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RESEARCH ARTICLE

## Legal Maxims in Ottoman Law (Literature and Functions)\*

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### Abstract

The article provides a comprehensive overview of the literature and role of qawā'id (legal maxims) in Ottoman law. It begins by categorizing qawā'id literature into classical and Tanzimat periods. The legal maxims literature of Ottoman period began with the transmission of Ibn Nujaym's (d. 1563) al-Ashbāh to the Ottoman centre. Later on, this literature was continued with the original works of Nāzırzāde (d. 1651) and Khādīmī (d. 1762). While the classical period produced foundational works, the Tanzimat era witnessed a surge in qawā'id literature through commentaries, translations, and independent texts. The article then delves into the influence of qawā'id on the development of the new legal system during the Tanzimat period. Qawā'id became central to legal education. They played a significant role in shaping the production of legal knowledge. Their impact is evident in the evolving Islamic law, modern legal writing, new maximization efforts, and political-legal debates. In the practical realm, the article examines the application of qawā'id in both the traditional sharia courts and the newly established Ottoman Nizāmiye courts. It also explores the role of qawā'id in the Turkish's development as a legal language and the dissemination of legal culture to various segments of society. Overall, the article highlights the multifaceted role of qawā'id in the Ottoman legal system, from their foundational contributions to their influence on legal education, practise, and language development.

### Keywords

Islamic law (al-fiqh), Ottoman law, legal maxims, qawā'id literature, qawā'id thought, dhawābit, Tanzimat period

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## Introduction

The concept of legal maxim (*qā'ida*, p. *qawā'id*) can be defined as concise propositions expressing principles that encompass different issues in a general or specific area of law. In the literature of Islamic law, which forms the basis of Ottoman law, the genre of *qawā'id*, which deals with the maxims, developed as one of the different types of writing. In the early period of Ottoman law, the foundations of the legal and judicial system were laid mainly by using the Seljuk heritage. Later, the distinction between sharia and 'urfī law (sultans' law) became clear, and these fields continued to develop within themselves throughout the classical period. So much so that it became possible to speak of an Ottoman law. However, it can be said that Ottoman law remained largely faithful to Islamic law and added a wealth of interpretation and application to this legal system.

The *qawā'id* literature of Ottoman period began with the transmission of Ibn Nujaym's (d. 1563) *Ashbāh* to the Ottoman centre. This was followed by original works of Nāzirzāde (d. 1651) and Khādimī (d. 1762). Although the *qawā'id* literature of the Tanzimat period can essentially be considered a continuation of the Hanafī madhhab, it will be seen that the Tanzimat and especially the Constitutional Monarchy period, in which calls for new *ijtihād* were made, have characteristics that transcend this madhhab. In particular, the *qawā'id* literature formed around the *Mecelle-i Ahkam-ı Adliye* (Majalla) commentaries, the commentaries or translations of classical *qawā'id* texts, and this type of works written independently should be mentioned. Within the framework of the introduction of the literature, the interests and networks of the authors, the originality values of the texts and their impact rates are discussed.

Regarding the functions of the maxims, firstly, the sources in the classical period of Ottoman law are examined. In terms of sharia law, fiqh and fatwa books and in terms of 'urfī law, law codes largely met the resource needs of the judge (*qādī*). The secondary position of the maxims in classical texts was questioned during the Tanzimat period. Although the *Mazbata* of *Asbāb-ı Mūcibe* (Minutes) of Majalla contains an entry stating that judgments cannot be made on the basis of maxims, the thought of *qawā'id* was not entirely in this direction. The maxims would play a significant role in the change in Islamic law and would be used for specific purposes in the texts produced within the new legal writing genre. The process of maximization/canonization (*taq'id*), which was also fed by the Majalla, continued in the fields of law. Although largely based on the accumulation of Islamic law, western legal literature also joined the sources in the process of producing maxims in Turkish. Moreover, the position of the maxims in political-legal polemical texts should be questioned. The use of maxims in the courts of shar'īyyah/sharia, nizāmiye and supreme courts and the debates on this issue deserve to be analyzed separately.

Finally, this article concludes with a title that explores the place of maxims in legal language and culture.

## I. Ottoman Period of The Literature of Legal Maxims (Qawā'id)

This period of qawā'id literature can be analyzed in two parts: the Ottoman classical period and Tanzimat period or the period beginning with the Majalla.

### A. Ottoman Classical Period

In this context the tradition of commentaries and glosses on Ibn Nujaym's (d. 1563) *Ashbāh* should be emphasized. Although not widespread, Nāzīr-zāde's (d. 1651) alphabetical qawā'id text should be evaluated as the first original qawā'id book written by an Ottoman jurist and reflecting the understanding of his period. Lastly, in the classical period, the work of Khādīmī (d. 1762) should be analyzed since he incorporated the maxims into a book of *usūl al-fiqh* and largely determined the understanding of the maxims after him.

#### 1. Effects of Ibn Nujaym's *al-Ashbāh* on the Ottoman Legal Community

After al-Kārhi, Debusī and al-Nasafī, the most notable work in the literature of qawā'id in the Hanafī madhhab is *al-Ashbāh wa-al-Nazāir*, written by Zayn al-Dīn Ibn Nujaym (1520-1563) at the end of his life.<sup>1</sup> This work, which he completed in 1562,<sup>2</sup> shaped the literature after him in terms of Hanafī legal thought and reconstructed the understanding of maxims.<sup>3</sup>

Shaykh al-Islām Ebussuud Efendi wrote a *taqrīz* (an appreciation) on an early (~1562) copy of *Ashbāh*, which soon passed to the Ottoman centre. He stated that he had analyzed this beautiful work and found it to be a book that refreshes the hearts of those who read it and that those who read it want to examine the details in it in depth, that it explains the proofs of jurisprudential issues and what is meant by these issues, that it fends off the objections that may be put forward, and finally, he prayed for the author and the copyist.<sup>4</sup>

1 For Ibn Nujaym's life and works, see Nav'izāde Atāyī, *Hadāik al-Haqāik fī Takmilē al-Şakāik*, Suat Donuk (ed), (Türkiye Yazma Eserler Kurumu Başkanlığı Yayınları 2017) 318; Kātip Çelebi (Hājjī Khalīfa), *Kashf al-Zunūn 'an Asāmī al-Kutub wa-al-Funūn*, Rüştü Balı (ed), (Tarih Vakfı Yurt Yayınları 2007) 126-127; Ahmet Özel, *Hanefi Fıkıh Alimleri* (Türkiye Diyanet Vakfı Yayınları 2013) 254; Ibn Nujaym, who has a gloss on Shaykh Bedreddin's *Jāmi al-Fusuleyn*, included Molla Khusrev's *Durer* among his sources in *al-Ashbāh*. See Ibn Nujaym, *al-Ashbāh wa-al-Nazāir al-Fiqhiyah 'alā Madhhab al-Hanafiyah*, Osman Bayder (ed), (Türkiye Yazma Eserler Kurumu Başkanlığı 2022) 74, 480, 628, 700.

2 Ibn Nujaym (n 1) 522.

3 Necmettin Kızılkaya, *Hanefi Mezhebi Bağlamında İslam Hukukunda Külli Kaideler* (Litera Yayınları 2018) 220, 238, 242-243; In addition to the *al-Ashbāh*, *Bahr al-Rāik* and *Fatāwā al-Zeyniyah* were also respected in Ottoman law, and *Fatāwā* was translated into Turkish during the Tanzimat period: Ibn Nujaym, *Fetāwā-yı Ibn Nüceym ve Tercümesi*, trans. Hasan Refet, Şeyh Yahya Efendi Matbaası, İstanbul 1289/1872.

4 Ebussuud Efendi, 'Taqriz', in: Ibn Nujaym, *al-Ashbāh wa-al-Nazāir*, Süleymaniye Library (Esad Efendi), no. 521, h. 969, vr. 3a.

As can be seen, the *Ashbāh* was soon included in the corpus of authoritative Ottoman jurisprudence. Despite this, it seems that there was not a complete consensus on the content of the work. For example, Shaykh al-Islām Sunullah Efendi (d. 1612), in response to a question asked to him about the *Ashbāh*, said that there were aspects that would be accepted as well as aspects that would not be accepted.<sup>5</sup> In the 18th century, in the words of Sachaklızāde (d. 1737), the *Ashbāh* was referred to as a work “worthy of being written in golden letters on the pages of the sun and the moon”.<sup>6</sup> The process of the *Ashbāh* becoming authoritative in the Ottoman centre is an example of how a book gains prestige in the hierarchy of the ulemā through a formal process.<sup>7</sup> Ibn Nujaym’s works, opinions, fatwas and, in the context of our subject, especially his writings on the maxims, dominated the Hanafi fiqh discourse after the 17th century.<sup>8</sup>

The existence of nearly two hundred manuscript copies in Anatolian libraries and the studies on it and their authors reveal the dominant position of *Ashbāh* in Ottoman law. There have been serious studies on the *Ashbāh* in the Muslim world in general and in the Ottoman geography in particular. When it is remembered that these works in the form of commentaries, glosses and other works, besides making the basic text comprehensible, have the purpose of appropriating it and adapting and maintaining it according to the time and place,<sup>9</sup> the work of Ottoman jurists on the *Ashbāh* becomes more meaningful.

Studies on the *Ashbāh* in the Ottoman centre (in Rumelia and Anatolia) began in the 16th century, when the work was also written.<sup>10</sup> Zeyrekzāde (d. 1595), who is understood to have been a *mudarris*, wrote a commentary dedicated to Murad III.<sup>11</sup> In the 17th century, Celeb Muslihuddin Mustafa b. Hayreddin Efendi (d. 1616) wrote a commentary dedicated to Ahmed I. 1616) wrote a commentary dedicated to Ahmed I.<sup>12</sup> Karachelebizāde Abdulaziz Efendi (d. 1658), who also served as a Shaykh al-Islām for a short time, reorganised and explained the *Ashbāh*, which he did not find useful due to the disorganisation of the subjects in his commentary.<sup>13</sup>

5 Būşra Ünalı, *Şun ‘ullah Efendi’nin Fetāvâ’sı ve Tahlilî* (Unpublished Master Thesis 2018) 158.

6 Saçaklızade Mehmed Efendi, *Tertibu ‘l-Ulūm (İlimlerin Tertibi)*, M R Deri and Z Pak and M A Özdoğan (ed), (Hikemiyat Yayınları 2020) 194-195.

7 Guy Burak, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (Cambridge University Press 2015) 138-139.

8 Samy Ayoub, *Law, Empire, and the Sultan (Ottoman Imperial Authority and Late Hanafi Jurisprudence)* (Oxford University Press 2020) 13, 31; Ibn Nüceym’s influence was also evident in the Ottoman geography outside the centre.

9 İsmail Kara, *İlim Bilmez Tarih Hatırlamaz: Şerh ve Haşiye Meselesine Dair Birkaç Not* (Dergah Yayınları 2021) 15.

10 A comprehensive study on the Ashbah literature has been conducted: Necmettin Azak, ‘Kavâ’id-i Fıkhiyyede Bir Literatür İncelemesi: İbn Nüceym’in el-Eşbâh ve’n-Nezâir’i ve Üzerine Yapılan Çalışmalar’ 3/2 (2020) Tahkik İslami İlimler Araştırma ve Neşir Dergisi 547.

11 See Nevzade (n 1) 1172, Azak (n 10) 554.

12 See Katip Çelebi (n 1) 434, al-Bagdadî İsmail Pasha, *Hadih al-Arifin Asmā al-Mualifin wa Asār al-Musannifin* (Dār al-Turās al-Arabiyye 1951) 43, Bursalı Mehmed Tahir, *Osmanlı Müellifleri*, A F Yavuz and İ Özen (ed), (Yaylacık Matbaası 1972) 395, Azak (n 10) 559, Burak (n 7) 138.

13 See Nevzat Kaya, ‘Karachelebizāde Abdülaziz Efendi’ in 24 DİA (2001) 381. (<https://islamansiklopedisi.org.tr/karachelebizade-abdulaziz-efendi>), Azak (n 10) 561.

In the 18th century, the studies on *Ashbāh* had continued, and Mawlānā Mehmed İzmirī (d. 1752), who was a mufti and mudarris in Izmir, prepared a commentary.<sup>14</sup> Sünbülzade Mehmed al-Maraşī (d. 1715), who was a mufti in Maraş, could not understand the division of the maxims into two groups as 6+19 by Ibn Nujaym in his commentary, because there is nothing to separate them, they are all of a universal nature.<sup>15</sup> The commentary of Karabeyzāde Mehmed Emin (d. 1807), who worked as a Rumeli Kazasker, was also written in this century.<sup>16</sup>

In the 19th century, Ibn Abidin's (d. 1836) notes on the *Ashbāh*, compiled by one of his students, should be mentioned as a text in the form of a gloss.<sup>17</sup> Apart from these seven commentaries and glosses, of which manuscript copies can be found,<sup>18</sup> studies on the *Ashbāh* in the Ottoman centre were also carried out in the form of editions, treatises and poems.<sup>19</sup> It is possible to say that the Ottoman jurists accepted the authority of the *Ashbāh* in the early periods, however, they did not like the order of the text and sought to put it in a new order, and they also criticized some aspects of the content and improved the original text.

## 2. The Missing Link in the Chain: Nāzirzāde's *Tartīb al-La'ālī*

Nāzirzāde Mohammad/Mehmed b. Suleyman (d. 1651) was an Ottoman jurist about whom not much is known. The only work that has survived from him is the alphabetical kavaid work titled *Tartīb al-La'ālī fī Silk al-Amālī*.<sup>20</sup> According to the information provided by Khālīd b. Abd al-'Aziz, who published the work, Nāzirzāde may have been from Gallipoli and may have been the father of Shayhīzāda, the author of the famous *Multaqā* commentary *Majma' al-Anhur*.<sup>21</sup> *Tartīb* was presented to Ebū Sa'īd Mehmed Efendi, the Shaykh al-Islām of the period.<sup>22</sup>

Nāzirzāde stated that when he was given permission to issue fatwas, he looked through the books of scholars to satisfy the questions posed to him, that he found

14 Bursalı (n 12) 360; Bağdadī (n 12) 328; Özel (n 1) 344; Azak (n 10) 565.

15 Sunbulzāde Mehmed al-Maraşī, *Tawqīf al-Ilah fī Sharhi Fennin min al-Ashbāh*, A Güneş and A D Müezzın (ed), (Noya Medya 2017) 280. He also stated that some examples are difficult to evaluate within the scope of the mentioned principle 109-110.

16 Bağdadī (n 12) 355; Azak (n 10) 569.

17 Özel (n 1) 145.

18 Among the works whose manuscript copies could not be found but mentioned by Katip Çelebi and Bağdadī under the title of *Ashbāh* are the glosses and *taliks* of Shaykh al-Islām Çivizāde Mehmed Efendi (d. 1586), Kınalızāde Ali b. Emrullah (d. 1589), Ahizāde Abdulhalim (d. 1604), Hasan b. Ali al-Kaysērī (d. 1767) and Balizāde Muhammed Emin (d. 1805). See Katip Çelebi (n 1) 127; Bursalı (n 12) 246, 290, 294; Azak (n 10) 579.

19 See Azak (n 10) 570.

20 It is understood that he wrote two more treatises besides this work. See Nāzirzāde Mehmed b. Suleyman, *Tartīb al-La'ālī fī Silk al-Amālī*, Khalid b. 'Abd al-'Aziz b. Suleiman (ed), (Mektebe al-Rushd 2004) 488, 497.

21 Khālīd b. Abd al-'Aziz (n 20) 43.

22 Ebussaid Mehmed Efendi served as Shaykh al-Islām three times in 1644-6, 1651-2 and 1654-5. See Mehmet İpşirli, 'Ebusaid Mehmed Efendi' in 10 DİA (1994) 281 (<https://islamansiklopedisi.org.tr/ebusaid-mehmed-efendi>); In *Tartīb* he is referred to as "mufti al-enām fī hāzihī al-eyyām Abū Sa'īd b. Es'ād". Nāzirzāde (n 20) 194-195; Kızılkaya, while introducing this work, confused Mehmed Efendi with his father Es'ād Efendi. See Kızılkaya (n 3) 267.

some maxims in them that could serve as evidence for his answers, and that he created his work by organizing these maxims alphabetically in order to make it easier to refer to them later.<sup>23</sup> Based on these statements, it can be concluded that the maxims were directly used in fatwas and accidents in the 17th century Ottoman Empire.<sup>24</sup>

The introduction addresses misconceptions about the maxims, such as their unsuitability for certain rulings, their lack of universality, and their inability to be accepted as evidence. It aims to clarify these issues, enabling those familiar with the maxims to effectively resolve encountered problems.<sup>25</sup> From this, it is understood that Nāzīrzāde accepted the maxims as evidence and tried to show that they are a universal source of rulings by stating the exceptions with their reasons. Although Nāzīrzāde was influenced by Ibn Nujaym, he also criticized him.

A search of Turkey's manuscript libraries reveals that there are eight copies of the work, five of which are in Istanbul, one in Sivas and one in Konya.<sup>26</sup> The oldest copy with a date is dated 22 April 1707, the others were written in 1755, 1812 and 1846. Whether Khādīmī, who will be discussed in the next section, was influenced by Nāzīrzāde is a matter of debate, but the presence of a copy in Konya leads us to the assumption that Khādīmī brought it.<sup>27</sup> Khālid's comparison with the tables also strengthens this assumption. Accordingly, the fact that both lists of maxims are alphabetical, about two-thirds of them are similar, and most importantly, Khādīmī's preference for the form used by Nāzīrzāde rather than the famous form in some maxims indicates such an influence.<sup>28</sup> However, even in this case, Khādīmī's mentioning the maxims among the evidence in the work of *usūl al-fiqh* and gives a semi-authentic list of maxims at the end. This, however, represents an innovation in itself.

23 Nāzīrzāde (n 20) 188.

24 Kızılkaya (n 3) 267.

25 Nāzīrzāde (n 20) 190.

26 There is a copy/manuscript of the work in Bursa İnebey Library. However, there is a strangeness in this copy! Although the text is the same, Ahmad 'Abd al-Rahmān al-Bashiktashī is recorded in the place of the author in the introduction. In a study introducing this copy, the year of Bashiktashī's death is given as 1724 with reference to Bagdādī and Kehhāle, *Tartīb* is attributed to Bashiktashī, and it is stated that no other copy can be found. See Recep Cici & Mustafa Ateş & Münir Yaşar Kaya, 'Bursa İnebey Yazma Eser Kütüphanesi'ndeki Fıkıh Usulü Kitapları: Üzerine En Çok Çalışma Yapılanlar ve Bazı Nadir Eserler' 31 (2018) *İslam Hukuku Araştırmaları Dergisi* 133. Since the relevant copy is also dedicated to Shaykh al-Islām Ebū Sa'īd, who lived in the 16th century, it is concluded that Bashiktashī most likely attributed the text to himself or that the author was miswritten by the annotator/copyist. Cf. Ahmad 'Abd al-Rahmān al-Bashiktashī, *Tartīb al-La'ālī fi Silk al-Amālī* (Bursa İnebey Library, copyist Hüseyin Hafız b. İsmail, no. 625, Athens 1161)

27 The copy, which is registered in Konya Regional Manuscript Library under the inventory number 42 Kon 1238, is written in talik calligraphy and has 94 folios. It is known that al-Khādīmī brought some works from Istanbul, which were transferred to the manuscript library in the centre of Konya. Mehmet Önder, *Büyük Alim Hz. Hadimi* (Güven Matbaası 1969) 6-13; Yaşar Sarıkaya, *Merkez ile Taşra Arasında Bir Osmanlı Alimi Ebu Said el-Hādīmī* (Kitap Yayınları 2008) 250.

28 Khālid (n 20) 100-110. For the view that these similarities are natural since both al-Khādīmī and al-Nāzīrzāde were influenced by the same source (*Ashbāh*), taking into account that *Tartīb* was not well known, see Kızılkaya (n 3) 271.

### 3. The Addition of the Legal Maxims to the Usûl: Khâdimî's *Khâtima* of *Majâmi*

Abû Sa'îd al-Khâdimî (d. 1762) was born in Konya, after receiving his primary education here, he went to Istanbul in 1725 and continued his madrasah education, then returned to his hometown and started teaching at his madrasah in Khâdim/Hadim-Konya.<sup>29</sup> Khâdimî, who wrote works in many fields, wrote a text on the usûl al-fîqh, whose full title was *Majâmi' al-Haqâiq wa al-Qawâ'id wa al-Jawâmi' al-Rawâ'iq wa al-Fawâid min al-Usûl*, and which was known as *Majâmi* for short, gained enough fame to replace Molla Khusrev's *Mir'at*, which was taught in Ottoman madrasas for a long time, and entered the madrasa curricula.<sup>30</sup>

In *Majâmi*, it is important that the legal maxims are mentioned among the secondary proofs of the usûl al-fîqh and 153 maxims are added to the end of the text (as *Khâtima*) in alphabetical order. Mentioning the maxims as proof and adding them to the end of the work of usûl al-fîqh in this way is a new situation. For the first time, the maxims, which were previously treated in the texts of the genres of ashbâh and khilâf, have been included in a book of usûl for the first time.<sup>31</sup>

Khâdimî's focus on concepts such as necessity and maslaha, which form the basis for legal change, makes his selection of maxims in both the main text and the conclusion particularly significant.<sup>32</sup> Again, the inclusion of custom in a usûl text in connection with *ijma* (consensus) is an innovation in the Hanafî usûl tradition,<sup>33</sup> and *Majâmi* has gained a privileged place in the Islamic world with these features.

Many commentaries have been made on *Majâmi*'s text. The first of these commentaries, albeit incomplete, belongs to Khâdimî's son Abdullah Efendi, and then Abu Hasan al-Malaî wrote the first complete commentary in 1764.<sup>34</sup> The most famous commentary is *Manâfi' al-Dakâik* by Muhammad Hulûsî al-Guzelhisârî

29 Sarıkaya (n 27) 59; Kaşif Hamdi Okur, *Osmanlılarda Fıkıh Usûlü Çalışmaları: Hadimi Örneği* (Mizan Yayınları 2010) 69-70; Mustafa Yayla, 'Ebû Saîd Hâdimî' 15 DİA (1997) 24 (<https://islamansiklopedisi.org.tr/hadimi-ebu-said>).

30 M. Kamil Yaşaroğlu, 'Mecâmiu'l-Hakâik' in 28 DİA (2003) 217 (<https://islamansiklopedisi.org.tr/mecamiul-hakaik>); Sarıkaya (n 27) 260; Özel (n 1) 346; Okur (n 29) 98. Khâdimî's usûl al-Majâmi and Guzelhisârî's commentary are mentioned at the beginning of the maturity period after the primitive and flowering period of Ottoman fiqh literature. See Reshad Amiri, *Legal Maxims in Islamic Jurisprudence (Their History, Character and Significance)* (Unpublished PhD Thesis 2003) 156.

31 *Majâmi* can even be characterised as a book of qawâ'id. See Orhan Çeker, 'Ebû Saîd Muhammed el-Hâdimî'nin Mecâmiu'l-Hakâik Adlı Eseri' 8 (1998) Selçuk Üniversitesi İlahiyat Fakültesi Dergisi 43.

32 The emphasis on the fact that the public authority can make some dispositions and impose some prohibitions on Islamic law based on maslaha shows that Hadimi was aware of the increasing influence of the state on the law. See Okur (n 29) 90.

33 Okur (n 29) 187. For a comparative analysis of the place of *Majâmi* in the usûl tradition, see Mürteza Bedir, 'Geleneğin Son Halkası: Hâdimî'nin Mecâmi'ü'l-Hakâ'ik adlı Eseri ve Usul'de Güncel Bilgi Meselesi ya da Bugün Fıkıh Usulünü Hangi Eserlerden Okumalıyız?' A H Furat and N K Yorulmaz and O S A (ed), *Sahn-ı Semân'dan Dârülfünûn'a Osmanlı'da İlim ve Fikir Dünyası Âlimler, Müesseseler ve Fikrî Eserler (XVIII. Yüzyıl)* (Zeytinburnu Belediyesi Kültür Yayınları 2018) 150.

34 Ahmed Hamdi Şirvani, *Lawâmi' al-Daqâ'iq ft Tarjamat Majâmi al-Haqâ'iq*, H Örs and S E Örs (ed) (Türkiye Yazma Eserler Kurumu Başkanlığı 2017) 41.

(d. 1837), completed in 1830.<sup>35</sup> In fact, it can be said that this work has a distinct reputation from *Majāmi*. The other famous commentary is the work of Suleyman b. Abdullah al-Kırkagacī (d. 1851), known as the “commentary of *Khātima*.”<sup>36</sup>

The list of maxims in *Majāmi* includes maxims taken from Ibn Nujaym’s *Ashbāh* and Merginānī’s *Hidāyah*, and maxims described by Khādimī.<sup>37</sup> The maxims in this list will also be among the primary sources of Majalla’s Introduction. The comparison shows it is seen that 65 of the maxims are the same. It should not be forgotten that 35 of them are also mentioned in Ibn Nujaym, and 6 of the 8 maxims newly formulated by Khādimī will also be included in the Majalla.<sup>38</sup>

## B. Codification of Legal Maxims: Introduction of *Majalla*

During the Tanzimat period, which started in 1839, on the one hand, the insufficient al-fiqh knowledge of the members of the newly established Nizāmiye courts, and on the other hand, the difficulty of the judges of the shar‘iyah courts to determine the valid opinion, primarily pointed to the need for a Turkish code in the field of obligations and judicial law.<sup>39</sup> The first attempt to address this need began with the establishment of a commission within the Assembly of Tanzimat in 1855.<sup>40</sup> However, despite convening to prepare a text, no concrete draft was produced by the commission.<sup>41</sup> In terms of our subject, within the framework of this initiative,<sup>42</sup> there is no indication that legal maxims would be included in the code. This suggests that the idea of including the rules in the text of a law was realized in Cevdet Pasha during the process that evolved from being a member of the *Metn-i Meṭn* commission to the presidency of the Majalla Commission.

As the first product of the Majalla Commission, the Mazbata, consisting of the Introduction (*Muqaddima*) and Chapter about Sale (*Kitāb al-Buyū*) containing the rules, was entered into force 20 April 1869, with the will (*irāde-i seniyye*) of the Sultan.<sup>43</sup> The Mazbata is a fundamental text in terms of explaining the transformation

35 See Ahmet Akgündüz, “Mustafa Hulusi Güzelhisari” in 14 DİA (1996) 331 (<https://islamansiklopedisi.org.tr/guzelhisari-mustafa-hulusi>).

36 Bursalı (12) 436; Bağdadî (n 12) 408.

37 Necmettin Azak, *Ebu Said el-Hadimi'nin Mecamiu'l-Hakâik Adlı Eserindeki Kavâid-i Külliye'nin İslam Hukukunun Temel Kaideleri İçindeki Yeri ve Önemi* (Unpublished Master Thesis 2010) 107.

38 Azak (n 37) 186.

39 M. Akif Aydın, ‘Mecelle-i Ahkam-ı Adliyye’ in DİA 28 (2003) 231 (<https://islamansiklopedisi.org.tr/mecelle-i-ahkam-i-adliyye>).

40 BOA, Y.EE., nr. 83/34, 25.05.1306; Ahmed Cevdet Pasha, Tezâkir, C Baysun (ed), (Turkish Historical Society Press 1991) 62.

41 Ahmed Cevdet (n 40) 63; Ebulula Mardin, *Medeni Hukuk Cephesinden Ahmet Cevdet Paşa* (Adalet Bakanlığı Yayınları 2021) 54-55; Osman Kaşıkçı, *İslam ve Osmanlı Hukukunda Mecelle* (Osmanlı Araştırmaları Vakfı Yayınları 1997) 31.

42 For Cevdet Pasha’s letter about the commission, see BOA, Y.EE., nr. 32/44.

43 See Aydın (n 39) 231-235.

in Islamic and Ottoman law,<sup>44</sup> and there are important emphases from the perspective of the qawā'id literature. In the introduction, the problems of the dual structure in which the Ottoman legal system was dragged into were mentioned, and it was stated that in addition to the difficulty of extracting and applying the necessary provisions from the al-fiqh accumulation, the provisions based on custom and tradition would also change with the change of time. After the issue of change in law, it is said that fatwa books consist of producing solutions to emerging events in the centre of principles/maxims, and it is complained that Ibn Nujaym's groundbreaking work in presenting the maxims accepted in the Hanafī madhhab in a compact manner has not been followed.

In the Ottoman context, the Majalla Commission could have done a more comprehensive work on the maxims if it had not been for the urgency of establishing legal unity in the country and the scarcity of trained jurists. One might even question whether the Commission could have prepared the rest of the code using an abstract method, similar to the approach pioneered by Ibn Nujaym, as mentioned in the book.<sup>45</sup> However, it was sufficient to draw attention to the necessity of advancing the studies of Islamic law within the framework of the needs and necessities of the time in a qawā'id-centred manner,<sup>46</sup> and it was stated that no judgement could be reached without a clear transfer from the books of the sect with the maxims included in the Introduction due to the legal context.

In the second article (articles 2-100), which is about the legal maxims, 99 maxims are listed, presumably "as a tribute to the asmā al-husnā (Names of God)".<sup>47</sup> To a large extent, this section consists of the maxims "arranged one after the other in an unsystematic manner without any connection, relevance and harmony between them."<sup>48</sup> Although the order may seem random, the context in which the Majalla Commission began its work was certainly influential in the selection of the rules.<sup>49</sup>

In this context, the legal maxims can be viewed as general principles of law or foundational principles of legal interpretation. In legal systems, it should be shown

44 For a detailed interpretation of the Mazbata in terms of the transformation in the field of Islamic law in the modern period, see Sami Erdem, *Tanzimat Sonrası Osmanlı Hukuk Düşüncesinde Fıkıh Usulü Kavramları ve Modern Yaklaşımlar* (Unpublished PhD Thesis 2003) 71.

45 Kaşıkçı (n 41) 38.

46 Mustafa Bakır, *İslam Hukukunda Külli Kaideler* (Unpublished Post-doctoral Thesis, 1988) 55.

47 Ekrem Buğra Ekinci, Ahmed Cevdet Paşa ve Mecelle'den Düsturlar (IQ Kültür Sanat Yayınları 2021) 82.

48 Hıfzı Veldet Velidedeoğlu, 'Kanunlaştırma Hareketleri ve Tanzimat', in *Tanzimat I* (Millî Eğitim Bakanlığı Yayınları 1999) 194; Kızılkaya (n 3) 298-299. There is also a view that the maxims of the Majalla are listed in a consistent manner, that each group expresses a legal theory despite the lack of subheadings, and that their number is small, although it is obvious that some of them were added later. See Fawzy Shaban Elgariani, *Al-Qawa'id al-Fiqhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classifications and Application to Contemporary Medical Issues* (Unpublished PhD Thesis 2012) 195.

49 Bakır (n 46) 56. A recent study pursues this question with the help of data science: Intisar Rabb & Yusuf Celik, 'Experiments in Tracking Canons across the Mecelle', *Islamic Law Blog* (16 March 2022) (<https://islamiclaw.blog/2022/03/16/works-in-progress-experiments-in-tracking-canons-across-the-mecelle/>)

how these principles, these “meta-norms” are binding on judges, and even these principles should be pointed out in the justifications of judges’ decisions.<sup>50</sup> Majalla is a noteworthy example in the normatisation/legalisation of maxims as principles of interpretation; since the maxims were included in a state law enacted by the sultan, they “assumed the character of a positive rule of law.”<sup>51</sup> The codification of maxims by the Majalla had a serious impact not only in the Ottoman context but also in Islamic law in general.

### C. Commentaries of *Majalla*

There are misconceptions that commentaries only repeat the main text and therefore cannot be evaluated in terms of originality and that the Ottoman legal community lacked intellectual dynamism because they kept writing commentaries.<sup>52</sup> However, commentaries are an indicator of the vitality of legal thought.<sup>53</sup> It is not accurate to perceive the commentator as a person who only repeats the text and interprets it verbatim. To understand the production process of legal knowledge in the Ottoman Empire more deeply, it is necessary to pay attention to commentaries.

The legal maxims in the Majalla are characterized in different ways by researchers. It has been stated that the Majalla initiated the period of perfection and stability in the genre of qawā‘id, that it was the pinnacle in the determination of the maxims and guided subsequent studies,<sup>54</sup> and that it can be considered the starting point of modern studies on qawā‘id.<sup>55</sup> Among the reasons for the commentaries on the Majalla are the need for Arabic and fiqh knowledge in order to understand the articles properly, the desire to explain the fiqh provisions on issues that are thought to be incomplete or ambiguous, and the desire to present the articles of the Majalla in the fiqh books and the different opinions in these books to the practitioners.<sup>56</sup> Considering that the Majalla was prepared especially for the judges working in the courts of Nizāmiye, it is natural that the commentary writers considered the practical benefit/current needs of this group.

In general, this order is followed in the commentaries: First, the Arabic original of the maxim and its source (mostly by mentioning *Ashbāh* and *Majāmi*) are reminded,

50 Kemal Gözler, ‘Yorum İlkeleri’, in *Anayasa Hukukunda Yorum ve Norm Somutlaşması* (Türkiye Barolar Birliği Yayınları 2013) 19; Sevtap Metin, *Hukuk Normunun Yorumu* (Unpublished PhD Thesis 2002) 286.

51 Gözler (n 50) 28.

52 Kasım Kopuz, *Reproduction of The Ottoman Legal Knowledge: The Case Of Ibrahim Al-Halabi’s Multaqa Al-Abhur and Defining The Concept of Baghy in Commentarial Writings on It (16th to 18th Centuries)* (Unpublished PhD Thesis 2019) IV.

53 For this perspective on commentaries, see William Smyth, ‘Controversy in a Tradition of Commentary: The Academic Legacy of Al-Saqqaki’s Miftah Al-Ulum’ 112 4 (1992) *Journal of the American Oriental Society* 589. Eyyüp Said Kaya, ‘Şerh (Fıkıh)’ in 38 *DİA* (2010) 560 (<https://islamansiklopedisi.org.tr/serh#4-fikih>).

54 Bakır (n 46) 56.

55 Elgariani (n 48) 191.

56 Sami Erdem, ‘Türkçede Mecelle Literatürü’ 3 5 (2005) *Türkiye Araştırmaları Literatür Dergisi* 673.

the concepts mentioned in the maxims are defined, what is intended to be explained in the maxim is explained in a simpler language, examples that can be evaluated under the maxim (mostly within the scope of *muamalāt* and with reference to other articles of the Majalla) are given, exceptions to the maxims are mentioned, and if any, controversial issues are mentioned. Within this template, different sequencing, emphasis and intensity can be observed in the commentaries. Since the Majalla regulates transactions, the examples given are mostly chosen from this field, but rarely examples from other fields such as *ibādāt*, *uqubāt* and *munakahāt* are also mentioned. The commentaries on the Majalla-Qawā'id written until 1918, when the Ottoman state effectively came to an end, are shown in the table below. In the following period, many studies on the Majalla were conducted in the Arab world and in Turkey.

Name	Commentator	Profession	Year	Place
Mecelle-i Ahkām-ı Adliye Kavâid-i Külliyesinin Şerhi	Şemsi Efendi	Correspondent	1877	Istanbul
Tashrîh al-Qawā'id al-Kulliyya	Abdüssettar Efendi	Mudarris	1878	Istanbul
(Mir'at-ı Mecelle (Arabic	Mesud Efendi	Mufti	1881	Kayseri-Istanbul
Mir'at al-Majalla	Ömer Hilmi	Mudarris	1881	Istanbul
Tafsîl li-Tawdîh al-Qawā'id al-Fiqhiyya wa-al-Usûliyya fî Awwal Majallat al-Ahkâm al-Adliyya	Süleyman Hasbi	Mufti	1881	Istanbul
Durar al-Hukkâm Sharh Majallat al-Ahkâm	Ali Haydar	Mufti-Mudarris	1881	Istanbul
Şerh-i Mecelle-i Ahkam-ı Adliye	Mehmed Rasim	Judge	1881	Sivas
Mecelle-i Ahkam-ı Adliye'den Kavaid-i Külliye-i Fıkhiyenin İzahı	Kuyucaklızade Atif	Mudarris	1888	Istanbul
(Sharh al-Majalla (Arabic	Selim Rüstem	Judge	1888	Beirut
Shawâhid al-Ajille fî Sharh Qawā'id al-Majallat al-Jelîlah	Hasan Sıdkı	Qadi-Mudarris	1889	Harpoot
Tevşih-i Kavaid-i Külliye	Ahmed Şükrü	Deputy	1892	Istanbul
Mecelle-i Ahkam-ı Adliye Şerhi	Türkezade M. Ziyaeddin	Bureaucrat	1894	Istanbul
Tevafukât-ı Kavâid-i Külliye	Mehmed Rıfat	Advocat	1894	Izmir
Mecelle Takrirleri	Seydişehri	Mudarris	1898	Istanbul
Telhis-i Kavaid-i Külliye ve Istilahât-ı Fıkhiye	Ali Ulvi	Deputy prosecuting attorney	1902	Isparta

Rūh al-Majalla	Hacı Reşid	Governor	1907	Istanbul
Mecelle-i Ahkam-ı Adliye Şerhi	Ahmed Ziya	Mudarris	1910	Konya
Mecelle Şerhi Kısm-ı Evvel: Kavaid-i Külliye	Bergamalı Cevdet	Mudarris	1911	Istanbul
Tatbikat-ı Mecelle	Mansurizade Said	Deputy- Mudarris	1911	Istanbul

### D. Reproduction of the Classics

In the Ottoman legal context, the translation and commentary processes by jurists, which render a text accessible and meaningful in their own language, did not consist solely of literal translation and explanation of expressions.<sup>57</sup> Within the framework of different transmission strategies, translators and commentators, in addition to their contributions to the text, sometimes even intervening in it, also criticize it and reflect on their own contexts. During the Tanzimat period, the interest and demand for *Ashbāh*, *Majāmi*, and *Ta'sis al-Nazar*, attributed to Dabūsī and considered as one of the founding texts of the qawa'id literature, increased, and their commentaries and translations were made. These works will be introduced by considering the identities of their authors, their place in the related literature and their effects.

The *Ashbāh* had an impact on Ali Suavi (1839-1878),<sup>58</sup> who attempted a reform of his own in al-fiqh, and translated some of the maxims in the *Ashbāh* into Turkish. He published them in his newspaper Muhbir in London and then printed them as a treatise in 1868.<sup>59</sup> This date is significant because it coincides closely with the publication of the Majalla. It should be remembered that at that time there was a debate on the codification of Islamic law or the importation of civil law through reception.<sup>60</sup> In the treatise with the title "The Principles of Jurisprudence" on the cover, the maxims related to custom in the method of jurisprudence are seriously emphasized, so much so that it can be said that a perspective that reduces the method of jurisprudence to legal maxims prevails. In this short text, it is important that the seven maxims included in the Majalla are given in their Arabic originals. Ali Suavi's treatise was written to prove to Europeans that Islamic law has mechanisms that can provide solutions to changing conditions and new issues and that it does not constitute an obstacle to progress.

In addition to its commentaries, *Majāmi* has been translated into Turkish twice; after an incomplete translation by Hanīf Ibrahim Efendi, Ahmed Hamdi Shirvanī

57 Miri Shefer-Mossensohn, *Osmanlı'da Bilim (Kültürel Yaratı ve Bilgi Alışverişi)*, Kübra Oğuz (trans.), (Türkiye İş Bankası Yayınları 2019) 132.

58 Abdullah Uçman, 'Ali Suavi' in 2 DİA (1989) 445 (<https://islamansiklopedisi.org.tr/ali-suavi>); Hüseyin Çelik, Ali Suavi ve Dönemi (İletişim Yayınları 2021) 37.

59 Çelik (n 58) 363; Ali Suavi, *Arabî İbare Usûlü'l-Fıkh Nâm Risalenin Tercümesi* (Muhbir Office 1868). For its introduction and transliteration, see Sami Erdem, 'Ali Suavi'nin Usûl-i Fıkha Dair Bir Risalesi' 2 (1998) Divan 283.

60 Ali Suavi's treatise can be read as supporting the work of the Majalla Society. See Esra Yakut, *Şeyhülislamlık* (Kitap Yayınları 2005) 109-110.

(1831-1890) translated the entire text. In order to teach Majalla better at the Mekteb-i Hukuk-ı Sultanî, *Majāmi* was added to the syllabus with the decision of Cevdet Pasha and Shirvanî was appointed as the instructor.<sup>61</sup> He undertook the task of “translating the book with the help and inspiration of the people” and added treatises on logic, debate and jadal at the end and published it under the title *Lawāmi‘ al-Daqā‘iq fī Tarjamat Majāmi al-Haqā‘iq* on 19 November 1876.<sup>62</sup> In the translation, a plain language was used by taking into account the students who were the addressees, a commented translation technique was adopted by making explanations where deemed necessary while adhering to the main text, and care was taken to enrich these explanations with the legal maxims in Majalla.

The work by Mustafa Hashim (1852-1920), grandson of Grand Vizier Koca Yusuf Pasha and son of Shaykh al-Islām Ahmet Muhtar Efendi, titled *Izāh al-Qawā‘id*, is a commentary on *Majāmi Khātime*. At the end of the work, which is written in Arabic, there is Ömer Hilmi Efendi’s taqrîz. Here, the value of fiqh and qawā‘id was mentioned and the work on the commentary of the legal maxims was presented.<sup>63</sup> In the introduction of the commentary, it was stated that Khādimî had collected the maxims in the most beautiful way and that these maxims were commented on by referring to fiqh books, giving examples of jurisprudence and mentioning exceptions.<sup>64</sup> Praises and prayers were made to Abdulhamid II and the maxims in the *Majāmi Khātime* were commented.

One notable work is by Süleyman Sırrı Efendi (1851-1931), whose *Izāh al-Ashbāh* is the first translation and commentary of *Ashbāh* in Turkish. Sırrı Efendi must have written the work during his tenure as a lecturer of fiqh at Darulfünun between 1902 and 1913.<sup>65</sup> In his commentary, he followed the style of Majalla, addressed the issues by numbering them with the name of the issue, added subheadings that were not in the original text, and made frequent references to the works of Hamawî, Sunbulzāde and Hibetullah (Ibn Abidin’s teacher) as well as Ibn Abidin’s works. Considering that the codification movements were now on the path of *talfiq* (regarding the issue of combining opinions of different Madhhabs) the opinions of other sects were also included in the commentary. The current events of the period (such as wars) and the daily problems of the society (such as *narh* and *ihitiqar*) were mentioned.<sup>66</sup>

61 Ali Adem Yörük, *Mekteb-i Hukuk’un Kuruluşu ve Faaliyetleri (1878-1900)* (Unpublished Master Thesis 2008) 9.

62 Şirvani (n 34) 66-67; This translation was highly appreciated and was printed in many editions. See Sankaya (n 27) 265.

63 Mustafa Hashim, *Izāh al-Qawā‘id* (Matbaa-i Amire 1295/1878) 89.

64 Mustafa Haşım (n 63) 2.

65 BOA, MF.MKT, nr. 762/67, 26.11.1321; He also taught Kitab al-Nikah at the Mekteb-i Hukuk. Yörük (n 61) 88. Regarding the date of the writing of the work, I found it appropriate to include 1910, the year in which a part of the work was printed, in the title. See Süleyman Sırrı, Süleyman Sırrı, *Izāh al-Ashbāh* (İkdam Matbaası 1329/1911). New Edisyon: ed. Necmettin Azak and Hüseyin Örs and Şaban Kütük (Türkiye Yazma Eserler Kurumu Başkanlığı 2022) 54.

66 See Süleyman Sırrı (n 65) 159, 605, 606.

Ibn al-Hāzim Farīd (1873/4-1938), while he was the chief of the Manisa murder court in 1912, put Dabūsī's work on his agenda, translated the text as a summary and partially commented on it through the articles of the Majalla.<sup>67</sup> No other commentary, commentary or gloss on *Ta'ṣīs al-Nazar* is known in the Ottoman legal literature. Therefore, the translation of this work by Ibn al-Hāzim is important in terms of qawaid literature. With this translation, al-Farīd aimed to reveal a work that explains with examples the maxims on which the disputes between the imams are based and the principles on which the issues that are disputed between the Hanafī imams and other mujtahid imams are based.<sup>68</sup> Some parts have been omitted in the translation, for example, the examples on slavery have not been translated, probably because they were not in accordance with the spirit of the time, and the sections on dhimmis and apostates have been completely ignored.

### E. Individual Qawā'id Works

Although the literature on kavaid in the Tanzimat period was marked by the commentaries on Majalla and the reproduction of classical books, there were also semi-authentic endeavours. After the early *Farā'id* of Mahmud Hamza Efendi, the mufti of Damascus, Nurali, a Tatar Turk, titled *Yuz Qawā'id* was written in Arabic. Mustafa Nazmi's *Tamsīl* and Musa Jarullah's *Qawā'id* were written in Turkish. These are the independent kavaid works that we have been able to identify. Although the maxims found in the Majalla are included in *Tamsīl* and *Qawā'id*, different maxims extracted from fiqh books are also included in the list, although their sources are not mentioned.

Mahmūd Hamza Efendi (1821-1887), the mufti of Damascus, wrote the text entitled *Farā'id al-Bahiyya fī al-Qawā'id wa al-Fawā'id al-Fiqhiyya* in 1878, which can be considered as the first kavaid work written after the Majalla, and the book was printed in Damascus in 1881.<sup>69</sup> In the *Farā'id*'s introduction, it is noted that the times have changed and the science of fiqh has weakened. It is also stated that making judgments despite new issues has become difficult, and this work was prepared with the aim of using maxims to facilitate the process.<sup>70</sup> According to him, the maxims had a twofold potential; they could provide answers to new situations that arose and they could facilitate the process of learning and reasoning about the law for teachers and students.<sup>71</sup> It is known that the *Farā'id* was also read in the Ottoman legal community.

67 Ibn al-Hāzim Farīd, *Te'ṣīsü'n-Nazar ve Ruhü'l-Fikh* (Mizanu'l-Hukuk Matbaası 1328/1912)

68 Ibn al-Hāzim (n 67) 2.

69 Mahmud Hamza, *Ferā'id al-Bahiyya fī al-Qawā'id wa al-Fawā'id al-Fiqhiyya* (Dār al-Fikr 1986) 251-253.

70 Mahmud Hamza, (n 69) 11.

71 See also Ayoub (n 8) 63; Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge University Press 2015) 262-263.

Nurali bin Hasan (1852-1919) has a work titled *Yüz Kavaid-i Fıkhiye ve Yüz Kavaid-i Usûliye -Delâil ve Mesâilleri ile-* (Hundred Qawā'id al-Fiqhiyya and Hundred Qawā'id al-Usûliyya -with their Proofs and Issues).<sup>72</sup> This work of Nurali can be considered within the scope of the law projects of the Muslims of Russia called *Mecelle-i Ahkam-ı Şer'îye* and Islamic law activities.<sup>73</sup> Nurali donated this work to libraries in Istanbul and Bursa and also presented it to Abdulhamid II.<sup>74</sup> According to the cover of the work, it was licenced for publication in Petersburg on 10 September 1901 and the author himself covered the printing costs. The work, the title of which is in Turkish and the text in Arabic, was produced by bringing together two treatises and printing them as a single book. In the first part, the maxims of fiqh are defined as principles derived from sharī'ah evidence, which form the basis for the views of the Hanafi sect.<sup>75</sup> Moreover, the second part defines the maxims of usûl as principles derived from rational and narrative evidence, providing the foundation for reaching religious rulings.<sup>76</sup> A total of 207 maxims, 101 in the qawā'id al-fiqhiyye section and 106 in the qawā'id al-usûliyye section, are listed and briefly explained by pointing to their sources and giving examples.

Mustafa Nazmi (Aklan, 1868-1958) wrote a work on qawā'id in 1902 when he was an assistant prosecutor in Çorum, and he was able to publish this text in 1907.<sup>77</sup> In the work titled *Tamsil-i Kavâid ve Zavâbit-ı İlm-i Hukuk*,<sup>78</sup> 238 maxims, including the maxims of Majalla, are listed, generally in alphabetical order, the maxims are explained with examples, and the sources of some maxims in hadiths are shown.<sup>79</sup> Original maxims not mentioned in Majalla and *Ashbâh* were produced,<sup>80</sup> references were made to classical fiqh books, as well as to the codes of the Tanzimat period such as the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure, and the Land Code, and the exceptions to the maxims were pointed out occasionally.<sup>81</sup>

Musa Jarullah Bigiev (1875-1949), a Kazan Tatar, wrote his work titled *Qawā'id-i Fiqhiyya* in 1910.<sup>82</sup> Carullah added 102 maxims to the 99 maxims of the Majalla,

72 Nurali bin Hasan el-Bulgârî, *Yüz Kavaid-i Fıkhiye ve Yüz Kavaid-i Usûliye (Delâil ve Mesâilleri ile)* (Matbaa-i Kerimiye 1902).

73 See Kibar Karadeniz, *Mahkeme-i Şer'îyye ve Mecelle Projesi Özelinde Rusya Müslümların İslam Hukuku Faaliyetleri (1788-1918)* (Emin Yayınları 2023) 185.

74 Nurali, *Sultan Abdülhamid'in Sarayında (Bir Tatar Müderrisin İstanbul, Bursa ve Surre Alayı ile Hac Hatıraları)*, Ömer Hakan Özalp (ed), (İşaret Yayınları 2021) 71, 82, 118.

75 Nurali (n 72) 2.

76 Nurali (n 72) 21.

77 He obtained a licence in July 1904 for the printing and publication of the work. BOA, MF.MKT., nr. 790/17, 23.04.1322.

78 Mustafa Nazmi, *Temsil-i Kavâid ve Zavâbit-ı İlm-i Hukuk* (Şirket-i Mürettebiye Matbaası 1323/1907).

79 Mustafa Nazmi (n 78) 71, 102.

80 İbrahim Yağız, *Mustafa Nazmi'nin Temsil-i Kavaid ve Zavabit-i İlm-i Hukuk Adlı Eseri* (Unpublished Master Thesis 2019) 18 and the comparison table of Majalla and Ashbâh in Annex-1.

81 Yağız (n 80) 19.

82 Ferhat Koca, 'Musa Carullah Bigiyef Hakkında Bir Nice Söz' in *Kavaid-i Fıkhiyye (İslam Hukukunun Genel İlkeleri)* F Koca and F Karataş and A Y Küçükütyaki (ed), (Ankara Okulu Yayınları 2018) 55.

totalling 201 maxims. The order is similar to that of the Majalla, but the phrases are not taken verbatim, but are expressed in a way that the Tatar people can understand.<sup>83</sup> After the explanation of the 99th maxim, it is stated that after the maxims quoted from the Majalla, which was collected by Ibn Nujaym, other maxims collected from fiqh and usul books will be presented.<sup>84</sup> In the commentary of the maxims, Qur'an verses and hadiths are referred to, the names of the sources used are not mentioned.<sup>85</sup>

## II. Functions of Legal Maxims in Ottoman Law

The maxims were used in the classical sources of Ottoman law. In the Tanzimat period, a new set of issues with judicial, administrative and legal dimensions was encountered. Issues such as the power relations between power and knowledge and the power of the state to give some maxims the power to be laws while ignoring others should be discussed. Majalla is in fact a shortcut to the reformulation of Islamic law in the context of the late Ottoman period and to trace the lasting traces of this system in the centre and provinces. In this period, the maxims are also a fundamental factor in the formation of legal language and legal culture. This chapter will trace the use of rules in the classical sources of Ottoman law, as well as the manifestations of rules in the field of law in the dimensions of education, knowledge production, practise and language culture.

### A. Legal Maxims in Classical Sources of Ottoman Law

Ottoman law, with its sharia and 'urfī law (sultans' law) dimensions, formed a unique legal structure and deserved to be named separately. This legal structure naturally had its own unique sources. In the Ottoman judicial system, there were a number of sources of information and enforcement where the judges could easily find the provisions they were looking for, and these sources are counted as handbooks (*al-furū'*) of Islamic law, legal responsas (*fatwā*), Ottoman codes (*kānūnnāmes*) and court records (*shar'īyya sijils*), all recognized within Hanafī law.<sup>86</sup> In the classical period -until Nāzirzāde-, Ottoman jurists did not produce an independent work in the kavaid genre. Although a work titled *al-Ashbāh wa-al-Nazāir* is attributed to Ibn Melek (d. 1395), one of the scholars of the period of Beyazıt I, it has not been found in library records.<sup>87</sup> Nevertheless, works on *khilāfiyāt*, which are close to the qawā'id

<sup>83</sup> For the comparison table, see Koca (n 82) 66.

<sup>84</sup> Musa Carullah Bigiyef, *Kavaid-i Fikhiye: Ahkam-ı Şer'īye Mecellesine Medhal Olmak Sıfatıyla*, Ahmad al-İshaki (ed), (Örnek Matbaası 1327/1910) 72.

<sup>85</sup> Apart from the hadith sources, works such as *al-Burhan* by al-Juwayni and *al-Murwafaqat* by al-Shatibi are cited, and there are also quotations from al-Maarri's poems. See Bigiyef (n 84) 109, 118.

<sup>86</sup> Mehmet Akif Aydın, *Osmanlı Hukuku (Devlet-i Aliyye'nin Temeli)* (İSAM Yayınları 2020) 287, 289, 290-292.

<sup>87</sup> Although it is said to have been found in one of the Mosul libraries -with a registration number- no such work can be found. Carl Brockelmann, *Geschichte der Arabischen Litteratur* (Supp. 2) (Brill 1938) 315.

genre, were written.<sup>88</sup> Although the maxims were not discussed in separate books or treatises, it can be observed that jurists took into account maxims such as the change of time, custom, *maslaha*, social conditions, the removal of difficulty and the provision of ease, and the broad interpretation of permissions in their opinions.

### 1. Handbooks (*al-Furū'*) of Islamic Law

The Ottoman madrasa curriculum is analyzed in three periods. Classical Hanafī texts such as *Hidāyah* were popular from the foundation until the Fatih period, Molla Khusrev's *Durer* came to the forefront after Fatih, and İbrahim Halabī's *Multaqā* reached widespread use during and after the reign of the Magnificent. In addition to these, it is certain that Shaykh Bedreddin's *Tashīl*, written during the conquest period, and Ibn Abidin's *Radd al-Mukhtar*, written in the pre-Tanzimat period, were also influential in the Ottoman legal community. We can take a closer look at the use of rules in these five main texts respectively.

When these texts, which had a significant influence on Ottoman law, are analyzed; the maxims are mostly referred to with the expression *asl*, no distinction is made between the maxims of *furū* and maxims of *usūl*, the usage is all-encompassing to all sections of *ibādāt-muamalāt-uqūbāt*, and the maxims taken as basis by the jurists are mentioned while explaining the reasons for the different views of the sects on the issues. It is seen that the possible criticisms of the Hanafī madhhab's view are responded to through the maxims that ensure consistency, the authors follow a narrative based on the maxims while expressing their own opinion/preference, and the maxims are used with different wording since they do not have established forms. Although the maxims seem to have been placed as a secondary element in the texts of jurisprudence, it is more than a hesitant claim to think that there are some principles/maxims in the background of jurisprudential reasoning despite the fact that the jurists do not express them explicitly in many issues. This will be seen more clearly in the case of *fatwas*.

### 2. Legal Responsa (*Fatwā*) Literature

In addition to *furū'* handbooks on jurisprudence, Ottoman jurists used *fatwa* collections as a source of reference. *Fatwas* consisted of short answers to the questions asked. While Arabic *fatwa* books such as *Hāniya (Qādihan)*, *Bezzāziyya*, *Tatarhāniyya* were effective in the early periods, after the 16th century, Turkish *fatwa* works such as *Fetava-yı Ali Efendi*, *Fetava-yı Feyziyye*, *Behcetü'l-Fetava*, *Neticetü'l-*

88 For example, *al-Kāfi* written in 1317 by Hattab b. Abu al-Qasim Karahisārī, one of the jurists of the Uthman Beg period: *Sharh Nazm al-Khilāfiyāt*, written in 1317, is a commentary on Najm al-Dīn Nesefī's (d. 1142) poetic work on *khilāf*. See Recep Cici, *Osmanlı Dönemi İslam Hukuku Çalışmaları (Kuruluştan Fatih Devrinin Sonuna Kadar)* (Arasta 2001) 59-63.

*Fetava* came to the fore.<sup>89</sup> Since the fatwa-type works consist of short answers to issues, jurisprudential proofs are generally not mentioned, so it is not common for fatwas to be based on maxims or for the judgement to be supported by maxims.<sup>90</sup>

It can be seen that jurists such as Resul b. Salih al-Ayidinī (d. 1570), Ebussuud Efendi (d. 1574), and Sunullah Efendi (d. 1612) referred to the maxims in their fatwas, albeit to a lesser extent. In particular, Ebussuud's use of qawā'id in his fatwas, which he himself produced in the Turkish language, should be regarded as a serious breakthrough. In the classical period of the Ottoman Empire, Ebussuud played a dominant role in the field of qawā'id thought. The maxims also manifested themselves prominently when issuing fatwas on newly emerging issues such as tobacco and coffee. It can be said that the mentality of the Ottoman jurists was based on certain maxims, which surfaced in the face of new issues.

### 3. Ottoman Codes (*Kānūnnāme*'s)

It is observed that the Ottoman Codes (*Kānūnnāme*'s), which constitute the 'urfī dimension of Ottoman law, ensured trust in the state and the law by providing unity and stability of practise, especially in matters related to state organisation, punishment, land and taxation.<sup>91</sup> In the context of trying to reconcile the practise of fratricide with sharia law, as it was ruled in Mehmed II the Conqueror's Code of Organisation<sup>92</sup> and considered within the scope of 'urfī law<sup>93</sup> it seems reasonable to consider the use of maxims under this heading. Some Ottoman scholars emphasised certain maxims in order to place fratricide on a legal basis.<sup>94</sup>

The 1525 Egyptian Code of Laws is a very important code that expresses the legal consequences of the Ottomans' establishment of sovereignty in the region in 1517, regulates the structure inherited from the Mamluk period practise within the framework of Ottoman law and maintains the established customs and traditions.<sup>95</sup> It is noteworthy that the sultan's language explains that the authority to legislate is directly derived from sharia law, and that the maxim of "what is customary is as if

89 See Şükrü Özen, 'Osmanlı Dönemi Fetva Literatürü' 5 (2005) Türkiye Araştırmaları Literatür Dergisi 335; on the emergence of Ottoman Turkish as a language of law from the 15th century onwards, this language's struggle for existence against Arabic, its acquisition of a public quality that could be shared by the public, and the role of fatwas in this context, see Himmet Taşkömür, '16. Yüzyıl Osmanlı Kültür ve Düşünce Hayatı Üzerine Bazı Gözlemler' A H Furat and N K Yorulmaz and O S A (ed), *Sahn-ı Semân'dan Dârülfünûn'a Osmanlı'da İlim ve Fikir Dünyası Âlimler, Müesseseler ve Fikri Eserler (XVIII. Yüzyıl)* (Zeytinburnu Belediyesi Kültür Yayınları 2018) 29-36.

90 Kızılkaya (n 3) 421.

91 See Halil İnalçık, 'Kanunname' in 24 DİA (2001) 333 (<https://islamansiklopedisi.org.tr/kanunname>).

92 *Kanunname-i Al-i Osman*, Mehmed Arif (ed.), (Ahmed İhsan ve Şürekası Matbaası 1329/1911) 27.

93 Aydın (n 86) 115.

94 For the discourses that can be based on the maxims and their analyses, see Mehmet Akman, *Osmanlı Devleti'nde Kardeş Katli* (Eren Yayınları 1997) 150-156.

95 Abdurrahman Atçıl, 'Memlükler'den Osmanlılar'a Geçişte Mısır'da Adli Teşkilat ve Hukuk (922-931/1517-1525)', 38 (2017) İslam Araştırmaları Dergisi 89.

it were legitimized by sharia” is invoked.<sup>96</sup> In the 1528 *Kānūnnāme* of Aydın, in the *Kānūnnāme* of Skopje-Selanik from the reign of Selim II (1566-1574), and in the law compilations of Ottoman jurists such as Dede Cöngi (d. 1567), Pîr Mehmed Efendi (d. 1611), and Hezarfen Hüseyin Efendi (d. 1691), there are references to the maxims.

When we look at the examples of the use of the maxims in the *Kānūnnāmes*, we see that the maxims were mostly used with their Arabic originals (probably in order to increase their effectiveness) for purposes such as strengthening the legitimacy of ‘urfî law in the eyes of sharia law, providing justification for the continuation or change of certain practises in the context of land law, and supporting the fatwas or judgments given.

#### 4. Court Records (*Shar‘iyya Sijils*)

Ottoman court records, the Sharia registry books, are among the primary sources in terms of Ottoman law.<sup>97</sup> Although the rules are not frequently mentioned in the registers, some examples of their use are found. In these examples, it is seen that the rules are used with their Arabic originals. In some cases, the sources of the rules are also mentioned. In the examples encountered, in addition to *Ashbāh*, *Qādihan* is also mentioned.

Even though there is no direct mention of the relevant maxims, issues related to the change of *ahkām* and customs stand out in the registers. When the registers are analyzed in general, it is seen that the sultans changed the law according to the needs of the society by establishing rules in areas regulated by Islamic law, such as the practise of official sectarianism, the binding of marriages to the permission of the qādī, the land regime, and the endowment of money. There are also many records indicating that local and private customs were taken into consideration.<sup>98</sup>

#### B. Maxims in Legal Education from Madrasa to Maktab

Both in classical fiqh sources and in the western legal literature, the maxims were considered an integral part of legal education and were considered important as the key to making the subjects easier for students to grasp. The most important aim of the Ottoman madrasas in the classical period was the training of judges who would serve in the expanding geography of the empire. Accordingly, the curriculum was constructed as fiqh-centred. The basic books taught here and the use of maxims in these books have been discussed above.

96 Ahmed Akgündüz, *Osmanlı Kanunnameleri ve Hukukî Tahlilleri* (Fey Vakfı ve Osmanlı Araştırmaları Vakfı 1990-1996) 4 86. ‘Urfî law was defined as an independent and autonomous field and was placed on an equal footing with sharia law on this basis. See Fatma Gül Karagöz, *The Evolution of Kanunname Writing in the 16th and 17th Century-Ottoman Empire: A Comparison of Kanun-ı Osmanî of Beyazid and Kanunname-i Cedid* (Unpublished Masters Thesis 2010) 48.

97 See Fethi Gedikli, ‘Osmanlı Hukuk Tarihi Kaynağı Olarak Şer‘iyye Sicilleri’ 3 5 (2005) *Türkiye Araştırmaları Literatür Dergisi* 187.

98 Gedikli (n 97) 193.

It is clear that Cevdet Pasha designed the Majalla as a fiqh textbook at the same time. The fact that the first article begins with a definition of fiqh, explains it in detail, and provides examples of the maxims within the text of the law is sufficient evidence of this. From the date of its adoption, Majalla would be placed at the centre of legal education from madrasah to school as both a fiqh textbook and a law. It is not difficult to guess that special attention was paid to the Introduction, i.e. the legal maxims, in the Majalla lessons and that it was emphasized more than other sections. Although the *Ashbāh*, which was rarely seen in the madrasa curricula of the classical period, and *Majāmi*, which filled the usūl al-fiqh section of the curriculum in the 18th century, presented the maxims to the students' attention, it was only with the Majalla that the maxims became central in legal education.

In 1855, the Muallimhane-i Nuvvab was opened,<sup>99</sup> followed by the Kavanīn and Nizamāt Dershanesi, which was established in 1870 and continued for about seven years,<sup>100</sup> the Mekteb-i Sultanī Law School, which operated between 1874 and 1881,<sup>101</sup> the Mekteb-i Hukuk, which started its activities in 1880,<sup>102</sup> the Thessaloniki Law School (1907-1913),<sup>103</sup> the Konya Law School (1908-1919),<sup>104</sup> and the Baghdad Law School (1908-1916),<sup>105</sup> Majalla qawā'id lessons were taught.

### C. Maxims in the Production of Legal Knowledge from Classical to Modern

During the Ottoman classical period, Hanafi jurists did not consider a legislative role for the sultan, the boundaries of which were theoretically drawn by them, as an encroachment on their authority. In other words, the relationship between the Ottoman Empire and Hanafi jurists was shaped in a process supported by the legal acceptance of the sultan's participation in law-making.<sup>106</sup> With the Tanzimat period, the Ottoman Empire began to infuse its law with European law, and reforms were made at the level of laws and courts based on the western example, as well as a transformation in the dimension of legal thought.<sup>107</sup>

99 This institution would later be named Mekteb-i Nuvvab in 1885, Mekteb-i Qudāt in 1908, and Madrasa al-Qudāt in 1909. See Jun Akiba, 'A New School for Qadis: Education of the Sharia Judges in the Late Ottoman Empire' 35 (2003) Turcica 125. The process of 'reforming' the Madrasa al-Qudāt towards the Mekteb-i Hukuk (School of Law) was parallel to the expansion of the jurisdiction and jurisdiction of the Nizāmiye courts to the detriment of the sharia courts. See Ali Adem Yörük, *Müderis ve Hukukçu Rizeli Hafız Kasım Efendi (II. Meşrutiyet Dönemi Hukuk Eğitiminde Üslup Arayışları)* (Dergah Yayınları 2014) 130.

100 Yörük (n 61) 19-22.

101 This school can be considered as the first version of Istanbul University Faculty of Law in terms of the organisation of legal education in Istanbul. See Fethi Gedikli, 'İstanbul Üniversitesi Hukuk Fakültesi Ne Zaman Kuruldu?' 69 1-2 (2011) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 91.

102 Yörük (n 61) 79-81

103 Vahit Cemil Urhan, 'Selânik Hukuk Mektebi (1907-1913)' in Balkan Tarihi Araştırmaları I, Bülent Akyay (ed), (Trakya Üniversitesi Balkan Araştırma Enstitüsü Yayınları 2021) 349.

104 Yasin Yılmaz and Mehmet Kiremitçi, 'Konya Hukuk Mektebi'nde Anayasa Hukuku Dersleri' 68 (2022) Adalet Dergisi 285.

105 Abdullah Cengiz, 'Bağdat Hukuk Mektebi' 34 (2023) İğdır Üniversitesi Sosyal Bilimler Dergisi 186.

106 Ayoub (n 8) 19.

107 Fethi Gedikli, 'Hukuki Düşünce yahut Cumhuriyetin Hukuk Devrimi -Bedevidikten Medeniliğe Geçiş-', in Tanzimat'tan Günümüze Türk Düşüncesi (Nobel Yayınları 2015) 893..

While it is possible to view the Majalla within the framework of continuity in the Ottoman legal system and the Hanafi tradition, this does not hold true for the production of legal knowledge. In the classical period, Muslim jurists could develop a legal thought that was more independent of state influence.<sup>108</sup> The centralized and nation-state system, on the other hand, intervened in the law more competitively. Unlike nation-states, in empires, laws were not imposed on the people, and there was a process of direct or indirect negotiation with local dynamics in the creation of law.<sup>109</sup> While in the classical period, the process resulted in the production of a legal text by a jurist and the subsequent adoption of this book by the state and the people, in the Tanzimat period, there was now a production of legal knowledge officially imposed by the state. In other words, the production of legal knowledge, which was a civil intellectual activity in which the state -although it had some influence- was not directly involved, was completely formalized. The text that was worth of commentary was no longer determined by the text itself, its quality or its author, but by the state itself.

### 1. The Role of the Maxims in the Change of Islamic Law

Since its inception, Islamic law has been systematized in a dynamic process in order to respond to the needs of societies, and the activity of *ijtihād* has continued in a lively manner. By the Ottoman period, there was no need for absolute and founding *ijtihād*, and a relative stability was achieved in the law. Even in this state, when the examples given in the above on fatwas are recalled, the institution of *ijtihād* was somehow operated, especially for newly emerging issues. It can be concluded that the maxims carried a serious weight in the change of Islamic law as they came to the fore in these new issues. During the Tanzimat period, when the need for change intensified, interest in *qawā'id* increased in the process that can be initiated with Ali Suavi's approach, discussed above, which reduced the *usūl al-fiqh* to *qawā'id*, and then continued with the Majalla.

The fact that the Ottoman ulema compiled a selection of maxims at the beginning of the Majalla, the first code of Sharia law, played an important role in the serious influence of legal maxims in the field of *fiqh*.<sup>110</sup> Since *qawā'id* express abstract principles, they had the potential to be used effectively in the renewal of Islamic law and the exercise of *ijtihād*.<sup>111</sup> In this context, it can be assumed that the Majalla chose to select the first hundred articles from the *qawā'id* literature in order to link

108 Hallaq emphasises that Islamic law is the law of jurists not only because it was constructed by jurists, but mainly because 'jurists were the bearers of the authority that sustained it for more than a thousand years'. Wael Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press 2009) 245.

109 See Jill Harries, *Law and Empire in Late Antiquity* (Cambridge University Press 1999) 36.

110 Mohammad Hashim Kamali, 'Legal Maxims and Other Genres of Literature in Islamic Jurisprudence' 20 1 (2006) Arab Law Quarterly 99.

111 Kamali (n 110) 78.

canonization to codification. Accordingly, codification should actually be perceived as a continuation of the qawā'id literature.<sup>112</sup>

Ottoman jurists such as Mansurizade Said, Celal Nuri and Mustafa Şeref regarded qawā'id as the only unchangeable constant of Islamic law. The process of canonization is to transform the *nass* (Qur'an and Sunnah) into universal propositions that can be used in law through a direct or indirect process. *Nasses* with universal characteristics were directly canonized using expressions similar to the original, while local and historical *nasses* were canonized through an indirect process, considering their meaning and purpose, or were used to explain or exemplify the maxims. Therefore, it is unnecessary and even dangerous for the *nass* to have a direct source value in the field of law.

## 2. The Functions of Maxims in Modern Legal Writing

The evolution of Ottoman law towards the Continental European legal system with the codification movement had manifestations not only in the judicial organization and legal education, but also in the legal doctrine. Commentaries on the code, which emerged as a legitimate and recognized form of writing, should be considered products of this new doctrine, although they can be linked to the ancient tradition of commentary. The commentaries written for the purposes of explaining either the whole code or one or more groups of articles, defining basic concepts, establishing relations with the whole codification and showing the sources of the articles have created a rich literature.<sup>113</sup>

The texts written by scholar jurists, especially textbooks that include "law (*hukūk*)" in their titles<sup>114</sup> also constitute a significant number. In these texts, it can be said that the maxims were used functionally to place the codes within a Sharia framework, demand the amendment of codes or the creation of new ones, justify customary law as one of the sources of law, and question and explain the theoretical-philosophical foundations of legal issues.

## 3. Attempts at Maximization/Canonization (*Taq'īd*) in Various Fields

In the type of writing that began to be established in the legal literature of the Tanzimat period, law was divided into natural and subject law in accordance with the French model, and the distinction between public and private was adopted in

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112 Ayoub (n 8) 156.

113 The first law commentary is probably Ohan Vahan Efendi's *Şerh-i Kanun-ı Ticaret* (Takvimhane-i Amire, Istanbul 1278/1861), a commentary on the commercial code. See Kara (n 9) 16.

114 The first book written within this framework was *Hukuk-ı Mîlel* (1847) by Ottokar, who worked as an interpreter at the Austrian Embassy in Istanbul. Ali Suavi's text is also important in that it includes the French word *droit/duruva*. See Kemal Gözler, "Hukuk Kelimesi Kaç Yaşında? Etimoloji Bize Ne Söyler", [www.anayasa.gen.tr/hukuk-kac-yasinda.htm](http://www.anayasa.gen.tr/hukuk-kac-yasinda.htm) (31.07.2019)

subject law. As the sub-branches of this division, the fields of state, constitutional, administrative, tax, criminal, civil, debts, commercial and execution and bankruptcy law were distinguished. In some of the texts written in this new style, it is seen that the maxims related to the field of study were also determined. Although these maxims were largely based on Islamic law, western sources were also used directly or indirectly.

In the legal literature of the Tanzimat period, there was an attempt to maximize almost every field of law. It is no coincidence that some of these attempts at maximization came from Majalla commentators such as Seydişehrî, Ali Haydar, and Hacı Reşid. During this period, in addition to the classical fiqh sources, Latin and French legal maxims were also among the sources that Ottoman jurists fed on. Whether systematic or not, the new legal community interest in the maxims remained alive. It is certain that this interest made serious contributions to the vocabulary of Turkish legal maxims.

#### 4. Use of Maxims in Political-Legal Debates

The presentation of concepts and institutions, which were essentially the product of western theories, within an Islamic framework was a common concern during the Tanzimat and Constitutional Monarchy periods. During the Ottoman modernization, political debates, which also had legal dimensions, occurred between intellectuals and statesmen. In these debates, religion came to the fore as the only legitimizing force within the framework of the adaptation paradigm.<sup>115</sup> One of the legitimizing tools provided by religion and Sharia/Islamic law in the context of the mentioned debates is the maxims. Although they were not used as frequently as verses and hadiths, the maxims were expected to have a power of influence close to the *nasses*.<sup>116</sup>

It is possible to give different examples from the Tanzimat, Constitutional Monarchy and transition periods to the Republic regarding the use of *qawā'id* in political debates that also had legal dimensions. Intellectuals such as Namik Kemal, Mansurizāde and bureaucrats such as Talat Pasha and Mustafa Kemal Pasha referred to the maxims in their speeches and writings. In terms of the course of the debates, it is seen that the maxims played an important role as one of the legitimization tools that came to the rescue at the points of need. Although arbitrary uses can be encountered, it can be said that the maxims are presented as reliable propositions in polemical/judgmental texts, and their ability to persuade the other side is trusted.

115 See İsmail Kara, *İslamcıların Siyasi Görüşleri I (Hilafet ve Meşrutiyet)* (Dergah Yayınları 2014) 22-23; Nurullah Ardiç, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernisation in the early 20th Century* (Routledge 2012).

116 On the use of *nusūs* as a means of legitimisation, see Kara (n 115) 39-44.

### **D. Maxims in the Application of Law from *Sharia* to *Nizāmiye* Courts**

In the cautious view defended by the majority, the benefits of the maxims in many aspects, such as education, are accepted, but it is not considered possible for them to be the basis of judgement on their own. In fact, there is an opinion that the maxims are used indiscriminately and judgements are made easily.

When the expressions used by the Majalla in different places are evaluated together, it can be said that equilibrium rather than caution has been observed. In other words, Majalla has taken a stance that evaluates the maxims as a whole without completely excluding them from practise and that they can be used provided that they find a transmission. Indeed, in order for the legal maxims to be used as evidence, an example from the books of *furū'* or *fatwa* was required. In fact, the maxims can be used as evidence in the first stage and a judgement can be reached, but it is necessary to support it with a second stage, that is, with a transmission from the *fiqh* tradition. In addition, the quality of being evidence is not found in the maxims individually, but when considered as a whole, the maxims, or rather the bundles of maxims adopted by a particular *madhhab/école*, can be seen as one of the safest ways to reach a judgement.

The Ottoman Court of Appeal has also ruled that judgments should not be made on the basis of one or more of the legal maxims. Nevertheless, some court judgements and *fatwas* make references to the maxims. In other words, we are faced with an ambivalent view on how to use and where to place the maxims in *fatwas* and judicial decisions.

### **E. Maxims in Legal Language and Culture From *Fiqh* to Code**

In the first chapter, it was discussed that the pre-Islamic Turks had sayings that could be considered as legal principles. These legal rules, which were manifested as proverbs, were regarded as laws in areas and periods when oral law was valid and sufficient among the people, and the phrase “proverb does not enter the *Qur'an*, but it goes with it” expressed the respected place of these maxims in the people’s understanding of law.<sup>117</sup> In the interlinear translations of Arabic *fiqh* books made near the establishment of the Ottoman Empire, the first Turkish forms of the maxims developed in Islamic law were encountered. In the Ottoman legal literature of the classical period, the maxims were mostly used in their Arabic originals. However, it was mentioned that it was possible to accept some propositions used in Turkish by *Ebussuud Efendi* in his *fatwas* as maxims.

In the *Tanzimat* period, the process of Turkification of the legal language in general and the maxims in particular gained formality and speed with the Introduction of

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117 Ali Rıza Önder, ‘Atasözlerinde Tüze Kuralları’ 1974 Türk Folkloru Araştırmaları Yıllığı/Beleten 109.

Majalla within the context of the codification movement.<sup>118</sup> It can be said that Turkish owes its development as a competent legal language to a great extent to the Majalla.<sup>119</sup> In this period, the relevant literature, namely the Majalla commentaries written by Ottoman jurists, the commentaries and translations of classical qawā'id books and most of the independent qawā'id works were also written in Turkish.

During the Tanzimat period, sharia law continued to be reformulated as in the case of Majalla, while 'urfî law was evolving into a new order inspired by French law by expanding its sphere of domination. In this period, law began to be standardized in both dimensions and was shaped within the framework of an understanding of justice based on positive law.<sup>120</sup> One can start from Majalla's Introduction to investigate how this new culture occurred in the society and to what extent it spread to different layers. In the Introduction, which we have analyzed in the literature section, four sections are emphasized, firstly in the section on the Majalla as an easy-to-understand law on fiqh, and then in the section on the maxims in particular.

Four layers can be mentioned here: law teachers and students, judges, civil servants and the public. The first layer was touched upon through the central place given to the Majalla in legal education. Those who were to learn and teach Islamic law were to be guided towards a maxim-centred understanding. The value of the Introduction of Majalla as a fiqh textbook was also emphasized. The second layer was the judges who were members of the court system. The legal culture formed especially in the Nizāmiye courts, which the judges had to adopt, was based on standardizing a judicial practise that focused on order. This was based on the belief in the power of scientific progress to design nature and society along rational lines. In this mentality, detailed legal regulations were considered as the achievement of an objective and rationalist structure in the judicial sphere.<sup>121</sup>

The third layer comprises civil servants in administrative affairs. The fact that they were also addressed can be attributed to Cevdet Pasha's understanding of the constitution. Pasha opposed the idea of a written constitution and thought that Islamic law and the Ottoman tradition, which found expression in legal maxims, could be accepted as the unwritten constitution of the state.<sup>122</sup> The fourth layer, the people, who were said to be able to control the conformity of their affairs to Sharia through

118 The most important development that broke the dominance of Arabic in the field of Islamic law was the preparation of the Majalla in Turkish. See Suraiya Faroqhi, *Osmanlı Kültürü ve Gündelik Yaşam (Ortaçağdan Yirminci Yüzyıla)* (trans.), (Tarih Vakfı Yurt Yayınları 2005) 32.

119 Fethi Gedikli, *Hukuk Dili ve Adli Yazışmalar* (İstanbul Üniversitesi Açık ve Uzaktan Eğitim Fakültesi Yayınları 2019) 76.

120 Edhem Eldem, *Mitler, Gerçekler ve Yöntem (Osmanlı Tarihinde Aklın Takılanlar)* (Tarih Vakfı Yurt Yayınları 2018) 284.

121 Avi Rubin, *Ottoman Nizamiye Courts (Law and Modernity)* (Palgrave Macmillan 2011) 156.

122 See Ayhan Ceylan, *Meşveret Düşüncesi ve Uygulaması in Türk Hukuk Tarihinde Meşveret Düşüncesi ve Uygulama* (Unpublished PhD Thesis 1998) 139; Bedri Gencer, *Hikmet Kavşağında Edmund Burke ile Ahmed Cevdet* (Melisa Matbaacılık 2011) 141-142; İrem Diler, *Ahmed Cevdet Paşa'nın Devlet, Hukuk ve Yeni Osmanlılarla Karşılaştırmalı Olarak Anayasa Görüşü* (Unpublished Master's Thesis 2019) 69.

maxims, also had different layers within themselves. In the classical period, the legal culture in the Ottoman Empire was disseminated among the social strata through fiqh manuals such as *Hidāyah* and basic works such as *Mızraklı İlmihal*. During the Tanzimat period, laws and especially the Majalla were also included in this culture.

### Conclusion

The article explores the development and significance of legal maxims (*qawā'id*) in Ottoman law, tracing their evolution from the classical period through the Tanzimat and Constitutional Monarchy periods.

Legal maxims in Islamic law, which are central Ottoman jurisprudence, encapsulate general principles applicable across various legal issues. Initially rooted in Seljuk traditions, Ottoman law evolved to distinguish between *sharia* (Islamic law) and *'urfī* (sultanic) law, with significant contributions from Islamic legal literature, notably Ibn Nujaym's *Ashbāh*, Nāzīrzāde's works, and Khādīmī's writings. The Tanzimat reforms aimed to unify Ottoman law, leading to the creation of the Majalla, which codified 99 legal maxims. Commentaries on the Majalla, illustrate the ongoing scholarly engagement with *qawā'id*. Additionally, translations and commentaries of classical works like *Ashbāh* and *Majāmi* further demonstrate the dynamic nature of Ottoman legal scholarship.

The evolution of *qawā'id* literature reflects the broader transformation of Ottoman law, from classical Islamic traditions to a more codified and systematic legal system during the Tanzimat reforms. The integration of maxims into legal codes like the Majalla highlights their enduring relevance and the complex interplay between traditional Islamic jurisprudence and modern legal reform.

The role of legal maxims in Ottoman law represents a profound intersection between tradition and transformation. Throughout the classical period, Ottoman jurists relied on maxims as fundamental tools for interpreting and applying Islamic law. These maxims guided the application of law across various sources, from handbooks of Islamic jurisprudence and fatwa literature to Ottoman codes and court records. The maxims served not merely as theoretical constructs but also as practical instruments shaping judicial decisions and legal practise.

With the advent of the Tanzimat period, the legal landscape of the Ottoman Empire underwent significant reformations. The integration of European legal principles and codification efforts, epitomized by the Majalla, signified a pivotal shift. The Majalla's incorporation of maxims highlighted their enduring influence while adapting them to a modernizing legal framework. The selection and codification of maxims within the Majalla were not merely continuations of tradition but represented a strategic

adaptation to meet the evolving needs of a state undergoing modernization.

In legal education, the prominence of maxims in Ottoman madrasas and later legal institutions underscores their role in shaping the legal culture and language. The Majalla's emphasis on maxims as central to legal education demonstrates their importance in cultivating a jurisprudential foundation that bridged classical Islamic law with modern legal practises.

The transition from a legal system rooted in traditional jurisprudence to one increasingly influenced by European models illustrates the dynamic nature of legal maxims. They continued to function as pivotal elements in the transformation of legal thought and practice, influencing both legislative reforms and the broader legal culture.

Ultimately, the study of legal maxims in Ottoman law reveals their dual role as both a repository of traditional wisdom and a catalyst for legal reform. They embody the enduring legacy of Islamic jurisprudence while also reflecting the adaptability of legal systems in the face of changing political and social landscapes. The ongoing significance of maxims in modern legal contexts further affirms their foundational role in shaping the evolution of law from the Ottoman Empire to contemporary legal systems.

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## Bibliography

- Ahmed Cevdet, *Tezâkir*, C Baysun (ed), (Türk Tarih Kurumu Yayınları 1991).
- Ahmed Hamdi Şirvani, *Lawâmi' al-Daqâ'iq fî Tarjamat Majâmi al-Haqâ'iq*, H Örs and S E Örs (ed) (Türkiye Yazma Eserler Kurumu Başkanlığı 2017).
- Akgündüz A, 'Mustafa Hulusi Güzelhisari' in *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (DİA) 14 (1996) 331.
- Akgündüz A, *Osmanlı Kanunnameleri ve Hukukî Tahlilleri* (Fey Vakfı ve Osmanlı Araştırmaları Vakfı 1990-1996).
- Akiba J, 'A New School for Qadis: Education of the Sharia Judges in the Late Ottoman Empire' 35 (2003) *Turcica* 125.
- Akman M, *Osmanlı Devleti'nde Kardeş Katli* (Eren Yayınları 1997).
- Ali Suavi, *Arabî İbare Usûlü'l-Fıkh Nâm Risalenin Tercümesi* (Mukhbir Office 1868).
- Amiri R S, *Legal Maxims in Islamic Jurisprudence (Their History, Character and Significance)* (Unpublished PhD Thesis 2003).
- Ardıç N, *Islam and the Politics of Secularism: the Caliphate and Middle Eastern Modernisation in the early 20th Century* (Routledge 2012).

- Atçıl A, 'Memlûkler'den Osmanlılar'a Geçişte Mısır'da Adli Teşkilat ve Hukuk (922-931/1517-1525)', 38 (2017) İslam Araştırmaları Dergisi 89.
- Aydın M A, 'Mecelle-i Ahkam-ı Adliyye' in DİA 28 (2003) 231.
- Aydın M A, *Osmanlı Hukuku (Devlet-i Aliyye'nin Temeli)* (İSAM Yayınları 2020).
- Ayoub S, *Law, Empire, and the Sultan (Ottoman Imperial Authority and Late Hanafi Jurisprudence)* (Oxford University Press 2020).
- Azak N, Ebu Said el-Hadîmî'nin Mecamiu'l-Hakâik Adlı Eserindeki Kavâid-i Külliyye'nin İslam Hukukunun Temel Kaideleri İçindeki Yeri ve Önemi (Unpublished Master Thesis 2010).
- Azak N, 'Kavâ'id-i Fıkhiyyede Bir Literatür İncelemesi: İbn Nüceym'in el-Eşbâh ve'n-Nezâir'i ve Üzerine Yapılan Çalışmalar' 3/2 (2020) Tahkik İslami İlimler Araştırma ve Neşir Dergisi 547.
- Bagdadî İ, *Hadih al-Arifin Asmâ al-Muallifin wa Asâr al-Musannifin* (Dâr al-Turâs al-Arabiyye 1951).
- Baktır M, İslam Hukukunda Külli Kaideler (Unpublished Post-doctoral Thesis 1988).
- Bedir M, 'Geleneğin Son Halkası: Hâdimî'nin Mecâmî'ü'l-Hakâ'ik adlı Eseri ve Usul'de Güncel Bilgi Meselesi ya da Bugün Fıkıh Usulünü Hangi Eserlerden Okumalıyız?' A H Furat and N K Yorulmaz and O S A (ed), *Sahn-ı Semân'dan Dârülfünûn'a Osmanlı'da İlim ve Fikir Dünyası Âlimler, Müesseseler ve Fikri Eserler (XVIII. Yüzyıl)* (Zeytinburnu Belediyesi Kültür Yayınları 2018).
- Bigiyef M S, *Kavâid-i Fıkhiyye: Ahkam-ı Şer'iyeye Mecellesine Medhal Olmak Sıfatıyla*, Ahmad al-İshaki (ed), (Örnek Matbaası 1327/1910).
- Burak G, *The Second Formation of Islamic Law: The Hanafi School in the Early Modern Ottoman Empire* (Cambridge University Press 2015).
- Bursalı M T, *Osmanlı Müellifleri*, A F Yavuz and İ Özen (ed), (Yaylacık Matbaası 1972).
- Cengiz A, 'Bağdat Hukuk Mektebi' 34 (2023) İğdır Üniversitesi Sosyal Bilimler Dergisi 186.
- Ceylan A, Meşveret Düşüncesi ve Uygulaması in Türk Hukuk Tarihinde Meşveret Düşüncesi ve Uygulama (Unpublished PhD Thesis 1998).
- Cici R, *Osmanlı Dönemi İslam Hukuku Çalışmaları (Kuruluştan Fatih Devrinin Sonuna Kadar)* (Arasta 2001).
- Çeker O, 'Ebû Saîd Muhammed el-Hâdimî'nin Mecâmî'ü'l-Hakâik Adlı Eseri' 8 (1998) Selçuk Üniversitesi İlahiyat Fakültesi Dergisi 43.
- Çelik H, *Ali Suavi ve Dönemi* (İletişim Yayınları 2021).
- Diler İ, Ahmed Cevdet Paşa'nın Devlet, Hukuk ve Yeni Osmanlılarla Karşılaştırmalı Olarak Anayasa Görüşü (Unpublished Master's Thesis 2019).
- Ebussuud Efendi, 'Taqrîz', in Ibn Nujaym, *al-Ashbâh wa-al-Nazâir*, Süleymaniye Library (Esad Efendi) 521 (969) 3a.
- Ekinci E B, *Ahmed Cevdet Paşa ve Mecelle'den Düsturlar* (IQ Kültür Sanat Yayınları 2021).
- Eldem E, *Mitler, Gerçekler ve Yöntem (Osmanlı Tarihinde Aklıma Takılanlar)* (Tarih Vakfı Yurt Yayınları 2018).
- Elgariani F S, *Al-Qawa'id al-Fikhiyyah (Islamic Legal Maxims): Concept, Functions, History, Classifications and Application to Contemporary Medical Issues* (Unpublished PhD Thesis 2012).
- Erdem S, 'Ali Suavi'nin Usûl-i Fıkha Dair Bir Risalesi' 2 (1998) Divan 283.

- Erdem S, 'Türkçede Mecelle Literatürü' 3 5 (2005) Türkiye Araştırmaları Literatür Dergisi 673.
- Erdem S, Tanzimat Sonrası Osmanlı Hukuk Düşüncesinde Fıkıh Usulü Kavramları ve Modern Yaklaşımlar (Unpublished PhD Thesis 2003).
- Faroqhi S, *Osmanlı Kültürü ve Gündelik Yaşam (Ortaçağdan Yirminci Yüzyıla)* Elif Kılıç (trans.), (Tarih Vakfı Yurt Yayınları 2005).
- Gedikli F, 'Hukuki Düşünce yahut Cumhuriyetin Hukuk Devrimi -Bedevilikten Medeniliğe Geçiş-', in Tanzimat'tan Günümüze Türk Düşüncesi (Nobel Yayınları 2015) 893.
- Gedikli F, 'İstanbul Üniversitesi Hukuk Fakültesi Ne Zaman Kuruldu?' 69 1-2 (2011) İstanbul Üniversitesi Hukuk Fakültesi Mecmuası 91.
- Gedikli F, 'Osmanlı Hukuk Tarihi Kaynağı Olarak Şer'iyye Sicilleri' 3 5 (2005) Türkiye Araştırmaları Literatür Dergisi 187.
- Gedikli F, *Hukuk Dili ve Adli Yazışmalar* (İstanbul Üniversitesi Açık ve Uzaktan Eğitim Fakültesi Yayınları 2019).
- Gencer B, *Hikmet Kavşağında Edmund Burke ile Ahmed Cevdet* (Melisa Matbaacılık 2011).
- Gözler K, 'Yorum İlkeleri', in Anayasa Hukukunda Yorum ve Norm Somutlaşması (Türkiye Barolar Birliği Yayınları 2013) 19.
- Gözler K, 'Hukuk Kelimesi Kaç Yaşında? Etimoloji Bize Ne Söyler', [www.anayasa.gen.tr/hukuk-kac-yasinda.htm](http://www.anayasa.gen.tr/hukuk-kac-yasinda.htm) (31.07.2019).
- Hallaq W, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press 2009).
- Harries J, *Law and Empire in Late Antiquity* (Cambridge University Press 1999).
- Ibn al-Hāzım Farīd, *Te'sisü'n-Nazar ve Ruhü'l-Fıkh* (Mizanu'l-Hukuk Matbaası 1328/1912).
- Ibn Nujaym, *al-Ashbāh wa-al-Nazāir al-Fiqhiyah 'alā Madhhab al-Hanafīyah*, Osman Bayder (ed), (Türkiye Yazma Eserler Kurumu Başkanlığı 2022).
- İnalcık H, 'Kanunname' in 24 DİA (2001) 333.
- İpşirli M, 'Ebusaid Mehmed Efendi' in 10 DİA (1994) 281.
- Kamali M H, 'Legal Maxims and Other Genres of Literature in Islamic Jurisprudence' 20 1 (2006) Arab Law Quarterly 77.
- Kara İ, *İslamcıların Siyasi Görüşleri 1* (Hilafet ve Meşrutiyet) (Dergah Yayınları 2014).
- Kara İ, *İlim Bilmez Tarih Hatırlamaz: Şerh ve Haşiye Meselesine Dair Birkaç Not* (Dergah Yayınları 2021).
- Karadeniz K, *Mahkeme-i Şer'iyye ve Mecelle Projesi Özelinde Rusya Müslimlerin İslam Hukuku Faaliyetleri (1788-1918)* (Emin Yayınları 2023).
- Karagöz F G, The Evolution of Kanunname Writing in the 16th and 17th Century-Ottoman Empire: A Comparison of Kanun-ı Osmanî of Beyazid and Kanunname-i Cedid (Unpublished Master's Thesis 2010).
- Kaşıkçı O, *İslam ve Osmanlı Hukukunda Mecelle* (Osmanlı Araştırmaları Vakfı Yayınları 1997).
- Katip Çelebi, *Kashf al-Zunūn 'an Asāmī al-Kutub wa-al-Funūn*, Rüştü Balcı (ed), (Tarih Vakfı Yurt Yayınları 2007).
- Kaya E S, 'Şerh (Fıkıh)' in 38 DİA (2010) 560.
- Kaya N, 'Karaçelebizâde Abdülaziz Efendi' in 24 DİA (2001) 381.
- Kızılkaya N, *Hanefî Mezhebi Bağlamında İslam Hukukunda Küllî Kâideler* (Litera Yayınları 2018).

- Koca F, 'Musa Carullah Bigiyef Hakkında Bir Nice Söz' in Kavaid-i Fıkhiyye (İslam Hukukunun Genel İlkeleri) F Koca and F Karataş and A Y Küçüktiryaki (ed), (Ankara Okulu Yayınları 2018) 19.
- Kopus K, Reproduction of The Ottoman Legal Knowledge: The Case Of Ibrahim Al-Halabi's Multaqa Al-Abhur and Defining The Concept of Baghy in Commentarial Writings on It (16th to 18th Centuries) (Unpublished PhD Thesis 2019).
- Mahmud Hamza, *Farāid al-Bahiyya fī al-Qawā'id wa al-Fawāid al-Fiqhiyya* (Dār al-Fikr 1986)
- Maraş S M, *Tawqīf al-Ilah fī Sharhi Fennin min al-Ashbāh*, A Güneş and A D Müezzın (ed), (Noya Medya 2017).
- Mardin E, *Medeni Hukuk Cephesinden Ahmet Cevdet Paşa* (Adalet Bakanlığı Yayınları 2021).
- Metin S, Hukuk Normunun Yorumu (Unpublished PhD Thesis 2002).
- Mustafa Haşim, *Izāh al-Qawā'id* (Matbaa-i Amire 1295/1878).
- Mustafa Nazmi, *Temsil-i Kavāid ve Zavābit-ı İlm-i Hukuk* (Şirket-i Mürettibiye Matbaası 1323/1907).
- Nāzırzāde M S, *Tartīb al-La'ālī fī Silk al-Amālī*, Khalid b. 'Abd al-'Aziz b. Suleiman (ed), (Mektebe al-Rushd 2004).
- Nav'izāde Atāyī, *Hadāik al-Hakāik fī Tekmileti al-Şakāik*, Suat Donuk (ed), (Türkiye Yazma Eserler Kurumu Başkanlığı 2017).
- Nurali H B, *Yüz Kavaid-i Fıkhiye ve Yüz Kavaid-i Usūliye (Delāil ve Mesāilleri ile)* (Matbaa-i Kerimiye 1902).
- Nurali H B, *Sultan Abdülhamid'in Sarayında (Bir Tatar Müderrisin İstanbul, Bursa ve Surre Alayı ile Hac Hatıraları)*, Ömer Hakan Özalp (ed), (İşaret Yayınları 2021).
- Okur K H, *Osmanlılarda Fıkıh Usūlü Çalışmaları: Hadimi Örneği* (Mizan Yayınları 2010).
- Önder M, *Büyük Alim Hz. Hadimi* (Güven Matbaası 1969).
- Önder A R, 'Atasözlerinde Tüze Kuralları' 1974 Türk Folkloru Araştırmaları Yıllığı/Belleten 109.
- Özel A, *Hanefi Fıkıh Alimleri* (Türkiye Diyanet Vakfı Yayınları 2013).
- Özen Ş, 'Osmanlı Dönemi Fetva Literatürü' 5 (2005) Türkiye Araştırmaları Literatür Dergisi 335.
- Rabb I A, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge University Press 2015).
- Rubin A, *Ottoman Nizamiye Courts (Law and Modernity)* (Palgrave Macmillan 2011).
- Saçaklızade M, *Tertibu'l-Ulüm (İlimlerin Tertibi)*, M R Deri and Z Pak and M A Özdoğan (ed), (Hikemiyat Yayınları 2020).
- Sarıkaya Y, *Merkez ile Taşra Arasında Bir Osmanlı Âlimi Ebu Said el-Hâdimî* (Kitap Yayınları 2008).
- Shefer-Mossensohn M, *Osmanlı'da Bilim (Kültürel Yaratı ve Bilgi Alışverişi)* Kübra Oğuz (trans.), (Türkiye İş Bankası Yayınları 2019).
- Smyth W, 'Controversy in a Tradition of Commentary: The Academic Legacy of Al-Saqqaki's Miftah Al-Ulum' 112 4 (1992) Journal of the American Oriental Society 589.
- Süleyman Sırrı, *Izāh al-Ashbāh* (İkdam Matbaası 1329/1911).
- Taşkömür H, '16. Yüzyıl Osmanlı Kültür ve Düşünce Hayatı Üzerine Bazı Gözlemler' A H Furat and N K Yorulmaz and O S A (ed), *Sahn-ı Semân'dan Dârülfünûn'a Osmanlı'da İlim ve Fikir*

- Dünyası Âlimler, Müesseseler ve Fikrî Eserler (XVIII. Yüzyıl) (Zeytinburnu Belediyesi Kültür Yayınları 2018).
- Uçman A, 'Ali Suavi' in 2 DİA (1989) 445.
- Urhan V C, 'Selânik Hukuk Mektebi (1907-1913)' in Balkan Tarihi Araştırmaları I, Bülent Akyay (ed), (Trakya Üniversitesi Balkan Araştırma Enstitüsü Yayınları 2021) 349.
- Ünaldı B, Sun'ullah Efendi'nin Fetâvâ'sı ve Tahlili (Unpublished Master Thesis 2018).
- Velidedeoğlu H V, 'Kanunlaştırma Hareketleri ve Tanzimat', in Tanzimat I (Millî Eğitim Bakanlığı Yayınları 1999) 194.
- Yağız İ, Mustafa Nazmi'nin Temsil-i Kavaid ve Zavabit-i İlm-i Hukuk Adlı Eseri (Unpublished Master Thesis 2019).
- Yakut E, *Şeyhülislamlık* (Kitap Yayınları 2005).
- Yaşaroğlu M K, 'Mecâmiu'l-Hakâik' in 28 DİA (2003) 217.
- Yayla M, 'Ebû Saîd Hâdimî' in 15 DİA (1997) 24-26.
- Yılmaz Y and Kiremitçi M, 'Konya Hukuk Mektebi'nde Anayasa Hukuku Dersleri' 68 (2022) Adalet Dergisi 285.
- Yörük A A, Mekteb-i Hukuk'un Kuruluşu ve Faaliyetleri (1878-1900) (Unpublished Master Thesis 2008).
- Yörük A A, *Müderris ve Hukukçu Rizeli Hafız Kasım Efendi (II. Meşrutiyet Dönemi Hukuk Eğitiminde Üslup Arayışları)* (Dergah Yayınları 2014).

