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"al-Fatawa al-Mahdiyya"**



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MUḤAMMAD AL-‘ABBĀSĪ AL-MAHDĪ (D. 1897),  
GRAND MUFTĪ OF EGYPT, AND HIS  
*AL-FATĀWĀ AL-MAHDIYYA*

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*Abstract*

An analysis of fatwas issued by the Grand Mufti of Egypt, Muḥammad al-‘Abbāsi al-Mahdī (d. 1897), and of related legal texts, indicates that during the second half of the nineteenth century, the Grand Mufti played an increasingly important role in ensuring the correct and uniform application of Ḥanafī law, thereby preventing him from serving as an agent of legal change.

**I**N THE SECOND half of the nineteenth century, Egypt's administration expanded and became more and more specialized. The loyal members of Muḥammad ‘Alī's household, who were expected to function in any post within the military and the civil administration and stood under his personal command, were gradually replaced by a new type of bureaucrat, for whom specialized skills and a keen knowledge of the administrative regulations were as important as personal loyalty to the ruler. Increasingly, their functions and competence were formally circumscribed. Relations between the administration and the subjects, and relations between officials themselves, tended to be governed less by personal ties than by rules and regulations. This implied that the scope of freedom of the administrators was curbed by the law. As a corollary of this development, the Khedives founded secular courts, specialized councils and bodies, whose competence was governed by legislation. After the first secular laws in the fields of criminal, commercial, and administrative law were enacted during the latter part of Muḥammad ‘Alī's reign, legislation in these fields greatly expanded during the reigns of his successors.<sup>1</sup>

In this article I will examine how these changes in the organization of the state affected the administration of Shari‘a justice and, especially, the office of the Grand Mufti. After introducing my main

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<sup>1</sup> For a detailed survey of these developments, see F. Robert Hunter, *Egypt under the Khedives, 1805-1879: From Household Government to Modern Bureaucracy* (Pittsburgh: University of Pittsburgh Press, 1984).

source, the collection of fatwas issued by Muḥammad al-‘Abbāsī al-Mahdī, a Grand Mufti, who held his post from 1848 until his death in 1897, and its author, I will argue that the bureaucratization of the state extended also to qadis and muftis, through the imposition of strict adherence to one of the opinions within the Ḥanafī school. The office of Grand Mufti played a crucial role in this connection. It developed from a relatively simple one — that of the Ḥanafī mufti of the Cairo Shari‘a court, who was occasionally consulted by the government — into a well remunerated post at the top of the hierarchy consisting of all those involved in the administration of Shari‘a justice, consulted by the public as well as by state agencies, and one of whose tasks it was to maintain a strict adherence to the Ḥanafī school within the judiciary. This prevented the Grand Mufti from introducing legal reform in the field of Islamic law.

*Al-Fatāwā al-Mahdiyya*

In May 1887 (Sha‘bān 1304) the publishing house associated with al-Azhar University completed the printing of a seven volume collection of fatwas issued by Muḥammad al-‘Abbāsī al-Mahdī (1827-1897), who was then the Grand Mufti of Egypt, a position he had held since 1848. Entitled *al-Fatāwā al-Mahdiyya fī l-Waqā’i‘ al-Miṣriyya* (hereinafter FM),<sup>2</sup> this massive collection contains approximately 13,500 fatwas that were selected by al-‘Abbāsī from the fatwas he had issued during the period between 1848 and 1886. Beginning from 1883, al-‘Abbāsī began to prepare the fatwas for publication by arranging them into chapters reflecting the standard order of Ḥanafī legal texts;<sup>3</sup> within each chapter the fatwas are arranged in chronological order according to their date of issue.<sup>4</sup>

Each fatwa begins with the formula *su’ila fī* followed by a noun (a question was asked concerning ...). The answer is introduced by *ajāba* (he answered), sometimes followed by *na‘am* (indeed) if the wording of the question correctly anticipates the answer. A question submitted by a government agency begins with *su’ila min / min ṭaraf*

<sup>2</sup> The title page mentions 1301 A. H. as the year of publication, which cannot be correct as some of the fatwas included are dated as late as 1303 A.H. I follow the year of publication mentioned in the colophon at the end of vol. VII.

<sup>3</sup> For a list of the chapters, see G. Delanoue, *Moralistes et politiques musulmans dans l’Égypte du XIXe siècle (1798-1882)* (Le Caire: Institut français d’archéologie orientale, 1982), 176-78.

<sup>4</sup> FM, I, 4-5.

... *fī* (a question was posed by ... concerning ... ), *su'ila min / min taraf ... bi-mā maḍmūnuhu ...* (a question was posed by ... with the following contents ... ). Beginning in approximately 1860, the expressions become more bureaucratic, as, for example: *su'ila bi-ifāda wārida min ... bi-tārīkh ... maḍmūnuhā ...* (a question was posed in a missive from ... dated ... with the following contents ... ). One fatwa is written in the form of a poem in answer to a question formulated in verse.<sup>5</sup> All fatwas end with the formula *wa-Allāh ta'ālā a'lam* (and the Exalted God knows best).

The fatwas vary in length from a few lines to several pages. They do not resemble Ottoman Turkish fatwas in which the question directed to a mufti is rephrased by his clerks in such a way that "yes" or "no" (*olur, olmaz*) suffices as an answer. The date on which each fatwa was issued is printed in the margin, sometimes with a note summarizing the contents of the fatwa.

Al-'Abbāsī issued most of the fatwas included in the FM in his capacity as mufti of the Grand Shari'a Court in Cairo, where he received requests for legal opinions from private individuals who were either involved in lawsuits or unsure about their Shari'a rights and duties, as in the following example, dealing with a man, a woman, and a slave:

A man sold his adult slave after becoming angry with him for entering his harem. But his wife purchased the slave from the first buyer in order to vex her husband. She wanted the slave to stay with her in her house. The husband asked the Grand Mufti [1] if he might forbid her to do so; [2] if she is allowed to unveil her face for the slave; and [3] if he is entitled to lodge her at his discretion in another residence that satisfies the requirements of the Shari'a. The Grand Mufti answered his questions by stating that a woman's slave is in this respect like any stranger (*ajnabi*). He is allowed to see only her face and hands, and if he fears being overcome with lust, even looking at her face is forbidden. Furthermore, as a slave, the man is allowed to enter her rooms without asking permission. The expenses of a wife's slave who serves her exclusively and has no other duties are to be paid by the husband, who is not entitled to bring her another servant unless she agrees. The husband has no right to remove a servant from his wife's home, unless the slave is untrustworthy and embezzles money for shopping. In that case the husband may replace him with another who is trustworthy.<sup>6</sup>

<sup>5</sup> FM, I, 299 (23 Rabi' I 1269).

<sup>6</sup> FM, V, 291-92 (18 Rajab 1270).

The Grand Mufti did not go into the third question posed by the angry husband, limiting himself to the remark that the husband is obliged to provide a residence that satisfies the legal requirements, without specifying whether the choice of a residence is exclusively his.

Approximately seven percent of the fatwas were issued at the request of official agencies, including local Shari‘a courts.<sup>7</sup> A few fatwas emanated from the Hijaz, India (Hind) or Turkey (al-Rūm).<sup>8</sup> Occasionally the name of the person at whose request the fatwa was issued or whose estate was at issue is mentioned in the question. This occurs only with regard to very important personalities, such as the Khedive and members of his household.

A few fatwas were endorsed by other ulema, usually the Shaykh al-Azhar (during the period that al-‘Abbāsī did not hold this position), the secretary to the Grand Mufti (*amīn al-fatwā*), and other high ranking ulema, not all of whom were Ḥanafīs. These endorsements occurred in cases involving a controversy between groups of scholars that had to be settled at the highest level;<sup>9</sup> in cases that were of great political import, such as the fatwa issued against the Sudanese Mahdī;<sup>10</sup> and in cases in which a fatwa was requested by the Privy Council (*al-Majlis al-Khuṣūṣī*), the highest conciliar body in Egypt<sup>11</sup>

<sup>7</sup> Authorities requesting fatwas were: Shari‘a courts (33 percent) — often submitted through the provincial administration (*mudiriyya*) and from there through the Cairo Governorate (*Muḥāfaẓa*) or through the Viceregal Cabinet (*al-Ma‘iyya al-Saniyya*); *Bayt al-Māl* (15 percent); Cairo Governorate (*Diwān al-Katkhudā Muḥāfaẓat Miṣr*) (10 percent); the Cairo Police Department (*Dābiṭiyyat Miṣr*) (6 percent); the Waqf Administration (4 percent); The Bureau of Pensions (*al-Rūznāma*) (3 percent); the *Majlis al-Aḥkām* (3 percent); and the Ministry of Justice (*Nazārat al-Ḥaqqāniyya*) (3 percent).

<sup>8</sup> See, for example, FM, III, 35 (20 Jumādā II 1266), from the agent of the waqfs in Mekka and Medina (*wakīl awqāf al-Ḥaramayn*); FM, II, 570 (20 Jumādā I 1270), from the office of waqfs in Mekka and Medina (*Diwān Awqāf al-Ḥaramayn*); FM, II, 2 (4 Muḥarram 1283), from India (*min al-Hind*); FM, II, 27 (8 Shawwāl 1296), from Turkey (*min bilād al-Rūm*); FM, V, 300-09 (20 Muḥarram 1302), from India (*min al-Hind*).

<sup>9</sup> FM, I, 222-26 (23 Jumādā II 1283): a controversy among the ulema of Dumyāt regarding the law of repudiation; FM, II, 698-700 (19 Jumādā I 1283): a controversy among high ranking muftis on the permissibility of substitution of waqf property (*istibdāl*).

<sup>10</sup> FM, II, 28-32, 18 Dhū al-Qa‘da 1300 (*su‘ila min ṭaraf al-ḥukūma al-khidīwiyya*). For an analysis of this fatwa, see R. Peters, "Islam and the Legitimation of Power: The Mahdi-Revolt in the Sudan," in *XXI. Deutscher Orientalistentag (Berlin, März 1980): Ausgewählte Vorträge*. Hrsg. von F. Steppat (Wiesbaden: 1983), 409-20.

<sup>11</sup> See J. Deny, *Sommaire des archives turques du Caire* (Le Caire: Institut français d’archéologie orientale, 1930), 120-21; Hunter, *Egypt under the Khedives*, 49-50.

(of five such cases, four were endorsed by additional ulema).<sup>12</sup> It is nevertheless difficult to determine the specific circumstances in which such an endorsement was required.

The overwhelming majority of the fatwas deal with legal matters (as opposed to matters related to ritual and dietary laws). The chapter on ritual law is only ten pages long (that is, one quarter of one per cent of a total of 3,988 pages) and contains a mere twenty-one fatwas, of which eight were issued at the request of state officials. The paucity of fatwas on this subject reflects the fact that although the Egyptian law courts applied Ḥanafī law, the majority of the population followed the Shāfiʿī or Mālīkī school in religious matters. It is interesting to compare the percentage of fatwas on religious topics in the FM, with that in the fatwa collection<sup>13</sup> of al-ʿAbbāsī's contemporary, the Mālīkī mufti, Muḥammad ʿIlaysh (1802-1882). Of 700 pages in ʿIlaysh's text, 181 (26 percent) deal with religious subjects.

*The author*<sup>14</sup>

Muḥammad al-ʿAbbāsī al-Mahdī, son of Muḥammad Amin al-Mahdī (d. 1831-32),<sup>15</sup> for some time Ḥanafī mufti during Muḥammad ʿAlī's reign, was born in the year 1827. In October 1848 al-ʿAbbāsī was appointed Ḥanafī mufti by Ibrāhīm Pāshā.<sup>16</sup> Because of his youth —

<sup>12</sup> Endorsed by additional ulema: FM, II, 730, III, 262, IV, 340, V, 523; signed only by the Grand Mufti: FM, IV, 645.

<sup>13</sup> See Muḥammad ʿIlaysh, *Faṭḥ al-ʿAlī al-Mālīk fī'l-fatwā ʿalā madhhab al-Imām Mālīk* (2 vols., Cairo: Maṭbaʿat al-Taqaḍḍum, 1901-02 [1319 A.H.]).

<sup>14</sup> Among the few sources for al-ʿAbbāsī's biography, the most important are an account by his son, Muḥammad ʿAbd al-Khālīq al-Ḥifnī, included in J. Zaydān, *Tarājim mashāhīr al-sharq fī'l-qarn al-thālith ʿashar* (2 vols., 3rd ed., Beirut: Dār Maktabat al-Hayāh, n.d.), II, 250-55, and a note in ʿAlī Mubārak, *Al-Khiṭaṭ al-Tawfiqiyya* (20 vols. Būlāq: Al-Maṭbaʿa al-Kubrā al-Amīriyya, 1886-89 [1304-06 A.H.]), XVII, 12-13. For a complete list of sources, see A. Schölch, *Ägypten den Ägyptern: Die politische und gesellschaftliche Krise der Jahre 1878-1882 in Ägypten* (Zürich: Atlantis Verlag, 1973), 332, nt. 243. Delanoue, *Moralistes et politiques* (168-74 and 136-37) summarizes the available biographical information.

<sup>15</sup> On Muḥammad Amin al-Mahdī, see E. W. Lane, *Manners and Customs of the Modern Egyptians* (Repr., London: Dent, 1966 [Originally publ. 1836]), 118-21.

<sup>16</sup> His predecessor, Aḥmad al-Tamīmī (1801/02-1847/48) was dismissed by Ibrāhīm immediately after assuming power. According to al-Tamīmī's son, his father was dismissed because he would not bend the law by issuing fatwas that served Ibrāhīm's interest. See Muḥammad Efendi al-Tamīmī, *Tarjamat ḥayāt al-ʿallāma al-shaykh Aḥmad al-Tamīmī al-Dārī al-Khalīlī muftī Miṣr* (Ms. Egyptian National Library, Tārīkh Taymūr 1096), 7. Ibrāhīm's appointment of a 21 year old scholar to this important office may indicate that he wanted a submissive person who would not oppose him.

he was only twenty-one years old — his professor of Ḥanafī fiqh, Khalīl al-Rashīdī, was appointed as his secretary in order to assist him in his new office.

Al-‘Abbāsī’s biographers mention that he twice fell afoul of the Khedive: Once when ‘Abbās (r. 1848-1854) attempted to confiscate all properties belonging to Muḥammad ‘Alī’s descendants and again when Ismā‘īl, acting as prince-regent for Sa‘īd (r. 1854-1863), attempted to assimilate family waqfs (*waqf ahlī*) to public waqfs (*waqf khayrī*) in order to gain control over them. Due to al-‘Abbāsī’s opposition nothing came of these plans. His biographers mention these incidents to emphasize not only the Grand Mufti’s integrity, but also the close ties that bound him to the Khedival house, ties that, apparently, were unaffected by such incidents. The strength of his relationship with the Khedive is evidenced by the fact that in January 1871 Ismā‘īl appointed him Shaykh al-Azhar, a post hitherto reserved for Shāfi‘īs and Mālikīs. Ismā‘īl apparently wanted to introduce certain reforms and regarded al-‘Abbāsī as the most suitable candidate for this task. The Khedive was not disappointed, for six months later he issued a decree prepared by al-‘Abbāsī, requiring for the first time that a student pass a final examination before being admitted to the ranks of the ulema (decree of 16 Rabi‘ I 1288/15 July 1871). At the same time, the allowances and pensions of the ulema at al-Azhar were increased, no doubt as compensation for their acceptance of his reforms. In the same year, on 25 December 1871 (12 Shawwāl 1288) the Khedive appointed al-‘Abbāsī a member of the Privy Council, which he was to attend two days a week in order to deal with cases that had to be decided according to the Shari‘a. His monthly salary was raised from 4,000 to 7,500 piasters.<sup>17</sup>

The test of al-‘Abbāsī’s loyalty to the ruling house came in 1881 with the ‘Urābī Revolt, which was supported by the students and ulema of al-Azhar. Suspecting that al-‘Abbāsī was going to issue a fatwa in which he would denounce the rebels as opponents of the

<sup>17</sup> Amīn Sāmī, *Taqwīm al-Nil* (3 vols., Cairo: Maṭba‘at al-Kutub al-Miṣriyya, 1928-36), III/3, 979. This was a high salary. In 1877 (1294 A.H.) members of the highest judicial bodies, the *Majlis al-Aḥkām* and the Courts of Appeal (*majālis al-isti’nāf*) received a monthly salary of 6,000 and 3,000 piasters respectively (Sāmī, *Taqwīm al-Nil*, III/3, 1462). When the Supreme Shari‘a Court was created on 4 June 1876 and the Privy Council no longer had to deal with Shari‘a cases, Treasury (*al-Māliyya*) inquired whether the Mufti remained entitled to his allowance of 3,500 piasters. The Khedive answered in the affirmative, arguing that the Grand Mufti’s membership on the Privy Council had not been terminated (Sāmī, *Taqwīm al-Nil*, III/3, 1358).

legitimate government and call for their execution, the Azharis campaigned for al-‘Abbāsī's dismissal as Shaykh al-Azhar, ostensibly on the ground of his outspoken support for the Khedive. Because the Ḥanafī school was associated with the Turco-Circassian ruling class, the Azharis put forward as their candidate the octogenarian Mālikī Chief Mufti, Muḥammad ‘Illysh.<sup>18</sup> But as an ardent supporter of ‘Urābī, he was rejected by the government. Al-‘Abbāsī was in fact dismissed by the Khedive on 5 December 1881, and a compromise candidate, Muḥammad al-Inbābī (1824-1896), a Shāfi‘ī, was appointed in his place.<sup>19</sup> Simultaneously, both al-‘Abbāsī and ‘Illysh were made members of a council that was charged with the task of assisting the Shaykh al-Azhar. Al-‘Abbāsī remained Grand Mufti. When a number of prominent Azhar ulema issued a fatwa calling for the deposition of the Khedive Tawfiq on the ground that he had disobeyed the Ottoman Sultan and let the British take possession of the country,<sup>20</sup> al-‘Abbāsī refused to sign.<sup>21</sup>

The FM contains one fatwa, dated 16 Shawwāl 1299 (31 August 1882), that is directly related to these events.<sup>22</sup> At that time, British troops had invaded Egypt and were advancing in the Delta, making their way toward Cairo. Spurred on by the religious fervour of his followers, Aḥmad ‘Urābī had asked the leading ulema of the four law schools whether or not the equestrian statue of Ibrāhīm Pasha (the grandfather of the Khedive Tawfiq) at Azbakiyya Square and the lion statues at both ends of the Qaṣr al-Nīl Bridge had to be demolished. Using the emotive word *ṣanam* (idol) to refer to these statues, ‘Urābī declared, "[O]ur country was afflicted with calamities only after idols were erected in Cairo and Alexandria." Although the Grand Mufti, who had been approached through his rival, the newly appointed Shaykh al-Azhar, had no sympathy for the ‘Urābists, he was compelled to pronounce that the removal of these statues was obligatory. In an attempt to dampen ‘Urābī's religious zeal, he had added the following supplement (*tatmīm*) to his fatwa:

<sup>18</sup> On ‘Illysh, see Delanoue, *Moralistes et politiques*, 129-68.

<sup>19</sup> On Inbābī, see Delanoue, *Moralistes et politiques*, 137, nt. 80.

<sup>20</sup> An English translation of this fatwa may be found in A. M. Broadley, *How we Defended Arabi* (Repr., Cairo: Research and Publishing Arab Centre [sic], 1980), 175-78.

<sup>21</sup> Schölch, *Ägypten den Ägyptern*, 350, nt. 119.

<sup>22</sup> For a translation and a detailed analysis of this fatwa, see R. Peters, "The Lions of Qasr al-Nīl Bridge: The Islamic Prohibition of Images as an Issue in the ‘Urābī Revolt," in M. Khalid Masud, Brinkley Messick, and David Powers (eds.) *Islamic Legal Interpretation: Muftis and their Fatwas* (forthcoming).

The rulers of the Muslims must remove everything in their countries that is objectionable (*munkar*), such as practicing usury (*ribā*), the opening of places known as brothels (*karākhānāt*) and bars (*kham-mārāt*), and other offences (*mūbiqāt*). [They also must] prevent God's servants from suffering wrongs contrary to the Shari‘a and forbid injustice and [the application of] rules other than those revealed by God. This is more urgent [than removing these images].<sup>23</sup>

At the end of 1882, after the revolt had been suppressed by the English, al-‘Abbāsī was reinstated as Shaykh al-Azhar, a post that he held until 30 December 1886, when he resigned from both his functions as a result of a disagreement with the Khedive. But when his successor as Grand Mufti, Muḥammad al-Bannā’, insisted that al-‘Abbāsī was the real Grand Mufti, he was reappointed to that office, which he occupied until his death in 1897.

To the best of my knowledge, the FM is his only independent work, although it contains at least one treatise, written in December 1858, entitled *al-Ṣafwa al-mahdiyya fī irṣād al-arādī al-miṣriyya*;<sup>24</sup> in this treatise, which deals with pseudo-*waqfs* (*irṣādāt*) created on state lands, al-‘Abbāsī urges the Khedive, Sa‘īd, not to abolish the allowances deriving from them. The treatise must have been prompted by the promulgation of the Egyptian Land Law some months earlier, in August 1858.

### *The Office of Mufti in Egypt*

#### Muftis in General

Due to the complexity of Islamic law, ordinary Muslims cannot be expected to be familiar with all details relating to their rights and duties. In order to know and understand the intricate rules of the Shari‘a they need the help of legal specialists, muftis, who are qualified to clarify the law relating to religious and other duties (*al-futyā al-‘amma*) and to specific lawsuits, at the request of either one of the parties or the qadi (*al-futyā al-qaḍā’iyya*). Until the Ottoman conquest of Egypt in 1517, there had been muftis and qadis from all four *madhhabs*; after the conquest, the Ḥanafī *madhhab* came to prevail in the administration of justice and only Ḥanafī muftis could

<sup>23</sup> FM, V, 299-300 (16 Shawwāl 1299). The statues were removed at the urging of the Mālīki mufti, ‘Illaysh. They were placed in the Egyptian Museum and reerected after the revolt.

<sup>24</sup> FM, II, 645-50 (7 Jumādā II 1275).

exercise the function of *al-futyā al-qadā'iyya*, despite the fact that the overwhelming majority of the population belonged to either the Shāfi'i or the Mālikī school.<sup>25</sup> Consequently, the task of the Shāfi'i, Mālikī and Ḥanbalī muftis (for the few Ḥanbalīs living in Egypt) was confined to *al-futyā al-'amma*.

During the nineteenth century, the government began to appoint Ḥanafī muftis to the various levels of the judiciary and the administration. These muftis were consulted by litigants, by the authorities, and by the qadis themselves. The Qadis Ordinance (*Lā'iḥat al-Quḍāh*) of 1856 established that "the qadi should consult the ulema and request fatwas from them in difficult cases, without forming his opinion independently, as a precaution against errors in [applying] the rules of the Shari'a" (Art. 21).<sup>26</sup>

In 1873 the government issued a decree regulating the duties and competence of the official Ḥanafī muftis.<sup>27</sup> This decree, drafted by a body of high ranking ulema and approved by the Privy Council, mentions four categories of mufti: those assigned to the regional courts (*majālis al-aqālīm*), those assigned to the provincial administrations (*mudiriyyāt*), the mufti of the Waqf Administration (*Diwān al-Awqāf*), and, finally, the mufti of Cairo (that is, the Grand Mufti) and the mufti of Alexandria. The muftis of the first three categories were allowed to issue fatwas relating only to cases dealt with by the bodies to which they were assigned or whenever a government department requested one; the muftis of Cairo and of Alexandria could issue legal opinions at the behest of either the government or the general public.<sup>28</sup> The enumeration of muftis in the 1873 decree was not comprehensive, as the FM mentions additional categories of mufti, including those assigned to the *Majlis al-Aḥkām* (one of the highest legislative and

<sup>25</sup> See 'Abd al-Raḥīm 'Abd al-Raḥmān 'Abd al-Raḥīm, "Al-qadā' fi Miṣr al-'Uthmāniyya 1517-1798," in 'Abd al-Raḥīm 'Abd al-Raḥmān 'Abd al-Raḥīm, *Fuṣūl fi tārikh Miṣr al-iqtisādī wa'l-ijtimā'i fi'l-'aṣr al-'Uthmānī* (Cairo: al-Hay'a, 1990), 319-49.

<sup>26</sup> For the text of the ordinance, see Filīb Jallād, *Qāmūs al-idāra wa-'l-qadā'* (5 vols., Alexandria: Al-Maṭba'a al-Bukhāriyya, 1890-95), IV, 129-31.

<sup>27</sup> Decree of 5 Rabī' II 1290 (for the text, see Jallād, *Qāmūs*, IV, 136). In 1251, Muḥammad 'Alī had decreed that only the Ḥanafī mufti was allowed to issue fatwas in cases regarding the government and its subjects (*ra'iyya*) and that other scholars who issued fatwas would be punished (see al-Tamīmī, *Tarjamāt*, 4). Muḥammad 'Alī's decree probably was intended to restrict the issuance of fatwas in connection with lawsuits before the Cairo Shari'a Court and other judicial bodies in Cairo.

<sup>28</sup> The Arabic text reads: *innahum munawwaṭān bi-mā yus'alūna* [sic] *'anhu min al-ḥawādith allatī 'alayhimā sawā'an kānat min al-ḥukūma aw khilāfiḥā*.

judiciary bodies), its predecessor, the Council of Justice (*Jam‘iyyat al-Haqqāniyya*), and to the Cairo Police (*al-Dābiṭiyya*).

The 1873 decree was based on the view that the state has a general responsibility for regulating the qualifications of muftis. In accordance with this view, al-‘Abbāsī expressed the opinion that a ruler is empowered to prohibit unqualified persons from issuing fatwas and to impose disciplinary punishment (*ta‘zīr*).<sup>29</sup> The decree of 1873 was meant not only to define the competence of the muftis mentioned in the text, but also to terminate the activities of unofficial muftis, whose knowledge of Islamic law was often defective. Although the Khedive originally had wanted to make the issuance of fatwas conditional upon previous authorisation (*ma‘dhūniyya*), the ulema consulted by the Privy Council had deemed that unnecessary; they proposed that fatwas given by muftis in cases exceeding their competence should not be accepted by state agencies, and their proposal was incorporated in the final text.<sup>30</sup> The decree also provided redress to litigants who had lost a case because they had relied on an incorrect fatwa issued by an officially appointed mufti; such litigants might ask to have the judgment reviewed by an authority appointed by the government.

#### The Grand Mufti in Egypt

Following the Ottoman conquest of Egypt, the Ḥanafī mufti assigned to the Grand Shari‘a Court in Cairo (*al-maḥkama al-kubrā al-shar‘iyya bi-miṣr*, or *maḥkamat miṣr al-kubrā*), with the title *muftī al-sāda al-ḥanafīyya*, came to be regarded as the highest ranking mufti in the country.<sup>31</sup> To emphasize his position with regard to the other chief muftis, he was referred to, from the middle of the nineteenth century, as *muftī al-diyār al-miṣriyya*<sup>32</sup> and, sometimes, simply as *bāshmuftī*.<sup>33</sup> The Grand Mufti had the following tasks:

- acting as mufti assigned to the Grand Shari‘a Court in Cairo;
- giving advice in the Khedival Council (*al-Dīwān al-‘Ālī*) on complicated legal questions;<sup>34</sup>

<sup>29</sup> See FM, V, 289 (28 Dhū al-Qa‘da 1264).

<sup>30</sup> The Arabic text reads: *law ṣadarat fatwā min ayy shakḥ fimā lā yakhtaṣṣ bihi lā yu‘awwal ‘alayhā fī maḥallāt al-ḥukūma wa-lā yunṣar lahā.*

<sup>31</sup> See Lane, *Manners and Customs*, 118.

<sup>32</sup> The title was first used in an official document in 1865. See Jād al-Ḥaqq in *Al-Fatāwā al-Islāmiyya* (Cairo: Al-Majlis al-‘Alī li’l-Shu‘ūn al-Islāmiyya, 1980-), 3655.

<sup>33</sup> See, for example, FM, II, 699 (19 Jumādā I 1283).

<sup>34</sup> See, for example, FM, II 449 (30 Rabi‘ II 1265): "We attended the

- issuing authoritative fatwas whenever there were controversies among ulema<sup>35</sup> or complaints about the misapplication of the Shari‘a by qadis;<sup>36</sup>
- membership, together with the chief muftis of the other *madhhabs*, the Shaykh al-Azhar, the Head of the Descendants of the Prophet (*naqīb al-ashrāf*) and sometimes other ulema, in the Council of Scholars (*al-majlis al-‘ilmī*) of Cairo, which was consulted by the rulers with regard to important religious matters;<sup>37</sup>
- issuing fatwas to both the general public and to government agencies, as prescribed in the decree of 1873.

Occasionally, the Grand Mufti was asked to issue an opinion relating to the interpretation and application of certain decrees connected with Shari‘a justice, decrees that, as a rule, were drafted by ulema. For example, we find fatwas on the question of whether a decree regulating the application of the Shari‘a becomes ineffective after the death of the ruler who enacted it;<sup>38</sup> on the meaning of an article in the Appendix to the Bayt al-Māl<sup>39</sup> Ordinance (*Dhayl Lā’ihat Bayt al-Māl*);<sup>40</sup> and on the relationship between a Khedival decree of 1874 and the 1880 Shari‘a Courts Ordinance, in view of the fact that the Ordinance establishes a time period for the prescription of actions which is longer than the term of prescription for actions relating to estates and *waqfs* mentioned in the Khedival decree.<sup>41</sup> However, when asked to explain certain provisions of the 1858 Land Law (*Qānūn al-Arāḍī*) relating to the mortgaging of state land (*arāḍī kharājīyya*

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Khedival Council in Cairo and the substance of the case of ... was read to us as well as the conflicting fatwas concerning the issue ... We considered their words and it appeared [to us] that the fatwa to the effect that ... was the one in agreement with the stipulations of the founder of the *waqf*."

<sup>35</sup> See, for example, FM, IV, 588 (15 Jumādā I 1271): a fatwa issued at the request of the *Majlis al-Aḥkām* concerning a controversy among the ulema of Upper Egypt regarding the law of donation.

<sup>36</sup> See, for example, FM, III 276-81 (10 Jumādā II 1289), where the Grand Mufti is consulted by the *Majlis al-Aḥkām* about incorrect judgments by the qadi of Giza.

<sup>37</sup> Lane, *Manners and Customs*, 121-22.

<sup>38</sup> FM, III, 255 (17 Rabī‘ I 1280). The decree enacted by the Khedive Sa‘id had authorized the local governors (*mudirūn*, *muḥāfizūn*) to represent the state in homicide trials if the victim had no heirs.

<sup>39</sup> The *Bayt al-Māl* was the government agency dealing with estates without heirs or with absentee heirs, and with the estates of freedmen (*‘utaqā’*) of the khedival family. For the text of the Bayt al-Māl Ordinance of 1276 and its appendices, see Jallād, *Qāmūs*, II, 5 ff.

<sup>40</sup> FM, IV, 432 (21 Šafar 1284).

<sup>41</sup> FM, III, 296 (15 Jumādā I 1298).

*amiriyya*), the Grand Mufti declined to issue an opinion, since a mortgage on state lands was valid only under this Law and not under the Shari‘a. Although he did not expressly state that such a transaction was null and void, he observed that it had to be handled by the secular courts (*al-majālis al-siyāsiyya*).<sup>42</sup>

The Grand Mufti sometimes was asked to act as an arbiter, as in a case in which the trusteeship of a *waqf*, entrusted to the leadership (*sajjāda*) of a Sufi brotherhood, was disputed by the son and the daughter of the last incumbent.<sup>43</sup> In other instances, the Grand Mufti was asked to issue a fatwa in order to convince a defeated litigant of the correctness of a judgment.<sup>44</sup>

As the highest official authority on religious matters, the Grand Mufti was consulted on the permissibility of printing certain books. Between 1871 and 1884, al-‘Abbāsī issued at least twenty-three fatwas in response to queries submitted by the Cairo Police Department and the Cairo Governorate (*al-Muḥāfaza*) on this matter.<sup>45</sup> In general, the Grand Mufti opposed the printing of popular stories such as the Arabian Nights, Abū Zayd and ‘Alī al-Tājir, because "they are full of lies with which one should not occupy oneself and [the reading of] which results in loss of time without benefit";<sup>46</sup> he also opposed books on magic because "they result in the loss of money without benefit, or in harm to God's creatures, neither of which is legally permitted."<sup>47</sup>

Unlike the Ottoman Shaykh al-Islām,<sup>48</sup> the Egyptian Grand Mufti does not appear to have issued many fatwas on political issues.<sup>49</sup> I have found only three such fatwas in the FM: the fatwa on the revolt of the Sudanese Mahdī, the fatwa on the destruction of statues at the time of the ‘Urābī Revolt, and a third fatwa, issued in 1876 in response to an inquiry from the Khedive regarding a person who claimed to have knowledge of the divine secrets (*al-mughayyabāt*), as a result of which people zealously occupied themselves with his words and

<sup>42</sup> FM, V, 400 (24 Dhū al-Qa‘da 1296).

<sup>43</sup> FM, II, 739-42, especially 741 (26 Jumādā II 1288).

<sup>44</sup> See, for example, FM, V, 212 (14 Jumādā II 1281); III, 295 (Rabī‘ II 1297).

<sup>45</sup> FM, V, 292-97.

<sup>46</sup> FM, V, 294 (7 Jumādā II 1288).

<sup>47</sup> FM, V, 293 (23 Shawwāl 1285).

<sup>48</sup> On the political fatwas of the Ottoman Shaykh al-Islām, see H. Krüger, *Fetwa und Siyar: Zur internationalrechtlichen Gutachtenpraxis der osmanischen Şeyh ül-Islām vom 17. bis 19. Jahrhundert* ( ... ) (Wiesbaden: Harrassowitz, 1978), 52-54.

<sup>49</sup> It is possible — although unlikely — that al-‘Abbāsī did in fact issue significant numbers of political fatwas which, for some reason, were not included in the FM.

committed actions disturbing to the public order. To this question al-'Abbāsī responded that such a person must be punished with *ta'zīr* if his words do not constitute apostasy (if they do constitute apostasy, he must be put to death).<sup>50</sup>

The Grand Mufti's power was augmented by the 1880 Shari'a Courts Ordinance (*Lā'ihat al-Mahākim al-Shar'iyya*). According to this Ordinance, any complaint about the misapplication of the Shari'a normally was handled by the Grand Shari'a Court in Cairo. But complaints against decisions in first instance or in appeal given by this court were to be referred to the Grand Mufti, whose fatwas in this regard were binding. He had the same power regarding decisions issued in first instance by the Shari'a Court in Alexandria (Art. 3). Another, similar, procedure, which had existed already for some time,<sup>51</sup> was formalized in Art. 22 of this Ordinance: Whenever a qadi was uncertain about a legal issue confronting him, he must first consult the mufti officially assigned to his court or to the district. The mufti's opinion would be binding if the qadi was in agreement; otherwise (or if the mufti himself did not know the correct answer), the matter would be presented to the Grand Mufti, whose decision would have the force of law. The same procedure applied if the Grand Shari'a Court of Cairo was uncertain about a point of law.

The result of these statutes and ordinances was that the function of Grand Mufti came to resemble that of Courts of Cassation in French or Dutch law. The task of such courts is to ensure the correct application of the law. Therefore, they rule exclusively on the legal issues of a case without examining the facts established by the lower courts.<sup>52</sup> That the Grand Mufti did not deal with issues of fact is evidenced by a formula frequently found in the FM: "If the situation is as mentioned [in the question]."

#### *Al-'Abbāsī's Attitude toward Innovation and Reform*

Al-'Abbāsī's career coincided with a period of rapid change in Egyptian society. In the 1870s, religious reformers such as Jamāl al-

<sup>50</sup> FM, II, 27 (20 Shawwāl 1293).

<sup>51</sup> See, for example, FM, I, 222-26 (23 Jumādā II 1283), where the Grand Mufti is called upon to settle a dispute between the qadi and the mufti of Dumyāt.

<sup>52</sup> For Dutch law, see Art. 398 ff. of the Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*) and Art. 99 of the Law of Judicial Organization (*Wet op de Rechterlijke Organisatie*) that give the Supreme Court (*Hoge Raad*) the authority to nullify decisions of lower courts for being contrary to the law. The Supreme Court, however, must accept the facts as established by the lower court.

Din al-Afghānī and Muḥammad 'Abduh began to develop a new jurisprudential methodology in an attempt to adapt Islamic law to contemporary conditions. In a number of instances, especially in the realm of family law, the interpretations of 'Abduh and likeminded reformers subsequently were adopted by governments and laid down in codes of personal status.<sup>53</sup> In Egypt, as elsewhere in the Muslim world, legal reform to a large extent was brought about by borrowing from other *madhhabs*, whose rulings on a specific issue seemed to be more in conformity with public interest or more suitable for eliminating hardships resulting from the application of the prescriptions of the prevailing *madhhab*. This method is in conformity with Ḥanafī legal theory. Many Ḥanafī scholars recognize as valid fatwas issued according to a less authoritative opinion or, in cases of "necessity" (*ḍarūra*), according to another *madhhab*. And if the mufti expressly is asked to issue a fatwa according to a *madhhab* other than his own, Ḥanafī doctrine allows him to do so.<sup>54</sup>

This flexibility enabled muftis to circumvent hardships caused by the enforcement of certain Ḥanafī rules. The FM contains evidence that this method had been followed prior to the introduction of state legal reform and that people used to have recourse to the law of other *madhhabs* in certain cases. As Grand Mufti, al-'Abbāsī was asked repeatedly to comment on the legal validity of fatwas not based on authoritative Ḥanafī opinion. As the following examples indicate, Al-'Abbāsī consistently rejected such fatwas as invalid and called for the *ta'zīr*-punishment of the issuing mufti.

According to Ḥanafī doctrine, a woman whose husband is absent and does not pay her maintenance (*nafaqa*), cannot obtain a divorce or sue her absent husband for payment. In most modern legislations adopted in Ḥanafī countries, this position has been replaced by the Mālikī (or Shāfi'ī) position which holds that failure to provide maintenance contravenes the essence of marriage and therefore is a ground for dissolution by the court, and which allows proceedings upon default. In late nineteenth-century Egypt, women in these circumstances applied to Mālikī muftis, demanding fatwas stating that their marriage was dissolved for non-payment of maintenance. Several such cases were submitted to the Grand Mufti, who consistently ruled

<sup>53</sup> The first of these codes was the 1917 Ottoman Code of Family Rights.

<sup>54</sup> Muḥammad Amin Ibn 'Abidin, "Sharḥ al-risāla al-musammāh bi-'uqūd rasm al-mufti," in *Majmū'at Rasā'il Ibn 'Abidin* (2 vols. Istanbul: Dar Sa'adat, 1907-08 [1325 A.H.]), I, 50-51.

that these fatwas had no effect because only Ḥanafī law was applicable.<sup>55</sup> In one case, a Mālikī scholar (*‘ālim*) apparently had asked a Ḥanafī judge for permission to dissolve a marriage according to his own *madhhab*. The judge replied: "If you are going to do so, do it far away from me," which the Mālikī interpreted as permission. The Grand Mufti, however, insisted that the Mālikī should be punished, because muftis must issue fatwas according to the Ḥanafī school.<sup>56</sup>

Unlike the other *madhhabs*, the Ḥanafīs do not allow default proceedings. But the Ḥanafī mufti of the *Majlis al-Aḥkām*, al-Sayyid ‘Alī Efendi Maḥmūd al-Baqli, nevertheless issued a fatwa holding that default proceedings were permitted in cases of necessity in order to prevent hardship and to protect people's rights. This fatwa may have been occasioned by the promulgation of the Law of Procedure of the *Majlis Qūmisyūn Miṣr* which permitted default proceedings.<sup>57</sup> In response, the Grand Mufti, acting in conjunction with a number of leading ulema,<sup>58</sup> reiterated the Ḥanafī view; he also argued that al-Baqli's position would result in false testimonies and encourage defaulters to challenge judgments based on default, thereby burdening the government.<sup>59</sup>

A mufti by the name of ‘Amr Abū Zayd from the village of ‘Uqba (or ‘Aqaba) issued a series of fatwas in which he advanced novel interpretations of the law of repudiation. Some of these, such as the invalidity of a repudiation (*ṭalāq*) reinforcing an oath or of one pronounced against a woman during her menstrual period, and the rule that a repudiation linked to the word *three* has the force of only one repudiation, can be traced to the Zāhiri *madhhab* or to the opinions of individual jurists like Ibn Taymiyya.<sup>60</sup> But no such support can be

<sup>55</sup> See, for example, FM, I, 434 (16 Muḥarram 1278).

<sup>56</sup> FM, III, 132 (14 Sha‘bān 1266). In other fatwas — all of them regarding phrases expressing a valid repudiation — he ruled that the adoption (*taqlid*) of another *madhhab* was under certain circumstances permitted. See FM, I, 216 (9 Rabi‘ II 1275) and 222-26 (undated). A similar case: FM, I, 219 (21 Ramaḍān 1281). The extent to which other *madhhabs* were officially recognized in Egypt remains to be examined.

<sup>57</sup> Art. 9 of the *Qānūn Ru‘yat al-Da‘āwī fī Majlis Qūmisyūn Miṣr*, issued 29 Jumādā II 1278; for the text, see Aḥmad Faṭḥī Zaghlūl, *al-Muḥāmāh* (Cairo, Matba‘at al-Ma‘ārif, 1900), appendix, 85 ff.

<sup>58</sup> Shaykh Muṣṭafā Muḥammad al-‘Arūsī (Shaykh al-Azhar), Shaykh Muḥammad al-Damanhūrī al-Shāfi‘ī, Shaykh ‘Abd al-Qādir al-Rāfi‘ī (*Muftī al-Awqāf*), Muṣṭafā al-Qurashī (*Amin al-Fatwā*).

<sup>59</sup> FM, III, 262-65 (22 Jumādā II 1284).

<sup>60</sup> See Ibn Rushd, *Bidāyat al-mujtahid* (2 vols., Cairo: Muṣṭafā al-Bābi al-Ḥalabī, 1965), II, 65; J. Brugman, *De betekenis van het Mohammedaanse recht in het hedendaagse Egypte* (Ph.D. diss., University of Leiden, 1960), 97, 99.

found for his contention that a repudiation is ineffective if pronounced by an angry man, or against a filthy woman not wearing make-up, or against a woman who is breastfeeding; or that a woman who has been triply divorced during pregnancy becomes lawful for her ex-husband without an intermediate marriage to another man, on the condition that she bears him a son. The Grand Mufti ruled that the government must punish this ignoramus and prevent him from issuing fatwas.<sup>61</sup>

From these examples it is clear that the Grand Mufti cannot be regarded as an innovator. His first concern was the uniform application of the Shari'a in strict conformity with the most authoritative opinions of the Ḥanafī School. This he did with a rigour that transcended the requirements of the Ḥanafī doctrine regarding the mufti's profession, as we have seen above. According to Ḥanafī legal theory, muftis have more freedom than qadis in the selection of legal opinions as a basis for their opinions, because qadis must abide by the instructions of the rulers.<sup>62</sup> In Egypt, the qadis were instructed by khedival decrees to pass sentence according to the most authoritative opinions of the Ḥanafī *madhhab*.<sup>63</sup> What the Grand Mufti attempted to do was to complete the Hanafitization of Egyptian law by putting the muftis on a par with the qadis and barring them from giving fatwas according to other *madhhabs*.

<sup>61</sup> FM, V, 91 (28 Dhū al-Qa'da 1265).

<sup>62</sup> See Muḥammad Amin Ibn 'Ābidin, *Radd al-Muḥtār* (5 vols., Būlāq: Dār al-Tibā'a al-Miriyya, 1881-82 [1299 A.H.]), I, 56.

<sup>63</sup> According to Art. 2 of the Qadis' Ordinance of 1856, judgments must be given according to the correct opinions within the Ḥanafī *madhhab* (*al-aqwāl al-ṣaḥīḥa min madhhab al-imām al-a'zam Abū Ḥanīfa*). Art. 10 of the 1880 Shari'a Courts' Ordinance requires qadis to follow the most authoritative opinions (*arjaḥ al-aqwāl*) within the Ḥanafī *madhhab*, which by that time already was standard practice. The qadis interpreted Art. 10 as requiring them to apply only Abū Ḥanīfa's opinions, despite the fact that "a most authoritative opinion" included one held by one of Abū Ḥanīfa's students (*aṣḥāb*) that was accepted within the *madhhab*. For examples, see Ibn 'Ābidin, "Sharḥ 'uqūd rasm al-mufti," I, 35. That the Egyptian qadis felt bound to apply Abū Ḥanīfa's opinions exclusively is clear from a criminal decree issued by the *Majlis al-Ahkām* in 1858 which establishes, exceptionally, that in cases of willful homicide the opinions of Abū Yūsuf and al-Shaybānī are to be applied, because they offer a wider definition of willful homicide for which retaliation may be demanded. For the text of the decree, see Sāmī, *Taqwīm al-Nil*, III/1, 294-97 (Muḥarram 1275); see also R. Peters, "Murder on the Nile: Homicide Trials in 19th Century Egyptian Shari'a Courts," *Welt des Islams* 30 (1990), 98-116.

*Conclusion*

During the second half of the nineteenth century the office of Grand Mufti acquired increasing authority, largely as a result of the better organization and bureaucratization of the Egyptian state, within which all agencies and functions acquired a distinct competence and hierarchical position. This process had three related effects on the office of the Grand Mufti. First, its competence, which previously rested largely on custom, was more precisely defined in written statutes. Second, the office of Grand Mufti was placed at the top of a hierarchy of muftis who were officially assigned to the courts of justice and to state agencies such as the Bayt al-Māl, the Waqf Administration, the *Majlis al-Aḥkām*, and the Cairo Police Department; the aim of this hierarchical structure was to ensure the uniform and consistent application of the Shari'a. The presence of official muftis in these agencies reflects the growing need for uniform administrative procedures, a need that was satisfied in part by compliance with the Shari'a. At the same time, muftis who were not appointed by the Government were forbidden to issue fatwas on legal matters contrary to Ḥanafi doctrine (they might still issue fatwas on ritual matters), and sanctions were instituted to ensure compliance with this policy. Third, opinions issued by the Grand Mufti in certain circumstances were made binding and he acquired the authority to act as a court of cassation. Local qadis were encouraged to consult officially appointed muftis and, in cases of uncertainty, the Grand Mufti himself, whose opinions in such cases, as laid down in the 1880 Shari'a Courts Ordinance, had the force of law. The same Ordinance accorded the Grand Mufti the authority to act as a court of appeal in cases of misapplication of the Shari'a. Situated at the top of the hierarchy of the Shari'a judiciary, charged with the task of ensuring the uniform application of the Shari'a, and legally bound to apply the most authoritative opinion of the Ḥanafi *madhhab*, he was in no position to introduce legal reforms and innovative legal doctrine, even if he wished to do so.