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THE POLITICS FOR THE FIQH AND THE FIQH FOR THE POLITICS: A STUDY OF THE RELATIONSHIP BETWEEN ḤANAFĪ JURISTS AND THE RULERS

SİYASET FIKIH, FIKIH SİYASET İÇİN: HANEFÎ FUKAHÂSININ YÖNETİCİLERLE İLİŞKİSİ ÜZERİNE BİR DEĞERLENDİRME

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ABSTRACT

It is widely known that Abū Ḥanīfa (d. 150/767), the eponymous founder of the Ḥanafī school of law, generally did not maintain cordial relations with political leaders. Despite being repeatedly offered official positions, such as the office of qadi, he consistently declined them. While the primary reason for this stance remains a subject of debate, it is plausible that his sympathy for the members of the Ahl al-Bayt—who held a politically oppositional position—and his commitment to the principle of justice played a significant role in shaping his attitude. Consequently, the tension between him and the rulers led to personal hardships and punitive measures against him. However, not long after his death, his followers became actively involved in the state's judicial organization. Many of his students, most notably Abū Yūsuf (d. 182/798), Muḥammad al-Shaybānī (d. 189/805), and Zufar b. al-Hudhayl (d. 158/775), served as qadis or chief qadis, applying the legal understanding they had inherited from their teacher. In doing so, they played a crucial role in formalizing Ḥanafī law. This article examines whether the decisions of these jurists were influenced by political authority. Specifically, it addresses whether Ḥanafī jurists, both in the formative period and in subsequent developments, were affected by political pressures, leading them to grant relatively greater administrative authority to rulers. The study aims to explore the relationship between jurists and political leaders from the early development of the Ḥanafī school to the Ottoman period. Although I acknowledge that the period under consideration extends far beyond the scope of this study, I believe that this analysis will contribute to the field by laying a foundation for similar and more specialized research. I argue that the initial generation of Ḥanafī jurists maintained a distinct balance between legal principles and political realities. While safeguarding the boundaries of the law, they did not disregard realpolitik, thereby allowing a necessary fluidity between fiqh and politics. Over time, this dynamic interaction became more pronounced, resulting in a vibrant network of communication between fuqaha and political figures. Although political pressure on the fuqaha was occasionally evident, it can be argued that, in principle, political authority made efforts to uphold the supremacy of the law just as jurisprudence sought to maintain social order.

Keywords: Islamic Law, Early Ḥanafī Jurists, Legal Authority, Political Authority, Fiqh and the State.

ÖZET

Hanefi hukuk ekolüne adını veren Ebû Hanîfe'nin (ö. 150/767) genel olarak devlet adamlarıyla arasının pek iyi olmadığı bilinmektedir. O, kendisine ısrarla teklif edilmesine rağmen kadılık gibi resmi görevleri kabul etmemiştir. Bunun ana sebebi tartışma konusu olmakla birlikte, siyasette muhalif konumda olan Ehl-i Beyt mensuplarına muhabbetinin ve adalet ilkesine bağlılığının söz konusu tutumuna etki ettiği söylenebilir. Yöneticilerle arasındaki gerginlik Ebû Hanîfe'nin sıkıntılar yaşamasına hatta bazı cezai yaptırımlara maruz kalmasına sebep olmuştur. Ancak ölümünden kısa bir süre sonra takipçisi olan hukukçular devletin adli teşkilatında görev almıştır. Ebû Yûsuf (ö. 182/798), Muhammed eş-Şeybânî (ö. 189/805) ve Züfer b. Hüzeyl (ö. 158/775) başta olmak üzere birçok öğrencisi kadı veya başkadı olarak devlet hizmetinde bulunmuş ve hocaları Ebû Hanîfe'den tevarüs ettikleri hukuk anlayışını uygulamışlardır. Böylece Hanefi hukukunun resmilik kazanmasına katkıda bulunmuşlardır. Peki yöneticiler fakihlerin kararlarını etkilemişler midir? Diğer bir ifadeyle, Hanefi fukahası başta ve ilerleyen süreçte siyasi otoritenin etkisinde kalmış mıdır ve buna bağlı olarak idarecilere görece daha fazla idari yetki tanımış mıdır? Bu makale, Hanefî hukuk ekolünün ortaya çıkışının ilk aşamalarından Osmanlı tecrübesine kadar uzanan idareciler ile fukaha arasındaki ilişkiyi incelemeyi amaçlamaktadır. Söz konusu dönemin makalenin sınırlarını aşacak derecede geniş olduğunun farkında olmakla birlikte benzeri ve daha özel çalışmalara zemin oluşturması bakımından alana katkı sağlayacağını düşünmekteyiz. İlk nesil Hanefî fukahası ile siyasi otorite arasında özel bir dengeye dayalı bir etkileşim olduğunu; fukahanın bir yandan hukukun sınırlarını kororken diğer yandan reel siyaseti göz ardı etmediklerini ve bundan dolayı fıkıhla siyaset arasında zorunlu bir geçişkenliğin yaşandığını düşünmekteyiz. Bu durum sonraki dönemlerde daha belirgin bir hal almış, fukaha ile siyasiler arasında canlı iletişime dayalı bir ağ oluşmuştur. Her ne kadar zaman zaman yöneticilerin fukaha üzerindeki baskısı hissedilir olmuşsa da ilkesel olarak fıkhın nizam-ı devleti gözettiği kadar devletin de hukukun üstünlüğünü korumaya çalıştığı söylenebilir.

Anahtar Kelimeler: İslam Hukuku, Erken Dönem Hanefî Fakihler, Hukuki Otorite, Siyasi Otorite, Fıkıh ve Devlet.

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INTRODUCTION

The early Ḥanafī jurists established their relationship with political authority based on different motives. Differences emerged between Abū Hanīfa's view of the Umayyad and Abbasid political authorities and the view of his disciples over time as conditions changed. While Abū Ḥanīfa distanced himself from the political authorities of both periods in order not to be abused and influenced by them for the sake of their legitimacy, Abū Yūsuf took a different stance probably on the grounds that it would contribute to the spread of Ḥanafī school of law. By practicing the judicial professions, Ḥanafī legal scholars were able to gain experience in procedural law from the first centuries onwards. With some exceptions, it is observed that until the last quarter of the 4th century, when the Ḥanafī madhhab completed its formation, the majority of qāḍīs were appointed from among the jurists who adopted Ḥanafī thought.[1]

In addition to those who explain the purpose of the establishment of the qadiats as an attempt to bring religion under the control of a centrist understanding of the state,[2] it is also claimed that Abū Yūsuf was used for political purposes and issued rulings in favor of political authority.[3] Aside from the personal relationships of the Ḥanafī eponyms, there is a more general perception that the Ḥanafī school grants more power to state authority than others.

With other words, some authors argue that the Ḥanafī school, after its founder Abū Ḥanīfa – who opposed the political authority of his time - granted more power to the political authority. This, despite the fact that Abū Ḥanīfa opposed the political authority in many issues, simply because he was against those of his time. His disciples and the next generation of fuqaha, on the other hand, would have changed their judgments under the pressure of state authority.[4]

This article examines the extent to which these theses are justified. First, there is a rudimentary examination of the relationships between the Ḥanafī eponyms, then the relationships and decisions of the Ḥanafī jurists with regard to public authority and the individual cases related to the topic.

1. ABŪ ḤANĪFA'S RELATIONS WITH POLITICAL AUTHORITIES

Abū Ḥanīfa lived more than a half century during the Umayyad period and the rest of his years during the Abbasid era. The Umayyad caliph Marwān II. (d. 132/750) and the Abbasid caliph Abū Jaʿfar al-Manṣūr (d. 158/775) wanted to have Abū Hanīfa on their side and use his reputation. However, he was supposed to have a better relationship with the Abbasid head of the state, he refused the orders and presents to be misused for their legitimization and even took sanctions for this.[5] Among the reasons why Abū Ḥanīfa did not hold any official offices during the Umayyad phase in particular was his affection for the Ahl al-Bayt and his view that

1 For a study on the official increasing and decreasing influence of the ḥanafi law in Baghdad between the 2nd and 5th century: Murteza Bedir, "Hanefî Mezhebinin Abbâsî Bağdat'ında Yükselişi ve Zayıflaması", *İslam Medeniyetinde Bağdat: Uluslararası Sempozyum (Medînetü's-Selâm)*, (Istanbul, Marmara Üniversitesi İlahiyat Vakfı Yayınları 2008). 1/621-632.

2 Joseph Schacht, *An Introduction to Islamic Law* (London: Oxford University Press, 1964), 50-51.

3 See Salim Öğüt, "Ebû Yûsuf", *Türkiye Diyanet Vakfı İslam Ansiklopedisi* (İstanbul: Türkiye Diyanet Vakfı Yayınları, 1994), 10/261.

4 Ahmet Yaman, *Siyaset ve Fıkıh* (Istanbul: İZ Yayıncılık, 2015), 111-112; Ahmet Aydın, "Devlet İdaresiyle İlgili Konularda Hanefî Fıkıh Literatüründeki Hükümlerle Ebu Hanife'nin İktidara Yönelik Tavrı Arasındaki Farklılık", *Mîzânü'l-Hak: İslami İlimler Dergisi* 11 (Aralık 2020), 60.

5 Şaban Kütük, "*Ebu'l-Hasen ed-Dîneverî'nin Menâkıbu Ebi Hanîfe Adlı Eserinin Tahkik ve Değerlendirilmesi*", *Tahkik İslami İlimler Araştırma ve Neşir Dergisi* 3/2 (December 2022), 29.

the caliph had to be appointed by consulship or consensus, which was not the case with the Umayyads.[6]

Even though many secondary works mention about the relationship between Abū Hanīfa and the political authority, there are only a few reports that provide relevant information from that time. Rather, the knowledge of his first years under Abbasid rule seems to have largely determined the picture of Abū Ḥanīfa's relationship with the administration. A summary of what is reported about this matter is that Abū Ḥanīfa criticized every political decision and policy course that did not conform to justice. It seems that he has taken a kind of opposition role. But his attitude should not be interpreted as encouraging rebellion against the caliph.[7]

To sum up, Abū Hanīfa was not really close to either the Umayyad or the Abbasid rule. He had a distant attitude towards both administrations, refused to accept their orders, and had troubled days as a result. Meanwhile, there are some authors who argue that the reason for his troubles was not that he refused the offer of a qadi position, but that he withheld his support for the caliphs as stated.[8]

What emerges from the fragmentary paragraphs is that Abū Ḥanīfa's heart did not beat for the government because he did not find its actions just. Al Jaṣṣāṣ notes, for him justice was the most important condition of office for both a judge and the head of state.[9] It remains to be seen, however, whether his loyalty to justice or his emotional attachment to the opposition was the primary reason for his opposition and reticence.

2. THE RELATIONSHIP OF ABŪ ḤANĪFA'S DISCIPLES WITH POLITICAL AUTHORITIES

As mentioned, Abū Hanīfa himself refrained from taking a qāḍī position.[10] Some of his students also refused to take official positions. But many of them served in different cities, especially in Kufa and Baghdad as judges. Zufar Ibn al-Huḏayl for example became the qāḍī of Basra while his teacher, Abū Ḥanīfa was still alive. Muḥammad al-Shaybānī was appointed qāḍī of Raqqa and Ray. Abū Yūsuf responded positively to Hārūn al-Rashīd's proposal and became the first official chief qāḍī.[11] Duman and Hoyladi give alone for the second century after the Hijrah a list of 24 students who have held a legal position.[12] However, I will concentrate on Abū Yūsuf's professional activities in the first step and will not be able to go into everyone's biography. The fact that he was the first chief qadi and wrote the first book on public law as a Ḥanafī scholar is here decisive for his election.

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6 Abū ʿAbdallāh Ḥusayn Ibn ʿAlī as-Saymarī, *Aḫbār Abī Ḥanīfa wa-Aṣḥābih* (Beirut: ʿĀlam al-Kutub, 1985), 69. This statement is primarily valid for his relationship with the Ummayad rulers. As I said, he had a better relationship with the Abbasids. For a extensive evaluation of his association with the Umayyads and Abbasids, see: Muḥammad Abū Zahra, *Abū Ḥanīfah*: *Ḥayātuh wa-ʿaṣruh ārāʾuh wa-fiqhuh* (Cairo: Dār al-Fikr al-ʿArabī, 1947), 36-60; Soner Duman & Adnan Hoyladı, "Hicrî II. Ve III. Asırlarda Yaşayan Hanefî Fakihlerin Resmî Görev Alma Tutumları Açısından Siyasî Otorite İle İlişkileri", *Dinbilimleri Akademik Araştırma Dergisi* 21/1 (Mart 2021), 146-149.

7 Murteza Bedir, *Ebu Hanife: Entelektüel Biyografi* (Ankara: Ay Yayınları, 2018), 163-170.

8 See. Muhammed Y. Musa, *Fıkh-ı İslam Tarihi* (Istanbul: Arslan Yayınları, 1974), 233.

9 Abū Bakr al-Jaṣṣāṣ, *Aḥkām al-qurʾān*, ed. Muḥammad aṣ-Ṣādiq Qamḥāwī (Beyrut: Dār Iḥyāʾ at-Turāṯ al-ʿArabī, 1992), 1/86.

10 There may have been some exceptions of a provisional nature. Dīnavarī (d. 469/1076), who wrote one of the earliest *manaqib*-work about Abū Ḥanīfah, reports that Abū Ḥanīfah, at the request of Abū Ja'far al-Mansūr, issued judicial decisions for three days in the al-Rusafa mosque the caliph had built. See Kütük, "Ebu'l-Hasen ed-Dîneverî'nin *Menâkıbu Ebi Hanîfe*", 40.

11 Najm ad-Dīn aṭ-Ṭarsūsī, *Tuḥfat al-Turk fī mā yajib an yuʿmal fī al-mulk*, ed. Ridwan as-Sayyid (Beirut: Dār aṭ-Ṭalīʿa, 1992), 9-12.

12 Duman - Hoyladı, "Hicrî II. Ve III. Asırlarda Yaşayan Hanefî Fakihlerin Resmî Görev Alma Tutumları", 150-159.

It is reported, that Abū Yūsuf established good relations with the Abbasids. He was offered the position of qāḍī by the later Abbasid caliph Mūsa al-Hādī (d. 170/786) when he was a member of Abū Ḥanīfa's teaching circle. He arrived in Baghdad and started his duty. al-Hādī appointed a second qāḍī to Baghdad due to the increase in the population. He appointed Abū Yūsuf to handle cases in the west of the city and Saīd b. ʿAbd al-Raḥmān (d. 174/790) to handle cases in the east of the city.[13] During this period, when Musa was still crown prince, Abū Yūsuf dealt with all types of cases, including theft. When Musa al-Hādī as heir apparent was appointed to Jurjān, Abū Yūsuf went with him and his son Yūsuf was appointed in his place. When caliph al-Mahdī died, Musa al-Hādī became the head of the state. Abū Yūsuf returned to Baghdad with him and continued to work as a qāḍī. From now on, Abū Yūsuf was authorized to handle all legal cases.[14]

3. THE RISE OF THE ḤANAFĪ LAW SCHOOL AS THE OFFICIAL MADHHAB

It is a historical fact that periodically a madhhab is more popular than other madhhabs due to its political support.15 The Ḥanafī madhhab was from the middle of the 2nd /7th century until the middle of the 5th/11th century the school of law with the greatest impact in Baghdad, which was the political and scholarly center of the Islamdom in this period. However, after this period, it had to be replaced by the Shafi'is.[16]

After the formation of schools of Islamic law (madhhabs), it is not possible to talk about periods in which a single madhhab dominated the entire Islamdom. In addition, the popularity of the madhhabs varied periodically, and when one madhhab was in vogue, another madhhab remained in the background. For this reason, it is reported that the representatives of the madhhab engaged in a natural struggle to gain both political and social power in order to turn their madhhab into the dominant one and this by obtaining state institutions such as the office of qāḍī and mufti, and by engaging in scholarly debates.[17]

As for the rise of the Ḥanafīs within the judicial system, it began as mentioned with the Abbasid Caliph Hārūn al-Rashīd's appointment of Abū Yūsuf, one of Abū Ḥanīfa's distinguished students, as a qādī al-qudāt. Abū Yūsuf, the chief qāḍī, who became the sole authority responsible for the appointment of qāḍīs, is thought to have contributed significantly to the spread of the Ḥanafī madhhab in this way.

3.1. Were There Any Compromises Between The Fuqaha And The Political Authorities?

As mentioned in the introduction, there is a claim that the purpose of the establishment of the Qadiate was an effort to bring religion under the control of a centrist state understanding.[18] It is also claimed that Abū Yūsuf was used for political ends and issued judgements in favor of the political authority.[19] Aside from the personal relations of the Ḥanafī eponyms, there is a more

13 Muḥammad Ibn Ḫalaf Wakīʿ, *Aḫbār al-quḍāh* (Beirut: al-Maktabat at-Tijāriyya al-Kubrā, 1947), 3/254-55.
14 Wakīʿ, *Aḫbār al-quḍāh,* 3/256.
15 I think there is no question that official support has contributed to the development and spread of the School of Law. However, this does not mean that the school of law has taken root only because of political support. Factors such as the teaching or training of like-minded lawyers or social acceptance are also crucial in this sense. For similar reviews see Ali Bakkal, *İslam Fıkıh Mezhepleri* (Istanbul: Rağbet Yayınları, 2007), 71-78.
16 Bedir, "Hanefî Mezhebinin Abbâsî Bağdat'ında Yükselişi ve Zayıflaması, 624-626.
17 Heinz Halm, *Die Ausbreitung der Schafiitischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert* (Wiesbaden, Dr. Ludwig Reichert, 1974), 25-26.
18 Schacht, *An Introduction to Islamic Law*, 50-51.
19 See Öğüt, "Ebû Yûsuf", 10/261.

general perception that the Ḥanafī school grants more power to the state authority than others.[20] This point will be explained below.

The issue of centralization and standardization of Islamic law was first raised in the Abbasid period. As an example of such attempts, we can mention that Hārūn al-Rashīd asked Mālik ibn Anas (d. 179/795) to compile a code to be applied in all cities. With similar intentions, the caliph asked Abū Yūsuf to compile a book on financial law. Abū Yūsuf then subsequently wrote the Kitāb al-Ḫarāj.[21] Based on these examples, it is conceivable that the governance, as an extension of its centralist policy, aimed to bring the law under its jurisdiction. However, it should not be forgotten that this type of governmental requirement relates to the legal and social order and not to the content of the law. It is therefore not appropriate to speak here of political authority influencing the legal decisions of the judicial authorities.

On the allegation that Abū Yūsuf's authority and reputation was misused for state purposes the following can be said: Based on the recommendations to the caliph in the beginning of Kitāb al-Ḫarāj, which he wrote on tax policy or more general sense on financial law on the request of Hārūn al-Rashīd, it would be injustice to say that he acted in accordance with the wishes of the caliph. Herein Abū Yūsuf likens the relationship between the caliph and the society to the bond between the ruler and the ruled. In this context, he drew attention to the discretionary power of the ruler over the ruled, but emphasized that this power should be practiced within the framework of justice. In addition, Abū Yūsuf, who described the office of the head of state as a duty that can lead to the greatest of rewards or the most severe punishment in case of abuse, stated that this duty is an office bestowed by God to govern the society and that the head of state (Hārūn al-Rashīd) will be responsible (in the Hereafter) for his position and his decisions. Furthermore, he advised the caliph not to be negligent in his duties and not to oppress the community.[22]

These advices are obviously not a product of fear or repression. Moreover, it is said that Harun al-Rashīd took these recommendations into consideration and issued an edict for all the governors to follow the Shari'ah with care,[23] which does not prove that Harun al-Rashid had any influence on Abū Yūsuf, but rather the opposite.

However, it is quite possible to find some examples in the fiqh literature that Abū Yūsuf granted more authority to the head of state than Abū Ḥanīfa. Abū Ḥanīfa for instance limited the highest amount of *taʿḏīr*-punishment to thirty-nine whippings. The reason for this is that he thought that it should be less than the minimum amount of the *ḥadd*-punishment, which is forty whippings to a slave for the crime of lible action. As a matter of fact, in a hadith, it is stated that "those who impose more than the *ḥadd*-punishment are the ones who overdoing".[24] Abū Yūsuf, on the other hand, argued that the punishment of *taʿḏīr* should be based on the *ḥadd*-punishment imposed on a free person. Therefore, in determining the upper limit of the punishment of *taʿḏīr*, he took the eighty whippings given to a free person as a basis and set it at seventy-nine whippings according to one narration and seventy-five whippings according to another narration, based on the practice of 'Ali ibn Abī Ṭālib. Abū Yūsuf, however, preferred to leave the amount of *taʿḏīr* to the

20 Michael Winter, "Inter-Madhhab Competition in Mamlûk Damascus: Al-Tarsûsî's Counsel for the Turkish Sultans", *Jerusalem Studies in Arabic and Islam* (2001), 25/197; Bakkal, *İslam Fıkıh Mezhepleri,* 95-96.

21 Musa, *Fıkh-ı İslam Tarihi*, 238.

22 Abū Yūsuf, *Kitāb al-Ḫarāj* (Cairo: al-Maṭbaʿah al-Salafiyyah, 1962), 3.

23 Musa, *Fıkh-ı İslam* Tarihi, 241.

24 Burḥan ad-Dīn al-Marġinānī, *al-Hidāyah šarḥ bidāyat al-mubtadī*, ed. Muḥammad M. Ṭāhir (Cairo: Dār as-Salām, 2000), 2/405.

political authority, provided that it is not more than eighty whippings. The head of state punishes the offender adequately according to the severity of the offense.[25]

Another example is the case of a non-Muslim landowner who does not pay his taxes (*Ḫarāj*) so that the land is entrust to someone else by the head of state. Abū Yūsuf, in his explanation of the matter in *Kitāb al-Ḫarāj*, says that the ruler can take the land from the person who is unable to pay the *Ḫarāj* tax and entrust it to another person who is able to pay it. However, Abū Yūsuf recommended that the head of state should avoid imposing taxes that the people cannot bear, and he cited the practices of the Caliph 'Umar as an example in this regard. The Caliph Umar, who made some changes in legal practice during his caliphate, considered the economic situation of the landowners in the taxes he collected and did not impose taxes that they could not bear.[26]

The Ḥanafī jurists Qāḍīḫān (d. 592/1196), who is known for his *fatwā* work *Fatāwā Qāḍīḫān*, says that whereas Abū Ḥanīfa does not authorize the head of state to transfer the land of a person who cannot pay the tribute tax to someone else. This is because, according to Abū Ḥanīfa, this is confiscating a person's private property, which is not right. However, since the Ḫarāj-tax is in the possession of the landowner as a debt, he should sell his land and pay the debt.[27] It is known that Abū Hanīfa attached great importance to the protection of private property and the owner's right to dispose of it, whereas Abū Yūsuf, as can be seen from this example, was able to prioritize the common interest over the private interest.

4. ON THE RELATIONSHIP BETWEEN THE ḤANAFĪ JURIST AND THE POLITICAL AUTHORITY

As above mentioned some authors claim that after Abū Ḥanīfa Ḥanafī scholars granted more power to the political authority and therefore allegedly incorporated his oppositional stance into his legal decisions. His students and his successors would have changed their rulings under pressure from poltical authorities.[28]

We also share the view that the Ḥanafī madhhab grants a broader scope to the political authority. Different examples will be given in the following paragraphs. However, this does not mean that Abū Ḥanīfa did not hold views that strengthened the political authority and it is difficult to reach a conclusion that he made his decisions out of defiance. For example, he required the permission of the head of state to cultivate waste land, while his two chosen disciples, Abū Yūsuf and aš-Šaybānī, did not consider it necessary.[29]

However, according to authors like Ridwan al-Sayyid, the aforementioned Ḥanafī jurists, contrary to Abū Ḥanīfa, sided with the political authority, made obedience to him obligatory, and stipulated the presence of the sultan as a condition for the validity of the Friday prayer. In addition, contrary to Abū Ḥanīfa's view, they authorized the political authority to impose restriction on the profligate (*safīh*) because his extravagance in his expenditures.[30]

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25 Abū Yūsuf, *Kitābu al-Ḫarāj,* 180-81.
26 Abū Yūsuf, *Kitābu al-Ḫarāj*, 62; al-Marġinānī, *al-Hidāyah*, 2/450.
27 Abū l-Maḥāsin Faḫr ad-Dīn Qāḍīḫān, *Fatāwā Qāḍīḫān* (Cairo: Muḥammad Šāhīn, 1865) 3/617.
28 Yaman, *Siyaset ve Fıkıh*, 111-112; Ahmet, "Devlet İdaresiyle İlgili Konularda Hanefî Fıkıh Literatüründeki Hükümlerle Ebu Hanife'nin İktidara Yönelik Tavrı Arasındaki Farklılık", 60.
29 Abū Yūsuf, *Kitābu al-Ḫarāj*, 65-67; al-Marġinānī, *al-Hidāyah*, 4/384.
30 See Introduction of Riḍwān as-Sayyid, *Tuḥfat at-Turk*, 10-11.

Najm ad-Dīn at-Tarsūsī (d. 758/1357), a Ḥanafī scholar from the Mamluk period, for example presents many individual cases in his work Tuḥfat al-Turk in order to substantiate his thesis that the Ḥanafi school of law attaches more executive precedence to the political authority. After listing some individual cases, he writes the following: "Such matters are too many to be confined to one book. But what I have mentioned here will be enough for righteous person. Indeed, if he were to reflect on them even minimally, he would find that the Ḥanafī school is more suitable for the sultan."[31]

Some have even gone so far to say that the late Ḥanafī jurists attached value and authority to Ottoman sultanic decrees and edicts to such an extent that the state was regarded as indispensable in the law-making process.[32] It should be noted that earlier mashayikh had already granted the public authority decision-making powers, particularly in the area of public law.33 Therefore, it should be noted that the decision-making power of the political authority is normally limited to public law and, in particular, to those areas on which the primary sources and the doctrine of the school of law are silent and thus subject to the discretion of the head of state.

5. THE MEANING OF THE POLITICAL AUTHORITY IN ISLAMIC LAW

Throughout the Islamic history, the political authority, who is responsible for the protection of religion and the implementation of religious law, has also played a key role in the establishment of social order and the realization of justice.[34] It seems therefore to be considered sufficient for such practices to be legitimate if they do not contradict the purpose of the Shari'ah, rather than if they are in accordance with the Shari'ah. Between these two seemingly close principles there is an important difference. That is to say, if one were to try to reconcile all the practices of the head of state with the principle of conformity to the Shari'ah, one would have to provide a specific piece of evidence for each of them, in which case many political practices would be condemned as illegitimate for lack of evidence. However, when it is sufficient that they do not contradict the Shari'ah, it is possible to show flexibility in the political sphere based on the universal evidences that show the general purpose of the Shari'ah, rather than on the individual evidences. This approach enabled them to expand the framework of jurisprudence in favor of the state's and, in essence, society's interest, and they evaluated the legitimate acts of the head of state within this framework.[35]

It can be said, that Ḥanafīs – and especially the later Ḥanafī jurists who were in the service of the state - have authorized the head of state in areas of public, war, and financial matters, as long as they do not contradict the spirit of the *naṣṣ*. A number of legal practices, especially in areas concerning the state and society, have been managed by the political authority. The fact that the

31 Najm ad-Dīn at-Tarsūsī, *Tuḥfat at-turk fī mā yajib an yu'mal fi-l mulk*, ed. Mohamed Menasri (Damascus: Institut français de Damas, 1997), 13.

32 Samy Ayoub, "The Sulṭān Says: State Authority in the Late Ḥanafī Tradition", *Islamic Law And Society* 23 (2016), 239-278. For an illustration of the transitivity of Sharia and customary law, or religion and politics, see: Melek Karacan. "Siyâset, Melâmet Ve Şehâdet Döngüsünde Bir Şeyh: İsmâil Mâşûkî", *Sufiyye* 15 (2023), 139-168; Hüseyin Güneş, "Kutsal Değerlerin Siyasete Alet Edilmesi Bağlamında Abdullah B. Ali İsyanı". *Hitit Üniversitesi İlahiyat Fakültesi Dergisi* 11/22 (Aralık 2012), 75-104.

33 Mürteza Bedir, "The Hanafi View of Siyasa and Sharia Between Idealism and Realism: Al-Hasiri's Conception of Temporal and Religious Politics: (Siyasa Ad-Diniyya Al-'uzma and Siyasa Al-Hissiyya Al-'uzma)", *İslam Tetkikleri Dergisi* 10/2 (September 2020), 459, 451-466.

34 Ibn Khaldun, *al-Muqaddima* (Beirut, Dār al-Arkam, 2001), 250.

35 Yunus Apaydın, "Siyâset-i Şer'iyye", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul Türkiye Diyanet Vakfı Yayınları, 2009), 37/300.

Ḥanafīs consider it necessary for the state to collect the zakāt of the apparent property (*amwāl ẓāhirah*) is only one of the examples that can be mentioned in this context.[36]

It is possible to explain one of the reasons respectively a theoretical basis for the legitimization for the Ḥanafīs' authorisation of the political authority as "protecting the state and thus the society and preventing fitna". On this occasion, we can refer to the evidence of istiḥsān, one of the Ḥanafī procedural evidences. The evidence of istiḥsān, is to deviate from the original ruling in a matter on grounds such as necessity (*ḍarūra*), custom (*ʿurf*), and beneficence (*maṣlaḥa*), and to make a different ruling in that matter.[37]

The fact that the Ḥanafīs regarded the presence of the head of state as one of the conditions for the validity of the Friday prayer can be considered as a judgement based on istiḥsān. The Ḥanafīs linked the Friday prayer with the head of state and considered the presence of the head of state or the presence of someone representing him. The main reason for this is to avoid sedition (fitna). Serahsī explains the problem as follows: "...If the sultan had not been stipulated for the validity of the Friday prayer, it would have led to sedition. Because some people would arrive at the mosque earlier and perform the prayer for their own special purposes, while others would miss the prayer, which would cause fitnah. Therefore, the Friday prayer has been entrusted to the imam as in other matters. Because he is the most suitable person to calm the fitnah between people."[38]

As seen in these and similar examples, the Ḥanafīs, due to the fear of fitna, reversed the actual ruling in some issues and ruled differently in accordance with istiḥsān. We believe that the issues that we will examine below in the context of the powers granted to the head of state by the Ḥanafīs are also related to the evidence of istiḥsān. For that matter, despite a clear hadith stating that there is no need for the permission of the head of state for the revival of dead lands (*Iḥyāʾ al-mawāt*), Ḥanafīs require the approval of the head of state in order to prevent disputes that may arise as a result of more than one person claiming the same land.[39]

The political authority, was seen as responsible authority for the preservation of religious live and the implementation of religious laws. He has also played a key role in the establishment of social order and the realization of justice.[40] Because of these important duties, Islamic scholars have considered a head of state necessary for every period.[41] The scholars who agreed on the appointment of the head of state also agreed that he has more authority than other Muslims because of the duties he is obliged to fulfill.[42] However, they never saw the head of state as the absolute sovereign and defined the limits of his sovereignty, in the most general terms, to the provisions of the Shari'ah, respectively to the boundaries of the Islamic law. Meant by Sharīʿah rulings or the boundaries of the Islamic law are three categories. These are firstly the principles

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36 Riḍwān as-Sayyid, „al-Fiqh wa-l fuqahāʾ wa-d dawla: Ṣirāʿ al-fuqahāʾ alā l-sulṭa wa s-ṣulṭān fī ʿaṣr al-mamlūkī", *Majallat al-Ijtihād* (1989), 3/146.

37 Šarīf al-Jurjānī, *Kitāb at-taʿrīfāt* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1983), 76.

38 Šams ad-Dīn as-Saraḫsī, *Kitāb al-mabsūṭ* (Istanbul: Çağrı Yayınları, 1982), 2/25.

39 For the example mentioned and other cases decided on the basis of fitnah see: Mehmet Birsin,"Hanefî Fıkhında Fitne Gerekçesine Dayalı Hükümler ve İstihsan Delili İle İlişkisi", *İslâmî Araştırmalar Dergisi* 22/1, (2011), 55-70.

40 Ibn Khaldun, *al-Muqaddimah*, 250.

41 ʿAlāʾ ad-Dīn al-Kasānī, *Badāʾiʿ aṣ-ṣanāʾiʿ fī tartīb aš-šarāʾiʿ*, ed. ʿAlī Muḥammad Muʿawwaz - ʿĀdil Aḥmad (Beirut: Dār al-Kutub al-ʿIlmiyya, 1997), 9/90-91; Abū-l Ḥasan al-Māwardī, *al-Aḥkām al-sulṭāniyya* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1985), 5; Imām al-Ḥaramayn al-Juwaynī, *Ġiyāṯ al-umam fī iltiyāṯ aẓ-ẓulam,* ed. ʿAbd al-ʿAẓīm Maḥmūd ad-Dīb (Jeddah: Dār al-Minhāj, 2011), 217.

42 al-Māwardī, *al-Aḥkām al-sulṭāniyya*, 18; Šihāb al-Dīn al-Qarāfī, *al-Iḥkām fī tamyīz al-fatāwā ʿan al-aḥkām wa-taṣarrufāt al-qāḍī wa al-imām*, ed. ʿAbd al-Fattāḥ Abū Ġuddah (Beirut: Dār al-Bašāʾir al-Islāmiyya, 2009), 46.

that are directly stated in the Qur'an and the Sunnah (*naṣṣ*). Secondly, norms that are not directly stipulated in the *naṣṣ*, but derivated by mujtahids and thirdly regulations that are necessary for the sake of society's welfare (*maṣlaḥa*), as long as they do not conflict with the principles of the Shariah. [43]

The primary sources of Islamic Law are the Qur'an and the Sunnah. Therefore, rulings must be based primarily on these two sources. However, because of the limitations of the issues and subjects directly covered by these two sources, a special effort had to be made to reveal the divine will for new events in order to say something about the changing and transforming life. This endeavor, known as ijtihad, is the judgments of mujtahids on different events by taking into account the divine will.[44]

Both the rulings directly stated in the Qur'an and the Sunnah and the rulings of the mujtahids based on these two sources constitute the shar'i framework. When it comes to politics, we see that this framework has been further expanded by the jurists (*fuqahāʾ*). That is to say, in times when it became difficult to stay within the sharia framework, when morality was corrupted and administrative corruption increased, the fuqahāʾ felt the need to grant authority to the head of state in order to protect the political order and ensure the public welfare. This situation can be said to be related to the fact that the Qur'an and Sunnah did not lay down detailed provisions on the political sphere, and to the dynamic nature of this field.[45]

The granting of authority to the political authority has also been evaluated in Islamic law in general within the Sharīʿah framework. However, this does not mean that all the acts of the political authority are legitimate. The main criterion for his actions is that they do not contradict the spirit of the Shari'ah. This kind of politics has also been characterized as "just politics". In short, political acts that are not limited to the *naṣṣ* but are deemed sufficient if they do not contradict what is sharia considered as legitimate or just politics.[46]

In later times, at the latest with the Mamluks, we see that the law was divided into sharʿī and siyasī law, i.e. a law based on Islamic sources and on the decisions of the public authorities. Al-Maqrīzī (845/1442) reports following on this issue:

"Know that in our time, since the existence of the Turkish state in the land of Egypt and Damascus, people have divided the rulings (laws) into two parts: Sharia law and political law"[47]

This twofold distinction makes it possible to speak of two types of politics: on the one hand, politics that were regulated by the Sharia, and on the other, politics that were left to the ruler. Nevertheless, the relationship between the fuqahāʾ and the rulers was not, as Abou El Fadl describes, a "dogmatic, one-sided relationship". It was rather a "reciprocal and dialectical process of adaptation and resistance" that transformed due to the socio-political circumstances.[48]

43 Halis Demir, *Devlet Gücünün Sınırlanması: Raşit Halifeler Dönemi* (Istanbul: İz Yayıncılık, 2004), 47.
44 ʿAbdussettār Efendī, *Medhal-i Fikh* (Istanbul: Mahmut Bey Matbaası, 1882), 16; Fahrettin Atar, *Fıkıh Usûlü* (Istanbul: İFAV Yayınları, 1988), 601.
45 See H. Yunus Apaydın, "Siyâset-i Şerʿiyye", 37/300.
46 Ibn Qayyim al-Jawziyya, *Iʿlām al-muwaqqiʿīn min rab al-ʿālamīn* (Cairo: Maktabat al-Kulliyāt al-Azhariyya, 1968), 4/374.
47 Taqīy ad-Dīn al-Maqrīzī, *al-Mawāʿiẓ wa-l iʿtibār bi-ḏikr al-ḫiṭaṭ wa-l āṯār* (Beirut: Dar al-Ṣādir, n.d.), 2/333.
48 Khaled Abou El Fadl , *Rebellion and Violence in Islamic Law* (Cambrdige: Cambridge University Press, 2001), 102.

6. CONCLUSION

The classical fiqh was a legal system that was in practice and had courts. So it was not a purely theoretical science. Therefore, what fiqh scholars did during the period of the founding jurisprudence and later was in the sense "real" that it was implemented in reality and, as a result, observed the real policy and could not ignore it. As a natural consequence of this fact, classical fiqh had to pursue a serious legal policy behind many provisions and principles.

Fiqh is dynamic because reality is dynamic. That is why it has an adaptable character, especially when it comes to observing customs or take socio-political measures. Even if it cannot be denied in absolute terms that especially the Ḥanafī fiqh school were inter alia shaped by the social and cultural conditions of the regions in which they originated, as well as by the political structure and political power - its former designation as official legislation most likely played a decisive role here - it is not correct to say that only these influenced fiqh, although it is difficult to determine the exact degree of this interaction. What can be said, however, is that the fuqahāʾ tried to protect the sovereignty of law and to regulate the field of politics (siyāsah) always within the framework of the Sharīʿa. If it was not always possible on the basis of Qur'anic verses or prophetic tradition, then it was possible through examples from the practice of the Prophet's companions or on the basis of the public interest (Maṣlaḥah) and necessities (Ḍarūrah). Nevertheless, there was always an area that was left to the discretion of the ruler, so that he had the power of determination above all in the area of public law.

In this article, I have tried to show by some historical anecdotes and few specific legal cases how the Ḥanafī jurists from the beginning till to the later period tried to implement the law within the framework of an interaction with the public authority, to adapt it to the socio-political circumstances and, for preventive reasons, to give in some areas the ruler a decision-making authority. These in turn consulted the fuqaha to implement a sharia-compliant or just policy. Both the fuqaha knew that political rulers were needed for religious life and social order, and the rulers also needed the fuqaha in order to govern justly and in accordance with the rules.

An important question that this paper has addressed is what was the real reason why Abu Hanifa did not want to accept the official positions that were offered to him. In addition to the explanations that he held back out of love for the Ahl al-bayt or that he did not conclude an agreement with the political authority for his principled stance on justice should also be mentioned here. It is likely that all of these reasons had an influence on his stance. Nevertheless, it is difficult to argue that he arbitrarily voted against the prerogatives of the head of state in his legal decisions and that the Ḥanafī scholars were willing to compromise after his death.

It is true that Ḥanafī scholars - at least those who were examined - have granted privileges to the public authority. However, this kind of granting of privileges should be understood as an effort to strike a balance between the realities of the situation and the goals of Shari'a.

It remains an important question to what extent the prerogatives of the political authority were extended and how they were restricted, and whether the attribution of certain prerogatives by the eponyms such as Abū Yūsuf later led to a separation of a twofold legal sphere, namely the legal sphere determined by the fuqahāʾ and that of the rulers.

REFERENCE

Abou El Fadl, Khaled. Rebellion and Violence in Islamic Law. Cambrdige: Cambridge University Press, 2001.

Abū Zahra, Muḥammad. Abū Ḥanīfah: Ḥayātuh wa-ʿaṣruh ārāʾuh wa-fiqhuh. Cairo: Dār al-Fikr al-ʿArabī, 1947.

Abū Yūsuf, Yaʿqūb Ibn Ibrāhīm. Kitābu al-Ḫarāj. Cairo: al-Maṭbaʿah as-Salafiyyah, 1962.

Apaydın, Yunus. "Siyâset-i Şerʿiyye". Diyanet İslam Ansiklopedisi. 37/299-304. Istanbul: Türkiye Diyanet Vakfı Yayınları, 2009.

Atar, Fahrettin. Fıkıh Usûlü. Istanbul: İFAV Yayınları, 1988.

Aydın, Ahmet. "Devlet İdaresiyle İlgili Konularda Hanefî Fıkıh Literatüründeki Hükümlerle Ebu Hanife'nin İktidara Yönelik Tavrı Arasındaki Farklılık". Mîzânü'l-Hak: İslami İlimler Dergisi 11 (December 2020), 57-79.

Ayoub, Samy. "The Sulṭān Says: State Authority in the Late Ḥanafī Tradition". In Islamic Law And Society 23 (2016), 239-278.

Bakkal, Ali İslam Fıkıh Mezhepleri. Istanbul: Rağbet Yayınları, 2007.

Bedir, Mürteza. Ebu Hanife Entelektüel Biyografi. Ankara: Ay Yayınları, 2018.

Bedir, Mürteza. "Hanefî Mezhebinin Abbâsî Bağdat'ında Yükselişi ve Zayıflaması". In İslam Medeniyetinde Bağdat (Medînetü's-Selâm): Uluslararası Sempozyum. 1/621-632. Istanbul: MÜİF Vakfı yayınları 2008.

Bedir, Mürteza. "The Ḥanafī View of Siyasa an Sharia Between Idealism and Realism: Al-Hasiri's Conception of Temporal and Religious Politics". İslam Tetkikleri Dergisi 10/2, (Sep. 2020). 451-466. https://doi.org/10.26650/iuitd.2020.693785.

Birsin, Mehmet. "Hanefî Fıkhında Fitne Gerekçesine Dayalı Hükümler ve İstihsan Delili İle İlişkisi". İslâmî Araştırmalar Dergisi 22/1, (2011). 55-70.

Demir, Halis. Devlet Gücünün Sınırlanması: Raşit Halifeler Dönemi. Istanbul: İz Yayıncılık, 2004.

Duman, Soner - Hoyladı, Adnan. "Hicrî II. Ve III. Asırlarda Yaşayan Hanefî Fakihlerin Resmî Görev Alma Tutumları Açısından Siyasî Otorite İle İlişkileri". Dinbilimleri Akademik Araştırma Dergisi 21/1 (2021). 143-178.

Efendī, ʿAbdussettār. Medhal-i Fikh. Istanbul: Mahmut Bey Matbaası, 1882.

Güneş, Hüseyin. "Kutsal Değerlerin Siyasete Alet Edilmesi Bağlamında Abdullah B. Ali İsyanı". *Hitit Üniversitesi İlahiyat Fakültesi Dergisi* 11/22 (Aralık 2012), 75-104.

Jaṣṣāṣ, Abū Bakr. Aḥkām al-qurʾān. Ed. Muḥammad aṣ-Ṣādiq Qamḥāwī. Beyrut: Dār Iḥyāʾ at-Turāṯ al-ʿArabī, 1992. 3 vol.

Jawziyya, Ibn Qayyim. Iʿlām al-muwaqqiʿīn min rab al-ʿālamīn. Cairo: Maktabat al-Kulliyāt al-Azhariyya, 1968. 4 vol.

Jurjānī, Sayyid Šarīf. Kitāb at-taʿrīfāt. Beirut: Dār al-Kutub al-ʿIlmiyya, 1983.

Juwaynī, Imām al-Ḥaramayn. Ġiyāṯ al-umam fī iltiyāṯ aẓ-ẓulam. Ed. ʿAbd al-ʿAẓīm Maḥmūd ad-Dīb. Jeddah: Dār al-Minhāj, 2011.

Halm, Heinz Die Ausbreitung der Schafiitischen Rechtsschule von den Anfängen bis zum 8./14. Jahrhundert. Wiesbaden, Dr. Ludwig Reichert, 1974.

Ibn Khaldun, ʿAbd ar-Raḥmān Ibn Muḥammad. al-Muqaddimah. Beirut, Dār al-Arkam, 2001.

Karacan, Melek. "Siyâset, Melâmet Ve Şehâdet Döngüsünde Bir Şeyh: İsmâil Mâşûkî". Sufiyye 15 (Aralık 2023). 139-168

Kasānī, ʿAlāʾ ad-Dīn. Badāʾiʿ al-ṣanāʾiʿ fī tartīb aš-šarāʾiʿ. Ed. ʿAlī Muḥammad Muʿawwaz & ʿĀdil Aḥmad. Beirut: Dār al-Kutub al-ʿIlmiyya, 1997. 9 vol.

Kütük, Şaban. "Ebu'l-Hasen ed-Dîneverî'nin Menâkıbu Ebi Hanîfe Adlı Eserinin Tahkik ve Değerlendirilmesi". Tahkik İslami İlimler Araştırma ve Neşir Dergisi 3/2 (2022), 1-110.

Marġināānī, Burḥan ad-Dīn. al-Hidāyah šarḥ bidāyat al-mubtadī. Ed. Muḥammad M. Ṭāhir. Cairo: Dār as-Salām, 2000. 2 vol.

Maqrīzī, Taqīy al-Dīn. al-Mawāʿiẓ wa-l iʿtibār bi-ḏikr al-ẖiṭaṭ wa-l āṯār. Beirut: Dar aṣ-Ṣādir, n.d. 2 vol.

Māwardī, Abū-l Ḥasan. al-Aḥkām al-sulṭāniyya. Beirut: Dār al-Kutub al-ʿIlmiyya, 1985.

Musa, Muhammed Y. Fıkh-ı İslam Tarihi. Istanbul: Arslan Yayınları, 1974.

Öğüt, Salim. "Ebû Yûsuf". Diyanet İslam Ansiklopedisi. 10/260-65. Istanbul: Türkiye Diyanet Vakfı Yayınları, 1994.

Qāḍīẖān, Abū l-Maḥāsin Faẖr ad-Dīn: Fatāwā Qāḍīẖān. Cairo: Muḥammad Šāhīn, 1865. 4 vol.

Saraẖsī, Šams ad-Dīn. Kitāb al-mabsūṭ. Istanbul: Çağrı Yayınları, 1982. 10 vol.

Sayyid, Riḍwān. „al-Fiqh wa-l fuqahāʾ wa-d dawlah: Ṣirāʿ al-fuqahāʾ alā l-sulṭa wa s-ṣulṭān fī ʿaṣr al-mamlūkī". Majallat al-Ijtihād 3 (1989).

Ṭarṣūṣī, Najm ad-Dīn. Tuḥfat al-Turk fī mā yajib an yuʿmal fī al-mulk: taḥqīq wa dirāsa. Ed. Riḍwān as-Sayyid. Beirut: Dār aṭ-Ṭalīʿa (1992).

Saymarī, Abū ʿAbdallāh Ḥusayn Ibn ʿAlī. Aẖbār Abī Ḥanīfa wa-Aṣḥābih. Beirut: ʿĀlam al-Kutub, 1985.

Schacht, Joseph. An Introduction to Islamic Law. London: Oxford University Press, 1964.

Wakīʿ, Muḥammad Ibn H̱alaf Aẖbār al-quḍāh. Beirut: al-Maktabat at-Tijāriyya al-Kubrā, 1947.

Winter, Michael. "Inter-Madhhab Competition in Mamlûk Damascus: Al-Tarsûsî's Counsel for the Turkish Sultans". Jerusalem Studies in Arabic and Islam 25, (2001). 195-211.

Yaman, Ahmet. Siyaset ve Fıkıh. Istanbul: İZ Yayıncılık, 2015

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