Summary: This entry addresses the work of the nineteenth-century Ottoman Ḥanafī jurists Ibn ʿĀbidīn, father and son. The main argument is that the Ḥanafī fiqh was at the time in a period of full transition, located as it was between its cosmopolitan multi-centuries conservative tradition, on the one hand, and the crisis of the Ottoman tax and rent system on the other, which prompted a full revision of the legal system during the Tanẓīmāt era (1839–1876).

Ibn ʿĀbidīn, Muḥammad Amīn (Damascus, 1198/1784–1252/1836)
Ibn ʿĀbidīn, Muḥammad ʿAlāʾ (Damascus, 1244/1828–1306/1888)

Ibn ʿĀbidīn was a Damascene faqīh who converted from the Shāfiʿī to the Ḥanafī madhhab (law school) when he was studying under the authority of local masters; he also practiced the Naqshabandī method and wrote on sufism. Prior to fully devoting himself to the fiqh, Ibn ʿĀbidīn was like his father a merchant, an occupation that he kept all his life, enabling him a good enough revenue to collect a large library of printed books and manuscripts, with a vitae of over fifty works on record, some of which have been lost. The *tājir* occupation, and his official title of *amīn al-fatwa,* opened his eyes to practical matters on property and contract. When studying with local masters, he learned the reading of the Qurʾān, ḥadīth, and fiqh manuals, and the reasoning by analogy and deduction based on preference. His prime interest was the work of a seventeenth-century Damascene mufti by the name of Muḥammad ʿAlāʾ al-Dīn al-Ḥaṣkafī (d. 1088/1677), to which Ibn ʿĀbidīn devoted a full commentary (*ḥāshiya*). His death marks the end of the last 24th *ṭabaqa* (class) among all the late Ḥanafī faqīhs, of which the first *ṭabaqa* belonged to the founders, Abū Ḥanīfa, Abū Yūsuf, and Shaybānī (Farfūr 1:629).

By the time of his death, the Ottoman Empire was under the rule of sultan ʿAbdulḥamīd the First, and the Bilād ash-Shām was under Egyptian occupation. The Egyptian episode overburdened the population at large with more taxation, pushing the iltizām system to its brink. The year preceding the occupation, in 1247/1831, saw the killing of the Ottoman governor in Damascus, Selim Pasha, with some of his entourage, in an act of defiance by angry mobs protesting the excessive taxes.

The Egyptian withdrawal in 1840 witnessed the beginning of the Tanẓīmāt reforms, which produced the penal qānūnnāme in 1858, the Constitution of 1876, the Majalla in 1877, and the niẓāmī courts which introduced a modern professional and appellate system to the judiciary. If there is any legacy to Ibn ʿĀbidīn in the reform movement, it was through his only son Muḥammad ʿAlāʾ who completed his father's unfinished magnum opus *Ḥāshiyat Radd al-muḥtār* and sat on the Majalla's board in Istanbul in 1868–1871. Otherwise, Ibn ʿĀbidīn was more an erudite and meticulous organizer of the fiqh, and its last major figure, than a genuine reformer. If the *Radd* has witnessed many printed editions since the mid-nineteenth century, it is certainly due to its erudition, clarity, and reliability, qualities that the Ḥanafī predecessors certainly lacked.

Contemporary scholars tend to portray Ḥanafism as a doctrine and law that was adopted by the Ottomans as "the madhhab of the state, *madhhab al-dawla*" (Farfūr 1:635). Such portrayal should be cautiously taken to mean "the predominant madhhab of the state" rather than "state law." To portray Ḥanafism as "state law" would give the wrong impression of a modern legal system which was enacted by the state. Such a possibility was only adopted by the Ottoman Tanẓīmāt reforms and the niẓāmī civil courts, whose practices were based on modern Napoleonic codes. Ḥanafism by contrast separates itself from both the state and the will of the sultan as legislator, and for this very reason the foundations of the madhhab lack any concept of governance in relation to state power. Ibn ʿĀbidīn had mixed emotions on the relationship of his own madhhab to state matters, ranging from suspicion to sarcasm. A case in point was regarding an opinion delivered in Ḥaṣkafī's *Durr al-mukhtār* (to which Ibn ʿĀbidīn delivered a full commentary in his *Ḥāshiyat*) in which the faqīh recommended to prohibit smoking on the basis that this is what the sultan (*walī al-amr*) wished; to which Ibn ʿĀbidīn sarcastically responded that "the sultan is neither authorized to examine nor prohibit; and when one of our faqīhs claims that the sultan of our times is just (*ʿādil*), he would have acted in unbelief thinking that tyranny is just" (Farfūr 2:825). Biographers have reported that at the time of sultan ʿAbdulḥamīd copies of the *Ḥāshiyat* had been confiscated on the basis that they contained an upfront critique to the sultanate and caliphate, but then an order was issued by Shaykh-ul-Islam and the Directorate of education (*maʿārif*) to have it in print one more time.

Such anecdotal evidence should not, however, be casually taken, as it denotes more than a suspicious attitude towards the state and sultanic power. As with the other madhhabs, Ḥanafism did not develop a concept of governance that would be either tied to the state or the sultanate; what it did was work out prescriptive normative rules for the practices of the political economy of a community.

First of all, Ḥanafism openly acknowledges custom-as-law, which led Ibn ʿĀbidīn to state that "what is established by custom shares the status of the Text [*al-thābit bi-l-ʿurf ka-l-thābit bi-l-naṣṣ*]" (*Rasā'il* 1:43); and "once a custom in the sharʿ is taken into consideration, a ruling could be validated on it [*al-ʿurf fi-l-sharʿ lahu iʿtibār, lidhā ʿalayhī al-ḥukm qad yudār*]" (*Rasā'il* 2:114; 2:147; Farfūr 1:501). The hermeneutic circle as a whole is thus intimately tied up to both language and custom, together forming "a customary linguistic truth [*ḥaqīqa ʿurfiyya lughawiyya*]" (*Rasā'il* 1:277), simply because each utterance "needs to be made specific by custom: this is a priority because it reflects the will of all the people" (*Rasā'il* 1:276). In sum, if custom has the status of a performative utterance, it is because it is recognized as such by the community at large, which is an indication that Ḥanafī practice was empirically tied to a given community rather than to an abstract impersonal society where state law is normative.

On the other hand, if such attitudes, which prioritize customary practices, point to a suspicion towards the state and sultanic power, they are also meant to nurture suspicion towards all those corrupt and ignorant judges (Ghazzal: Chapter 2), and all those fatwa opinions "of our

time," "which we sadly realize are unreliable as soon as we examine any one of the late works which have not been properly vetted yet [*ghayr muḥarrara*]" (*Rasā'il* 1:13; Farfūr 2:923). What Ibn ʿĀbidīn would do all his life, in particular in his popular magnum opus *Radd al-muḥtār,* thanks to his access to a large collection of printed and manuscript sources, is to organize the Ḥanafī fiqh along more "reliable" opinions.

Such attitude could be seen, for example, in the way he would proceed on matters of contract and property. Those who expect to find coherent views on the Ottoman tax-farming system of the mīrī and iltizām will surely be disappointed (Ghazzal: Chapter 4). The crisis of the iltizām is obliquely addressed through the patrimonial beneficiaries of the tax system, which Ibn ʿĀbidīn condescendingly addresses as "the rulers of politics [*ḥukkām al-siyāsa*]." To begin with, the eighteenth and nineteenth centuries saw the proliferation of contractual practices whose aim was to address the decline of the value of the "real rent" in the waqf system. Considering that the iltizām primarily aimed at collecting the rent-cum-tax from mīrī domains, which already were excessive and abusive, there was a direct impact on waqfs, as their "real rent"—what stayed as such *within* the property—plummeted in conjunction with those of mīrī lands. As a result, various contractual practices approved of the tenant "investing" in the leased waqf property, de facto entitling him in a form of "possession." Such was the case of contracts like the *ḥaqq al ḥakar,* or the two-rent *ijāratayn* lease, or the *marṣad,* or the *ḥaqq al-kadek,* all of which implied that the tenant had made substantial "investments" in the property of the waqf, de jure according him a special *longue durée* lease. Such leases had to be approved by judges and were bound to complex procedures, which Ibn ʿĀbidīn's opinions and fatwas contributed at clarifying (Ghazzal: Chapter 3). Those technically stood among the events, *wāqiʿāt,* which the imams of the madhhab did not address, and which became collectively known as "the rights of decision over the awqāf" (Farfūr 1:282–284).

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