), 321–72. For two sales contracts of state lands in the 15th century, see Muhammad Arabiya Amin, *Fihrist Wathaʾiq al-Qahira hatta Nihayat ʿAsr Salatin al-Mamalik (239–922 H/853–1522 M) maʿa Nashr wa-Tahqiq Tisʿat Namadhij* (Cairo: al-Maʿhad al-ʿIlmi al-Faransi li-l-Athar al-Sharqiyya, 1981), 365–406.

[24] Sabra, *Poverty and Charity*, 69–100; Sabra, "Rise of a New Class?" 203–10.

[25] Petry, *Protectors or Praetorians?* 199, 203, 247–51.

[26] Igarashi, *Land Tenure and Mamluk Waqfs*, 8.

[27] For analysis of the effects of this transition on economic development in Egypt, see Lisa Blaydes, "Mamluks, Property Rights, and Economic Development: Lessons from Medieval Egypt," *Politics & Society* 47, no. 3 (2019): 395–424. For an analysis of Egyptian waqf on the eve of the Ottoman conquest, see Yehoshua Frenkel, "The Waqf System during the Last Decades of Mamluk Rule," in *The Mamluk-Ottoman Transition: Continuity and Change in Egypt and Bilād al-Shām in the Sixteenth Century*, vol. 2, ed. Stephan Conermann and Gül Şen (Göttingen, Germany: Bonn University Press, 2022), 221–71.

[28] During the 11th and 12th centuries, competition among the followers of the schools at times turned violent in Iran, Iraq, and Khorasan. See Wilferd Madelung, "The Spread of Maturidism and the Turks," in *Actas do IV Congresso de Estudeos Árabes e Islamicos, Coimbra-Lisboa 1968* (Leiden: E. J. Brill, 1971), 138–46; Richard W. Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge, MA: Harvard University Press, 1972), esp. 28–46; and Seyfullah Kara, *Büyük Selçuklular ve Mezhep Kavgaları* (Istanbul: İz Yayıncılık, 2007), 247–60.

[29] Joseph H. Escovitz, "The Establishment of Four Chief Judgeships in the Mamluk Empire," *Journal of the American Oriental Society* 102, no. 3 (1982): 529–31; Yossef Rapoport, "Legal Diversity in the Age of Taqlid: The Four Chief Qadis under the Mamluks," *Islamic Law and Society* 10, no. 2 (2003): 210–28.

[30] Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law, A Social and Intellectual History* (Syracuse, NY: Syracuse University Press, 2015), esp. 38–43.

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Ottomans encountered a composite landscape of the shariʿa courts and legal transactions, including *awqāf*.

Indeed, the complex challenges associated with waqfization and the shariʿa judicial system were reflected clearly in the political setbacks and policy reversals that characterized the first decades of Ottoman rule. Rather than being a period of smooth transition to Ottoman rule, the first decades after the conquest were marked by a messy period of negotiation, accommodation, and continuity from Mamluk rule punctuated by sporadic assertions of power by the Ottoman central authority.[31] For example, Selim I initially appointed one of his own men, the grand vizier Yunus Pasha (d. 1517), as the governor of Egypt. He also dismissed the four local chief judges and appointed one of his scholar-bureaucrats, the chief military judge of Anatolia, Kemalpaşazade (d. 1534), as the single chief judge of Egypt.[32] However, the arrangements proved untenable within months. Yunus Pasha proved to be corrupt, and the general uproar among Egyptians at the judicial administration of Kemalpaşazade proved too difficult to ignore. Before departing Egypt, Selim reversed course and appointed as governor a Mamluk who had defected to the Ottoman cause, Khayir Beg (d. 1522), and reinstated the former chief judges of the Mamluk regime.[33] In the meantime, Selim declared that the Ottoman administration recognize all the *awqāf* that had been instituted under Mamluk rule and sent a decree to all the local administrators ordering them "not to interfere with the *awqāf*."[34]

In 1522, early in the reign of Süleyman (r. 1520–66), the Ottoman government again attempted to increase the centralized control over Egypt by appointing a governor from the center and a scholar-bureaucrat to serve as the single chief judge. However, this initiative increased discontent among the Egyptian population and contributed to a series of uprisings against Ottoman rule.[35] Rebellion and disorder continued until 1525, when the grand vizier İbrahim Pasha (d. 1536) arrived in Egypt with the aim of establishing a stable order. According to the testimony of his aide and secretary in this campaign, Celalzade Mustafa (d. 1567), İbrahim Pasha met and negotiated with different groups—towns people, peasants, bedouin, and others from various parts of the country—and reached an agreement resulting in the Lawbook (*Kanunname*) of Egypt. The Lawbook, among other concessions to the local Egyptian groups, endorsed the validity of *awqāf* that had been established during the Mamluk period. In return, a governor from the Ottoman center, Süleyman Pasha (d. 1547), was appointed and a scholar-bureaucrat chief judge, Leyszade Ahmed Çelebi

[31] For a wide range of studies on this theme, see Stephan Conermann and Gül Şen, eds., *The Mamluk-Ottoman Transition: Continuity and Change in Egypt and Bilād al-Shām in the Sixteenth Century*, vol. 1 (Göttingen, Germany: Bonn University Press, 2017). See also Reem A. Meshal, *Sharia and the Making of the Modern Egyptian: Islamic Law and Custom in the Courts of Ottoman Cairo* (Cairo: American University of Cairo Press, 2014), 55–102.

[32] The Egyptian chronicler Ibn Iyas discusses the ineffectiveness of this Ottoman experiment with a single chief judge; Muhammad b. Ahmad b. Iyas al-Hanafi (Ibn Iyas), *Badayiʿ al-Zuhur fi Waqayiʿ al-Duhur*, vol. 5, *al-Juzʾ al-Khamis min Sana 922 ila Sana 928*, ed. Muhammad Mustafa (Beirut: al-Maʿhad al-Almani li-l-Abhath al-Sharqiyya, 2010), 165–66. Another contemporary, Idris Bidlisi (d. 1520), identifies this Ottoman chief judge as Kemalpaşazade (d. 1534); *Salimshahnama*, Topkapı Sarayı Müzesi Kütüphanesi, Emanet Hazinesi ms. 1423, 173b; for the Turkish translation, see Idris Bidlisi, *Selim Şah-Nâme*, ed. and trans. Hicabi Kırlangıç (Ankara: T. C. Kültür Bakanlığı Yayınları, 2001), 354.

[33] Feridun M. Emecen, *Yavuz Sultan Selim* (Istanbul: Yitik Hazine, 2011), 287–308; Abdurrahman Atçıl, "Memlükler'den Osmanlılar'a Geçişte Mısır'da Adlî Teşkilat ve Hukuk," *İslâm Araştırmaları Dergisi* 38 (2017): 92–93; Christopher Markiewicz, *The Crisis of Kingship in Late Medieval Islam: Persian Emigres and the Making of Ottoman Sovereignty* (Cambridge, UK: Cambridge University Press, 2019), 138–40.

[34] For the discussion of Selim I's policy regarding the *awqāf* in Egypt, seeʿAfifi, *al-Awqaf wa-l-Haya al-Iqtisadiyya*, 27–30. For reference to the decree, dated 16 May 1517, see ibid., 28–29.

[35] Seyyid Muhammed es-Seyyid Mahmud, *XVI. Asırda Mısır Eyaleti* (Istanbul: Marmara Üniversitesi Yayınları, 1990), 72–90; Benjamin Lellouch, *Les Ottomans en Égypte. Historiens et conquérants au XVIe siècle* (Paris: Peeters, 2006), 53–62; Side Emre, "Anatomy of a Rebellion in Sixteenth-Century Egypt: A Case Study of Ahmed Pasha's Governorship, Revolt, Sultanate, and Critique of the Ottoman Imperial Enterprise," *Osmanlı Araştırmaları* 46 (2015): 77–129; Atçıl, "Memlükler'den Osmanlılar'a Geçişte Mısır'da Adlî Teşkilat ve Hukuk," 94–95; Benjamin Lellouch, "Hain Ahmed Paşa (m. 1524) et sa famille," *Turcica* 52 (2021): 63–102.

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(d. 1545/46), was installed to oversee the judicial system, but with the condition that he preserve legal plurality in Egypt through the appointment of deputy judges from the four schools.[36]

Despite the enactment of these arrangements, corruption and confusion continued unabated. In the 1520s, Ottoman administrators sought to assess the productivity and potential revenue of Egypt through surveying both the land and claims to it. Mamluk records were difficult to locate, and frequently those who asserted possession of property could not produce documents to support their claims.[37] Ottoman officials usually endorsed these claims in cases in which local witnesses testified to their authenticity, yet the absence of documentation, including endowment deeds, repeatedly caused confusion for the Ottoman administration between the 1520s and 1540s. During the same period, the sale of state lands and the creation of *awqāf* accelerated. Although such sales and endowments were legal, if perhaps undesirable from the perspective of the imperial center, the embezzlement and corruption of governors and other officials was another pressing area of concern. During these years, Ottoman governors of Egypt amassed enormous wealth from their tenures.[38] Much of this went unnoticed in Istanbul until 1544, when two former governors, Süleyman Pasha and Hüsrev Pasha (d. 1544), in a fit of rage, exchanged violent threats and accusations of corruption during their tenures in Egypt in the midst of a meeting of the imperial council.[39]

The claims and counterclaims of these former Ottoman governors exposed a much more pervasive and fundamental problem concerning the management and handling of revenue that coincided with wider efforts at fiscal centralization during the first grand vizierate of Rüstem Pasha (d. 1561) between 1544 and 1553. In the immediate wake of Hüsrev Pasha and Süleyman Pasha's eruption at the meeting of the imperial council, Sultan Süleyman appointed Rüstem Pasha as grand vizier and ordered an extensive investigation into the claims of the two governors.[40] The investigation unfolded over several years and raised questions about the financial activities of top-ranking Ottoman officials pertaining to nearly every conceivable source of revenue, including most obviously *awqāf*.[41] This investigation and others exposed the fiscal realities of Egypt to the central administration.[42] By 1549, the imperial council was apprised of the general state of affairs and clearly cognizant of the considerable loss of potential revenue in Egypt. Such unrealized revenue from Egypt was all the more significant because remittances from this province were so critical to the functioning of the central government, especially during the 1540s when the Ottomans were at war with both the Habsburgs and the Safavids. In response, the imperial

[36] Atçıl, "Memlükler'den Osmanlılar'a Geçişte Mısır'da Adlî Teşkilat ve Hukuk," 105–7. For Celalzade's account of the Egyptian inspection, see Celalzade Mustafa, *Ṭabaḳāt ül-Mamālik ve Derecāt ül-Masālik / Geschichte Sultan Süleymān Ḳānūnīs von 1520 bis 1557*, ed. Petra Kappert (Wiesbaden: Franz Steiner Verlag, 1981), facs. 121a-130a. See also Kaya Şahin, *Empire and Power in the Reign of Süleyman: Narrating the Sixteenth-Century Ottoman World* (New York: Cambridge University Press, 2013), 53–59. For the lawbook, see "Merkezî ve Umûmî Mısır Kanunnâmesi," in *Osmanlı Kanunnameleri ve Hukuki Tahlilleri*, vol. 6, *Kanuni Sultan Süleyman Devri Kanunnameleri*, ed. Ahmet Akgündüz (Istanbul: Fey Vakfı, 1993), 81–176; for the rules about the *awqāf*, see 135–38.

[37] Michel, "Les Circassiens avaient brûlé les registres," 245–58.

[38] Kürşat Çelik, "Mısır Beylerbeyi Hayır Bey'in Muhallefatı (1517–1522)," *Tarih Araştırmaları Dergisi* 33, no. 55 (2014): 163–82.

[39] Jean-Louis Bacqué-Grammont, "Notes et documents sur Divane Hüsrev Paşa," *Rocznik Orientalistyczny* 41 (1979): 49–55.

[40] Muhammet Zahit Atçıl, "State and Government in the Mid-Sixteenth Century Ottoman Empire: The Grand Vizierates of Rüstem Pasha (1544–1561)" (PhD diss., University of Chicago, 2015), 254–89.

[41] Mehmet İpşirli, "Mısır Eyaletinin Teşkili Döneminde İki Beylerbeyi Soruşturması," *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 21 (2015): 3–19; Linda Darling, "Investigating the Fiscal Administration of the Arab Provinces after the Ottoman Conquest of 1516," in Conermann and Şen, *The Mamluk-Ottoman Transition*, vol. 1, 147–58.

[42] For examples of the documents of surveys and investigations into the *awqāf* of Egypt during the 1540s or earlier, see Aydın Özkan, ed. and trans., *Mısır Vakıfları* (Istanbul: İslam Tarih, Sanat ve Kültürünü Araştırma Vakfı, 2005); TSMA, D. 4593.

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council appointed a new governor, Semiz `Ali Pasha, with instructions to set aright the land regime of Egypt with the goal of augmenting revenue for the central government.

In the early 1550s, therefore, the Ottoman government was proactive but needed to act in consideration of the historical and local context and needed to honor earlier concessions and promises. The government had declared its recognition of formerly instituted *awqāf* and the principle of plurality in the judicial system. That is, from the perspective of the Ottoman government *awqāf* authorized by judges or deputy judges of any of the four schools were valid. In this context, shariʿa doctrines, consisting of multiple opinions on the same issue from the same school or from different schools, came to the fore as a critical tool of governance, providing different sides—the government and the local groups—with the language to communicate, interact, and negotiate, and so to participate in making laws and forming governing decisions.

The Waqf Controversy of the 1550s

All of these issues and conditions informed the actions on *awqāf* by the Ottoman central government as well as their representative in Cairo, the governor `Ali Pasha, in the early 1550s. Yet these actions did not avoid controversy. The opening salvo of the controversy took the form of an imperial decree, sent in late 1550 or early 1551, regarding the status, taxation, and management of the lands endowed by Mamluk sultans and commanders. To substantiate this position, the decree was accompanied by a series of fatwas of the chief jurist Ebussuud, intended to explain the shariʿa basis of the sultan's directive, namely the imposition of *kharāj* taxes on endowment lands. Although the imperial decree is no longer extant, it seems the central government, in recognition of the particular conditions related to *awqāf* and judicial administration, wished to buttress imperial policy by demonstrating its agreement with shariʿa. In a sense, the government wished to preempt a local reaction by grounding the basis of the order in shariʿa.

The stakes of the question were considerable for both the endowment beneficiaries and the Ottoman treasury, because *kharāj* amounted to as much as 40 percent of the agrarian revenue of any property. If enforced, some social services, such as the upkeep of mosques, bridges, and madrasa buildings, that had been supported by endowments would likely end, and some beneficiaries, including waqf administrators and stipendiaries, would lose income. In addition, the surplus money in the coffers of the endowments would be taken by the Ottoman government and be accounted as unpaid taxes from past years.

A wide segment of Egyptian society that would be affected by the implementation of the fatwas and the imperial decree became greatly disturbed. As anticipated by the central government, they appealed to shariʿa and encouraged some of the Egyptian scholars to respond. Chief among these scholars was the noted Hanafi jurist Ibn Nujaym. In the preface to his treatise on this issue, *al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya* (The Pleasing Present on Egyptian Lands), Ibn Nujaym clarifies that he became involved in the matter when the news of tax reform concerning *awqāf* reached Egypt in 1551 and "a group of people" solicited him to weigh in on the "imposition of *kharāj* on endowed lands."[43] In response to this request, Ibn Nujaym wrote *al-Tuhfa*. The Shafiʿi jurist, Muhammad b. Ahmad al-Ghayti also became involved in the controversy and penned his own legal treatise around the same time. The circumstances of al-Ghayti's treatise in this debate were sufficiently noteworthy to be recorded decades later by the biographer Najm al-Din al-Ghazzi (d. 1651) in his entry on the Shafiʿi scholar, in which he records, "[W]hen the calamity of canceling the positions and salaries of people unjustly appeared . . . al-Ghayti met the governor and other commanders and said the words none of his peers would dare to speak."[44] Al-Ghayti likely met

[43] Ibn Nujaym, *al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya*, 123.

[44] Najm al-Din al-Ghazzi, *al-Kawakib al-Saʾira bi-Aʿyan al-Miʾa al-ʿAshira*, ed. Khalil al-Mansur (Beirut: Dar al-Kutub al-ʿIlmiyya, 1997), 3: 47.

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both the governor Semiz Ali Pasha and the Ottoman judge Hamid Efendi (d. 1577), both of whom he mentions favorably in his treatise.[45]

The scholars were concerned with a common set of problems that can be reduced to five interrelated issues, which turned upon both historical interpretation and legal reasoning. First, they were especially interested in understanding the status of the lands of Egypt at the time of the Muslim conquest because this status determined property rights and tax obligations. Second, they acknowledged that over time the state came into ownership of the land, and so they wrestled with the legal implications of this development. Third, they sought to articulate the legitimate acts of a ruler in managing treasury lands. Fourth, within the scope of a ruler's legitimate action, they took up the question of the revocability of a ruler's acts on waqf lands. Last, they offered their view on the central questions, namely the locus of taxation, whether the owner or the land itself, and what this meant for imposing taxes on waqf.

The Islamic Conquest and the Lands of Egypt

All of the mid-16th-century scholars who weighed in on this controversy grounded their analysis in the historical question of property rights and taxation on lands following the Muslim conquests of the 7th century. When the Muslims captured Iraq, Syria, and Egypt during the rule of the caliph ʿUmar b. al-Khattab (r. 634–44), they left the lands of these regions in the hands of non-Muslim cultivators, and so effectively recognized the private property rights of the cultivators. In exchange for these rights, non-Muslim peasants paid *kharāj*, a land tax, at a higher rate than *ʿushr* paid by Muslim cultivators elsewhere.[46]

In later centuries, the jurisprudential doctrines of the different schools developed abstractions that would help to make sense of and theorize the reality on the ground. The Muslim jurists of the 8th and 9th centuries posed a number of pressing questions: What was the effect of the Islamic conquest on the conquered territories? Did it just establish political superiority while maintaining the existing property ownership? Or did it end and restructure all the existing rights, including property? The Hanafis clearly thought that the conquest brought political superiority and that the ruler had the right to endorse the existing rights over property. Accordingly, they held the opinion that after the conquest, peasant ownership of the lands in Iraq, Syria, and Egypt was recognized and *kharāj* was imposed as tax. On the other hand, Malikis, Shafiʿis, Hanbalis, and Imami Shiʿis appear to have had the idea that the conquest ended the existing property rights. Therefore, for most of them, these lands were *fayʾ*, the common property of all Muslims to be administered by the ruler, who left the land in the control of the peasants, but exacted *kharāj* as rent. Some jurists underlined the distinction between the lands captured by force and those by treaty and had the opinion that the former was *ghanīma*, that is booty, to be divided among the ruler and the warriors who participated in the war of conquest, whereas the latter's status was determined according to the terms of the treaty. Some Shafiʿis distinguished between Iraq (conquered by force) on the one hand, and Syria and Egypt (conquered by treaty) on the other.[47] Despite the seeming differences in opinions regarding the status of

[45] Al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 172. Al-Ghayti's prayers for `Ali Pasha and Hamid Efendi and his request from the sultan to keep them in office at end of the treatise suggest his connection with these two top Ottoman officials in Egypt at the time. See ibid., 185–86.

[46] Ann K. S. Lambton, *Landlord and Peasant in Persia: A Study of Land Tenure and Land Revenue Administration* (New York: I. B. Tauris, 1969), 17–30; Abd al-Aziz Duri, *Early Islamic Institutions: Administration and Taxation from the Caliphate to the Umayyads and ʿAbbāsids* (New York: I. B. Tauris, 2011), 87–97; Marie Legendre, "Landowners, Caliphs and State Policy over Landholdings in the Egyptian Countryside: Theory and Practice," in *Authority and Control in the Countryside: From Antiquity to Islam in the Mediterranean and Near East (6th–10th Century)*, ed. Alain Delattre, Marie Legendre, and Petra Sijpesteijn (Leiden: Brill, 2018), 392–419.

[47] Hossein Modarresi Tabatabaʾi, *Kharāj in Islamic Law* (London: Anchor Press, 1983), 122–31; Johansen, *Islamic Law on Land Tax and Rent*, 7–11; Mustafa Fayda, "Fey," in *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (Istanbul: İSAM, 1995), 12:

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these lands in theory, different schools were united in recognizing and legitimizing the actual practice, whereby peasants acted as if they owned the land, in which capacity they routinely sold, inherited, or leased it. They also regularly paid *kharāj* as tax or rent.[48]

Unsurprisingly, both Ibn Nujaym and Ebussuud agreed with the Hanafi handling of these issues and sought to apply them to the issues they took up. Indeed, Ibn Nujaym's analysis precisely reflected the early Hanafi doctrine on the status of property rights after Muslim conquest:

> The Hanafi authorities—may God Almighty have mercy upon them—agreed that when the Imam conquered a country, left its people in their places and prescribed *kharāj* on their lands, then, they (i.e., the inhabitants) own their lands, and their acts, such as sale, donation, bequest, lease, lending and endowing are valid, regardless of whether the holder of the land remains an unbeliever or converts to Islam.[49]

For Ibn Nujaym, Hanafi doctrine unequivocally and unanimously recognized the private property rights of the actual holders of the lands after the Islamic conquest. Because Ebussuud's thought is reflected in a fatwa, a legal genre not particularly suited to extensive exposition, his views on the question are not explicitly stated, but may be inferred as agreeing with Ibn Nujaym because he accepts the concept of the "death of proprietor," which presupposes private ownership following the Muslim conquests, at least in Egypt.[50]

Al-Ghayti, as a Shafiʿi, differs from both the Hanafi jurists on this question, because the Shafiʿi position held that Egypt was conquered by force and so the preconquest owners lost their property rights:

> Our (Shafiʿi) authorities said: if a land is conquered by force, like the case in the land of Egypt according to the most popular opinion, the land is booty (*ghanīma*). Those who have the right over booty (*ghānimīn*) own the land and use it [as they wish].[51]

> The land of Egypt was conquered by force . . . it was divided among *ghānimīn* whose ownership was established. Thus, the land of Egypt is that of *ʿushr*, not that of *kharāj*.[52]

In this handling, if land is captured by force, the existing property rights end, and the ruler does not have the right to confirm the property rights of the former inhabitants. Rather, the land is treated as booty, from which the ruler takes one-fifth with the expectation it be spent on public services and the poor, in accordance with Qurʾanic injunction (8:41). The remaining four-fifths is distributed among the warriors who conquered the land.[53] Because Egypt falls into this category for al-Ghayti, pre-Islamic inhabitants lost their property rights, and Muslim warriors became the new owners of the land.

All the participants agreed that the land in Egypt after the Muslim conquest was owned by individual owners. As will be seen, the opinions of the scholars on this fundamental point affected the divergent paths their arguments took.

511–13; Mustafa Demirci, *İslamın İlk Üç Asrında Toprak Sistemi* (Istanbul: Kitabevi, 2003), 49–66, 127–44. See also Kenneth M. Cuno, "Was the Land of Ottoman Syria *Miri* or *Milk*? An Examination of Juridical Differences within the Hanafi School," *Studia Islamica* 81 (1995): 123–27.

[48] Demirci, *İslamın İlk Üç Asrında Toprak Sistemi*, 76–77.

[49] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 126.

[50] TSMA, E.0704.45.1.

[51] Al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 178.

[52] Ibid., 182.

[53] Rudolph Peters, "Booty," in *Encyclopaedia of Islam,* vol. 3, 2015, http://dx.doi.org/10.1163/1573-3912_ei3_COM_25367.

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State Ownership of the Lands and the "Death of Proprietor"

From the late 10th century, political developments and the ensuing arrangements they precipitated concerning land strained certain jurisprudential assumptions. Individuals began to lose their property rights over lands in the face of the extension of the claims of executive authorities, sultans, military commanders, and soldiers. Private ownership of lands in Iraq, Syria, and Egypt gradually waned, and the state began to be seen as the ultimate holder of the property rights. This process started in Iraq in the 10th century and spread to other places to become the dominant feature of the land regime in Egypt in the 12th century.[54]

If one of the functions of jurisprudential discourse was to ensure the semblance of continuity, another was to help make sense of relations on the ground and to give direction to them.[55] The task for the jurists was to give a plausible description of the change from private proprietorship to state ownership.[56] In this context, the concept of *bayt al-māl* (the public treasury) proved to be useful in accounting for the change. The public treasury was separate from a ruler's private funds, indeed it belonged to all Muslims, yet a ruler had wide discretion over its use and the property attached to it, so long as his actions were for the welfare of Muslims (*maṣlaḥat al-Muslimīn*). On the other hand, the existence of the public treasury restricted the powers of the ruler by postulating a public entity, properly belonging to all Muslims, which was itself entitled to certain rights, and beholden to specific rules and regulations.[57]

Yet jurists were still left to explain how widespread private ownership gradually resulted in near universal state control of land. Baber Johansen showed that the later Hanafi doctrine developed the idea of "death of the proprietors" (*mawt al-mālikīn*) to vindicate state ownership of the lands, according to which lands passed to the ownership of the public treasury when their owners died without heir. By the 15th century, this position had become predominant among Hanafi jurists, and was used to rationalize the near universal control of the lands of Egypt by the state.[58]

In keeping with this view, Ibn Nujaym cites the discussion of death of the proprietors by Hanafi jurist Kamal al-Din Ibn al-Humam (d. 1457), and then makes it the basis of his argument about the lands of Egypt.

> He (Ibn al-Humam) articulated in *Fath al-Qadir* (The Almighty's Grant of Opening): "what is now taken from the lands of Egypt is rent (*badal ijāra*), not *kharāj*. Do you not see that the peasants do not own the lands! This is despite the fact that we said that the land of Egypt is [classified for the collection of] *kharāj*. God knows best. This is apparently because of the death of proprietors without leaving an heir. Thus, the land devolved to the treasury.[59]

[54] Lambton, *Landlord and Peasant*, 49–52; Johansen, *Islamic Law on Land Tax and Rent*, 80–81; Chris Wickham, "The Power of Property: Land Tenure in Fāṭimid Egypt," *Journal of the Economic and Social History of the Orient* 62, no. 1 (2019): 67–107. See also Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I. B. Tauris, 2007), 11–13; and Malissa Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire: Harmonization, Property Rights and Sovereignty* (London: I. B. Tauris, 2023), 31–48.

[55] For an insightful discussion about the place and functions of discourse in the construction of social relations, see Norman Fairclough, *Critical Discourse Analysis: The Critical Study of Language* (New York: Routledge, 2013), 1–21.

[56] For the tools of representing change while preserving the original school doctrines, see Baber Johansen, "Legal Literature and the Problem of Change: The Case of the Land Rent," in *Contingency in a Sacred Law: Legal and Ethical Norms in the Muslim Fiqh*, ed. Baber Johansen (Leiden: Brill, 1999), 446–64.

[57] Duri, *Early Islamic Institutions*, 166–67, 176–77; Cengiz Kallek, *Sosyal Servet: İslam'da Yönetim-Piyasa İlişkisi* (Istanbul: Klasik, 2015), 50–53.

[58] Johansen, *Islamic Law on Land Tax and Rent*, 80–93. See also Ayoub, *Law, Empire, and the Sultan*, 56–58. For critique of the idea of the "death of proprietor" by Hanafi jurists from Syria from the 16th to the 19th centuries, see Cuno, "Was the Land of Ottoman Syria *Miri* or *Milk*?" 121–52.

[59] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 125.

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> [T]hey (the Hanafi authorities) agreed that the lands can be inherited. For this, the *kharāj* becomes incumbent on the new owners. This continues until one of the owners dies without issue. If this happens, the property is transferred to the treasury.[60]

Ebussuud does not discuss the idea of death of the proprietor but refers to it as the basis of state ownership of the lands when discussing the acts of the ruler over the lands of Egypt.[61] On the other hand, al-Ghayti assumes the transition of the lands of Egypt from private property to state ownership but does not feel it necessary to provide a rationale for this process. For, as will be seen, his view that the lands of Egypt were classified for the collection of *ʿushr*, and not *kharāj*, makes it possible for him to construct his argument more directly.

The Acts of the Ruler and the Creation of *Awqāf* from Treasury Lands

So, although in one way or another, all of the scholars agreed that the lands of Egypt came under the control of the state in some fashion, the more contentious question of how the ruler might dispose of them remained. These scholars conceived of the ruler "as the overseer of the welfare of Muslims," and analogized his powers over the treasury to that of a guardian over the property of an orphan.[62] In other words, like an orphan's guardian, the ruler can only dispose of treasury property in the best interests of Muslims or the public, and when acting in those interests he has wide scope for action.

Yet does sale of treasury property fall within that scope? The three jurists did not see the sale of the treasury land as intrinsically opposed to the public interest. They affirmed the ruler's right to sell it, yet they acknowledged that the public interest and the ruler's interest might be conflicted, especially, for instance, if the ruler might wish to sell property of the public treasury to himself. In such cases, they required the ruler to sell the property to someone else from whom he might subsequently buy it, or they advised him to appoint someone to sell the property, to escape any conflicts of interest.[63]

Crucially, the jurists differed on what this sale entailed. Does it transfer only the land from the treasury to the buyer? Or the land together with the right to its *kharāj*? In other words, can the *kharāj* of the land become the subject of property? Ebussuud is direct about this question and rejects categorizing *kharāj* as a commodity that may be bought and sold.

> Question: Is it sound to collect *kharāj* for a waqf considering that the buyers possess that land along with [the right to collect] its *kharāj* as property? Answer: It is not. The *kharāj* is taken for the treasury.
>
> Question: If the sultan sells land along with [the right to collect] *kharāj* and in this manner the buyers, saying "We are possessors of the land along with [the right to collect] *kharāj*," and make all of it a waqf, is this waqf not sound according to the sharīʿa? Answer: Neither is it acceptable to sell [rights] to *kharāj*, nor to make [these rights] a waqf.[64]

[60] Ibid., 126.

[61] "If the sultans of Egypt sell [a parcel of] *kharāj* land which does not have any owner [a *kharāj* land whose owner dies without issue], is the sale permissible according to the sharīʿa? Answer: It is"; TSMA, E.0704.45.1.

[62] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 123; al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 182.

[63] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 123–24, 127; al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 174, 182; TSMA, E.0704.45.1. Indeed, this is the process followed by the Mamluk sultan Qansuh al-Ghawri (d. 1516) with respect to the sale of a number of treasury properties that were incorporated into one of his endowments. See, for example, entries on documents detailing sales from the treasury to the Mamluk sultan al-Ghawri's treasurer Khayir Beg and the subsequent sale to al-Ghawri for inclusion in his endowments; Amin, *Fihrist Wathaʾiq al-Qahira*, 303, 311, 314. For discussion of these sales, see Daisy Livingston, "Managing Paperwork in Mamluk Egypt (c. 1250–1517): A Documentary Approach to Archival Practices" (PhD diss., SOAS University of London, 2018), 111–15.

[64] TSMA, E.0704.45.1.

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Ebussuud's response to these questions is crucial because they bear directly upon the controversy in the mid-16th century, namely whether the government had the right to impose *kharāj* on the waqf land of Egypt. In Ebussuud's opinion, the ruler has the right to sell the land under the treasury's possession but cannot sell the *kharāj*, as the *kharāj* is not eligible to become the subject of a sale. Therefore, the administrators and beneficiaries of *awqāf* made from lands purchased from the treasury cannot make the argument that they are not liable for *kharāj*, because they had purchased the land together with its *kharāj*. Ibn Nujaym and al-Ghayti differ from Ebussuud and do not see the payment of *kharāj* for lands purchased from the treasury as required. But they substantiate this opinion with a different line of argumentation, as we will see.

Another important act of the ruler is the endowment of "land belonging to the treasury (*arāḍī bayt al-māl*), for the support of certain activities, institutions, or persons (*irṣād*)."[65] This act does not alienate the land from the treasury but results in the assignment of the land itself or its revenues to cover expenses that can normally be disbursed from the treasury. Ebussuud briefly touches on the ruler's act of making assignments from the revenues of the treasury lands and upholds it.

> Question: Is it legitimate according to the shariʿa for His Majesty the Caliph of God to command that henceforth the *kharāj* of lands be taken and spent on expenditures for which they are earmarked according to shariʿa? Answer: It is.[66]

Ibn Nujaym and al-Ghayti discuss the act of *irṣād* in more detail and agree with Ebussuud in its legitimacy. They differ from Ebussuud on whether this act is revocable.

The Revocability of the Ruler's Acts on Treasury Lands

Eager to increase the revenues from Egypt, the Ottomans decided to impose *kharāj* on the waqf lands in Egypt. The administrators and beneficiaries of the *awqāf* perceived this as revoking the previous ruler's acts of sale and the endowments of treasury land. Therefore the jurists engaged with the question of the revocability of the ruler's sale of treasury land or endowment of it (*irṣād*).

In the case of the sale of treasury land, in keeping with his opinion of the ineligibility of *kharāj* for sale, Ebussuud declares that any act of past rulers entailing the nonpayment of *kharāj* is null and void.

> Question: When there was an excess of *kharāj* in Egyptian lands, no *kharāj* was taken at all from the villages which Sultan Qayitbay [d. 1496] and the other [Mamluk] emirs had endowed as waqf. Answer: The conditions of *awqāf*, except for *kharāj*, should be observed. However, they (the founders of the *awqāf*) have no worldly or otherworldly relationship to *kharāj*.[67]

Ibn Nujaym disagrees with Ebussuud on the revocability of a founder's stipulation regarding exemptions on *kharāj* obligations from waqf lands purchased from the treasury, and details why *kharāj* obligations cease and the ruler's act in this regard cannot be revoked. We will examine his argument on this issue shortly, when we discuss opinions about the locus of taxation.

Ebussuud appears to have seen the ruler's acts of endowing treasury land or its revenue (*irṣād*) as temporary assignments and revocable at the reigning sultan's will.[68] Ibn Nujaym

[65] Cuno, "Ideology and Juridical Discourse," 143.
[66] TSMA, E.0704.45.1.
[67] Ibid.
[68] "Question: [I]s it permissible according to the shariʿa to use the necessary sum for the repair of mosques and other good works from the *kharāj* by the order of His Majesty the Caliph of God? Answer: It is [permissible] with an order. Mosques are among the [permissible] expenditures of the *kharāj*." See ibid.

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disagrees with Ebussuud and in this regard cites the opinions of two Hanafi scholars, Qasim b. Qutlubugha (d. 1474) and Ibn al-Humam, who specify that the endowment of treasury lands is legitimate and cannot be revoked.[69]

Al-Ghayti approaches both issues from a different angle and brings the Shafiʿi position to the forefront in an ingenious way. He focuses on the shariʿa judicial practice of Egypt and underlines the paramount position of a judge's decision in ending any particular juristic issue by referring to the principle "the judge's decision erases all the disagreement, and the issue becomes conclusive (lit., one which is unanimously agreed upon; *mujmaʿ ʿalayhā*)." In doing so, al-Ghayti moves the parameters of the debate from legal theorization to settled case law.[70] For al-Ghayti, the solution to the debate in the mid-16th century should revolve not around shariʿa principle, but the specific decisions of the judges who ratified the endowments under question on the status of the endowed lands and the rights and duties pertaining to them. Because most of the endowments in Egypt were ratified by Shafiʿi judges, the Ottoman government should treat these *awqāf* according to the Shafiʿi opinion and so recognize their irrevocability and exemption from *kharāj*.[71]

Imposing Taxes on *Awqāf* and the Locus of Taxation

For all of these jurists, the central question was the legitimacy of imposing *kharāj* taxes on waqf land, yet their discussion ranged more widely because the issues they took up helped to buttress their argument on this question.

Ebussuud, as might be clear from the foregoing discussion, appears to have had the idea that the *kharāj* status, determined after the Islamic conquest, was attached to the land. The change in the owner of the land or the ruler of the region of the land did not have any effect on the status of the land. Thus, *kharāj* was to be imposed after all the subsequent transformations and proprietary transfers, even when the land was brought into a waqf.[72] On the other hand, for Ibn Nujaym, *kharāj* was imposed on people, not on the land:

> It cannot be said that *kharāj* is a tax imposed on land and it never drops. [In response to this] we say that this is valid as long as there is a person suitable for this imposition (*dhimma*). If the owner dies and does not leave an heir, *kharāj* drops for the absence of the place on which it can be imposed [i.e., *dhimma*] . . . *Kharāj* cannot be imposed on someone who buys land from the sultan [the treasury].[73]

For Ibn Nujaym, the *kharāj* status of the land ends when it devolves to the treasury, which is not a person and does not have a *dhimma*—which is conceived as the locus of the indebtedness and taxation. If the treasury sells this land to a person, it transfers it with its tax status, that is, no *kharāj*. After this, if the purchaser endows it, the tax status stays the same and the obligation of *kharāj* does not return.

Because al-Ghayti rejected the *kharāj* status of Egypt, the relevant tax was not *kharāj* but *ʿushr*. However, he does not go into the discussion of the locus of taxation. Rather, he appears to recognize the authority of the sultan to choose among divergent opinions of different schools and scholars. In the name of all scholars and Sufis of Egypt, he beseeches the sultan Süleyman to follow in the footsteps of his father Selim, who allowed all the *awqāf* to continue as they had before the Ottoman conquest.[74]

[69] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 131–32.

[70] For an examination of the jurisprudential discourse on containing the possible adverse consequences of plural shariʿa judicial practices in Egypt during the Mamluk period, see Talal Al-Azem, "A Mamluk Handbook for Judges and the Doctrine of Legal Consequences (*al-mūǧab*)," *Bulletin d'Etudes Orientales* 63 (2014): 205–26.

[71] Al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 183–86.

[72] TSMA, E.0704.45.1.

[73] Ibn Nujaym, "al-Tuhfa al-Mardiyya fi al-Aradi al-Misriyya," 128–29.

[74] Al-Ghayti, "al-Taʾyidat al-ʿAliyya li-l-Awqaf," 185–86.

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The Aftermath of the Controversy: `Ali Pasha's Report on the Investigation of the Endowments

The controversy on taxing *awqāf* did not remain solely in the domain of theoretical exchange. Indeed, it played a critical role in making the policies and laws affecting the *awqāf* in Egypt in the following period. The discourse developed as a result of certain policy prescriptions of the Ottomans, whereas its effects were registered in subsequent administrative decisions.

`Ali Pasha, the governor of Egypt, was central in all of this, even if he offered no clear theoretical stance on the matter.[75] Shortly after his arrival in Egypt on 18 July 1549, he appears to have paid particular interest to the affairs related to the endowments in Egypt —probably because he knew of the Ottoman central government's interest in them, an interest that continued from the investigations into the administration of Egypt in the wake of the governorships of Süleyman Pasha and Hüsrev Pasha. According to his own statement, `Ali Pasha believed that eliminating forgeries of ownership and endowment deeds would increase the revenues. In May 1550, before receiving the imperial decree ordering the collection of *kharāj* on *awqāf*, he proposed renewing the documents of the private property owners and beneficiaries of the endowments. The proposal required the verification of all claims of owners of private property and beneficiaries of endowments that were traced to the Mamluk era. He recommended that each such claim be checked against the Mamluk era registers before confirmation of its veracity. For him, Ottoman registers (*irtifāʿ* and *tarbīʿ* registers) compiled in the decades after the Ottoman conquest were unreliable, as they did not always rely on the authentic documents but on the "testimony of some witnesses or guides in towns and villages." He convinced ʿAbd al-Qadir, a scion of the Mamluk-era bureaucratic Jiʿan family, to find the relevant Mamluk registers, kept in the citadel of Cairo.[76] `Ali Pasha believed that this process of verification would reveal the forgeries in the claims of private property and endowment and help confirm the rights of the treasury over lands and taxes.

The Ottoman central government decided to proceed with `Ali Pasha's plan. The process of verification continued, even in the midst of the controversy under examination, and the verified claims were recorded in special registers until 1553.[77] In the end, `Ali Pasha prepared a document, explaining the criteria of verification of private property and endowments and the relevant decisions on these issues taken by the government. If a claim for private property or endowment was approved, a document of confirmation (*ifrāj*) was issued; in cases of doubt about the authenticity of the claim, the holder was given temporary possession (*tamkīn*), and if the claim was rejected, then the property was taken into the treasury (*ilḥāq*). `Ali Pasha's document allows us to see the continuities and changes in the government policy from the beginning of the controversy in late 1550 or early 1551 to 1553. This in turn makes it possible to reflect on the role of shariʿa as a medium for the interaction among different sides and the effect of this on lawmaking and governing decisions. Significantly, neither the fatwas of Ebussuud nor the opinions expressed in the treatises of Ibn Nujaym and al-Ghayti were binding. Even so, these fatwas and opinions had a practical relevance, because they constituted the main medium of interaction in this context. All the actors chose to reflect on the reality through articulating opinions concerning policy and rules. It is equally clear that `Ali Pasha considered their views and arguments carefully as he crafted a policy on this question, which was confirmed by the central government.

In `Ali Pasha's campaign of verification and authentication of claims, we can highlight four principles adopted by the governor in his decisions that were rooted in the issues examined by Ebussuud, Ibn Nujaym, and al-Ghayti (Table 1), and a fifth that none of the scholars directly commented upon.

[75] "Recueil de décisions juridiques," 1.

[76] Ibid., 2–4. Shaw, "Land Law of Ottoman Egypt," 106–15; Michel, "Les *Rizaq Iḥbāsiyya*," 122–25; Michel, *L'Égypte des villages*, 151.

[77] Shaw, "Land Law of Ottoman Egypt," 114–18.

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TABLE 1. Opinions of Scholars and Decisions at End of Controversy

Topic	Ebussuud	Ibn Nujaym	Al-Ghayti	Final Decision / `Ali Pasha
The status of the land of Egypt	The land of *kharāj*	The land of *kharāj*	The land of *'ushr*	The land of *kharāj*
Selling the treasury land	Permissible	Permissible	Permissible	Permissible
Endowment out of treasury land *(irṣād)*	Revocable	Irrevocable	Irrevocable	Revocable
Endowment out of salary assignments	-	-	-	Invalid
***Kharāj* on endowed lands**	Required	Cannot be imposed	Cannot be imposed	Not imposed

The first concerned the status of the lands of Egypt, on which point `Ali Pasha favored the views of Ebussuud and Ibn Nujaym, concluding that the lands of Egypt were subject to *kharāj*, and not *ʿushr*, as argued by the Shafiʿi al-Ghayti. In keeping with this view, if the status of land as endowment or private property was not permanently or temporarily confirmed, then the "*kharāj* of this land will be collected . . . for the treasury."[78]

Second, `Ali Pasha's decisions depended upon the validity of the public treasury selling landed property. In this regard, all three scholars agreed that private property rights regarding lands purchased from the treasury were legitimate.[79] `Ali Pasha's document similarly reflected this view. If the purchase from the treasury could be clearly established, the private property or endowment status was confirmed.[80]

Third, `Ali Pasha followed Ebussuud's opinion about the revocability of endowments of the treasury lands. Whereas Ibn Nujaym and al-Ghayti considered the charitable grants from the endowments to mosques, madrasas, scholars, etc. (*irṣād* or *aḥbās*) as irrevocable, Ebussuud considered them discretionary grants of the sultan, which could be revoked subsequently by any ruler. `Ali Pasha endorsed this view but gave these endowments one year of respite from paying *kharāj*.[81]

Fourth, `Ali Pasha weighed in on the legitimacy of endowing salary grants, an issue on which all three scholars were silent. This issue was one of the central issues `Ali Pasha addressed. He unambiguously rejected the consideration of the salary assignments in the form of cash from the treasury or from an endowment or in the form of a revenue assignment (timar or *iqṭāʿ*) as hereditary privileges. He also rejected turning these assignments into endowments with deeds specifying how they were to be transferred and used by the progeny and others after the death of the original assignees. He was unequivocal on this point: "I commanded the seizure of such resources for the treasury."[82]

Last, and most crucially, `Ali Pasha decided upon the question of imposing *kharāj* on endowments and waqf lands. Whereas Ebussuud required the imposition of *kharāj* on the endowed lands in Egypt, which had once been *kharāj*-paying, Ibn Nujaym and al-Ghayti were of the opinion that *kharāj* could not be imposed on the endowed lands in Egypt—

[78] "Recueil de décisions juridiques," 23–24.

[79] Al-Ghayti was misinformed about Ebussuud's and the Ottoman government's view and stated that the sultan was against the establishment of the endowments out of the lands purchased from the treasury. See al-Ghayti, "al-Ta'yidat al-ʿAliyya li-l-Awqaf," 172.

[80] "Recueil de décisions juridiques," 14–15, 20–21.

[81] Ibid., 22–23. This does not mean that the Ottomans tended to annul all these charitable grants. Rather, they continued many of them and kept special registers for them, which were updated and used by the government until the 19th century. Michel, "Les *Rizaq Iḥbāsiyya*," 120–22.

[82] "Recueil de décisions juridiques," 12–17.

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with the differing justifications described above. `Ali Pasha sided with Ibn Nujaym and al-Ghayti and declared that if private property or endowment status of land was confirmed, no *kharāj* was to be taken.[83] It is possible to say that the main change from the beginning of the controversy to `Ali Pasha's arrangements in 1553 was this last issue, that is, terminating the duty of *kharāj* from the endowments and lands owned as private property.

Conclusion

The waqf controversy in Egypt in the mid-16th century lays bare the relationship between Ottoman power, law, and governance. Preestablished administrative procedure did not resolve the matter. Rather, the dynamic interactions of various actors, legal concepts, and governing institutions paved the way for a workable solution to the issue. The episode highlights the particular political and legal configurations that informed Ottoman governance in Egypt during this period.

Governing Egypt entailed reckoning with the distinctive political, economic, demographic, intellectual, and judicial features of the country, and such features clearly had a significant bearing upon the range of options available to the Ottoman government as it sought to tax and administer *awqāf* in Egypt. Even so, shariʿa played a crucial role in this dynamic process because it provided the common interpretative medium by which the different parties in the controversy communicated their positions. The specific controversy started with the arrival of the imperial decree from the center together with Ebussuud's fatwas articulating opinions about shariʿa norms. Local jurists, namely Ibn Nujaym and al-Ghayti, responded with their own opinions on the matter by suggesting alternative shariʿa norms. The crisis was concluded when `Ali Pasha, with the approval of the central government, engaged the local challenge seriously and crafted a policy that implemented some of the opinions of these local scholars and rejected others.

The episode also highlights the limits of power exercised by the central government and its representatives in Egypt. The imperial decree, in its assertive documentary form, assumed an authoritative position, yet on its own was insufficient to define policy. After all, its dispatch alongside Ebussuud's fatwas tacitly acknowledged the limitations of the sultan's decree as the definitive final authority because the order required the legitimating support of shariʿa norms as articulated by a scholar.[84] The local reaction and Ibn Nujaym and al-Ghayti's ensuing opinions underscored these limitations, and in doing so similarly drew upon the legitimating force of shariʿa to buttress their positions. What emerged did not necessarily depend on an intellectual process of weighing the opinions of different scholars on the merits of their reasoning or scriptural sources. Rather, at the end of the controversy, `Ali Pasha's policy was built on a distinct configuration of the various parts of the opinions expressed by all the jurists in the controversy. The final policy decision represented each of the positions to some extent.

In this process, shariʿa constituted an instrument of governance. This, we believe, differs from its conception as an autonomous field of scholarly interpretation, or the understanding of shariʿa as an inclusive normative system encompassing rules derived from both the interpretative activities of scholars and the definitive edicts and orders of rulers.[85] Shariʿa as an instrument of governance provided a language for the articulation of diverse opinions and

[83] Ibid., 23–24.

[84] For other instances in which shariʿa opinions were used to buttress or shape Ottoman policies, see Joshua M. White, "Fetva Diplomacy: The Ottoman *Şeyhülislam* as Trans-Imperial Intermediary," *Journal of Early Modern History* 19, no. 2/3 (2015): 199–221; Abdurrahman Atçıl, "The Safavid Threat and Juristic Authority in the Ottoman Empire during the 16th Century," *International Journal of Middle East Studies* 49, no. 2 (2017): 295–314; Christopher Markiewicz, "Persian Secretaries in the Making of an Anti-Safavid Diplomatic Discourse," in *Diplomatic Cultures at the Ottoman Court, c.1500–1630*, ed. Tracey A. Sowerby and Christopher Markiewicz (New York: Routledge, 2021), 27–52.

[85] Stilt, *Islamic Law in Action*, 24–37; Anjum, *Politics, Law, and Community*, 93–136; Hallaq, *Impossible State*, 37–73.

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thereby facilitated the interaction of diverse actors, concepts, and institutions. This understanding of shariʿa differs from, but does not contradict, a conception of shariʿa as the body of opinions aimed at formulating norms in accordance with the divine will. Without denying shariʿa other functions in this and other contexts, the episode underscores how opinions of jurists, past and contemporary, functioned within the process of governance, and comprised the means by which different actors participated in and negotiated governing policies and rules in their own day.

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