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Borrowing, Modification, and Innovation of Legal Maxims in Early Ottoman Egypt: The Case of Ibn Nujaym's *Ashbāh Wa Naẓāʾir*

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Abstract

Ibn Nujaym was a prominent Hanafi jurist whose influential work, *al-Ashbāh wa al-Naẓāʾir* (the resemblances and similitudes) served as one of the primary sources for the *Majallāt al-Aḥkām al-ʿAdliyya*. However, despite the significance of this compilation of legal maxims, it has not been adequately studied in terms of its sources and intellectual influences. By comparing the text of *Ashbāh wa Naẓāʾir* by Ibn Nujaym and al-Subkī and analyzing through a historical framework, this paper argues that. Ibn Nujaym's legal methodology was shaped by the Shāfiʿī-dominated intellectual environment of Egypt during the transition from the Mamluk era to the Ottoman empire. This study reveals that his work was strongly inspir ed by Tāj al-Dīn al-Subkī's *Ashbāh wa Naẓāʾir*, a well-known Shāfiʿī compilation of legal maxims. The dominance of Shāfiʿī doctrine in late Mamluk Egypt, along with the gradual decline of legal pluralism and increasing pressure to conform to the hegemonic school, led Ibn Nujaym to position himself under the Shafī's umbrella of legal principle. We can trace this affiliation through his adoption of several structural and conceptual elements from al-Subkī's work, such as the use of similar language, categorization styles, borrowing the main maxims, and modifying derivative maxims. His approach reflects not only a borrowing process but also a form of legal adaptation and survival within a shifting political landscape.

Keywords: Ibn Nujaym, *al-Ashbāh wa al-Naẓāʾir,* Legal Maxim, Ottoman Egypt

Introduction

The mark of acceptance for a poet is not in what novel work they produce, but how the y engage with the works of other poets and artists. This is T. S. Eliot's argument for how a work should be judged by the standard of the past. In addition, Eliot also emphasizes that a poet not only has 'personality' to be expressed, but also has to recognize a particular medium (Eliot, 1982, p. 41). This kind of framework resembles how Muslim scholars preserve the knowledge they produce. When a scholar writes something, they usually start by engaging with earlier traditions to establish their authority. It is not just about repeating the past, but about placing themselves within that legacy to legitimize their position. Only after doing so can they eventually offer something new that continues this legacy while also reshaping it. This pattern can be seen in *Ashbāh wa Naẓāʾir* by a Hanafi scholar Zayn al-Dīn Abū Bakr ibn Muḥammad ibn Aḥmad ibn Nujaym (d. 970/1562).

This article explores how Ibn Nujaym, despite being a Hanafi scholar, was strongly influenced by the Shāfiʿī tradition in his book *al-Ashbāh wa al-Naẓāʾir*. Interestingly, the Hanafi school initiated this style of writing earlier, especially in the 4th/10th century. At that time, legal issues were becoming more complex, but, unfortunately, existing texts couldn't always provide relevant responses to emerging issues. As a result, scholars began to formulate general legal principles in the form of *qawāʿid* and *ḍawābiṭ* to organize and summarize the positions of their school. One notable figure was al-Dabbūsī, who gathered the most accepted opinions (*rājiḥ*) in his school. He grouped them into eight categories and formulated legal maxims based on them (al-Dabūsī, n.d., pp. 10–11). His work was even considered to be one of the first examples of comparative law as an independent discipline (az-Zarqā & az-Zarqa, 1989, p. 39). Before him, al-Karkhī also undertook a similar approach. Both scholars used the same wording, beginning their maxims with the word *aṣl* and writing them in a long-form style. This effort also highlights that the "gate of *ijtihād*" was not profoundly closed as many scholars have claimed (Hallaq, 1984, p. 4). Muslim scholars were still practicing *ijtihād,* just within the structure of their school. It was understandable that Hanafi scholars were particularly active in developing legal maxims because their school had a strong rationalist approach. They needed general principles that could help manage differences of opinion within the school, especially when clear textual stipulations were lacking (Nadāwī, 1998, p. 135).

Later, this style was adopted by various Islamic schools of law. Shāfiʿī scholars like Ibn al-Wakīl, Ibn al-Mulaqqin, al-Subkī, al-Zarkashī, al-ʿAlāʾī, and al-Suyūṭī played a prominent role in developing this kind of genre. Among Maliki scholars, al-Khushnī and al-Qarāfī, al-Maqqarī, al-Wansharīsī took a leading role in engaging with legal maxims. From the Hanbali school, Ibn Taymiyya, Ibn Rajab, Ibn Abd Hadī were key figures. The Shāfiʿī genealogical connection is easy to trace because many of their books bear the same title: *al-Ashbāh wa al-Naẓāʾir*. In the Maliki school, the style of legal maxim began with Muḥammad ibn al-Ḥārith Khushanī through *Ushūl Futyā fi al-Fiqh ʿalā Mazhab al-Imām Mālik* (d. 351 AH) with some maxims usually beginning with the word *kullu,* for instance, *kullu muqirrin aqarra iqrāran mujmalan fa al-qaul qauluhu fi tafsīrihi* (whoever makes a general or unspecified confession, then his statement is accepted in clarifying its meaning) and al-Qarāfi (684 H) through al-Furuq (Nadāwī, 1998, pp. 189–192). Finally, titles of works from the Hanbali school usually begin with *al-Qawāʿid*, like *al-Qawāʿid al-Nūrāniyya* by Ibn Taymiyyah and *al-Qawāʿid* by Ibn Rajab.

This shows that the genre of legal maxims was not limited to a single school but became a shared intellectual heritage across the schools of jurisprudence (*madhāhib*). Each school adopted the idea of distilling rulings into general principles, but they expressed it in ways that reflected their own priorities. For the Shāfiʿīs, the repeated use of the title *al-Ashbāh wa al-Naẓāʾir* illustrates their desire to highlight analogy and similarity, to demonstrate how cases could be grouped together by likeness. For the Hanbalis, the choice of the word of *qawāʿid* in the titles of their works reflected their preference for laying down foundational rules.

But Ibn Nujaym's case is unique because of how open he is about his sources of inspiration. Unlike al-Qarāfī, who borrowed from ʿIzz al-Dīn Ibn ʿAbd al-Salām without crediting him, possibly as part of a 'Malikization' effort (Sheibani, 2020), Ibn Nujaym clearly acknowledges that he was influenced by al-Subkī. In this way, he clearly stated his connection and showed that his work was shaped by that earlier work. This openness distinguishes his writing and marks a significant difference between him and others who worked on similar material. Before presenting the *qawāʿid kulliyyah*, he made this acknowledgment in clear terms:

> "However, I have not seen among them a book resembling that of Shaykh Tāj al-Dīn al-Subkī al-Shāfiʿī, one that encompasses multiple disciplines within the field of jurisprudence (*fiqh*). When I reached the section on invalid sales *(al-bay'i al-fasid)* while writing a commentary on *al-Kanz*, I compiled a concise book on legal principles (*ḍawābiṭ*) and their exceptions, which I titled *'al-Fawāʾid al-Zayniyya fī al-Fiqh al-Ḥanafiyya'*, containing five hundred legal maxims. I was then inspired to compose a new book following the same model as al-Subkī's, which would encompass seven distinct areas of the law" (Ibn Nujaym, 1986a, p. 10).

Despite the richness of Ibn Nujaym's *al-Ashbāh wa al-Naẓāʾir*, this work is still understudied in academia. Most of the research on legal maxims tends to focus on the paradigm shift from *Ashbāh* to the codification of *Majallāt al-Ahkām al-Adliyah* (Ayoub, 2020, p. 139; Burak, 2013a, p. 136; Hallaq, 2009; Layish, 2004; Peters, 2002; Rubin, 2016) and its application to various issues (Hidayat, 2023; Kamali, 2006; Zakariyah, 2015). Joseph Schacht argues that the *Mecelle* marked the loss of Islamic law's identity, as it was deeply influenced by European forms and thus amounted to a secular legal code (Schacht, 1982, p. 92). In the same vein, while acknowledging Ottoman achievements, Bernard Lewis downplays their Islamic content, arguing that the *Mecelle* was just a digest rather than a code of Sharia law (Lewis, 1968, p. 123). Supporting his predecessors, Sherman Jackson also characterizes the *Mecelle* as a modern product born out of the pressures of modernization. Taking the discussion further, Avi Rubin introduces the concept of "glocalization," which leads to the argument that codification in the 19th century should not be viewed as a purely Western phenomenon; rather, it was part of global dissemination, in which codification was taking place in many countries. Even though the *Mecelle* drafters might borrow from European models, they still didn't imitate all of the aspects of those models and the process of adaptation and indigenization were a key part of the process (Rubin, 2016). Acknowledging modernity, Wael Hallaq sees the *Mecelle* as "the transposition of Islamic law to the fairly independent and informal terrain of the jurist to that of highly formalized and centralized agency of the state" (Hallaq, 2009, p. 411). Instead of focusing on the paradigm shift of the state codification of legal maxims, some scholars tend to focus on the different terms in legal maxims and

their application to modern issues. Kamali brings a helpful distinction between legal maxims (*qawāʿid fiqhiyyah*) and other related genres like *furūq*, *ḍawābiṭ*, and *naẓariyyāt fiqhiyyah* (Kamali, 2006). At the advanced level, Luqman explores how the five universal legal maxims can be used in criminal law, showing how Islamic law is actually bounded and goal-oriented to serve the *maqasid shariah* (objectives of Islamic law), not harsh or barbaric in nature (Zakariyah, 2015). In the same vein, Hidayat studies the use of legal maxims like *al-aṣl fi al-muʿāmalāt* from different *madhhab* to critique fatwas issued by the Indonesian Ulama Council (MUI, Majelis Ulama Indonesia) (Hidayat, 2023). However, none of these studies directly address Ibn Nujaym's *al-Ashbāh wa al-Naẓāʾir* as a product of its specific historical, political, and intellectual milieu. Most references to Ibn Nujaym tend to treat his work only as a stepping stone toward later codification, without asking deeper questions about why and how he wrote it in the first place.

In this sense, I will highlight similarities through intertextuality by reading *al-Ashbāh wa al-Naẓāʾir* by al-Subkī and Ibnu Nujaym side- by- side before analyzing them within a historical framework. Then, I raise three questions to echo this debate: 1) What specific elements in Ibn Nujaym's *Ashbāh wa al-Naẓāʾir* reflect the influence of al-Subkī? 2) Why does Ibn Nujaym appear to follow a Shāfiʿī style rather than adhering to a Hanafi structure? 3) How did the political and social context of the Mamluk-Ottoman period shape this inter-*madhhab* borrowing process? These questions are central for understanding not only the intellectual character of Ibn Nujaym's work but also the broader dynamics of legal scholarship in sixteenth-century Egypt.

I argue Ibn Nujaym was clearly indebted to the Shāfiʿī mode of legal-maxim writing—most notably to al-Subkī as the primary model, and to al-Suyūṭī in a more indirect sense—particularly in terms of form, structure, and linguistic formulation. By adapting and reordering these elements, adding his own contributions, and modifying new derivative maxims, he demonstrated a conscious effort to align with the Shāfiʿī tradition. This does not mean there were no other *madhāhib* in sixteenth-century Egypt. Rather, it shows that the Shāfiʿī school remained the leading *madhhab* due to the influence of al-Azhar and the Ṣāliḥiyya school, even though the Ḥanafī school was the official Ottoman *madhhab* (Spevack, 2014, pp. 52–3).

To support this argument, I will structure my discussion as follows: First I will outline biographies of Ibn Nujaym and al-Subkī with an overview of their *Ashbāh wa al-Naẓāʾir*; then I will compare those works side-by-side to identify similarities and differences in terms of language, order, and the maxims that appear as new in Ibn Nujaym's text; finally, I explore the factors that contributed to this Shāfiʿī influence within a Hanafi framework, highlighting both the intellectual context and the dynamics of cross-*madhhab* borrowing.

Discussion

Tajuddin Al-Subkī, Ibn Nujaym, And Their *Al-Ashbāh Wa Al-Naẓāʾir*

ʿAbd al-Wahhāb ibn ʿAlī ibn ʿAbd al-Kāfī al-Subkī was born in Cairo in 727 AH/1327 CE. His family lineage came from Sabk, a district in Menoufia, Egypt (az-Zarkallī, 2002a, p. 184). Being the son of the great scholar Taqī al-Dīn al-Subkī gave him the opportunity to learn Islamic teachings from an early age. Many scholars of his time studied under his father. Al-Subkī attended study circles in Egypt, then travelled to Damascus with his father in Jumādā al-Ākhirah in 739 AH, where he continued to seek knowledge from scholars there (Zainuddin b. Ibrahim, 1986b, p. 5). He studied under his father and many others, attending various renowned schools in Egypt and Syria, including al-ʿAzīziyya, al-ʿĀdiliyya al-Kubrā, al-Ghazāliyya, al-Azrawiyya, al-Shāmiyyīn, al-Nāṣiriyya, and al-Amīniyya (Al-Subkī, 1991, p. 7). He became widely known as a scholar who made significant contributions to the development of the Shāfiʿī school. Al-Subkī held several important positions throughout his life, including as a judge, historian, and scholar. He passed away in 771 AH/1370 CE while serving as a judge in Damascus.

Though he only lived for around 44 years, al-Subkī left behind several influential works. His scholarly contributions earned him a reputation as an *imām* in his time and for generations after. Some of his well-known works include *Jam' al-Jawāmi, Rafʿ al-Ḥājib ʿan Mukhtaṣar Ibn al-Ḥājib*, *Sharḥ al-Minhāj li-l-Bayḍāwī fī al-Uṣūl*, *Ṭabaqāt al-Fuqahāʾ al-Kubrā, al-Wusṭā*, and *al-Ṣughrā* (Al-Subkī, 1991, p. 9). Each of these works shows his deep engagement with the intellectual debates of his age, and many became reference points for later jurists, particularly Shāfiʿī scholars, who relied on them to clarify complex legal and theoretical questions. His relatively short life did not limit his ability to have a long-lasting impact on the

study of *uṣūl* and *fiqh* methodology. But the work we will be focusing on is *al-Ashbāh wa al-Naẓāʾir*, the book that compiled his structuring of legal maxims, since it demonstrates his method of organizing principles and offers a window into his unique juristic approach.

Two centuries later, in 926 AH / 1520 CE, Zayn al-Dīn Abū Bakr ibn Muḥammad ibn Aḥmad ibn Nujaym was born in Egypt (az-Zarkallī, 2002b, p. 64). From an early age, he displayed a strong passion for learning, devoting himself to the study of Islamic sciences. His pursuit of knowledge led him to study with some of the most distinguished scholars of his age, not only within the Hanafi school but from various schools, reflecting the intellectual openness of his training. His teachers included Qāsim ibn Qutlubughā, Burhān al-Karkhī, Amīn ibn ʿAbd al-ʿAlī, Sharaf al-Dīn al-Bulqīnī, Aḥmad ibn Yūnus (also known as Ibn Shalabī), Abū al-Fayḍ al-Salmī, and Nūr al-Dīn al-Daylamī al-Mālikī. From these teachers, he obtained certification (*ijāzah*) to teach and issue legal opinions (*fatwā*) (Zainuddin b. Ibrahim, 1986b, p. 5).

During his lifetime, Ibn Nujaym displayed strong dedication to the Hanafi school through teaching and scholarly works. Some of his works include *al-Bahr al-rā'iq Syarh Kanz al-Daqā'iq, al-Nahr al-Fā'iq Syarh Kanz al-Daqā'iq, Fatḥ al-Ghaffār bi-Sharḥ al-Manār* or better known *as Misykat al-Anwār, al-Risālah al-Zayniyyah, and Fatāwā al-Zayniyyah* (az-Zarkallī, 2002b, p. 64). Among them, *al-Ashbāh wa al-Naẓāʾir* gained special attention from later scholars and is regarded as one of the most important references in the Hanafi school.

Ibn Nujaym admired and engaged with works produced by Shāfiʿī scholars. In his *Ashbāh*, Ibn Nujaym openly admits that he was inspired by Taj al-Dīn al-Subkī in structuring his own version of *Ashbāh wa Naẓāʾir*. What differentiates his work is that he applies these maxims directly to *fiqh* (jurisprudence), not *ushul fiqh* (principles of jurisprudence) like al-Sub ki does. He closely adhered to al-Subkī's approach, even titling his work *Ashbāh wa Naẓāʾir*. Remarkably, he completed the work on the 27th of Jumādā al-Ākhirah, 969 AH, just six months after he started writing (Zainuddin b. Ibrahim, 1986b, p. 7). There are no clear accounts of how he learned from Subkī's *Ashbāh*, but he was likely introduced to it by his Shāfiʿī teachers.

It is worth noting that during the mid-sixteenth century, *Ashbāh wa Naẓāʾir* was considered a text of high status (*al-kutub al-mu'tabaroh*) among the imperial

learned hierarchy. The Ottoman sultan Süleymân Kânûnî (r. 1520-1566) began working on a list of syllabi to be taught in imperial *madrasas* (schools) to ensure that the students and scholars consulted those works in their rulings and writings (Burak, 2013b, p. 132). By creating this kind of ecosystem, the Ottomans were able to determine which books were sources to be followed or used as hermeneutical standards. Surprisingly, even though Ibn Nujaym did not graduate from an imperial *madrasa*; his work was approved and justified by Ottoman seniors. However, the status of his work changed over time among scholars. While Sheikhul Islam Mehmed Ebüssuûd Efendi approved of this work as a book of high status, he said that some contents of the book should be rejected (*mardūd*) (Burak, 2013b, pp. 136–137). This ambivalence reflects a broader pattern in Ottoman legal culture, where a text could simultaneously serve as a reference point and yet remain subject to critique. Putting aside its critics, it could be concluded that this high status is the reason the Ottomans considered the book as the main source of *Majallāt Ahkām ʻAdliyah.*

The Intertextuality Between Al -Subkī and Ibn Nujaim's *Asybah Wa Nazair*

One can immediately recognize the similarities between al-Subkī and Ibn Nujaym's *Ashbāh wa Naẓāʾir*, even in their first chapter *(farʿ-kitāb)*. These similarities can be seen from the structure, examples, and terminology they use, which clearly echo each other. This highlights that Ibn Nujaym knew al-Subkī's work well and adopted his style, but he shaped it to fit the Hanafī school. Now, we will look more closely at these links and what they mean.

Heavily Borrowed: Title and Language Style

Many scholars have used the title *Ashbāh wa Naẓāʾir* for their books on legal maxims. Among Shāfiʿī scholars, this naming tradition had already been in use since Ibn al-Wakīl (d. 716 H), and was then continued by Tāj al-Dīn al-Subkī (d. 771 H), Ibn al-Mulaqqin (d. 804 H), and al-Suyūṭī (d. 911 H). Whether they realized it or not, these Shāfiʿī scholars created an environment where *Ashbāh wa Naẓāʾir* became a sort of collective identity, something that felt inherently part of the Shāfiʿī legacy. This trend shows how naming itself could function as a marker of scholarly belonging. By reusing the same title, they were not just writing

something new but also positioning themselves within a well-known intellectual genealogy. The title *Ashbāh wa Naẓāʾir* became more than a label, it acted like a signpost for readers, signaling continuity and familiarity.

Historically, Ibn al-Wakīl was believed to be the first to use this title in the context of legal maxims—although it's also said that exegetes of the Qur'ān were the ones who originally utilized the term. Unfortunately, according to editors' notes, the book was left unfinished and unedited (Nadāwī, 1998, p. 216). This unfinished work shows that the initial stages of the tradition were still unclear. One of Ibn al-Wakīl's motivations for writing *Ashbāh wa Naẓāʾir* was to refine and complete the scattered notes of previous authors, some of whom had died before organizing their material. Al-Subkī contributed by reorganizing the content and polishing its language (Al-Subkī, 1991, p. 7). After that, Ibn al-Mulaqqin (d. 804 H), one of al-Subkī's students, continued this legacy. He structured his version of *Ashbāh wa Naẓāʾir* based on the sequence of *fiqh* chapters and embedded legal maxims within each topic. Finally, perhaps the most widely studied work in this tradition is al-Suyūṭī's *Ashbāh wa Naẓāʾir*, which he divided into seven thematic sections, starting with the well-known five major maxims (*al-qawāʿid al-khamsah*) as understood by most Shāfiʿī jurists (Nadāwī, 1998, p. 243). Through their repeated use of the same title, these authors contributed to shaping a kind of "atmosphere" where the name *Ashbāh wa Naẓāʾir* became almost inseparable from the Shāfiʿī tradition, even though their approaches and structures varied in the details.

In contrast, this kind of unified titling culture did not quite take root in the Ḥanafī tradition of legal maxims. One of the earliest figures considered the founder of Hanafi's *qawāʿid* is Abū al-Ḥasan al-Karkhī (d. 340 H), who lived near the border of Iraq and studied in Baghdad. His short *risalah*, *Uṣūl al-Karkhī*, is often cited as one of the earliest sources of Ḥanafī maxims. It was later expanded upon by Najm al-Dīn al-Nasafī (d. 537 H). Unlike the Shāfiʿīs, however, the Ḥanafīs did not build a titling tradition that bound their works together. Their interest was less in establishing a recognizable brand and more in developing technical discussions suited to specific legal debates. This divergence already highlights the different intellectual cultures of the two *madhhabs*.

All the maxims in Karkhī's collection begin with the word *al-aṣl* (the foundational principle). For example: *al-aṣl anna mā thabata bi al-yaqīn lā yazūlu bi al-shakk*

(The foundational principle is that certainty is not overruled by doubt), *al-aṣl anna mā sāʿadahu fa al-qawl qawluhu* (the legal default is that if there is supporting evidence for a claimant, then his statement is the one upheld), and *al-aṣl anna li al-ḥāl manzilah ka manzilat al-maqālah* (the default rule is that circumstances are accorded the same weight as explicit statements) (Nadāwī, 1998, p. 163). In the early 5th AH, this tradition was taken further by al-Dabbūsī, a Ḥanafī scholar from Dabusiyya (between Bukhara and Samarkand), in his work *Taʾsīs al-Naẓar*. Though not yet considered a *qawāʿid* book in the strict sense, this work can be seen as the beginning of comparative *fiqh* (*fiqh muqāran*), attempting to systematize the debates between various Ḥanafī jurists. He divides the discourse into eight areas of disagreement, including between Abū Ḥanīfah and his students (Abū Yūsuf and Muḥammad al-Shaybānī), and even differences with later figures like Muḥammad ibn al-Ḥasan, al-Ḥasan ibn Ziyād, and Zufar. Dabbūsī adopted a similar style to al-Karkhī, frequently using the formula *al-aṣl,* such as: *al-aṣl ʿinda Abī Ḥanīfah anna al-shayʾ idhā ghalaba wujūdahu yujʿalu ka al-mawjūd ḥaqīqatan wa in lam yujad.* (According to Abū Ḥanīfah, when something is mostly present, it is treated as if it exists in reality—even if it's not fully there) (al-Dabūsī, n.d., p. 15). *Taʾsīs al-Naẓar* represents a turning point because it demonstrates how Ḥanafīs began to engage in systematic comparison within their school.

Surprisingly, Ibn Nujaym did not continue this *aṣl*-style tradition. As someone born and raised in Egypt, he was more influenced by the Shāfiʿī scholars around him. In fact, when we compare his *Ashbāh wa Naẓāʾir* to earlier works, it bears greater resemblance to the Shāfiʿī versions, especially that of al-Subkī, as even the title of his book directly echoes the Shāfiʿī tradition. This reveals how geography shaped intellectual choices. Living in Egypt, Ibn Nujaym found himself constantly exposed to Shāfiʿī methods and writings. Rather than the strict writing style of the Hanafis, he blended his school's heritage with the intellectual currents of his environment.

Borrowing Shāfiʿī Legal Maxims

In this section, I will focus specifically on the legal maxims used in both al-Subkī and Ibn Nujaym's versions of *Ashbāh wa Naẓāʾir*. The goal is to examine how far Ibn Nujaym borrows from the legal maxims formulated by al-Subkī, both in terms

of order and language style. Before presenting his own framework, al-Subkī first brings together various views of previous scholars on legal maxims. Abū ʿAlī al-Ḥusayn al-Marwarrūzī (d. 462/1069), for example, emphasized four primary maxims which are: *al-yaqīn lā yazūlu bi al-shakk, al-ḍarar yuzāl*, *al-mashaqqah tajlib al-taysīr.* Subsequently, ʿIzz al-Dīn Ibn ʿAbd al-Salām focused more on the role of *iʿtibār al-maṣāliḥ* (consideration of public interest) and *darʾ al-mafāsid* (removing harm) (Al-Subkī, 1991, p. 12). As for al-Subkī, he chose to outline five maxims: *al-yaqīn lā yazūlu bi al-shakk* (certainty is not overruled by doubt), *al-ḍarar yuzāl* (harm must be removed), *al-mashaqqah tajlib al-taysīr* (hardship brings ease), *al-rujūʿ ilā al-ʿādah* (returning to customary practice), *al-umūr bi maqāṣidihā* (matters are judged by their purposes). This five-maxim structure differs from Qāḍī Ḥusayn's, particularly in that al-Subkī includes *al-umūr bi maqāṣidihā* as one of the core legal principles.

In adopting these major legal maxims, Ibn Nujaym applies a technique of borrowing, and reordering, adding, and modifying them. He intentionally uses terminology that mirrors his predecessor, and in fact, four of the maxims appear exactly as they do in al-Subkī's work: *al-yaqīn lā yazūlu bi al-shakk, al-ḍarar yuzāl*, *al-mashaqqah tajlib al-taysīr*, *al-umūr bi maqāṣidihā.* However, when it comes to the maxim on custom, there's a slight difference. While al-Subkī uses the phrase *al-rujūʿ ilā al-ʿādah* (a return to custom), Ibn Nujaym uses the more standard expression *al-ʿādah muḥakkamah (*custom is authoritative*).* I believe that Ibn Nujaym was not influenced by al-Subkī only, but also by other prominent Shāfiʿī scholars who lived in close temporal proximity—particularly al-Suyūṭī. In fact, if we look at the ordering of the maxims, Ibn Nujaym's sequence matches that found in al-Suyūṭī's *Ashbāh wa Naẓāʾir* (Al-Suyūtī, 1997). This ordering similarity cannot be accidental. It suggests that Ibn Nujaym was consciously aligning himself with a structure already widely recognized in the Shāfiʿī tradition. We can see these similarities within the three books of *Ash bah wa Nazair*, the legal maxims are provided as follows:

Ibn Nujaym	al-Suyūṭī	As-Subkī
لا ثواب إلا بالنية		
الأمور بمقاصدها	الأمور بمقاصدها	اليقين لا يزول بالشك
اليقين لا يزول بالشك	اليقين لا يزول بالشك	الضرر يزال
المشقة تجلب التيسير	المشقة تجلب التيسير	المشقة تجلب التيسير
الضرر يزال	الضرر يزال	الرجوع إلى العادة
العادة محكمة	العادة محكمة	الأمور بمقاصدها

The legal maxims presented above show the influence of Shafi'ī scholars on Ibnu Nujaym's *Ashbāh*. He adopted the legal maxims presented within as-Subkī's work. His engagement with al-Subkī's structure shows respect for earlier contributions, while his reinterpretation reflects an effort to root maxims deeply in Hanafi *furūʿ al-fiqh*. In this way, his work both preserved cross-*madhhab* dialogue and reinforced the identity of Hanafi scholarship.

A significant addition in Ibn Nujaym's work can also be seen in the *farʿ al-thānī*, which focuses on *fawāʾid* (legal insights or benefits). In this section, Ibn Nujaym presents a wide range of legal principles and maxims. In contrast, this same chapter in al-Subkī's *Ashbāh* focuses more on *uṣūliyyah* maxims—such as *takhsīs al-ʿāmm* (specification of the general), *taqyīd al-muṭlaq* (restriction of the absolute), and *al-taʿbīʿ wa al-tābiʿ* (derivative rulings and dependents). At first glance, one might think that Ibn Nujaym's second section differs significantly from al-Subkī's. However, when comparing al-Subkī and al-Suyūṭī, a much clearer similarity emerges. I believe this is because they lived in relatively close historical periods.

In conclusion, Ibn Nujaym took many ideas from Shāfiʿī predecessors, especially al-Subkī and al-Suyūṭī, but he reshaped them to fit Hanafi priorities. His *Ashbāh wa Naẓāʾir* is therefore both an intellectual borrowing and a creative adaptation. This blending of traditions reflects the scholarly environment of Mamluk and Ottoman Egypt where the Shafi'i were at the forefront of articulating knowledge, such that many scholars followed Shafi'i style including in the context of *qawaid fiqhiyyah*.

New Maxim in Ibn Nujaym's work

Ibn Nujaym introduced a new legal maxim that had not appeared previously in the Shāfiʿī *Ashbāh wa Naẓāʾir* tradition: *"lā thawāba illā bi al-niyyah"* (there is no reward without intention). He divides intention (*niyyah*) into two types: *ukhrawī* (related to the Hereafter), which concerns reward and punishment, and *dunyawī* (worldly), which determines the validity or invalidity of acts of worship. This discussion focuses on *ʿibādāt māḥḍah*—pure acts of worship such as prayer, zakat, and fasting. Though there are also discussions related to gifts (*hibah*), marriage, and divorce, the central concern remains intention. For example, *zakat* (almsgiving) is not valid without intention. However, there are also interesting exceptions: if someone gives a gift jokingly, it is still considered legally valid (Al-Suyūtī, 1997, pp. 14–8). This maxim does not appear in the *Ashbāh wa Naẓāʾir* of al-Subkī, nor in the works of other Shāfiʿī scholars. Perhaps, since it still deals with intention, it has been implicitly incorporated under the broader maxim *al-umūr bi maqāṣidihā.*

In addition, in the next period, all these maxims were incorporated into the *Majalla*, except the first (*lā thawāba illā bi al-niyyah*). This exclusion is grounded in the secularization of Islamic law, meaning that the concept of reward based on intention in acts such as prayer or *zakat* is not subject to codification. The codification focuses solely on transactions between people, including sales, leasing, cooperation, and other similar matters. (*The Michelle*, 2004, pp. 100, 159, 200)

Despite similarities in terms of the use of key legal maxims, the sources used by al-Subkī a and Ibn Nujaym differ from one another. Al-Subkī often cites Shāfiʿī scholars, and vice versa for Ibn Nujaym. In al-Subkī's work, for example in his first maxim—*lā yuzāl al-yaqīn bi al-shakk*—he frequently refers to al-Māwardī, al-Shāfiʿī, Ibn Qaṭṭān, Ibn al-Qaṣṣ, al-Rūyānī, al-Rāfiʿī, and al-Nawawī. This suggests that the *fiqh* he engages is rooted in the Shāfiʿī doctrinal tradition, while also reflecting the various debates among its scholars (Al-Subkī, 1991, pp. 14–16). While Ibn Nujaym often cites *Kanz al-Daqāʾiq* by ʿAbd Allāh ibn Aḥmad al-Nasafī and *Fatāwā al-Bazzāziyya* by ʿAlāʾ al-Dīn al-Bazzāzī al-Ḥanafī in discussing several issues related to doubt (Ibn Nujaym, 1986a, p. 70). Both us e this maxim and preserve their own madhhab. This comparative pattern demonstrates that

legal maxims, though universal in form, functioned differently depending on the interpretive heritage of each school.

Modifying the Derivative Maxims

Ibn Nujaym did not always adopt derivative maxims from al-Shāfiʿī; rather, he developed his own versions. For example, in the discussion of the maxim *al-aṣl fī al-ashyāʾ al-ibāḥah ḥattā yadulla al-sharʿʿalā taḥrīmihi* (the default ruling on things is permissibility until the Sharīʿah indicates prohibition). In the Shāfiʿī school, this maxim is well known and widely applied to various issues. However, in Ibn Nujaym's treatment, the ruling differs. In Ḥanafīsm, the applicable maxim is not *ibāḥah* but rather *al-tawaqquf*, meaning that something has no legal ruling until there is evidence indicating whether it is permissible or forbidden. Nevertheless, Ḥanafī scholars themselves differed on this matter. According to some, including al-Karkhī, the default ruling is permissibility, whereas according to the adherents of *ahl al-ḥadīth* the default is prohibition (Ibn Nujaym, 1986a, p. 73). This divergence reflects the inductive nature of *qawāʿid al-fiqh* itself. Legal maxims were never conceived as ideologically fixed formulas; they emerged from accumulated case law (*furūʿ*), were first articulated as narrower *dhawābiṭ*, and only later reconstructed as broader *qawāʿid*. Ibn Nujaym's contribution, therefore, illustrates not only continuity and innovation within the Ḥanafī tradition, but also the inherently dynamic character of *qawāʿid* as a genre.

Between Shāfiʿī And Ḥanafīsm: Legal Authority In Mamluk And Ottoman Egypt

Before we delve into the circumstances in which *Ashbāh wa Naẓāʾir* was written, it should be noted that there were similarities in the dynastic laws of the Mamluks and the Ottomans, although significant differences also emerged after the Ottoman conquest. Historically, many ruling dynasties established their own legal frameworks to legitimize their authority—what Burak refers to as "dynastic law." This practice began after the Mongol conquests. Although the evolution of schools' doctrines was not directly sponsored or subjected to intervention by the state, this did not mean that dynasties could not provide support, patronage, or employment to members of these schools. For instance, during the Mamluk era, the sultan was required to follow the Shāfiʿī school for their rule to be recognized.

However, the relationship between doctrinal schools and the dynasty did not extend to direct intervention, but rather to regulation and support. By contrast, when the Ottomans adopted the Ḥanafī school as their official *madhhab*, it marked a divergence from earlier centuries, as the dynasty became actively involved in shaping the *madhhab*'s doctrinal development (Burak, 2013b, p. 584). This can be seen by the fact that, under the Mamluks, *muftis* were independent scholars who were chosen by their teachers, obtaining *ijazat tadris wal ifta*. But, in the Ottoman period, muftis were appointed by the state.

However, both dynasties shared similarities. It is important to note that the circumstances which gave rise to the *Ashbāh wa Naẓāʾir* were closely related to two big shifts: the adoption of the official *madhhab* and the dynasty's political fortunes. During the Mamluk era in Cairo, the Shāfiʿī school was at the forefront of scholarly and intellectual activity across various disciplines. It is no surprise that most Ashʿarī theologians at the time were Shāfiʿīs. Shāfiʿism became not only the dominant legal school, but also the main conduit for legitimizing political power. Shāfiʿī scholars often held judicial authority over other schools of law. This dominance extended beyond the scholars – even the sultans themselves were expected to follow the Shāfiʿī doctrine. There was even a case where a Ḥanafī sultan was killed for refusing to submit to Shāfiʿī rulings (Jackson, 1996, pp. 53–56). Still, the sultanate had no authority to intervene or alter doctrine. This intertwining relationship between political legitimacy and Shāfiʿī dominance highlights an important feature of the Mamluk legal landscape: the symbolic power of *madhhab* affiliation. The Shāfiʿī school was not considered the official state *madhhab*, but, in practice, the recognition of the Shāfiʿī school as the central authority in Cairo meant that those aligned with the school had greater access to careers in the judiciary, teaching, and religious administration. That even rulers were pressured to adopt a Shāfiʿī legal identity shows how deeply embedded the school was in the political fabric of the time.

When the Ottomans conquered Egypt in the early 16th century, there was a clear shift, with the Ḥanafī becoming the official legal school, taking over from the Shāfiʿī. By the sixteenth century, the Ottoman Empire had already adopted the Ḥanafī school as the state-*madhhab*. This period saw the emergence of key institutional changes, including the establishment of state-appointed muftis, the rise of an imperial educational system, the codification of jurisprudence through imperial canon law, and the systematic reconstruction and documentation of the

school's scholarly genealogy (Burak, 2013b, p. 584). Gradually, the state took an active role in shaping and rearticulating legal doctrine in line with Ḥanafī principles, as it was now the official school of the empire. The Ottomans' choice of the Ḥanafī school was not accidental. Ḥanafīsm offered unique features that were useful for the increasing religious plurality of the empire. Its doctrinal flexibility, particularly in the use of juristic preference *(istihsān)* and reasoning *(ra'y),* gave Ottoman rulers greater room to integrate state policy into legal discourse. The centralization of muftis, and the appointment of scholars within the *ilmiye* hierarchy, allowed the Ottomans to gradually consolidate both religious and political authority under one umbrella.

This transitional period from Mamluk to Ottoman rule had a significant impact on the intellectual climate in Egypt. The character of *fiqh* during the Mamluk period strongly influenced the legal scholarship of early Ottoman Egypt. There are several reasons for this continuity: many Ḥanafī scholars had studied directly under Shāfiʿī scholars, and the writing style of many legal works adopted a *hadith*-centered approach, reminiscent of the Shāfiʿī method in *fiqh* (Karadağ, 2019). In this sense, this article has already highlighted this influence, especially in the writing of legal maxims by Hanafi scholar Ibn Nujaym.

One striking difference between the Mamluk and Ottoman periods is the concept of legal pluralism. Before the Ottoman conquest, Egypt enjoyed a degree of legal pluralism: although the administration of justice was integrated with state structures, society still had access to multiple legal forums and schools of law. However, once the Ḥanafī school became the official *madhhab* of the state, many scholars who were not part of the Ottoman *ʿilmiyye* bureaucracy were excluded from formal legal discourse. While it is true that the Ottomans also appointed jurists from the four schools, the Ḥanafī school nevertheless remained at the forefront. As a result, legal authority became increasingly centralized. This centralization marked one of the most significant differences between the Ottomans and the empires that preceded them. Yet, the distinct legal culture of Cairo meant that these centralizing attempts were met with resistance (Baldwin, 2022, pp. 138–139). Despite increasing centralization, legal pluralism persisted under the Ottomans, and legal culture at this time became more pragmatic. The practice of *talfīq*, which permitted the use of rulings from other schools of law, expanded from the sixteenth through the eighteenth centuries (Ibrahim, 2015, p. 107). Ibn Nujaym wrote his *al-Ashbāh wa al-Naẓāʾir* in Cairo during this turbulent

transition. While the Ottoman state was trying to consolidate legal authority through Ḥanafīsm, the social reality in Cairo remained plural in terms of *madhhab* affiliations and legal forums. Ibn Nujaym's work reflects this context: it is systematic and filled with legal maxims, yet also flexible and open to Shāfiʿī influences. In this way, his legal opinions were grounded in Ḥanafī doctrine but his style of writing clearly adopted many elements from Shāfiʿī scholars—especially Taj al-Dīn al-Subkī. However, Ibn Nujaym not only borrowed legal maxims and the writing methods of earlier scholars but also made original contributions by introducing new legal maxims of his own.

Ibn Nujaym's *Ashbāh wa Naẓāʾir* emerged within a unique transitional climate, as legal authority shifted from the symbolic dominance of Shāfiʿīsm under the Mamluks to the centralized Ḥanafīsm of the Ottomans. His work was therefore not merely an internal product of the Ḥanafī school, but also a response to the political, social, and intellectual dynamics surrounding him. By adopting Shāfiʿī structures and styles while reaffirming Ḥanafī identity, he demonstrated how scholars could employ both adaptation and innovation. This illustrates not only the flexibility of Islamic law in navigating changes in dynastic authority but also the integral role of cross-*madhhab* intellectual borrowing in sustaining the broader legal tradition of Islam.

Conclusion

Ibn Nujaym's *Ashbāh wa Naẓāʾir* is not merely a Hanafi text but a work situated at the crossroads of two traditions: the Shāfiʿī legacy of Mamluk Egypt and the centralized Hanafi project of the Ottoman Empire. His work shows how juristic authority in Sixteenth-century Egypt was shaped both by Shāfiʿī dominance and by the Ottoman state's insistence on Hanafi orthodoxy. By borrowing and adapting earlier frameworks, Ibn Nujaym successfully negotiated these competing pressures. The forms of borrowing in *Ashbāh wa Naẓāʾir* are evident in his use of language, order, and categorization. He mirrors al-Subkī in adopting the same title for his book and following the five main maxims: *al-yaqīn lā yazūlu bi al-shakk, al-ḍarar yuzāl*, *al-mashaqqah tajlib al-taysīr*, *al-umūr bi maqāṣidihā,* and *al-ʿādah muḥakkamah*. But Ibn Nujaym did not stop at replication. His addition of new principles, namely *lā thawāba illā bi al-niyyah*, demonstrates creative adaptation. Furthermore, he also adopts different principles, such as

deriving maxims and sometimes rejecting some ideas from Shafiʾī maxims. Through this blend of approaches, his text serves as an act of intellectual borrowing and, at the same time, a work of dialogue as knowledge production.

This development can be read in the broader context of shifting legal authority. Under the Mamluks, the Shāfiʿī school dominated the intellectual landscape and provided legitimacy to the dynasty. Legal pluralism allowed multiple schools of law to coexist. With the Ottoman conquest, however, the Hanafi school became the official *madhhab*, and the state began to centralize legal authority through the appointment of muftis, the restructuring of education, and the codification of law. Ibn Nujaym composed his work during this transition, when Cairo still carried strong Shāfiʿī influence but was increasingly drawn into the Hanafi framework of the Ottoman state.

The significance of *Ashbāh wa Naẓāʾir* thus lies in its mediating role. It bridges Shāfiʿī methodological clarity and Hanafi doctrinal concerns, showing that *madhhab* boundaries were flexible rather than rigid. Ibn Nujaym's text reflects a negotiation of authority between scholars and the state, while also affirming the agency of jurists in shaping their works. Ultimately, his work highlights how Islamic law evolves not in isolation but through dialogue, including adopting, reordering, borrowing, adding, and modifying legal maxims. The book captures the survival strategies of scholars facing political change and illustrates how cross-*madhhab* encounters could generate enduring doctrinal contributions to the history of Islamic jurisprudence. Furthermore, this book also shows us the popularity of Shāfiʿī thought, such that even scholars from non- Shāfiʿī schools sought to adopt this style.

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