LAW AND CHANGE: A STUDY OF THE CULTIVATION OF WASTELAND IN THE 16TH-17TH CENTURY OTTOMAN EMPIRE

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Abstract

This article examines the nature of legal change in Islamic law through the case of the cultivation of wasteland (*iḥyāʾ al-mawāt*) in the 16th-17th century Ottoman Empire. Imber, one of the leading scholars in modern Ottoman historiography, argues that there was an incompatibility between *qānūn* and *sharīʿah* regarding the legal consequences of opening up wastelands (*mawāt*s) for agriculture in the Empire. He asserts that the legal doctrine of the Ḥanafī school gives the right of full ownership (*al-milk al-tāmm*) to a person cultivating a wasteland with the permission of the ruler (*imām*), while the Ottoman sultans' *qānūn*s only grant this person the right of disposal (*ḥaqq al-*

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taṣarruf). Imber's observation about the practice is accurate; however, his claim regarding the Ḥanafī school's legal doctrine of *iḥyāʾ al-mawāt* needs revision. This article takes into consideration Ḥanafī *nawāzil* and *fatāwá* literature originating from Central Asia and Ottoman Anatolia to demonstrate that the doctrine in question underwent a slow and gradual but essential change over centuries, and then Ottoman Ḥanafī scholars interpreted the practice of the Empire based on this new doctrine, recognizing the sultan's authority to grant only the right of disposal to those who wished to cultivate the wasteland, suggesting that there was not an actual contradiction between *qānūn* and *sharīʿah* on this issue.

Key Words: Central Asia, Ottoman Empire, cultivation of wasteland, *iḥyāʾ al-mawāt*, Islamic law, *qānūn*, *sharīʿah*, legal change, *nawāzil*, *fatāwá*, *wāqiʿāt*, *al-milk al-tāmm*, *ḥaqq al-taṣarruf*.

Introduction[1]

There are two main narratives in the literature that explain the nature of the doctrinal growth and change of Islamic law. According to an old narrative embraced by Schacht, Coulson, and Chehata, Islamic law largely completed its growth during the 8th to 10th centuries, which is referred to as the formative period.[2] The pioneer of this narrative, Schacht, claims that during the early Abbasid period, Islamic law was in a dynamic interaction with political, social, and economic developments, but "from then onwards became increasingly rigid and

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[2] Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964), 70; Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: Clarendon Press, 1950), 329; Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 75, 80-85; Chafik Chehata, *Etudes de Droit Musulman* (Paris: Presses Universitaires de France, 1971), 1/17. For the critics against this approach, see 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* (New York: Croom Helm, 1988), 1-6; Wael B. Hallaq, "From *Fatwās* to *Furūʿ*: Growth and Change in Islamic Substantive Law", *Islamic Law and Society* 1/1 (1994), 29-31.

settled into its final form".[3] Coulson, taking Schacht's claim one step further, argues that Islamic law had no connection with practice during the formative period as well. He suggests that the scholars of that period had a speculative and idealistic approach, enabling them to establish a comprehensive and ideal system of rules, but they were "largely in opposition to existing legal practice".[4] Moreover, Schacht asserts that Islamic law experienced only some minor changes after the formative period, and these changes "were concerned more with legal theory and the systematic superstructure than with positive law".[5] Coulson and Chehata also share this observation in general.[6]

This was the narrative that gained wide acceptance in the orientalist circles in the second half of the 20th century. However, throughout the end of the century, this narrative started to be criticized by various researchers whose studies focused on the *fatwá* institution, such as

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3 Schacht, *An Introduction*, 75. He accordingly claims that the gate of *ijtihād* was closed after the formative period, see *Ibid*., 70-71, 74-75; For a detailed critique of this claim, see Wael B. Hallaq, "Was the Gate of *Ijtihad* Closed?", *International Journal of Middle East Studies* 16/1 (1984), 3-41. Schacht, interestingly and ironically, accepts the role of *muftī*s and their *fatwá*s in the doctrinal development of Islamic law and says: "The doctrinal development of Islamic law owes much to the activity of the *muftis*... As soon as a decision reached by a *muftī* on a new kind of problem had been recognized by the common opinion of the scholars as correct, it was incorporated in the handbooks of the school". Schacht, *An Introduction*, 74-75.

4 Noel James Coulson, "The State and the Individual in Islamic Law", *International and Comparative Law Quarterly* 6/1 (January 1957), 57.

5 Schacht argues that these changes do not have influence over the substantive law (*furū'*) or the legal theory (*uṣūl*) of Islamic jurisprudence by saying: "This original thought could express itself freely in nothing more than abstract systematic constructions which affected neither the established decisions of positive law nor the classical doctrine of the *uṣūl al-fiqh*". Schacht, *An Introduction*, 75.

6 Coulson, *A History of Islamic Law*, 140-142, 148; Chehata, *Etudes de Droit Musulman*, 1/24-25.

Johansen,[7] Hallaq, Gerber,[8] Bedir,[9] and Ayoub.[10] These critics assisted in establishing a counter-narrative for the nature of doctrinal growth and change of Islamic law. This new narrative assumes that Islamic law had a dynamic and viable interaction with real life in every period of history and continued its doctrinal growth and change through a special literary genre called *fatāwá*, *wāqiʿāt*, or *nawāzil* (the compilation of legal opinions) after the formative period. According to this new narrative, when a legal opinion (*fatwá*) issued by an authoritative jurisconsult (*muftī)* of a legal school to solve a newly encountered problem reached a certain prevalence and acceptance among other *muftī*s in the following period, it was usually incorporated into the *furūʿ* (substantive law) works, particularly commentaries of the school.[11] Because the practical function of these

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7 Johansen argues that Ḥanafī legal doctrine concerning fundamental regulations of agricultural lands in Egypt, such as "tax", "wage", and "property", underwent significant changes during the last century of the Mamluks and the transition period to the Ottomans, and the *fatwá*s issued by scholars played a crucial role in these changes, see Johansen, *The Islamic Law on Land Tax and Rent*, 2; Baber Johansen, "Legal literature and the Problem of Change: The Case of the Land Rent", *Islam and Public Law*, ed. Chibli Mallat (Londra: Graham & Trotman, 1993), 29-47.

8 Gerber disagrees with the claims that Islamic law is increasingly withdraw from the real life and based on imitation (*taqlīd*). On the contrary, he claims that the *fatwá*s of Khayr al-Dīn al-Ramlī (d. 1081/1671), as a jurist of post-formative period, exhibit qualities of "openness", "flexibility", and "dynamism" in the sense of interacting with practical applications, see Haim Gerber, "Rigidity Versus Openness in Late Classical Islamic Law: The Case of the Seventeenth-Century Palestinian Muftī Khayr al-Dīn al-Ramlī", *Islamic Law and Society* 5/2 (1998), 165-195. For another study of Gerber in which he emphasizes the dynamic character of Islamic-Ottoman law, see Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (New York: State University of New York, 1994), 79-112.

9 Bedir asserts that the Ḥanafī endowment doctrine has undergone significant changes in Central Asia since the 4th/10th century, and claims that these changes were mainly directed by the *fatwá*s of authoritative jurists of the region that were compiled in the "*wāqiʿāt*" and "*nawāzil*" literature, see Murteza Bedir, *Buhara Hukuk Okulu: Vakıf Hukuku Bağlamında X-XIII. Yüzyıl Orta Asya Hanefî Hukuku Üzerine Bir İnceleme* (İstanbul: İSAM Yayınları, 2014).

10 Ayoub, examining the development of Islamic law, focuses on the impact of political authority on the formation of legal norms during the early modern Ottoman Empire. See Samy A. Ayoub, *Law, Empire and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (New York: Oxford University Press, 2020); see also Id., "The Sulṭān Says: State Authority in the Late Ḥanafī Tradition", *Islamic Law and Society* 23/3 (2016), 239-278.

11 Hallaq tries to show that Islamic law indeed follows such a course of development, see Hallaq, "From *Fatwās* to *Furūʿ*", 29-65; see also Id, *Authority, Continuity, and Change in Islamic Law* (Cambridge: Cambridge University Press, 2001), 166-235.

works "was to provide the jurisconsults with a comprehensive coverage of substantive law" and therefore, they "were expected to offer solutions for all conceivable cases so that the jurisconsult might draw on the established doctrine of his school, and to include the most recent as well as the oldest cases of law that arose in the school".[12] In short, the incorporation of *fatwá*s into these works indicated that they became part of the legal doctrine of the school.[13]

The article, in line with this new narrative, sheds light on the phenomena of the legal change in Islamic law through the practice of cultivation of wasteland (*iḥyāʾ al-mawāt*) in the 16th-17th century Ottoman Empire. It aims to show that the doctrine of *iḥyāʾ al-mawāt* of Ḥanafī legal tradition underwent a slow and gradual but essential change over a period of centuries in the Central Asia, and then the Ottoman Ḥanafī scholars interpreted the practice in question on the basis of this new doctrine. However, the Ottoman legal-historian Imber claims that there was not a conformity between *qānūn* and *sharīʿah* in terms of the practice of cultivation of wasteland in the Empire and thus that the Ḥanafī doctrine of *iḥyāʾ al-mawāt* was not applied there.[14] For, according to him, Ḥanafī interpretation of Islamic law

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In fact, it was a theory previously proposed by Schacht, but for some reason, he didn't give it much attention. See Schacht, *An Introduction*, 74-75. Powers and Peters also claim that the *fatwá*s can be incorporated into the *furūʿ* books over time. See David Powers, "*Fatwās* as Sources for Legal and Social History: A Dispute over Endowment Revenues from Fourteenth-Century Fez", *al-Qantara* 11/2 (1990), 339; Rudolph Peters, "What Does it Mean to be an Official Madhhab? Hanafism and the Ottoman Empire", *The Islamic School of Law: Evolution, Devolution, and Progress*, ed. Peri Bearman et al. (Cambridge: Harvard University Press, 2005), 149.

12 Hallaq, "From *Fatwās* to *Furūʿ*", 55.

13 Hallaq, "From *Fatwās* to *Furūʿ*", 61. Hallaq offers a new classification for the legal literature of the schools of Islamic law. For, he refers to *mukhtaṣar*s (concise texts), *sharḥ*s (commentaries), and *ḥāshiyah*s (glosses) as "*furūʿ* books" distinguishing them from *fatwá*-type works, and views the development of the Islamic law as a process that progresses "*from fatwá*s *to furūʿ*". However, according to the general acceptance of Islamic legal traditions, *fatwá*-type works are also considered as part of *furūʿ* (substantive law) in terms of their content. Since a *fatwá* that gradually gains authority within a particular legal tradition is often incorporated into *shurūḥ* (plural of *sharḥ*), it is more accurate to define this process as "from *fatwá*s to *shurūḥ*". Therefore, as you will see below, I will use this definition.

14 Colin Imber, "The Cultivation of Wasteland in Hanafī and Ottoman Law", *Acta Orientalia Academiae Scientiarum Hungaricae* 61/1-2 (March 2008), 101-112.

gives the right of full ownership (*al-milk al-tāmm*)[15] of a wasteland to a person cultivating it with the permission of the ruler, but the Ottoman land law stemming from the orders of the sultan grants only a limited right of disposal (*ḥaqq al-taṣarruf*) to the person apart from exceptional circumstances. In a similar approach to Schacht, Imber considers that *sharīʿah* remained unchanged for centuries after the formative period,[16] and hence, he does not give any credence to the possibility of change in the doctrine. Yet, as will be seen below, while Imber's observation of Ottoman legal practice is correct, his claim about the Ḥanafī legal doctrine and the relationship between *qānūn* and *sharīʿah* needs to be revised.

The article relying on the *fatāwá* literature, which is largely neglected by Imber, elucidates that the Ottoman Ḥanafī jurists interpreted the authority of sultans over the lands in the broadest sense with an inherited understanding from the Central Asian Ḥanafī legal tradition and authorized them to grant only the right of disposal to the person who wanted to cultivate the wasteland. Therefore, contrary to Imber's claim, the article argues that there was a clear conformity between *qānūn* and *sharīʿah* in this respect. To that end, the first part of the article clarifies the practice of *iḥyāʾ al-mawāt* in the Empire during the 16th and 17th centuries through *qānūnnāmah*s, *farmān*s, and the court registers. The second part examines the alteration process of the Ḥanafī doctrine of *iḥyāʾ al-mawāt* in the Central Asia. The last part deals with the approaches of the Ottoman Ḥanafī jurists of the period to the practice of *iḥyāʾ al-mawāt* in the Empire.

1. The Practice of *Iḥyâʾ al-mawāt* in the 16th-17th Century Ottoman Empire

The cultivation of wasteland was a widespread practice in the Ottoman Empire, particularly during the era of population growth and

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[15] In Islamic legal literature, the state of owning both the essence (*raqabah*) and the benefits (*manfaʿah*) of a property is expressed by the terms *al-milk al-muṭlaq*, *al-milk al-tāmm*, *al-milk al-kāmil*, or *milk al-ʿayn wa-l-manfaʿah*. It grants the widest authority to the owner on the property. However, the state of owning only *raqabah* or *manfaʿah* is referred to as *al-milk al-nāqiṣ*, meaning partial ownership. See Hasan Hacak, "Mülkiyet", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (Ankara: TDV Yayınları, 2020), 31/541-546. In this article, when I use the word "ownership" in an absolute way, I will be referring to the first meaning.

[16] Colin Imber, *Ebu's-su'ud: The Islamic Legal Tradition* (London: Edinburgh University Press, 1997), 65.

territorial expansion in the late 15th and throughout the 16th century.[17] However, it surprisingly occupied a relatively small space both in the *qānūnnāmah*s regulating the land laws and in the *fatwá* compilations containing the legal interpretations of the scholars.[18]

First and foremost, it should be noted here that some of these regulations, which are rarely found in the documents from the 16th and 17th centuries, were not actually associated with the theoretical narrative of *iḥyāʾ al-mawāt* existed in the texts of the Ḥanafī legal tradition. Indeed, these regulations were mainly related to the cultivation of lands that were originally in the status of *mīrī* (state-owned) land,[19] located within the boundaries of a *sipāhī*'s *tīmār*, but left fallow and vacant for a long period of time while being previously prosperous.[20]

As clear from the documents, the act of cultivation would change the status of the land in question from *mawāt* to *mīrī*.[21] In other words, in the Ottoman practice, opening up a wasteland granted the occupier a limited right of disposal rather than a right of ownership. This rule was applied to both *mawāt* lands that were located within the boundaries of a *tīmār* and the ones that were defined as *khārij az-daftar* (unregistered) since they were not recorded in the *taḥrīr* registers as an income for the *sipāhī*s. However, these lands were subject to different regulations in some aspects. To illustrate these

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17 Halil İnalcık, *An Economic and Social History of the Ottoman Empire: 1300-1600*, ed. Halil İnalcık - Donald Quataert (London: Cambridge University Press, 1994), 1/167-168; Id., "Filāḥa: iv. Ottoman Empire", *The Encyclopaedia of Islam*, ed. Bernard Lewis et al. (Leiden: Brill, 1991), 2/907.

18 For the same observation, see Imber, "The Cultivation of Wasteland", 104.

19 The absolute ownership of this type of land belonged to the imperial treasury, but in practice it was at the disposal of the sultan for distribution as *tīmār*s to *sipāhī*s by virtue of military services. See Bayram Pehlivan, *Sultan, Reaya ve Hukuk: Klasik Dönem Osmanlı Devleti'nde Tarım Topraklarının Mülkiyeti Sorunu* (İstanbul: Marmara University, Institute of Social Sciences, Ph.D. Dissertation, 2023), 60-66.

20 Khāliṣ Ashraf, *Kulliyyāt-i Sharḥ-i Qānūn-i Arāḍī* (Dārsaʿādah: Yuvanaki Panayotidis Maṭbaʿahsi, 1315 AH), 561, 571-572.

21 This deep-rooted practice is also clearly protected in the Land Code of 1858 with the following statements: "And the rules of the code that are applicable to other arable [*mīrī*] lands are also completely valid for such [*mawāt*] lands". (Art. 103). ʿAlī Ḥaydar Efendī's interpretation of the article claims: "The lands opened up for agriculture through this way become *mīrī* lands. On the contrary, the person cultivating the wasteland is not considered to have owned it". ʿAlī Ḥaydar Efendī, *Sharḥ-i Jadīd li-Qānūn al-Arāḍī* (İstanbul: Shirkat-i Murattibiyyah Matbaʿahsi, 1321-1322 AH), 448.

differences more clearly, I will separately examine the practice for each type of land.

1.1. The Cultivation of Wasteland in the Status of *Khārij az-daftar*

The *Qānūnnāmah* of Silistre, dated 924/1518, regulates the cultivation of *mawāt* lands that are in the status of *khārij az-daftar*. It states:

> Clearing the roots from a field or opening it up with axes on this side of Balkan Mountain is acknowledged by ancient law (*qānūn-i qadīm*). But when the registrar has come and registered the province, the field from which the roots have been cleared is also among the *çiftlik*s of *raʿāyā*. The occupier's claim that "he cleared the field" should not be acted upon.[22]

According to the document, although the *raʿāyā* clearing the land had the right to manage it as he wished until the new tax survey, it did not mean that he had absolute ownership (*raqabah*) of the land. In other words, when the *mawāt* land was cultivated, it henceforth obtained the status of *mīrī* land. The aforementioned law stipulates that when the registrar of the province came and allocated the land in question to a *tīmār*, it would be managed according to the rules of the *mīrī* system like the other *çiftliks* of the *raʿāyā*. Because if opening up the land for cultivation entitled the *raʿāyā* with the right of ownership, it would have been legally impossible for the registrar to allocate it to a *tīmār* in the new tax survey. In the *Qānūnnāmah* of 1539 for Vize, sharing similar content, the matter is expressed more clearly:

> If a person clears the roots from a plot, he acquires possession[23] of the plot, and his claim that "I am clearing the roots from the plot" is heard until the arrival of the registrar of the province. However, when the registrar has come and registered the province, the plot from which the roots have been cleared is also like other *çiftlik*s of *raʿāyā*.[24]

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[22] Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri* (İstanbul: Osmanlı Araştırmaları Vakfı Yayınları, 1991), 3/485.

[23] The word *sāḥib* that is frequently encountered in the legal documents of the empire usually does not mean "owner", but "possessor" (*dhū l-yad*). As can be understood from the text, it is used here in this meaning as well.

[24] Ömer Lütfi Barkan, *XV ve XVIıncı Asırlarda Osmanlı İmparatorluğu'nda Ziraî Ekonominin Hukukî ve Malî Esasları, Birinci Cilt: Kanunlar* (İstanbul: İstanbul

The last sentence of the quotation explicitly indicates that the cultivated wastelands were subject to the rules of the *mīrī* system. For example, the requirement of paying *ṭapu* (entry fee) and the prohibition of leaving these lands fallow for more than three years were also valid for the lands that were cultivated while they were previously *mawāt*. In this context, the *Qānūnnāmah* of Vize states more strongly than the *Qānūnnāmah* of Silistre that the cultivation of wasteland did not provide the right of ownership:

> If *çiftlik*s of this sort are left fallow for three years, the *sipāhī* should give them to someone else in return for *ṭapu*. If, after three years, he has not plowed [the land], his claim: "I am its owner. I am clearing the roots from it." should not be acted upon. The *sipāhī* should reallocate it by *ṭapu*.[25]

On the other hand, the same issue is addressed in a *qānūnnāmah* that seems to belong to Sulaymān the Lawgiver's reign, but it was published with an attribution to ʿAlī Chāwīsh of Sofia (Tr. Sofyalı Ali Çavuş) since copied by him in 1064/1653.[26] An article in this *qānūnnāmah* states that if the *raʿāyā* cultivated a wasteland that was in the status of *khārij az-daftar* and in the disposal of no one, including wilderness, forest, and mountain by drilling a well or cutting a tree, it was permissible for the register of the province to allocate these lands as *tīmār* to qualified persons. Additionally, it clarifies that a *sipāhī* holding a *barāt* from the sultan was also eligible to acquire these types of lands before their registration. The last sentence of the article implies that the absolute ownership of the land belonged to the treasury during the period from cultivation until a new tax survey as well.[27] In fact, another article of the *qānūnnāmah* addressing the same issue expresses it more clearly by stating:

> The official tax collectors occupy [this sort of cultivated wastelands on behalf of the treasury] until the arrival of a new

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Üniversitesi Edebiyat Fakültesi Türkiyat Enstitüsü Neşriyatı, 1943), 233-234. For the comment of Imber, see "The Cultivation of Wasteland", 104-105.

25 Barkan, *Kanunlar*, 233-234; see also Imber, "The Cultivation of Wasteland", 105.

26 For the critics of this attribution, see Akgündüz, *Osmanlı Kanunnâmeleri*, 4/456-457.

27 Akgündüz, *Osmanlı Kanunnâmeleri*, 4/494. For a short explanation of the article, see Midhat Sertoğlu (ed.), *Sofyalı Ali Çavuş Kanunnâmesi: Osmanlı İmparatorluğu'nda Toprak Tasarruf Sistemi'nin Hukukî ve Mâlî Müeyyede ve Mükellefiyetleri* (İstanbul: Marmara Üniversitesi Fen-Edebiyat Fakültesi Yayınları, 1992), 119; see also Imber, "The Cultivation of Wasteland", 108-109.

> registrar. There is no obstacle for [the registrar] to allocate them as *tīmār*s to qualified persons who want to obtain them by *barāt*, since they are in the status of *khārij az-daftar*. These are just like other *tīmār*s.[28]

On the other hand, an article in the *Qānūnnāmah* of 1539 for the Sanjaq of Bosnia gives the impression that the cultivation process conducted in the regions that were in the status of *khārij az-daftar* provided the *raʿāyā* with the right of full ownership. It states:

> And persons must draw a border line over the intersection point of their axes when they clear the mountain ... The black mountain does not belong to anyone, [but] it belongs to the cultivator of wasteland, and nobody must interfere [him].[29]

However, if this article is evaluated together with the aforementioned rules that were prevalent in the same territories during these dates, the last sentence probably alludes that the cultivator of wasteland would obtain only the right of disposal rather than the absolute ownership of the land in harmony with the general practice in the Empire. The article, which apparently aims to protect the cultivator against the unlawful interventions of the local authorities, strongly asserts that he had the right to dispose of the land as he wished without owning it.

When people started to cultivate these wastelands that were previously in the status of *khārij az-daftar*, they were excused from paying *ṭapu*-taxes. As a matter of fact, this issue was referred to with the same expressions in two separate edicts sent by Sulaymān the Lawgiver to Lofcha and Albanian judges in May 1549 (*awāsiṭ* Rabīʿ al-ākhir 956). They state:

> [As I have been informed] they [*raʿāyā*] are clearing and cultivating some plots with their axes, and they [local administrators] are demanding taxes even from people like them. You should inspect and, if they are doing so, prevent them from demanding taxes for the plots that... had no revenue attributed to *sipāhī*s in the register and were vacant places cleared by them with axes.[30]

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[28] Akgündüz, *Osmanlı Kanunnâmeleri*, 4/491; 5/530.

[29] Akgündüz, *Osmanlı Kanunnâmeleri*, 6/438.

[30] *Farmān Ṣūratlari* (İstanbul: Süleymaniye Kütüphanesi, Atıf Efendi, 1734), 44b, 46b; İnalcık also agrees with the claim, see "Filāḥa", 2/907.

1.2. The Cultivation of Wasteland within the Boundaries of a *Tīmār*

The cultivation of wasteland within the boundaries of a *tīmār* which was allocated to a *sipāhī* as a revenue in the register was subject to different regulations according to whether permission had previously been obtained from the *sipāhī* or not. So, I will examine the issue separately for both cases below.

1.2.1. Permissible Cultivation

As a rule, the *raʿāyā* who wanted to open up this type of wasteland for cultivation was first required to get permission from the *sipāhī*, pay him *ṭapu*-tax, and then clear and cultivate it within three years. A *qānūn*, attributed to the time[31] of Jalālzādah Muṣṭafá (d. 975/1567) and Ḥamzah Pasha (d. 1014/1606), the famous *nishānjī*s of the 16th and early 17th centuries, clearly states:

> If a person receives by *ṭapu* mountainous lands on the soil of a *tīmār*-holder to clear them with his axe, if he has cleared them within three years, well and good. But if three years pass and he has not cleared them, the *tīmār*-holder may give the lands by *ṭapu* to someone else.[32]

This practice means that the cultivators had the right to acquire only the right of disposal of these lands. According to the *mīrī* system of the Empire, if any type of land was unjustifiably left fallow and idle during three consecutive years, the *raʿāyā* would lose their rights over the land, and *tīmār*-holders were eligible to give it to the others by *ṭapu*.[33] The mentioned law stipulates the same duration for cultivated wastelands. However, contrary to the regulations of this system, it explicitly states that no excuses will be accepted for this sort of land.[34]

The *raʿāyā,* clearing a wasteland with the permission of the *tīmār*-holder and by paying him the *ṭapu* fee of the land, obtained a

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[31] Jalālzādah served as a *nishānjī* during 1534-1557 and Ḥamzah Pasha held the office in 1581, 1592-1596,1598-1599,1601-1605. See Imber, "The Cultivation of Wasteland", 105, footnote, 4.

[32] "Kânûn-i Cedîd", *İslâm ve Osmanlı Hukûku Külliyâtı: Kamu Hukuku*, ed. Ahmed Akgündüz (İstanbul: Osmanlı Araştırmaları Vakfı Yayınları, 2011), 1/787. For the translation, see also Imber, "The Cultivation of Wasteland", 105.

[33] Akgündüz, *Osmanlı Kanunnâmeleri*, 7/283.

[34] "Kânûn-i Cedîd", 1/787; see also Imber, "The Cultivation of Wasteland", 105. This provision was revised in the Land Code of 1858 and stated there that persuasive legal excuses such as illness would be given credence for these cases, see Art. 103.

privileged status for their daughters in the middle of the 16th century. Until that date, according to the established rule of the *mīrī* system, the daughters of the deceased *mutaṣarrif*[35] were unable to claim any rights on their father's lands. If the deceased left a son, the land was transferred to him without an obligation to pay a *ṭapu* fee like a *mulk-i mawrūth* (inherited private property).[36] If the deceased did not have a son but had a brother, the brother could acquire the right of disposal of the land by paying a fee called *ṭapu-yi mithl,* the amount of which was determined by the expert witnesses. If the deceased had neither a son nor a brother, the *tīmār*-holder had the right to give it to whomever he wished by *ṭapu*, but in this case, *ṭapu* fee was determined by himself. Abū l-Ṣuʿūd's legal opinion (*fatwâ*) in the *Maʿrūḍāt* states that Sulaymān the Lawgiver issued an edict in 958/1551,[37] revising the mentioned *qānūn-i qadīm* and, for the first time, he granted "*ṭapu* right"[38] to the daughter of the *raʿāyā* who cultivated the land that was previously a wasteland. The question part of the *fatwá* is related to whether the daughter has the inheritance right when the person clearing the wasteland passes away, leaving a son and a daughter.[39] In his response, Abū l-Ṣuʿūd firstly explained the common and well-known practice and then conveyed the recent regulation put in place for the cultivated wastelands. It states:

> In cases such as this, where [a person] has created fields and meadows by clearing forest and mountain and, in short, has expended money and effort, if such places are assigned to others by title, daughters would necessarily be deprived of the money

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35 This term is mainly used to signify that the *raʿāyā* acquire only the right of disposal of the land in question, rather than the ownership of it.

36 *Majmūʿat al-fawāʾid wa-l-fatāwá* (İstanbul: Süleymaniye Kütüphanesi, Esad Efendi, 914), 353a.

37 Another legal text recorded this date as 957/1550. See Akgündüz, *Osmanlı Kanunnâmeleri*, 5/302. Although Abū l-Ṣuʿūd clearly states here that the daughter obtained the *ṭapu* right for the first time with this edict, Imber, who seems to misinterpret the *fatwá*, argues that the edict of 1551 forbade the transfer of the deceased *mutaṣarrif*'s land to his daughter. See Imber, "The Cultivation of Wasteland", 106-107.

38 A right to acquire the possession of the land by paying *ṭapu* fee to the *tīmār*-holder.

39 Abū l-Ṣuʿūd Muḥammad ibn Muḥammad al-Iskilibī al-ʿImādī [as Şeyhülislâm Ebussuûd Efendi], *Maʿrûzât*, ed. Pehlul Düzenli (İstanbul: Klasik Yayınları, 2013), 237.

> which their fathers have spent. It has, therefore, been commanded that they will be given to the daughters.[40]

As indicated in the edict, the practical rationale behind this regulation was that, under the current situation, the daughters were being deprived of the money spent by their fathers in cultivating the *mawāt* lands. The edict removed this deprivation by giving daughters the *ṭapu* right. However, the privilege granted to them still indicated a limited right when compared to that of the sons. Indeed, as mentioned in the continuation of the *fatwá*, unlike the sons, the daughters were also required to pay *ṭapu-yi mithl* –just like the brothers– to obtain the possession right of the land that their fathers opened up for cultivation.[41] However, the scope and nature of the daughter's rights on their deceased father's lands underwent significant changes over time, ultimately leading to them acquiring inheritance rights similar to those of sons. First of all, the *ṭapu* right of the daughters was expanded to include the *mīrī* lands that were originally prosperous and inherited from their fathers in Dhū l-qaʿdah 975/April 1568. Then, in *awāʾil* Rabīʿ al-awwal 980/July 1572, a new edict came into effect, stating that, in such a case, it would suffice for the daughters to pay the price of the annual yield from the land as *ṭapu* fee to the *tīmār*-holders.[42] Finally, on Jumādhá l-awwal 7, 1263 (April 23, 1847), for the first time, the daughters were granted the right to inherit their father's land "without the requirement to pay a *ṭapu* fee", just like the sons, and more importantly, in cases where the sons were also among the heirs, the daughters were granted the right to inherit it "with an equal share to that of the sons".[43] One week later, on Jumādhá l-awwal 14, 1263/April 30, 1847, the inheritance rights of both the sons and daughters were

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[40] *Ibid.* This rule is also integrated into subsequent laws, see Akgündüz, *Osmanlı Kanunnâmeleri*, 5/302; 6/463; 7/693. Nishānjī Jalālzādah Muṣṭafá inserted a marginal note into The *Qānūnnāmah* of Selim I by stating that the old rule was revised and now the daughter of the *raʿāyā* cultivating the wasteland has the right to obtain the disposal of the land, see Akgündüz, *Osmanlı Kanunnâmeleri*, 3/98-99, footnote 9.

[41] Akgündüz, *Osmanlı Kanunnâmeleri*, 7/337.

[42] "Kânûn-i Cedîd", 1/766, 780, 789; see also Ömer Lütfi Barkan, "Türk Toprak Hukuku Tarihinde Tanzimat ve 1274 (1858) Tarihli Arazi Kanunnamesi", *Türkiye'de Toprak Meselesi: Toplu Eserler 1* (İstanbul: Gözlem Yayınları, 1980), 306.

[43] ʿĀrif Ḥikmat, *al-Aḥkām al-marʿiyyah fī l-arāḍī l-amīriyyah* (İstanbul: Dār al-Ṭibāʿah al-Maʿmūrah, 1265 AH), 3.

extended to cover the lands left by their mothers.[44] It is worth saying that the cultivation of *mawāt* lands marked the beginning of these regulations that gradually came into effect in favor of the daughters of the deceased *mutaṣarrif*s over centuries.[45]

In this context, it is important to determine the amount of *ṭapu* fee that the *raʿāyā*, who cultivated the wasteland with permission, had to pay to the *sipāhī*s. However, before delving into this question, it should be noted that, as can be anticipated, the land being in a *mawāt* condition naturally required the *raʿāyā* to spend additional labor and money to open it up for cultivation in comparison to the prosperous state-owned (i.e., *mīrī*) lands. In fact, the *qānūnnāmah*s and the compilations of *fatwá*s indicate that the *raʿāyā* showed a strong reluctance to pay the *ṭapu*-tax to the *sipāhī*s for the lands that they cultivated by enduring various struggles and obstacles. On the other hand, the cultivation of *mawāt* lands served as an additional source of income for the *sipāhī*s. But, the question of whether the tax revenues from the lands cultivated after the tax-survey (*taḥrīr*) within the boundaries of a *tīmār* belonged to the *sipāhī*s or to the *bayt al-māl* (imperial treasury) occasionally led to tensions between them and the treasury officials.[46] In the early 17th century, following a dispute of this kind, Sultan Aḥmad I declared through an edict dated Muḥarram 1018/April 1609 that the tax revenues from these lands belonged to the *sipāhī*s.[47]

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[44] *Taqwīm-i Waqāyiʿ*, (Jumādhá l-awwal 14, 1263), 332, 1; Sarkis Karakoç, *Arāḍī Qānūnu ve Ṭapu Nizāmnāmahsi: Taḥshiyahli* (İstanbul: İBB Atatürk Kitaplığı, Osman Ergin, 2258), 126.

[45] In the literature, it is a commonly held view that the transformation of *mīrī* lands into private property in the Ottoman Empire primarily took place from the first half of the 19th century onward due to external factors. Nevertheless, a closer examination of the sequential regulations carried out by the central government since the latter part of the 16th century, which progressively augmented the rights of *raʿāyā* over these lands reveals that it was, in fact, a deep-rooted process stemming from the internal dynamics within the empire. For a recent study that delves into this process by tracing the historical evolution of rules governing the transfer of *mīrī* land, see Pehlivan, *Sultan, Reaya ve Hukuk*, 225-247.

[46] A legal opinion clearly shows this disagreement, see *Fatāwā-yi Abū l-Ṣuʿūd*, comp. Walī Yagān ibn Yūsuf (İstanbul: Süleymaniye Kütüphanesi, İsmihan Sultan, 223), 89b.

[47] "Kânûn-i Cedîd", 1/779. For a *fatwá* of Abū l-Ṣuʿūd dealing with the same problem, see *Fatāwā-yi Abū l-Ṣuʿūd*, comp. Bozānzādah (İstanbul: Süleymaniye Kütüphanesi, Murad Molla, 1115), 33a-b.

In fact, with the aim of making the cultivation of *mawāt* lands more appealing for the *raʿāyā*, it was expected that the *ṭapu-tax* either wouldn't be demanded at all, as it would later be stipulated in the Land Code of 1858,[48] or at the very least, the amount would be kept at a symbolic level. However, the limited number of legal codes, such as the one attributed to Jalālzādah and Ḥamzah Pasha, clearly stated that the *raʿāyā* cultivating the wastelands with the permission of the *sipāhī*s was obliged to pay the *ṭapu*-tax.[49] In addition, the governor (*mīrliwā'*) of Trabzon, ʿUmar Beg, who conducted the land survey of the Bozok Province in 1572, noted at the beginning of this survey record that the *raʿāyā* opening up the idle and vacant places for cultivation were required to make a payment ranging from 15 to 30 *aqchah*s (Tr. akçe) depending on the fertility of the soil.[50] The regulation contained within this exceptional document should only be valid for this province and its surroundings. Because the rare examples of the court records shedding light on the issue indicate that this tax was 45 to 50 *aqchah*s for İstanbul and its surroundings. For instance, in a record from the Üsküdar Court dated 925/1519, a *sipāhī* named Muṣṭafá Chalabī ibn Saralu states that Qāsim ibn Ilyās, Murād ibn Tashoghlī and his brother Mursal opened up a piece of gravel land for cultivation located in Palidlu village of Gakwize (Gebze) district and he received 45 *aqchah*s from them as *ṭapu*-tax.[51] Furthermore, according to another record dated 988/1580, Darwish ibn Ḥusayn, the *sipāhī* of Kanlica village located in the Mafraz Kargali subdistrict of Üsküdar, entrusted (*tafwîḍ*) the right of disposal of a certain amount of mountainous forest within the boundaries of this village to Meḥmed ibn Daniz in exchange for 50 *aqchah*s as a *ṭapu*-tax.[52] In another record dated the same year, it is mentioned that Turakhān Beg ibn ʿAbd Allāḥ, the absolute representative of the same *sipāhī*, Darwish ibn Ḥusayn, gave a part of mountainous and vacant land belonging to the Alashli Mountain to a *raʿiyyah* (singular of *raʿāyā*) named Ilyās in exchange for 50 *aqchah*s

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48 Art. 103.

49 For another example, see Akgündüz, *Osmanlı Kanunnâmeleri*, 7/721.

50 Barkan, "Tanzimat ve 1274 (1858) Tarihli Arazi Kanunnamesi", 305.

51 *Üsküdar Mahkemesi 2 Numaralı Sicil (924-927/1518-1521)*, ed. Rıfat Günalan et al. (İstanbul: İSAM Yayınları, 2010), 2/142.

52 *Üsküdar Mahkemesi 51 Numaralı Sicil (987-988/1579-1580)*, ed. Rıfat Günalan et al. (İstanbul: İSAM Yayınları, 2010), 8/266.

as a *ṭapu*-tax.[53] In this context, it should also be noted that during the 16th and 17th centuries, although the amount of *ṭapu*-tax for the prosperous lands located in İstanbul and its surroundings varied depending on the size and fertility of the land, it sometimes reached hundreds, thousands or even tens of thousands *aqchah*s.[54] Actually, this clearly indicates that the Ottoman administration kept the amount of the *ṭapu*-tax required to be paid for the opening up the wastelands for cultivation at a very low level, though not purely symbolic, in order to make it more attractive for the *raʿāyā*.[55]

It is understood that the cultivation of wastelands with permission underwent a partial revision in the 17th century. For, *Qawānīn-i ʿUrfiyyah-ʾi Sulṭāniyyah* (The Imperial Customary Laws), a legal code compiled by an anonymous Ottoman bureaucrat who appears to have served as a court clerk in this century, clearly stated that no *ṭapu* payment would be demanded from the *raʿāyā* who opened up a forest for cultivation with permission; instead, it would be sufficient for them to pay only "a few *aqchah*s" to the *tīmār*-holder.[56] But it is not clear whether this rule, imposed on the forests in the 17th century, applied to all types of wastelands or not. However, the document still shows that when it came to the cultivation of forests, no *ṭapu*-tax was demanded from the *raʿāyā*; instead, a symbolic fee under the name of *idhn aqchahsi* (permission fee) or *ijāzat aqchahsi* (authorization fee) was received.

By the middle of the 19th century, a substantial change took place in this respect. Although the Land Code of 1858 accepted the cultivation

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53 *Üsküdar Mahkemesi 51 Numaralı Sicil*, 8/271.

54 "Kânûn-i Cedîd", 1/779. See also *Eyüb Mahkemesi (Havâss-ı Refîʿa) 19 Numaralı Sicil (1028-1030/1619-1620)*, ed. Yılmaz Karaca et al. (İstanbul: İSAM Yayınları, 2011), 24/234, 281, 284; *Balat Mahkemesi 1 Numaralı Sicil (964-965/1557-1558)*, ed. Mehmet Akman et al. (İstanbul: İSAM Yayınları, 2019), 41/133, 154; *Üsküdar Mahkemesi 2 Numaralı Sicil*, 2/155, 267; *Üsküdar Mahkemesi 51 Numaralı Sicil*, 8/268, 343.

55 İnalcık claims that the Ottoman authorities paid attention to keep the tax payments at a very low level with the purpose of increasing the attractivity of cultivating vacant and abandoned lands for people and groups, see İnalcık, *An Economic and Social History of the Ottoman Empire*, 1/170. However, in the 16th and 17th centuries, this privileged situation was valid only for *yürük*s and janissaries in the military class rather than whole *raʿāyā*. See Imber, "The Cultivation of Wasteland", 110-112.

56 *Qawānīn-i ʿUrfiyyah-ʾi Sulṭāniyyah* (İstanbul: İBB Atatürk Kitaplığı, Muallim Cevdet, K223), 63a.

of wasteland as a means of obtaining only the right of disposal of the land, as it had always been, it clearly stipulated that *ṭapu*-tax would no longer be demanded for the wastelands cultivated with the permission of land officials who had replaced the status of *sipāhī*s as the holders of the lands at that time.[57] The commentators of the code stated that, in practice, the *raʿāyā* were not demanded to pay the *ṭapu*-tax in such cases, but they were only obliged to pay a kind of transaction fee under the name of "three *gurūsh*s (piastre) for paper cost and one *gurūsh* for clerkship" and then "a *ṭapu* title deed" was given to them for free.[58]

1.2.2. Unpermitted Cultivation: A Tension Between *Sipāhī*s and *Raʿāyā*

The unpermitted cultivation of wastelands within the boundaries of a *tīmār* also provided a limited right of disposal for the *raʿāyā* themselves. The issue, occasionally encountered in various legal codes from the 16th to the 17th centuries, was also included in the general code of Sulaymān the Lawgiver, known as *Qānūnnāmah-ʾi ʿUthmānī* (The Ottoman Imperial Code).[59] According to this code, the *raʿāyā* cultivating the wastelands without permission from the *tīmār*-holders had the right of disposal over the land for three[60] years.[61] However, if the *ṭapu*-tax was not paid at the end of that period, the land could be transferred to someone else. In this case, the right to acquire disposal rights of the land by paying the *ṭapu*-tax to the *tīmār*-holders, primarily belonged to the person who opened it up for cultivation. However, if this person refused to pay the *ṭapu*-tax, then the *tīmār*-holder could allocate the land to someone else in exchange for it.

The cultivation of wastelands without permission led to serious tensions between the *raʿāyā* and the *sipāhī*s in the early 17th century.

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57 Art. 103.

58 Ashraf, *Kulliyyāt*, 570; ʿAlī Ḥaydar Efendī, *Sharḥ-i Jadīd*, 448.

59 Akgündüz, *Osmanlı Kanunnâmeleri*, 4/310. This regulation was integrated into later legal codes. As for the examples, see Akgündüz, *Osmanlı Kanunnâmeleri*, 8/117, 9/509.

60 This duration was reduced to six months in the mid-19th century, see Ashraf, *Kulliyyāt*, 571.

61 In his article, Imber refers to another version of this law (see Akgündüz, *Osmanlı Kanunnâmeleri*, 8/117), whose language is somewhat ambiguous, and infers that the *sipāhī* had the authority to reclaim the land from the person who cultivated it during this period. However, a clearer version of the law to which I referred (see Akgündüz, *Osmanlı Kanunnâmeleri*, 4/310) in the footnote 59 shows that this inference is not correct.

Apparently, the *raʿāyā*, who might have been inclined to consider the act of cultivation alone sufficient to obtain the right of disposal of the wasteland, and perhaps even ownership of it, were unwilling to pay the *ṭapu*-tax to the *sipāhī*s to secure this right. It is probably for this reason that the wastelands were generally preferred to be cultivated by the *raʿāyā* without permission from the *sipāhī*s. However, the *sipāhī*s, who suffered significant loss of revenues because they couldn't obtain a *ṭapu*-tax in such cases, either personally or through other local officials (this is not clear in the documents) brought the issue to the attention of the sultan. The petition, dated Dhū l-qaʿdah 11, 1017/February 16, 1609, stated that the *raʿāyā* cultivating the wastelands without permission claimed that the *ṭapu*-tax would be invalid because they had started to pay tithe (*ʿushr*) and tax (*rasm-i chift*) to the *tīmār*-holder.[62] It was emphasized in the same petition that "a farm in the vicinity of İstanbul was given to the *raʿāyā* for twenty to thirty thousand *aqchah*s, and in some regions for five to ten thousand *aqchah*s, and in each region in the Empire for a significant amount of *aqchah*s" and thus pointed out that "if this actual situation were accepted, then the *raʿāyā* would have the right to disposal the state-owned and endowed lands as private property and therefore, especially the *tīmār*-holders, who have participated in campaigns for twenty to thirty years, would have been wronged".[63]

In response to the petition, Sultan Aḥmad I issued an edict on Muḥarram 1, 1018/April 6, 1609 ordering those who opened up wastelands for cultivation without permission to pay the *ṭapu*-tax to the *tīmār*-holders.[64] In return for the attitude of the *raʿāyā* who claimed the ownership of the wastelands, they opened them up for cultivation and therefore refused to pay the *ṭapu*-tax to the *tīmār*-holders, the edict, highlighting the sultan's authority over these lands, strongly showed that the *raʿāyā* only acquired the right of disposal over these lands rather than the ownership of them and hence, they were obliged to get permission from the *sipāhī*s who was the deputy of the sultan and to pay *ṭapu*-tax in order to gain this right.[65]

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62 Pīr Meḥmed al-Uskūbī, *Ẓahīr al-Quḍāh* (İstanbul: Süleymaniye Kütüphanesi, Esad Efendi, 852), 84a; see also 84a-b.

63 "Kânûn-i Cedîd", 1/779; see also Imber, "The Cultivation of Wasteland", 107-108.

64 "Kânûn-i Cedîd", 1/779. For another version of the *fatwá*, see Akgündüz, *Osmanlı Kanunnâmeleri*, 7/339.

65 Imber, "The Cultivation of Wasteland", 108.

In short, the rules governing the practice of cultivation of wastelands during the 16th-17th century Ottoman Empire were determined by the edicts of the political authority or the legal codes consisting of them. The political authority or its local representatives in the provinces, known as *tīmār*-holders, granted the *raʿāyā* only the "right of disposal" over the wastelands, whether cultivated with permission or without. The absolute ownership of the lands, in all cases, belonged to the imperial treasury. Therefore, Imber is correct in claiming that the practice of cultivating wastelands in the Empire had its source in the "sultanic law".[66] However, his claim that this practice was in conflict with the Ḥanafī interpretation of the *sharīʿah* does not appear to be accurate. This issue will be elaborated upon in the subsequent sections of the article.

2. The Change in the Ḥanafī Doctrine of Cultivating Wasteland in Central Asia

This section will first present a summary of the classical Ḥanafī doctrine of *iḥyāʾ al-mawāt* in terms of the boundaries of the sultan's authority over the wastelands. Then, the coming section will explain that a new interpretation emerged on this subject in the second half of the 4th/10th century with Abū l-Layth al-Samarqandī (d. 373/983) in Central Asia. Finally, the last one will elucidate that this interpretation was increasingly quoted in the *fatāwá* literature that was compiled in the same region during the following centuries, and then it became a part of the Ḥanafī substantive law through its incorporation into the *sharḥ* literature.

2.1. The Classical Ḥanafī Doctrine of Cultivating Wasteland: An Overview Regarding the Boundaries of the Sultan's Authority

The cultivation of wasteland, one of the oldest methods for acquiring the right of disposal or ownership of agricultural lands, has evolved into an integral part of Islamic substantive law, stemming from various practices of Prophet Muḥammad and the Rightly-Guided Caliphs,[67] and in the main sources of the Ḥanafī legal tradition, it has been dealt with either as a separate chapter or as a sub-chapter within

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66 Imber, "The Cultivation of Wasteland", 101-112.

67 Hamza Aktan, "İhyâ", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 2000), 22/7.

the chapters titled *kitāb al-shirb* (the book of water sharing) or *kitāb al-zakāh* (the book of almsgiving).

In Ḥanafī legal doctrine, there are varying approaches regarding the definition of "*mawāt* land". However, according to the view that serves as the basis for legal opinions within the school, the lands that are currently unusable because of infertility and unsuitability for agriculture due to drought, flood, etc., which are ownerless or their owners are unknown, are all considered *mawāt* land.[68] *Iḥyāʾ*, which means to open up the *mawāt* land for agriculture, includes procedures such as irrigation, digging channels, making fountains, removing stones from the soil, drying the swamp, planting grain, planting trees and constructing buildings on the land.[69] The person claiming the land with this purpose first subjects it to a process called *taḥjīr* or *iḥtijār* and, as part of this process, surrounds the land with stones, bushes, or dry trees. Although *taḥjīr* is not sufficient to obtain the right of disposal or ownership of the land, it grants the person the right to cultivate the land ahead of others within a three-year period. However, the land that is not cultivated within three years returns to the status of *mawāt,* and the ruler (*imām*) can reallocate it to whomever he wishes.[70]

The question of whether the permission of the ruler is a requirement for acquiring ownership right to wasteland through cultivation is a subject of discussion in the doctrine. While Abū Ḥanīfah stipulates obtaining the permission of the ruler for this, Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī consider the cultivation of the wasteland alone to be sufficient. The *Imāmayn* (i.e., the two latter jurists) mainly rely on the literal meanings of these prophetic narrations: "The person cultivating the wasteland owns it".[71] and "The

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[68] Zayn al-Dīn ibn Ibrāhīm ibn Muḥammad Ibn Nujaym al-Miṣrī, *al-Baḥr al-rāʾiq sharḥ Kanz al-daqāʾiq*, along with *Minḥat al-khāliq* of Ibn ʿĀbidīn (Beirut: Dār al-Kitāb al-Islāmī, n.d.), 8/238-9. Abū l-Ṣuʿūd also defines the *mawāt* lands as above in one of his *fatwá*s. See *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 261b. According to another view attributed to Abū Yūsuf by Qāḍīkhān, "lands that the ruler conquered by military force (*ʿanwat*^{an}) but did not distribute to the veterans and left them ownerless (*muhmal*)" are regarded as *mawāt* lands. See Abū l-Maḥāsin Fakhr al-Dīn Ḥasan ibn Manṣūr Qāḍīkhān al-Ūzkandī, *Fatāwá Qāḍīkhān* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2009), 1/244.

[69] Ibn Nujaym, *al-Baḥr al-rāʾiq*, 8/238.

[70] Abū Bakr Shams al-aʾimmah Muḥammad ibn Abī Sahl Aḥmad al-Sarakhsī, *al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 23/168.

[71] Abū Dāwūd, "al-Kharāj", 37; al-Tirmidhī, "al-Aḥkām", 38.

one who cultivates the ownerless land is more deserving of its ownership than anyone else".[72] They also argue, by comparing wastelands with the permissible properties (*al-amwāl al-mubāḥah*) such as water, wood, grass, prey, mines, or buried treasures, that the person cultivating these lands ahead of anyone else will obtain ownership of them without requiring permission from the ruler.

On the other hand, Abū Ḥanīfah, in this context, pays attention to these narrations of the Prophet Muḥammad: "*ʿĀdiyy al-arḍ*[73] belongs to Allah and His Messenger, then it is yours".[74] and "A person cannot have anything without the consent of his ruler".[75] He, therefore, associates such actions of the Prophet with his rulership (*imāmah*) and views the authority of the ruler as a measure "to prevent chaos and rights violations and to maintain the order in the cultivation of these lands".[76] To put it more clearly, according to him, the cultivation of wastelands is, in fact, a matter of politics (*siyāsah*) rather than *sharīʿah*.[77] Additionally, he argues, by comparing wastelands with spoils of war or treasury properties, that no one can claim ownership right over these lands without the permission of the ruler.[78]

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72 al-Bukhārī, "al-Ḥarth", 15; Abū Dāwūd, "al-Kharāj", 37.

73 *ʿĀdiyy al-arḍ* though literally translates to "the lands of *ʿĀd* people", refers as a term to the ownerless and barren lands, in other words, the *mawāt* lands. See al-Sarakhsī, *al-Mabsūṭ*, 23/168.

74 Abū Yūsuf Yaʿqūb ibn Ibrāhīm ibn Ḥabīb al-Kūfī, *Kitāb al-Kharāj*, ed. Ṭāhā ʿAbd al-Raʾūf Saʿd - Saʿd Ḥasan Muḥammad (Cairo: al-Maktabah al-Azhariyyah li-l-Turāth, n.d.), 77.

75 Abū l-Qāsim Musnid al-dunyā Sulaymān ibn Aḥmad al-Ṭabarānī, *al-Muʿjam al-kabīr*, ed. Ḥamdī ibn ʿAbd al-Majīd al-Salafī (Cairo: Maktabat Ibn Taymiyyah, 1994), 4/20.

76 Aktan, "İhyâ", 22/9; For a firsthand commentary on Abū Ḥanīfah's approach, see Abū Yūsuf, *Kitāb al-Kharāj*, 76-77.

77 As explicitly stated by the prominent figure of the Central Asian Ḥanafī legal tradition, Shams al-aʾimmah al-Ḥalwānī (d. 452/1060-1), Abū Ḥanīfah defines *mawât* lands as a right belonging to the entire Islamic community (*ḥaqq al-ʿāmmah*) and says that only the *imām* has the authority to dispose of such lands, and without his permission, no one can own them. See Shams al-aʾimmah ʿAbd al-ʿAzīz ibn Aḥmad al-Ḥalwānī, *al-Mabsūṭ* (İstanbul: Süleymaniye Kütüphanesi, Ayasofya, 1381), 71b.

78 For detailed information on the views and arguments of the scholars, see Muḥammad ibn Ḥasan al-Shaybānī, *al-Aṣl*, ed. Mehmet Boynukalın (Beirut: Dār Ibn Ḥazm, 1433), 8/159, especially see 165-166; Abū Yūsuf, *Kitāb al-Kharāj*, 76-77; Abū Bakr Aḥmad ibn ʿAlī al-Rāzī al-Jaṣṣāṣ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī fī l-fiqh al-Ḥanafī* (Beirut - Medina: Dār al-Bashāʾir al-Islāmiyyah - Dār al-Sirāj, 2010), 3/443-445; al-Sarakhsī, *al-Mabsūṭ*, 23/167, 3/16.

The view relied upon as the basis for legal opinions (*muftá bih*) in the school is that of Abū Ḥanīfah. However, the mainstream Ḥanafī legal texts usually quote this view with the sentence: "The person cultivating the wasteland owns it". and do not provide a detailed explanation regarding the authority of the ruler over these lands.[79] The absolute language of these legal texts seems to imply that the authority of the ruler is limited to granting full ownership of the land in question to the relevant person. As can be seen below, Ottoman Ḥanafī jurists of the 16th and 17th centuries have thus occasionally grappled with questions such as:

> While it is clearly stated [in the legal texts of the school] that *Zayd* cultivating the wasteland with the permission of the ruler obtains full ownership of it, why does not he obtain it in our time, and why does it not pass to his heirs when he dies?[80]

In his analysis of the issue, Imber confines his examination of the school's doctrine of cultivating wasteland to only two main legal texts,[81] and perhaps for the same reason, he states that there was a clear inconsistency between the Ottoman practice and the Ḥanafī doctrine in this respect, and hence he claims that the practice in question was, in fact, established by the "secular law" independently of *sharīʿah*.[82] According to his research findings, in contrast to the prevailing view of the Ḥanafī school, the Ottoman sultans did not grant the persons cultivating the wastelands full ownership rights but a limited right of disposal of them, regulated by the rules of the *mīrī* system. This analysis is based on the assumption that according to the view of Abū Ḥanīfah, the sultan (i.e., *imām*) did not have the authority to grant only the right of disposal to the person cultivating the wasteland.

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[79] For the examples, see Abū l-Ḥusayn Aḥmad ibn Abī Bakr al-Qudūrī, *Mukhtaṣar al-Qudūrī fī l-fiqh al-Ḥanafī*, ed. Kāmil Muḥammad Muḥammad ʿUwayḍah (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1418), 140; Abū l-Ḥasan Burhān al-Dīn ʿAlī ibn Abī Bakr al-Marghīnānī, *al-Hidāyah fī sharḥ Bidāyat al-mubtadī*, ed. Ṭalāl Yūsuf (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī, n.d., 4/383-4; Alāʾ al-Dīn Muḥammad ibn ʿAlī al-Ḥaṣkafī, *al-Durr al-mukhtār sharḥ Tanwīr al-abṣār wa-jāmiʿ al-biḥār*, ed. ʿAbd al-Munʿim Khalīl Ibrāhīm (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2002), 671.

[80] Pīr Meḥmed al-Uskūbī, *Muʿīn al-muftī fī l-jawāb ʿalá l-mustaftī* (*Fatāwā-yi Uskūbī*) (İstanbul: Süleymaniye Kütüphanesi, Aşir Efendi, 133), 297b. This *fatwá* will be discussed below in a similar context.

[81] The legal texts referenced by Imber, in this context, are limited to al-Qudūrī's *al-Mukhtaṣar* and al-Marghīnānī's *al-Hidāyah*, see Imber, "The Cultivation of Wasteland", 102.

[82] Imber, "The Cultivation of Wasteland", 101-112.

Nevertheless, as elucidated in the preceding section, although Imber's observation regarding the Ottoman practice is accurate, the assumption he makes regarding Abū Ḥanīfah's view and the claim he puts forth based on it require revision. The Ḥanafī *nawāzil* and *fatāwá* literature compiled in Central Asia and Ottoman Anatolia, which he largely ignored in his study,[83] makes this revision imperative.

2.2. The Early Doctrinal Discussions in Central Asia

One of the leading jurists of the Central Asian Ḥanafī legal tradition, Abū l-Layth al-Samarqandī, in his work titled *Fatāwá l-nawāzil*, indicates that a practice similar to the Ottoman experience regarding the cultivation of wasteland existed in this region during the first half of the 4th/10th century.[84] He relates that another prominent Ḥanafī jurist of the region, Abū l-Qāsim Aḥmad ibn Ḥām ibn ʿIṣmah al-Balkhī al-Ṣaffār (d. 336/947), was asked a question about whether the *imām* could grant permission to someone who wished to cultivate a wasteland on the condition that "he does not own it, but only benefit from it", and he responded as follows:

> If this person cultivates the land, he will own it because the condition proposed by the *imām* is invalid. It is just like when the *imām* demands that a person can hunt as long as he doesn't own the prey or gather wood from the mountains as long as he doesn't own it, or that a married couple can engage in *liʿān*[85] as long as they don't separate. It is the same in this case.[86]

Even though al-Ṣaffār asserts that the cultivation of a wasteland under this condition gives the person full ownership, al-Samarqandī is of the opinion that this is a response consistent with the view of Abū

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[83] Imber makes references in his article only to a few *fatwá*s belonging to Ibn al-Bazzāz from Central Asia and Abū l-Ṣuʿūd, Meḥmed al-Bahāʾī and ʿAbd al-Raḥīm from the Ottoman Anatolia, and he particularly disregards some of Abū l-Ṣuʿūd's *fatwá*s that are directly relevant to the issue. In addition, he devotes only one page of the 12-pages article to the examination of cultivating wasteland in the Ḥanafī doctrine.

[84] The question of which contextual circumstances gave rise to the practice of cultivating wastelands in Central Asia is important, but it lies beyond the scope of this research.

[85] *Liʿān* is a special type of divorce in which a husband accuses his wife of adultery without witnesses, and at the end they both invoke curses upon themselves in front of a judge, for detailed information see Mehmet Âkif Aydın, "Liân", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (Ankara: TDV Yayınları, 2003), 27/172-173.

[86] Abū l-Layth Imām al-hudá Naṣr ibn Muḥammad al-Samarqandī, *Fatāwá l-nawāzil* (İstanbul: Süleymaniye Kütüphanesi, Carullah Efendi, 960), 36a.

Yūsuf and al-Shaybānī.[87] Indeed, as mentioned above, the *Imāmayn* compare wastelands to permissible properties like prey and wood and hence argue that a person who cultivates such a land will own it without the need for the *imām*'s permission. In his response to this question, al-Ṣaffār, basing his argument on their view, concludes that the condition put forth by the *imām* is not valid for the cultivation of wastelands just as it is not valid for the permissible properties. However, al-Samarqandī, giving the impression of not agreeing with al-Ṣaffār's mentioned *fatwá*, answered the same question, this time basing his response on the view of Abū Ḥanīfah, as follows:

> However, according to Abū Ḥanīfah's view, this condition is valid because no one can own the land without the permission of the ruler. Therefore, if the ruler does not allow the relevant person to own the land, it means that the ownership right does not occur for him.[88]

Al-Samarqandī's interpretation is in line with Abū Ḥanīfah's general approach. As I noted earlier, Abū Ḥanīfah, considering the cultivation of wastelands as a matter of politics with reference to various narrations of the Prophet, acknowledges that the authority to decide under what conditions these lands should be cultivated belongs to the ruler.

2.3. From *Fatwá*s to *Shurūḥ*: The Incorporation of al-Samarqandī's Interpretation into the Ḥanafī Legal Doctrine

The interpretation that al-Samarqandī developed based on Abū Ḥanīfah's approach to the problem also appeared in other important examples of *nawāzil* and *fatāwá* literature compiled in Central Asia during the later centuries. Some of these examples include: *al-Wāqiʿāt* of al-Ṣadr al-Shahīd (d. 536/1141), *al-Fatāwá l-Walwālijiyyah* of al-Walwālijī (d. after 540/1146), *Majmūʿ al-nawāzil wa-l-wāqiʿāt wa-l-ḥawādith* of al-Kashshī (d. 550/1155), *Khulāṣat al-nawāzil* of al-Yazdī[89] (d. after 559/1164), *al-Muḥīt al-Burḥānī, Dhakhīrat al-fatāwá*, and *Tatimmat al-fatāwá* of Burḥān al-Sharīʿah al-Bukhārī (d.

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87 Al-Samarqandī, *Fatāwá l-nawāzil*, 36a.

88 Al-Samarqandī, *Fatāwá l-nawāzil*, 36a.

89 For the biography of al-Yazdī, see Khayr al-Dīn ibn Maḥmūd ibn Muḥammad al-Ziriklī, *al-Aʿlām: Qāmūs tarājim li-ashhar al-rijāl wa-l-nisāʾ min al-ʿArab wa-l-mustaʿribīn wa-l-mustashriqīn* (Beirut: Dār al-ʿIlm li-l-Malāyīn, 2002), 7/253.

589/1193), and *al-Fatāwá l-Ghiyāthiyyah* of Dāwūd ibn Yūsuf al-Khaṭīb[90] (d. first half of 7th/13th century).

First, considering that these compilations consist of the *fatwá*s related to commonly encountered events in the Central Asian Islamic community,[91] it is evident that the question of whether the rulers have the authority to give permission to people who wish to cultivate wastelands on the condition that they acquire only the right of disposal of the land remained a dynamic issue in this region during the 12th and 13th centuries.

Among these scholars, al-Kashshī, compiling the legal opinions of Abū Bakr Muḥammad ibn al-Faḍl (d. 381/991), Abū l-Abbāṣ Aḥmad ibn Muḥammad al-Nāṭifī (d. 446/1054), and the other prominent scholars of the Ḥanafī school in his work, quotes exactly the mentioned words of Abū l-Layth al-Samarqandī.[92] In his work summarizing *al-Fatāwá l-nawāzil*, al-Yazdī also conveys al-Samarqandī's statements just as they are.[93] al-Ṣadr al-Shahīd and al-Walwālijī, who seem to consider Abū Ḥanīfah's view to be correct (*taṣḥīḥ*) and give it preference (*tarjīḥ*),[94] respond the question by ignoring the views of the *Imāmayn*. They state:

> If the *imām* gives permission to a person to cultivate a *mawāt* land on the condition of not acquiring its ownership but only benefitting from it, he does not own the land upon cultivating it. Because this condition is valid according to Abū Ḥanīfah, as, in

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90 For the biography of Dāwūd ibn Yūsuf al-Khaṭīb, see Adem Çiftci, "Hanefî Fetva Geleneğinin Önemli Bir Halkası: el-Fetâva'l-Gıyâsiyye", *İslam Hukuku Araştırmaları Dergisi* 35 (2020), 533-563.

91 For instance, among these scholars, al-ʿAttābī mentions in his work that he compiles the *fatwá*s of Ḥanafī scholars regarding the legal issues for which people often need judgments. See Abū Naṣr Aḥmad ibn Muḥammad al-ʿAttābī, *al-Fatāwá l-ʿAttābiyyah (Jāmiʿ al-fiqh)* (İstanbul: Süleymaniye Kütüphanesi, Damat İbrahim, 710), 0b-1a. For a comprehensive analysis of the nature of these works, see Bedir, *Buhara Hukuk Okulu*, 94-115.

92 Aḥmad ibn Mūsá al-Kashshī, *Majmūʿ al-nawāzil wa-l-wāqiʿāt wa-l-ḥawādith* (İstanbul: Süleymaniye Kütüphanesi, Fatih, 2467), 20a.

93 Abū Ṣaʿd Jalāl al-Dīn al-Muṭahhar ibn Ḥusayn al-Yazdī, *Khulāṣat al-nawāzil* (İstanbul: Süleymaniye Kütüphanesi, Carullah Efendi, 928), 124a.

94 For the terminological definitions of *taṣḥīḥ* and *tarjīḥ*, see Hallaq, "From *Fatwā*s to *Furūʿ*", 51 etc.

his view, no one can own it without the permission of the *imām*...[95]

In this context, both two scholars do not mention the names of Abū l-Layth al-Samarqandī and Abū l-Qāsim al-Ṣaffār. However, Burḥān al-Sharīʿah al-Bukhārī addresses the issue that a farmer abandons a *mawāt* land after cultivating it with the permission of the *imām* and leaves it fallow, realizing that the land is not suitable for agriculture, and then, another farmer tills the same land with the *imām*'s permission as well. He states here that it is a controversial issue among the Ḥanafī scholars whether the first farmer can take the land from the second one or not and emphasizes that the scholars' responses to the question of "whether the cultivator of the wasteland, with the permission of the ruler, will obtain full ownership of the land or only the right of disposal"[96] determines their positions in this discussion. According to his narrative, al-Ṣaffār,[97] accepting that the person who cultivates the *mawāt* land with the permission of the *imām* will only have the right of disposal, argues that as long as the first farmer cultivates the land, he will have more rights over it than anyone else, but if he abandons it and leaves it fallow, he will lose this right. On the other hand, the majority of the Ḥanafī scholars, who acknowledge that the act of cultivation grants full ownership of the land to the person, argue that the first farmer can reclaim the land from the second one in any case. As can be noticed, there is a clear contradiction between Burḥān al-Sharīʿah's narrative in terms of al-Ṣaffār's view on the issue of cultivating the *mawāt* land with permission and the narrative of the other Ḥanafī scholars mentioned above, including al-Samarqandī. For, according to the narrative of al-Samarqandī and his followers, al-Ṣaffār states that even if the *imām* explicitly gives permission for the

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[95] Ḥusām al-Dīn ʿUmar ibn ʿAbd al-ʿAzīz al-Bukhārī al-Ṣadr al-Shahīd, *al-Wāqiʿāt* (İstanbul: Süleymaniye Kütüphanesi, Şehid Ali Paşa, 1086), 33a; Abū l-Fatḥ ʿAbd al-Rashīd ibn Abī Ḥanīfah al-Walwālijī, *al-Fatāwá l-Walwālijiyyah*, ed. Miqdād ibn Mūsá Furaywī (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 1/214.

[96] Burḥān al-Sharīʿah, *Tatimmat al-fatāwá* (İstanbul: Süleymaniye Kütüphanesi, Fatih, 2410), 206b. This narrative can also be found in almost the same expressions in al-Bukhārī's other two works. See Burḥān al-Sharīʿah Maḥmūd ibn Aḥmad al-Bukhārī, *al-Muḥīṭ al-Burḥānī* (Karachi: Idārat al-Qurʾān wa-l-ʿUlūm al-Islāmiyyah, 2004), 19/75; Id., *Dhakhīrat al-fatāwá* (İstanbul: Süleymaniye Kütüphanesi, Carullah Efendi, 650), 225b.

[97] Burḥān al-Sharīʿah writes his full name like this: "Aḥmad ibn Ḥām ibn ʿIṣmah al-Ṣaffār al-Balkhī", see Burḥān al-Sharīʿah, *Tatimmat al-fatāwá*, 206b.

cultivation of the *mawāt* land on the condition of only benefiting from it, this condition would not be valid, and the person cultivating the land would have full ownership over it. This contradiction probably arises from Burḥān al-Sharīʿah's erroneous narrative. He must have mistakenly attributed this view to al-Ṣaffār instead of al-Samarqandī.[98] However, Burḥān al-Sharīʿah's other analysis is of considerable significance, indicating that this interpretation, which actually belongs to al-Samarqandī, had not yet gained widespread acceptance among the Ḥanafī scholars at that time and therefore had not reached a high position in the hierarchy of intra-school legal views.

Dāvūd ibn Yūsuf al-Khaṭīb, on the other hand, transmits the narrative of al-Samarqandī and al-Ṣadr al-Shahīd in *al-Fatāwá l-nawāzil* and *al-Wāqiʿāt* respectively with a slight difference in wording and points out the divergence between the views of Abū Ḥanīfah and the *Imāmayn* on this matter.[99]

The interpretation developed by al-Samarqandī based on Abū Ḥanīfah's view began to be quoted in later centuries in the Ḥanafī school's literature of commentary (*sharḥ*), thus completing the process of becoming a part of the legal doctrine. Some of the works referring to this approach include: *Jāmiʿ al-muḍmarāt* of Yūsuf ibn ʿUmar al-Kādūrī (d. 832/1428-9), *al-Hidāyah* of Burhān al-Dīn al-Marghīnānī (d. 593/1197), *al-Ikhtiyār* of ʿAbd Allāh ibn Maḥmūd al-Mawṣilī (d. 683/1284), *Tabyīn al-ḥaqāʾiq* of ʿUthmān ibn ʿAlī al-Zaylaʿī (d. 743/1343), *al-ʿInāyah* of Akmal al-Dīn al-Bābartī (d. 786/1384), *al-Bināyah* of Badr al-Dīn al-ʿAynī (d. 855/1451), *al-Baḥr al-rāʾiq* of Zayn al-Dīn Ibn Nujaym (d. 970/1563), *Majmaʿ al-anhur* of

[98] Although a summary of the narrative by Burḥān al-Sharīʿah is cited in later commentary literature without mentioning the name of al-Samarqandī or al-Ṣaffār, in some works the view that cultivation with permission gives the person only the right of disposal over the land is also attributed to the latter. For the commentaries that do not mention any names, see al-Marghīnānī, *al-Hidāyah*, 4/383-384; Ibn Nujaym, *al-Baḥr al-rāʾiq*, 8/239. For the commentaries that attribute this view to al-Ṣaffār, see Akmal al-Dīn Muḥammad ibn Maḥmūd al-Bābartī, *al-ʿInāyah sharḥ al-Hidāyah* (Beirut: Dār al-Fikr, n.d.), 10/71. For this narrative, see also Ḥāfiẓ al-Dīn Muḥammad ibn Muḥammad al-Kardarī al-Khārizmī al-Bazzāzī, *al-Fatāwá l-Bazzāziyyah*, along with *al-Fatāwá l-ʿĀlamgīriyyah* (Būlāq: al-Maṭbaʿah al-Kubrá l-Amīriyyah, 1310 AH), 6/125.

[99] The author submitted his work to the ruler of Delhi Sultanate, Abū l-Muẓaffar Ghiyāth al-Dīn Balābān (d. 686/1287), see Dāwūd ibn Yūsuf al-Khaṭīb, *al-Fatāwá l-Ghiyāthiyyah* (Būlāq: al-Maṭbaʿah al-Amīriyyah), 48-49.

Shaykhīzādah ʿAbd al-Raḥmān (d. 1078/1667), *Radd al-mukhtār* of Muḥammad Amīn Ibn ʿĀbidīn (d. 1252/1836).

Al-Kādūrī, among these scholars, quotes al-Ṣadr al-Shahīd's words identically.[100] The scholars, except Ibn ʿĀbidīn, generally content themselves with summarizing the narrative made by Burḥān al-Sharīʿah.[101] The late-period Ḥanafī scholar from Damascus, Ibn ʿĀbidīn, on the other hand, does not feel the need to refer to any previous legal authorities in this context since it appears that al-Samarqandī's interpretation has already become an integral part of the school's legal doctrine by this time. Hence, he just states that according to Abū Ḥanīfah, if the sultan allows a person to cultivate a *mawāt* land on the condition of just benefiting from it, the person has only the right of disposal, while according to the *Imāmayn*, he has the right of full ownership.[102]

3. The Approaches of 16th and 17th Centuries Ḥanafī Scholars towards the Problem of Cultivation of Wasteland

The Ottoman state, which gradually evolved into a universal empire starting from the mid-15th century, underwent a shift in its priorities after the 1530s and instead of expanding its borders through conquest, began to concentrate on establishing a strong centralized government within the existing territories.[103] Like many other empires during the

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[100] Yūsuf ibn ʿUmar ibn Yūsuf al-Kādūrī al-Bazzār, *Jāmiʿ al-muḍmarāt wa-l-mushkilāt*, ed. ʿAmmār Muḥsin Fuʾād al-Rāwī (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2018), 3/460.

[101] Al-Marghīnānī, *al-Hidāyah*, 4/383-384; Abū l-Faḍl Majd al-Dīn ʿAbd Allāh ibn Maḥmūd al-Mawṣilī, *al-Ikhtiyār li-taʿlīl al-Mukhtār* (Cairo: Maṭbaʿat al-Ḥalabī, 1937), 3/67; Fakhr al-Dīn ʿUthmān ibn ʿAlī al-Zaylaʿī, *Tabyīn al-ḥaqāʾiq sharḥ Kanz al-daqāʾiq*, along with *al-Ḥāshiyah* of Shihāb al-Dīn Aḥmad ibn Muḥammad al-Shalabī (Cairo: al-Maṭbaʿah al-Kubrá l-Amīriyyah, 1895), 6/35; Ibn Nujaym, *al-Baḥr al-rāʾiq*, 8/239; al-Bābartī, *al-ʿInāyah*, 10/71; Badr al-Dīn Maḥmūd ibn Aḥmad al-ʿAynī, *al-Bināyah sharḥ al-Hidāyah* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1420), 12/287; Shaykhīzādah ʿAbd al-Raḥmān ibn Meḥmed, *Majmaʿ al-anhur fī sharḥ Multaqá l-abḥur*, along with *al-Durr al-muntaqá* of al-Ḥaṣkafī (Beirut: Dār Iḥyāʾ al-Turāth al-ʿArabī), 2/558.

[102] Ibn ʿĀbidīn is of the opinion that this difference of views stems from the disagreement on the extent of the *imām*'s authority over *mawāt* lands, see Muḥammad Amīn ibn ʿUmar Ibn ʿĀbidīn, *Radd al-mukhtār ʿalá l-Durr al-mukhtār* (Beirut: Dār al-Fikr, 1992), 6/432.

[103] For detailed information about this transformation, see Abdurrahman Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire* (London: Cambridge University Press, 2017), 119-133.

classical era, the primary source of income for the Ottomans was agricultural taxes. Consequently, the Empire's ability to strengthen its central authority and influence was heavily based on the equitable taxation of agricultural lands and the effective collection of taxes. During this period, as the central government implemented various administrative measures to reassert control over the lands, the Ottoman scholars, particularly the *shaykh al-islām*s, also exerted a considerable effort to explain the legal basis of the land system of the Empire.[104]

In this historical context, one of the main issues that preoccupied the scholars was the legal boundaries of the sultan's authority over the *mawāt* lands. To explain this, they primarily relied on the new interpretation developed by al-Samarqandī, often citing the important sources of Central Asian Ḥanafī legal tradition, such as *al-Fatāwá l-Walwālijiyyah* and *Dhakhīrat al-fatāwá*. For instance, some of these scholars include Chīvīzādah Muḥyī al-Dīn Meḥmed (d. 954/1547) and Bālīzādah Muṣṭafá (d. 1073/1662) among the *shaykh al-islām*s, as well as Pīr Meḥmed al-Uskūbī (d. 1020/1611), a *muftī* from the province Uskub (Skopje), and ʿAlī al-Nithārī,[105] known as *Muḥyī-ʾi Qayṣarī*, who served as "the *muftī* of *Qayṣarī*".

Chīvīzādah quotes the interpretation in question separately from the works of al-Walwālijī and al-Kashshī, just as it is.[106] As understood from another *fatwá* by Chīvīzādah, he regards the legal nature of the relationship between *sipāhī* and *raʿāyā* as being invalid lease contract (*ijārah fāsidah*) in these cases.[107] Bālīzādah refers to *al-Fatāwá l-Walwālijiyyah* as well, but he rearticulates this interpretation in his own words, as follows:

> According to Abū Ḥanīfah, if the ruler allows a person to cultivate a [*mawāt*] land on the condition of only benefitting from it, he cannot own it. However, if he gives permission by

[104] For a study focusing on this effort, see Pehlivan, *Sultan, Reaya ve Hukuk*.

[105] For a detailed biography of al-Nithārī, see Ahmed Hamdi Furat, "17. Asır Osmanlı Taşrasında Bir Fakih Portresi: Ali en-Nisârî", *Recep Tayyip Erdoğan Üniversitesi İlahiyat Fakültesi Dergisi* 15 (2019), 13-33. For his *fatwá* compilation, also see Şükrü Özen, "Osmanlı Döneminde Fetva Literatürü", *Türkiye Araştırmaları Literatür Dergisi* 3/5 (2005), 314.

[106] Chīvīzādah Muḥyī al-Dīn Meḥmed, *Majmūʿah-yi Chīvīzādah* (İstanbul: Süleymaniye Kütüphanesi, Carullah Efendi, 845), 300b-301a.

[107] Chīvīzādah Muḥyī al-Dīn Meḥmed, *Fatāwā-yi Chīvīzādah* (İstanbul: Süleymaniye Kütüphanesi, Kadızade Mehmed Efendi, 251), 1a-2a.

transferring the ownership of the land to him, then he becomes the owner.[108]

In the question part of a *fatwá*[109] addressed to al-Uskūbī, it is asked that how, despite the fact that the mainstream legal texts of the Ḥanafī school clearly state that the person cultivating the wasteland with the permission of the ruler owns it, the Ottoman sultans, in practice, grant the *raʿāyā* only the right of disposal over the land.[110] In his response, he states: "If the permission [of the ruler] does not include the right of ownership, but only of disposal, then [the person] does not acquire ownership as clearly explained in the *fatāwá* [literature]". He specifies here that the view expressed in the texts of the school as "the person who cultivates a wasteland with the permission of the ruler becomes its owner", contrary to what is initially understood, does not solely limit the authority of the ruler to granting full ownership of the land. Instead, it also gives the ruler the authority to grant only the right of disposal over it. He, at the end of his response, cites al-Walwālijī verbatim, stating that this explanation is found in the *fatāwá* literature.[111]

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[108] Bālīzādah Muṣṭafá, *al-Aḥkām al-Ṣamadiyyah fī l-sharīʿah al-Muḥammadiyyah ʿalá l-madhhab al-Nuʿmāniyyah* (İstanbul: Süleymaniye Kütüphanesi, Yenicami, 675), 199b.

[109] Al-Uskūbī, *Muʿīn al-muftī* (Âşir Efendi, 133), 297b. This *fatwá* can also be found in other compilations with the same wording, such as *Ṣuwar al-fatāwá* (see Süleymaniye Kütüphanesi, Amcazade Hüseyin Paşa, 243), 207a) attributed to a *muftī* named Mawlānā Pīrī Efendī, and *al-Fatāwá l-Sīwāsiyyah* (Süleymaniye Kütüphanesi, Kılıç Ali Paşa, 487, 158b) which was compiled by an anonymous scholar among the commentators of *al-Ṭarīqah al-Muḥammadiyyah* by Birgivī Meḥmed. In fact, the majority of the *fatwá*s found in these two compilations and al-Uskūbī's compilation are identical, with only some variations in their locations. In this respect, the actual author of *Ṣuwar al-fatāwá*, attributed to Mawlānā Pīrī Efendī, must also be Pīr Meḥmed Efendī al-Uskūbī. This is evident from the *ẓahriyyah* page of the mentioned copy of the compilation, which states that Mawlānā Pīrī Meḥmed Efendī served as the *muftī* of Thessaloniki and was an apprentice (*mulāzim*) to Chīvīzādah Meḥmed Efendī (d. 995/1587). These two pieces of information are historically accurate for al-Uskūbī as well. *Al-Fatāwá l-Sīwāsiyyah* by an anonymous compiler must also be another version of al-Uskūbī's compilation copied by someone else under a different title. I would like to thank my dear colleague Murat Sarıtaş for sharing with me his analysis that *Ṣuwar al-fatāwá* and *Muʿīn al-muftī* are largely same in terms of their content.

[110] The question part of the *fatwá* is previously quoted in another context. Additionally, see al-Uskūbī, *Muʿīn al-muftī* (Âşir Efendi, 133), 297b; *Ṣuwar al-fatāwá* (Amcazade Hüseyin Paşa, 243), 207a; *al-Fatāwá l-Sīwāsiyyah* (Kılıç Ali Paşa, 487), 158b.

[111] Al-Uskūbī, *Muʿīn al-muftī* (Âşir Efendi, 133), 297b; *Ṣuwar al-fatāwá* (Amcazade Hüseyin Paşa, 243), 207a; *al-Fatāwá l-Sīwāsiyyah* (Kılıç Ali Paşa, 487), 158b.

ʿAlī al-Nithārī was also asked the following question, which is, in fact, a reflection of the confusion caused by the tension between the literal meaning of the legal texts of the school and the Ottoman practice: "Does *Zayd* own either the ultimate ownership (*raqabah*) or usufructs (*manāfiʿ*) of the wasteland that he cultivated with the permission of the ruler?"[112] Al-Nithārī answers the question by stating that: "It is controversial. According to the majority of the scholars, he owns the ultimate ownership of the land, while some others argue that he owns only its usufructs". He then quotes exactly the narrative related to this issue, as it appears in *Dhakhīrat al-fatāwá* of Burḥān al-Sharīʿah al-Bukhārī, which was previously mentioned.[113] In his response, al-Nithārī, translating al-Bukhārī's words verbatim into Ottoman Turkish implies that the view accepting that the ruler has the authority to allow the cultivation of a wasteland only on the condition of benefitting from it is still a marginal view in the school at that time.

Moreover, some of the leading *shaykh al-islām*s of the period, such as Abū l-Ṣuʿūd (d. 982/1574), Khwājah Saʿd al-Dīn (d. 1008/1599) and Meḥmed al-Bahāʾī (d. 1064), considering the existing practice in the core lands of the Empire, interpreted the authority of the sultan over *mawāt* lands in the broadest sense and gave him the authority to grant not only the right of ownership but also of disposal to the person cultivating the wasteland, drawing from an inherited understanding from the Central Asian Ḥanafī legal tradition. The analysis of Abū l-Ṣuʿūd's various *fatwá*s addressing the issue of opening up a wasteland for agriculture clearly shows that he adopted this understanding. When the edict of 958/1551, which granted the "*ṭapu* right" for the daughters of the *raʿāyā* who cultivated the *mawāt* lands, came into effect, it appears that they attempted to extend their privileges to the already cultivated *mīrī* lands as well. Therefore, the sultan later issued another edict by declaring: "If the land in the possession of deceased *Zayd* is not a place that he previously cleared with his own axe and put labour into, then it should not be granted to his daughter!"[114] Abū l-Ṣuʿūd was asked whether the meaning of the word "a place that he previously

[112] ʿAlī al-Nithārī, *al-Fawāʾid al-ʿaliyyah min al-masāʾil al-sharʿiyyah* (İstanbul: Süleymaniye Kütüphanesi, Nuruosmaniye, 2021), 81b.

[113] al-Nithārī, *al-Fawāʾid* (Nuruosmaniye, 2021), 81b.

[114] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b. Unfortunately, we do not have information about the date on which this edict of the Sultan was issued. However, judging by the content, it appears to have been issued after the edict of 958/1551.

cleared with his own axe and put labour into" mentioned in the edict refers to "the cultivation of *mawāt* land".[115] In his relatively long response to this question, he first states that the right of disposal over the *mīrī* lands, including the prosperous lands and the ones that had been initially wastelands but were opened up for agriculture, has been transferred to the *raʿāyā* through an invalid lease contract.[116] This part of the *fatwá* is important because of two reasons. Firstly, he states here that the cultivated wastelands acquire the status of *mīrī* lands. This actually means the legal confirmation of a practice that is clearly seen in the *qānūnnāmah*s and the court records of the period. Secondly and more importantly for the problem addressed in this research, he acknowledges that the sultan can grant only the right of disposal over a wasteland to the person wishing to cultivate it in return for a fee. As mentioned previously, in practice, the *raʿāyā* requesting to cultivate a wasteland were required to get permission from the *sipāhī* as being the deputy of the sultan, to pay him the "*ṭapu*-tax" and then to open up the land for agriculture within three years. As can be seen both in the continuation of this *fatwá* and in his other *fatwá*s, he interprets the legal contract between the *sipāhī* and the *raʿāyā* as "an invalid lease" (*ijārah fāsidah*) due to the unclear duration of disposal by the latter and he also considers the payment of *ṭapu*-tax, which has been a prevalent practice in the Empire, as an "advance fee" (*ujrah muʿajjalah*).[117] In fact, this interpretation is nothing more than the application of the understanding inherited from Abū l-Layth al-Samarqandī to the Ottoman context. Indeed, according to the analysis of al-Samarqandī, Abū Ḥanīfah is of the opinion that the *imām* has the authority to grant only the right of disposal over the *mawāt* land to the person who wish to cultivate it. In this case, the transfer of the right of disposal can be either in the form of "loan" (*ʿāriyah*), or "lease"

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[115] This *fatwá*, contrary to the claims put forth by some researchers, especially Barkan (see Barkan, *XV ve XVI ıncı Asırlarda Osmanlı İmparatorluğu'nda Ziraî Ekonominin Hukukî ve Malî Esasları*, xxxix-xl), shows that the *shaykh al-islām*s had the authority to interpret the imperial edicts. Indeed, Abū l-Ṣuʿūd, in his response to the question, directly provides an answer himself, rather than referring the matter to the *nishānjī*.

[116] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b.

[117] The classical lease doctrine of Ḥanafī school requires certain conditions for the validity of the contract. One of these conditions is that the duration of disposal of the property must be specified. See al-Zaylaʿī, *Tabyīn al-ḥaqāʾiq*, 5/121.

(*ijārah*). Abū l-Ṣuʿūd, taking the existing practice of the Empire into account, makes his interpretation in line with the second one.

Abū l-Ṣuʿūd, who considers the *ṭapu* agreement conducted between the *sipāhī* and the *raʿāyā* as an invalid lease contract, states that "even if the contract is valid, it become null and void due to the death of the tenant",[118] and in such a case, according to *sharīʿah,* the *sipāhī* can give the land to another person in exchange for an advance fee. He also mentions that when a *mutaṣarrif* of a land passes away and leaves behind his son, it is considered "good and well" (*mustaḥsan*) by the sultan for his son to inherit land in question free of charge, and this practice is deemed as an "established law" (*qānūn-i muṭṭarid*).[119] Abū l-Ṣuʿūd, who, in the same context, asserts that the daughter and sister of the deceased *mutaṣarrif* also have the *ṭapu* right on the land, mentions that various edicts contain different statements regarding the amount of the tax to be demanded from them in such cases, and particularly emphasizes that "The noble *sharīʿah* does not provide a positive or negative ruling in any of these practices.[120] In the continuation of the *fatwá*, he emphasizes again that the act of cultivation does not make a person the owner of the land.[121] Lastly, drawing attention to the labor and *aqchah*s invested by the *raʿāyā* in order to open up the land for agriculture, he states that it would be appropriate, in terms of the ultimate goals of the *sharīʿah* and the protection of the *raʿāyā*'s rights, for the sultan to enact some just regulations regarding these lands.[122] In short, in harmony with the view of Abū Ḥanīfah, who evaluates the cultivation of *mawāt* lands within the scope of politics, Abū l-Ṣuʿūd indicates that the *sharīʿah* entrusted all the matters regarding the administration of these lands to the discretion of the sultan.

In the question part of another *fatwá* addressed to Abū l-Ṣuʿūd, it is stated that some meadows, which have been cultivated from wasteland and used under the name of *"bālṭahliq"* (copse) in Rumelia, are being transferred to the heirs according to the Islamic inheritance

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[118] The lease contract ends upon the death of one party, see al-Marghīnānī, *al-Hidāyah*, 3/247.

[119] Abū l-Ṣuʿūd interprets the edict of the sultan in this matter as follow: "The fact is, this is an accepted edict". See *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b.

[120] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b.

[121] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b.

[122] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 223), 34b.

rules and are bought and sold among the *raʿāyā*, moreover their taxes are neither paid to the imperial treasury nor to the local administrators,[123] and it is asked whether these meadows are private property (*mulk*) or not. This question clearly shows that, in practice, at least some of the lands opened up for cultivation by the *raʿāyā* were treated as private property. However, in his response to the *fatwá*, Abū l-Ṣuʿūd states that this practice is contrary to the *sharīʿah*, emphasizing that the person wishing to cultivate a *mawāt* land should first get permission from the *sipāhī*, and even if this is done, he asserts, the act of cultivation does not confer ownership but only the right of disposal, and in this case, he is obliged to pay the taxes of the land to the *sipāhī*.[124] Furthermore, referring again to the effort expended by the *raʿāyā* in cultivating the land, Abū l-Ṣuʿūd says that according to the imperial laws, after their death, the land would pass not to someone else but to their heirs, and neither they nor the heirs can engage in transactions that transfer ownership of the land.[125] He clearly opposes the buying and selling of these lands among the *raʿāyā* due to the fact that the cultivated wasteland obtains *mīrī* status and its ownership belongs to the imperial treasury. However, he does not consider completely denying this prevalent practice in society; instead, he resorts to another legal formula to establish a legitimate solution. According to this formula consisting of *farāgh* (renouncement) and *tafwîḍ* (delegation) procedures, the *raʿāyā* renounces his right, that he acquired by cultivating the wasteland, in favour of someone else and in return for a fee, and delegates to him the right of disposal over it, and then, the *sipāhī* rents out the same land to the same person with a *ṭapu*-tax.[126] As noticed, in this case, the new *mutaṣarrif* of the land makes two separate payments; to the previous *mutaṣarrif* under the name of *badal-i farāgh* (renouncement cost) or *badal-i tafwîḍ* (delegation cost) and to the *sipāhī* under the name of *"ṭapu*-tax" which is, in fact, *ujrah muʿajjalah* according to Abū l-Ṣuʿūd.

Khwājah Saʿd al-Dīn, like his predecessors Chīvīzādah Muḥyī al-Dīn Meḥmed and Abū l-Ṣuʿūd, accepts that the sultan has the authority to

[123] *Fatāwā-yi Abū l-Ṣuʿūd*, comp. Walī Yagān ibn Yūsuf (İstanbul: Süleymaniye Kütüphanesi, İsmihan Sultan, 226), 89a-b.
[124] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 226), 89a-b.
[125] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 226), 89b.
[126] *Fatāwā-yi Abū l-Ṣuʿūd* (İsmihan Sultan, 226), 89b.

give permission the cultivation of wasteland on the condition of only benefitting from it. However, in contrast to them, he interprets the relationship between the *raʿāyā* and the *sipāhī* as *"ʿāriyah"* (loan) rather than *"ijārah fāsidah"* (invalid lease contract) in these cases. For instance, in a *fatwá* addressed to him, it is stated that *Bakr* dug a well, with the permission of the *sipāhī*, in a *tīmār* land located a hundred *dhirāʿ*s[127] away from a spring well in *Zayd*'s land that he had endowed to his sons through a valid endowment. *Bakr* conveyed the water coming out of the well to a suitable place by means of a channel, and built a fountain there, and endowed it. However, this caused a decrease in the water of the spring well. It is asked whether the trustee (*mutawallī*) has the right to demolish *Bakr*'s well.[128] In this context, it should first be noted that, according to the Ḥanafī legal doctrine of cultivating wasteland, an area with a radius of five hundred *dhirāʿ*s, located around the spring in the cultivated wasteland with the permission of the sultan is defined as *ḥarīm* and the disposal of this area is also allocated to the cultivator as a kind of servitude right (*ḥaqq al-irtifāq*).[129] In his response, Khwājah Saʿd al-Dīn states that if the spring well located within the wasteland is cultivated and owned by the permission of the sultan and later endowed, then the trustee "has the right to prevent another person from disposing of properties in the boundaries of the *ḥarīm*. However, he adds: "The owning of the wastelands by cultivating them in this way is not known in this region", and "the ultimate ownership of them belongs to the imperial treasury, and they are granted to the cultivators as a loan (*ʿāriyah*)".[130] Nevertheless, the term *ʿāriyah* means "the transfer of the usufruct of a property to another person without any charge", but, in the Ottoman practice, when it comes to the cultivation of a wasteland within the boundaries of a *tīmār* the *raʿāyā* was required to pay the *ṭapu*-tax as an entry fee to the *sipāhī*. Therefore, it can be said that Abū l-Ṣuʿūd's interpretation of *ijārah fāsidah* is much more appropriate in

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127 *Dhirāʿ* is an ancient unit of length.

128 *Fatāwā-yi Khwājah Saʿd al-Dīn* (İstanbul: Süleymaniye Kütüphanesi, Şehid Ali Paşa, 2728), 0b.

129 ʿAlāʾ al-Dīn Abū Bakr ibn Masʿūd ibn Aḥmad al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1986), 6/195. For detailed information regarding *ḥarīm,* see Salim Öğüt, "Harim", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 1997), 16/188-190.

130 *Fatāwā-yi Khwājah Saʿd al-Dīn*, 0b.

describing the legal nature of the relationship between the *sipāhī* and the *raʿāyā*.

Al-Uskūbī and al-Bahāʾī apparently accepts that the sultan has the authority to allocate only the right of disposal over the wasteland to those who wish to cultivate it. In such cases, they interpret the relationship between the *sipāhī* and the *raʿāyā* as *ijārah fāsidah*, like his predecessors Chīvīzādah and Abū l-Ṣuʿūd. For, in one of his *fatwá*s, al-Bahāʾī states that the villagers are obligated to pay a *ṭapu-yi mithl* to the *sipāhī* for "the fields they cultivate with the knowledge of the *tīmār*-holder using their own axes".[131]

This practice, where the *raʿāyā* had only the right of disposal over the *mawāt* lands, was largely preserved in the Land Code of 1858. However, as mentioned above, with this code, it was enacted that the *ṭapu*-tax would no longer be demanded from the *raʿāyā*, if the land was cultivated with permission. [132] Furthermore, in the *Majallah*, it was accepted that the sultan, according to his discretion, could allocate either full ownership or only the right of disposal of the *mawāt* land to those who cultivate it.[133] Taking into consideration that the legal views of the later period Ḥanafī tradition were given privilege[134] in the *Majallah* especially regarding the issues experiencing legal changes within the school such as the cultivation of wastelands, the article in question is important since it points the continuity in the legal discourse.

Conclusion

This study, contrary to Imber's claim, shows that the 16th-17th century Ottoman practice of cultivation of wasteland was compatible with the Ḥanafī interpretation of Islamic law. It also points out to the significant role of jurisconsults, and their legal opinions compiled in the *fatāwá* and *nawāzil* literature of the school in the doctrinal growth

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[131] *Ṭapu-yi mithl*, which means "market value" of the land, indicates that al-Bahāʾī interprets this relationship as *ijārah fāsidah*. For the *fatwá*, see al-Uskūbī [as Üskübî Pir Mehmed Efendi], "Zahîru'l-Kudât", *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, ed. Ahmed Akgündüz (İstanbul: Osmanlı Araştırmaları Vakfı, 1996), 9/442.

[132] Art. 103.

[133] Art. 1272.

[134] For this aspect of the *Majallah,* see Ayoub, *Law, Empire, and the Sultan*, 129-151, 142-144.

and change of Islamic law. During this growth and change process, which took place in line with Hallaq's summarized narrative in the introduction, a practice, where the sultan had the authority to grant only the right of disposal over the wastelands to those who wish to cultivate them, emerged in the first half of the 4th/10th century in the Islamic society of Central Asia. Afterwards, one of the prominent Ḥanafī jurists of the time, Abū l-Layth al-Samarqandī, reinterpreted the legal view of Abū Ḥanīfah, which was transmitted in an absolute language in the mainstream legal texts of the school, in order to show that this practice was in conformity with the Islamic law. He argued that in such cases, the authority of the sultan was not limited solely to granting ultimate ownership of the land to the relevant person, but he could also, if deemed appropriate, assign them the exclusive right of disposal over the land. This new interpretation was, in a sense, regarded as correct (*taṣḥīḥ*) and given preference (*tarjīḥ*) by later legal authorities in the same region, such as al-Ṣadr al-Shahīd and al-Walwālijī, thus increasingly cited in the *fatāwá* and *sharḥ* literature of the school, and it apparently became, at least to some extent, a part of the Ḥanafī legal doctrine towards the mid-16th century. *Shaykh al-islām*s such as Chīvīzādah Muḥyī al-Dīn Meḥmed, Abū l-Ṣuʿūd, Khwājah Saʿd al-Dīn, Meḥmed al-Bahāʾī, and Bālīzādah Muṣṭafá, as well as the scholars from the provinces like Pīr Meḥmed al-Uskūbī, referred to the interpretation of al-Samarqandī to provide a legal explanation for the practice, which had a deep-rooted history in the core lands of the Empire during the 16th and 17th centuries.

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