NIAS Netherlands Institute for Advanced Study in the Humanities and Social Sciences

The Hanafī School: History, Transformations, and Future

The Netherlands Institute for Advanced Study (NIAS)
December 3-4, 2018

WORKSHOP ORGANIZERS

Samy Ayoub, University of Texas at Austin
Christian Lange, University of Utrecht

SCHEDULE

DAY ONE: DECEMBER 3, 2018

- Registration & Lunch: 11:00AM – 1:30PM
- Introduction and Welcoming Remarks: 1:30 PM – 2:00PM

Panel One: 2:00 PM- 3:30 PM

Hanafī Fiqh: New Questions & Approaches

- **Sohail Hanif**, Cambridge Muslim College, "*Fiqh* as Method: Early Classical Ḥanafism in the Classroom"

- **Aamir Bashir**, University of Chicago "Persistence of a *Madhhab*: Lessons from Modern South Asia"

- **Christian Lange**, Utrecht University, "Reading Hanafi Sources, From a Distance"

- **Coffee Break 3:30- 4:00 PM**

Panel Two: 4:00 PM – 6:00 PM

Ottoman Hanafism: Transformations and Reconstitution

- **Guy Burak**, NYU Libraries, " Feyzullah Efendi, 'Abd al-Rahim ibn Abi al-Lutf and the Rise of the Provincial Fatawa Collections in the Long Eighteenth Century"

- **Hatice Kübra Kahya**, Istanbul University, "The sentence of death: Nūr al-Dīn al-Tarâbulsī's *fatwa* on *waqf*"

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- **Abdurrahman Actil**, Istanbul Sehir Univeristy, "The *Kanun* Laws and Sharia Courts in Egypt during the Mamluk-Ottoman Transition (1517 – 1524)"

Keynote Address:6:00 PM – 7:00 PM

Professor **Murteza Bedir**, Istanbul University, "The Hanafi School: Formation, Transformation, and Contemporary Relevance"

Dinner: 7:30PM – 9:30PM

Ristorante Vasso
Rozenboomsteeg 10-14
1012 PR Amsterdam

DAY TWO: DECEMBER 4, 2018

Panel Three: 9:00 AM- 11:30 AM

Early Hanafism and the Formation of a Legal Tradition

- **Hacer Yetkin**, Marmara University, "Rethinking the Hanafi-Mu'tazili interaction: Is it overemphasized?"

- **Ayşegül Şimşek**, Marmara University, "The Formation and Evolution of the Early Ḥanafī Discourse on Rebellion"

- **Nesrine Badawi**, AUC Egypt, "Al-Shaybānī and the Regulation of Armed Conflict"

- **Robert Gleave**, University of Exeter, "Abū Hanīfa, Jaʿfar al-Ṣādiq and the beginnings of Islamic Legal Theory

Lunch 11:30 PM – 12:30 PM

Panel Four: 1:00 PM – 3:00 PM

Contemporary Hanafism

- **Muhammad Almarakeby**, University of Edinburgh, "Ijtihād and Social Changes in the *fatwā*s of Late Ḥanafīs"

- **Samy Ayoub**, University of Texas, " Pseudo-Ḥanafīs? *Sharīʿa*, Divorce, and Legal Reform in the 20th Egypt

- **Muetaz A. Al-Khatib**, Hamad Bin Khalifa University, "Muslim Minorities and Juristic Consideration: Hanafi Jurisprudence as a Case Study"

Panel Five: 3:00PM – 5:00PM

Readings in Hanafī Texts

Concluding Remarks 5:00PM – 5:30PM

Dinner: 7:30PM – 9:00PM

Mogul: Indian Restaurant
Rokin 107, 1012 KN Amsterdam

Departures: December 5, 2018

ABSTRACTS

(1) *Fiqh* as Method: Early Classical Ḥanafism in the Classroom

Dr. Sohail Hanif, Cambridge Muslim College

The early classical period of the Ḥanafī school – from approximately 400 to 650 on the Islamic calendar – produced leading teaching texts of the Ḥanafī school, presenting the full maturation of Ḥanafī law and theory. In this paper, I use leading works of legal theory and substantive law from this period to present a model of Ḥanafī jurisprudence. I show that this model represents the essential features of Ḥanafī thought, and that the goal of legal training was acquiring the ability to reason soundly within this system of thought. Legal commentaries teach students not only how to understand the reasoning behind individual cases but also how to construct sound legal arguments and how to accommodate knowledge of natural science and social practices into these legal arguments. I argue that treating Ḥanafī teaching texts as textbooks that present a method of legal thought as opposed to simply a set of rules is what maintains the relevance of this science and opens the possibility for a re-imagination of its implications in a variety of contexts. I reflect also on the need for constructing a *madhhab* as classically conceived – that is, as a guild of living jurists – for the implications of Ḥanafī thought to be fully realised.

(2) Persistence of a *Madhhab*: Lessons from Modern South Asia

Aamir Bashir, PhD Candidate , University of Chicago

Scholars dealing with the formation and perpetuation of *madhhabs* (Islamic legal schools of thought) tend to engage with the subject mostly with reference to the premodern period. This paper seeks to draw their attention towards modern South Asia, where one can see processes akin to *madhhab* formation and perpetuation unfold before us. In particular, I focus on a group of Ḥanafī *ʿulamā*, the Deobandīs, who emerged as a distinct orientation (*maslak*) within the larger Sunni community of northern India in the nineteenth century. While all the factors identified by scholars of premodern *madhhabs*, namely distinct legal corpus (*furūʿ*) & legal methodology (*uṣūl*), institutions (madrasas and courts), and state sponsorship, have had varying roles to play in the emergence of the Deobandī *maslak*, I seek to identify the one crucial factor which sets them apart and is responsible for their continued existence as a distinct group. Through textual analysis of works produced during the course of two contemporary intra-Deobandī debates in Pakistan, viz. the legitimacy of Islamic banking & finance and the legitimacy of "private" armed rebellion against a state, I demonstrate that more than anything else, it is the model behavior enacted by the *akābir* (elders) of the earlier generations of Deobandīs, that serves as the final criterion for legitimacy of thought and action. This reference to the *akābir*, in turn, serves to cement Deobandī *maslak* identity, despite the presence of centripetal forces generated by modernity and regional geopolitics.

(3) Rethinking the Hanafi-Mu‘tazili interaction: Is it overemphasized?

Dr. Hacer Yetkin, Marmara University

There is sufficient historical evidence to acknowledge that Hanafites were in interaction with Mu‘tazila during their formative period. In addition to the rationalist tendencies of both schools and sharing the same academic circles, the political cooperation during *mihna* caused an impression of stronger alliance between them. It is widely accepted that the dissolution of Hanafi school from Mu‘tazila –in terms of juristic methodology- was not before the end of the fifth century AH by the efforts of Transoxanian Hanafites, first al-Serakhsî (d. 483/1090) and al-Pazdawi (d. 482/1089) and later by al-Samarqandî (d. 539/1144), who explicitly undertook the task of constructing a non-Mu‘tazili methodology. In this paper, I will argue that the Hanafi school has always and primarily been a law school, and the separation of Hanafites from Mu‘tazila took place quite earlier than it is assumed. The references in relevant texts of both schools prove that the last scholar to bear both identities –Hanafi and Mu‘tazili- in the real sense was al-Karkhi (d. 340/952). After him, the Hanafi methodology was represented by al-Jassas (d. 370/981) and the Mu‘tazili methodology by Abu Abdullah al-Basri (d. 369/980). Similar to Transoxanian Hanafites, Mu‘tazili jurisprudents like Qadi Abduljabbar (d. 415/1025) and Abu’l-Husayn al-Basri (d. 436/1044) also sought for an independent Mu‘tazili methodology. Thus, the accusation of al-Samarqandi against the Transoxanian Hanafi jurisprudent al-Dabusi (d. 430/1039) of being inclined to Mu‘tazila, in as late as the sixth century AH, appears to be motivated by some ideological concerns of the period.

(4) The sentence of death: Nūr al-Dīn al-Tarâbulsī’s *fatwa* on *waqf*

Hatice Kübra Kahya, PhD Candidate, Istanbul İlahiyat

The issue of *istibdal* meaning exchanging *waqf* properties with private properties was a subject of deep discussions both in Mamluk and Ottoman Empires reaching their peak between 13th-16th centuries. Many Mamluk scholars including Grand *Kadi*s of Mamluk; Ibn Harīrī, Ibn at-Turkmani, Tarsūsī, Kafiyaci, Ibn Qutluboga and several prominent Ottoman scholars like Ibn Nujaym and Qinalizadah along with the chief *mufti*s Muhyiddin Çivizade and Ebussuud Efendi, all participated in the debate. In the course of the Ottoman-Egypt consolidation process following the conquest of Egypt by Ottomans in 1517, there arose some legal disputes between Egyptian and Ottoman jurists. Among them, the most agonizing one happened between the *kadi* of Egypt then the chief *mufti* Muhyiddin Çivizade and Nuraddin Tarâbulsī. Tarâbulsī, for the *fatwa* of *istibdal* issued by himself which angered Çivizade and other Ottoman jurists in Egypt, was condemned to death by Sultan Sulayman. Before the document announcing the sentence had reached Egypt, Tarâbulsī died of natural causes in 1535. In this paper, I will examine the *fatwa*s and epistles produced by the relevant Hanafi jurists to this event among whom there were Ibn al-Shalabī who supported, by his *fatwa,* his friend Tarâbulsī, Qinalizadah who took pride in his mentor Çivizade’s legal operations to protect the *waqf*s in Egypt, the son of Amīn al-Dīn Abd al-‘Âl who did, in his epistle, put in a good word for Tarâbulsī and his own like-minded father, and also the 17th century Egyptian Hanafi jurist Shurunbulâlī with his pro-Çivizade work on *istibdal*.

(5) Feyzullah Efendi, 'Abd al-Rahim ibn Abi al-Lutf and the Rise of the Provincial Fatawa Collections in the Long Eighteenth Century

Dr. Guy Burak, NYU Libraries

The paper will examine the rise of *fatawa* collections by state-appointed Hanafi muftis across the Ottoman lands over the course of the eighteenth century. The earliest of these collections was the collection by the Jerusalemite Hanafi mufti 'Abd al-Rahim ibn Abi al-Lutf (d. 1692), whose son was commissioned by the seyhulislam at the time, Feyzullah Efendi, to compile his father's rulings. Over the course of the eighteenth century the practice proliferated from *Bilad al-Sham* to Anatolia and the Balkans. This development was significant in the empire's regulation of its legal paper trail, as *fatawa* had not been systematically organized in collection before the eighteenth century. It also reflect an attempt to canonize local traditions by turning *fatawa* that circulated locally as documents and majmu'as into provincial "reliable books."

(6) The Formation and Evolution of the Early Ḥanafī Discourse on Rebellion

Ayşegül Şimşek, PhD Candidate, Marmara University

Bāb al-bughāt is the name of the chapter that deals with rebellion in classical *fiqh* literature. However, because the Muslim society did not witness any severe internal threat during the lifetime of the Prophet (pbuh), there is a scarcity of direct references to rebellion in the Qur'ān and Sunna. As a result, the theorizing activity of the jurists plays a central role in the creation of these chapters on rebellion. Identifying a framework for the fight against rebels is especially important because this also means distinguishing it from the war against other adversaries; such as apostates and bandits. For this reason, Ibn Taymiyyah accuses the early jurists (primarily *ahl al-Kūfa*) of inventing a legal principle that leads to civil unrest (*fitna*). In this paper, I will argue that the Ḥanafīs were the first school of law to systematically and elaborately discuss rebellion. I will examine the early Ḥanafī approach to rebellion by tracing the formation and evolution of *bāb al-bughāt*, and will try to determine if the ruling class had any effect on the legal discourse that resulted in a harsher treatment towards rebels.

(7)

الأقليات الدينية في الوعي الفقهي: الحنفية نموذجًا

Dr. Muetaz A. Al-Khatib, Hamad Bin Khalifa University, Qatar

إشكالية الأقليات الدينية والأقليات بشكل عام إشكاليةٌ حديثة نسبيًّا، فتعبير الأقلية يُحيل إلى التشكيلات القومية أو الإثنية أو الدينية أو اللغوية التي تختلف عن محيطها أو المجموعات الأخرى التي تقيم معها في كيان واحد، وهي إشكالية أفرزها تشكيل الكيانات السياسية الحديثة التي أخذت شكل الدولة، وقد برز تعبير الأقليات بقوة مع التحول من "العثمانية" إلى مفهوم الدولة، سواءٌ تلك الدولة الوطنية المستقلة في مرحلة ما بعد الاستعمار أم نظام الدول والأنظمة التسلطية الحالية.

ومع تبلور الوعي الحداثي، والسعي نحو إنشاء الكيان السياسي والخروج من شكل الكيانات التقليدية السائدة، برزت لدى الطوائف غير المسلمة منذ أواخر القرن التاسع عشر نوازع تأكيد الذات على شكل هجوم على الذاتية السياسية الإسلامية المؤكدة بقوة في الدولة، "وظهرت الدولة العلمانية كتنازل متبادل عن الذاتية يقوم على إلغاء الطابع الديني للدولة الإسلامية، وليس كبناء لذاتية جديدة عصرية وقومية تتجاوز الدين"، وفي المقابل طرحت الإشكالية نفسها على أصحاب أطروحة "الدولة الإسلامية" الذين وجدوا أنفسهم مضطرين إلى بناء تصورات حديثة لهذه الإشكالية ذات الإحالات الفقهية الكثيرة.

تركز هذه الورقة على معالجة الوعي الفقهي بإشكالية الأقليات الدينية؛ بهدف توضيح سياقاتها وقوانينها واتجاهات التجديد فيها من جهة، ولبيان حجم الإشكال الواقع في محاولة استعادة بعض التصورات التاريخية من جهة أخرى، وسيتم التركيز على النظام الفقهي لأهل الذمة عند الحنفية كنموذج.

(8) Pseudo-Ḥanafīs? *Sharīʿa*, Divorce, and Legal Reform in the 20th Egypt

Dr. Samy Ayoub, University of Texas at Austin

This paper explores an important debate on Divorce Law in the early 20th century Egypt between the *sharīʿa* judge Aḥmad Muḥammad Shākir (d. 1958) and the adjunct to the last Shaykh al-Islām of the Ottoman Empire, Muḥammad Zāhid al-Kawtharī (d. 1952). The debate is centered on Shākir's argument that triple divorce (deemed irrevocable according to the Ḥanafī school, which is the school that Egyptian *sharīʿa* judges were required to follow by the Ministry of Justice since 1880) should be treated as a single revocable divorce – a position that the Ḥanafī school rejects. The Egyptian divorce law was changed on 10th March 1929 to embrace the revised position that a triple divorce counts as a single divorce, thereby making it revocable. Aḥmad Shākir argued that the official adherence of the *sharīʿa* courts to the preponderant opinions (*al-rājiḥ*) of the Ḥanafī school was one of the key obstacles to a meaningful legal reform. Despite his declared following of the Ḥanafī school, Shākir consistently dismissed Ḥanafī legal norms and authorities, and advocated the urgency to break with the control of the Ḥanafī legal school on the process of judicial reasoning in the Egyptian *sharīʿa* courts. Aḥmad Shākir was a pseudo-Ḥanafī.

(9) Al-Shaybānī and the Regulation of Armed Conflict

Dr. Nesrine Badawi, AUC Egypt

This presentation examines al-Shaybānī's seminal jurisprudence on the regulation of armed conflict and attempts to offer an interpretation of his work through analysis of the interplay between his jurisprudential theories and the socio-political context he witnessed. Through a detailed examination of the deductive process employed by al-Shaybānī, the paper argues that a reading of his work from a strictly legal perspective would fail to understand how the formidable Muslim empire he witnessed closely had impacted his jurisprudence. At the same time, the paper also argues that despite proximity to the caliph, al-Shaybānī had maintained relative independence from the Caliph, leading him to develop jurisprudence that is neither apolitical nor subservient to the ruling class. Rather, al-Shaybānī's *al-Aṣl* can be read as a pragmatic statesman/jurist's attempt to weigh out and balance different and perhaps competing interests, with a special interest in establishing Muslim suzerainty and maintaining internal stability.

(10) The *Kanun* Laws and Sharia Courts in Egypt during the Mamluk-Ottoman Transition (1517 – 1524)

Dr. Abdurrahman Actil, Istanbul Sehir Univeristy

In the pre-modern Muslim societies, there was a broad consensus about the authority of sharia laws to regulate the horizontal relationships between individuals, including in such areas as personal status, transactions, and inheritance. Underneath that consensus, however, there could

be significant differences of opinion, especially about how to put that law into practice. For example, which of the doctrines of the four legal schools (Hanafi, Shafiʿi, Maliki and Hanbali) would become the basis of legal procedure, endorsed and sanctioned by the state apparatus? Who would implement sharia rules in the courts? What would be the relationship of the sharia judge with the ruling class? After the Ottoman takeover of Egypt, these questions were all matters of contention. The *kanun* laws in the form of decrees (*ferman*) brought about several shifts in the organization of sharia courts and the nature of their relationship with the Ottoman government.

An investigation into the context of these laws reveals that the will and ideas of the sultan (or his men) did not singlehandedly determine how sharia courts in Egypt would function. Local groups, including local scholars and common people, participated in the interactions that determined how those courts were to function and contributed to the formation of the laws that regulated sharia courts in Egypt. The end result of these interactions appears to have been a product of the hybridization of the Mamluk and Ottoman priorities. The judicial administration of Egypt was incorporated into the Ottoman scholarly-bureaucratic system by the appointment of a top Hanafi scholar-bureaucrat as the single judge formally above all other judicial personnel. However, in Egypt, in contrast to the Ottoman Balkans and Anatolia, the representatives of all legal schools were appointed as deputies and recognized as of equal status in the judicial process.

(11) Reading Hanafi sources, from a distance

Dr. Christian Lange, Utrecht University

One of the Arabic digital subcorpora currently under construction at Utrecht University (https://sensis.sites.uu.nl/digital-humanities/) is a collection of fifty-five texts (ca. 50 million tokens) from the *furūʿ al-fiqh* tradition of the four Sunni schools of law and the Ja'fari school. This paper, after briefly discussing Arabic textmining terminology, describes the difficulties in putting together the Ḥanafī subcorpus (e.g., dealing with the limited availability of texts, defining criteria for a sensitive selection of available texts, or standardizing digital texts according to established or emerging standards developed elsewhere, e.g., in the framework of the Open Islamic Texts Initiative [OpenITI]). The paper then outlines a number of preliminary 'solutions' to these issues, as they are currently being tested at Utrecht University. Finally, the paper presents some first research results, powered by the corpus search engine BlackLab (http://inl.github.io/BlackLab/index.html), as they apply to the Ḥanafī subcorpus. These exercises in "distant reading", for the most part, pertain to the effort to trace the conceptual history of (Ḥanafī) *fiqh* in the longue-durée (2nd/8th to 13th/19th centuries).

(12) Ijtihād and Social Changes in the *fatwā*s of Late Ḥanafīs

Muhammad Almarakeby, PhD Candidate, University of Edinburgh

In this paper, I draw on the *fatwā*s of Muhammad Al-Mahdī Al-'Abbāsī (1827-1897) to study the issue of *ijtihād* and *taqlīd* in late Ḥanafī fiqh. Al-Mahdī was a major character in the Ottoman Egypt. He held the office of the muftī of Egypt for almost forty years in the 19th century (1848 to 1886). The *fatwā*s of Al-Mahdī, I suggest, give us interesting examples to rethink *ijtihād* and *taqlīd* in the early modern period; a period which is always depicted as

stagnant and static. Studying his works, it is easy to observe that Al-Mahdī has considered himself as a *muqallid* who has no authority to perform *ijtihād*. For example, In one of his unpublished treatises, he highly condemns other *muftī*s for their deviation from Ḥanafī *madhhab* in the triple divorce case (Al-Mahdī, manuscript) However, it is noticed also that he himself occasionally contradicts the early Ḥanafī *fatwā*s. He allows wives, for instance, to refuse to migrate with their husbands although the default opinion of the *madhhab* affirms that wives should obey their husbands and travel with them whenever they travel. In another case, Al-Mahdī claims that the marriage contract of the woman who marries some person who is not *kuf'* (socially and religiously equivalent) without the permission of her guardian should be void (*bāṭil*) instead of the default opinion of the *madhhab* that it should be *fāsid* (void but reparable) only. I suggest in this paper that Al- Mahdī's approach can only be understood if we managed to escape our limited and reductive understanding of *ijtihād* in the Islamic studies academia. Unlike the standard understanding of *ijtihād* as a process of deducing the ruling only, Islamic law theorists suggest that in order to reach a ruling, 'ulamā' have to perform two kinds of *ijtihād*; the first is to deduce the ruling from the texts, and the second is to apply this ruling to the particular case in question.

(13) Abū Ḥanīfa, Ja'far al-Ṣādiq and the beginnings of Islamic Legal Theory

Robert Gleave, University of Exeter

The recorded exchanges between the 6th Imam of the Shiites (Imam Ja'far al-Ṣādiq) and Abū Ḥanīfa are scattered throughout the Shī'ī ḥadīth corpus. The general pattern of the exchange is the Abū Ḥanīfa is quizzed or makes a comment which reveals his juristic incompetence; Imam Ja'far corrects him, pointing out his errors, and Abū Ḥanīfa is embarrassed by his ineptitude. They are, of course, part of an early Shī'ī polemic against certain trends in Islamic legal theory which were seen as deviant from the Prophet's own legal system which had been passed on to the Imams. In these exchanges we find not only polemic, though, but the emergence of the early landscape of Islamic legal theory and the debates which were to figure later between the various *madhhab*s. In this paper, I aim to examine these recorded exchanges between Abū Ḥanīfa and Imam Ja'far al-Ṣādiq, in order to explore how the Ḥanafis were viewed in early juristic discourse by the early Shī'ī legal writers, and the extent to which these portrayals reveal the different visions of the law in the emerging schools.