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THE USE OF *MULTAQA'L-ABḤUR* IN THE OTTOMAN MADRASAS AND IN LEGAL SCHOLARSHIP[1]

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Of all the compendia of Hanafite law used by jurists and scholars, the *Multaqa'l-Abḥur* of Ibrāhīm al-Ḥalabī[2] was probably the most popular. There are many references to its pre-eminence among the Hanafite books of law scattered far and wide in many sources but despite its obvious influence we seem to have very little knowledge either as to how the work came into being or of its author. It is all the more curious when we consider the fact that more than fifty commentaries were written on the *Multaqā* throughout the Empire and it was used as one of the principal sources during the compilation of the *Majalla,* the *Tanzimat* code of law.

In this article an attempt will be made to show how the *Multaqā* was taught in the *madrasas* and how it was used in the courts of law by the *qadis* and its contribution to the *Majalla.* As it is important to be aware of the sources from which the *Multaqā* was compiled, they are given as follows :

1 The following article, with some changes, is taken from «A Study of Ibrāhīm al-Ḥalabī with Special Reference to the *Multaqā*», a Ph. D. thesis submitted to the University of Edinburgh in 1981.

2 The author, Ibrāhīm b. Muḥammad b. Ibrāhīm al-Ḥalabī was born in Aleppo at about 866/1461 or earlier. He received his early education in Aleppo and Damascus. Towards the end of the ninth/fifteenth century he left Aleppo for Cairo which was one of the best centres for Islamic studies. In Cairo al-Ḥalabī studied *tafsīr, hadīth, fiqh, qirā'a* and other branches of Islamic learning. After completing his studies he went to Istanbul where he held the post of *imām* and *khaṭīb* in various mosques until his death in 956/1549.

[See A.b. Muṣṭafā Ṭāshkūbrī-zāda, al-*Shaqā'iq al-Nu'māniyya fī Dawlat al-'Uthmāniyya* in the margin of *Wafayāt al-A'yān* (Cairo, 1310 AH.), II, 24.]

a) The *Mukhtaṣar* of Aḥmad b. Muḥammad b. Aḥmad ... b. Abu'l Ḥusayn b. Abū Bakr (362/972 - 428/1037), known as al-Qudūrī.

b) The *Mukhtār* of 'Abdallāh b. Maḥmūd ... Majd al-Dīn al-Mawṣilī (599/1202 - 683/1284).

c) *Kanz al-Daqā'iq* of 'Abdullāh b. Aḥmad b. Maḥmūd, known as Hāfiẓ al-Dīn Abu'l Barakāt al-Nasafī (d. 651/1253).

d) *Wiqāyat al-Riwāya fī Masā'il al-Hidāya* of Maḥmūd b. 'Ubaydallāh Ṣadr al-Sharī'a al-Awwal, known as al-Maḥbūbī (d. 712/1312).

Two other sources, the *Hidāya* of Burhān al-Dīn al-Marghinānī (511/1117 - 593/1196) and *Majma' al-Baḥrayn* of Muẓaffar al-Dīn Abu'l-'Abbās Aḥmad known as Ibn al-Sā'ātī (d. 694/1295) were also consulted occasionally by the author. The compilation of the *Multaqā* was completed on 23rd Rajab 923/11th September 1517.

A — *The Multaqā as a Text-Book in the Madrasas*

The Ottoman *madrasa* system had fully evolved when the *Multaqā* was compiled by Ibrāhīm al-Ḥalabī. The greater part of the energy expended within these scholarly establishments was devoted to the study of the Qur'anic sciences and their various branches. Of these *fiqh* was to be of particular importance, for the *madrasa* was the training ground for two careers in particular, that of the jurist and that of the teacher, and the study of *fiqh* was the basic occupational training for the legal career. It was divided into two separate disciplines, *uṣūl* and *furū'*; the bases or principles of law were termed the *uṣūl al-fiqh*[3] and the disciplines derived therefrom, the *furū'*.

As the greater majority of the population in the Ottoman state was Hanafite, the text-books of this rite served as main reference books in the *madrasas*. In the provinces, where there were large numbers of non-Hanafites, the text-books of other rites were also used for the same purpose. In Iraq, for example, besides Hanafite works, Shafiite works were also used, such as the *Matn al-Ghāya wa'l-Taq-*

3 The science of *uṣūl al-fiqh* has been defined by the doctors as «the science of the principles whereby one reaches fiqh in the true way.» See N.P. Agnides, *Mohammedan Theories of Finance*, Lahore, 1961, P. 4.

rīb[4] and a commentary on the same work by al-Kātib al-Shirbīnī (d. 977/1569), alongside another commentary by Ibn Qāsim al- Qazzī d. 918/1512), and its supercommentary by Ibrāhīm al-Birmāwī (d. 1106/1694)[5].

Although in a broad sense the *mudarris* was free to teach the text-book of his choice, sometimes texts had already been prescibed by the founder of the *waqf* or its *mutawallī*. The teacher was thus restricted in his choice of text, many of which were often provided for the use of the instructor[6]. Indeed in some cases text-books were prescribed by the Sulṭān, most probably with the aim of maintaining some uniformity in legal training throughout the state. An imperial decree issued in the sixteenth century gives the list of text-books given to the teachers, to be used in the *madrasas*[7]. Naturally the law books named in the list are entirely Hanafite works such as the *Hidāya* the *Nihāya,* the *Ghāyat al-Bayān,* the *Qāḍīkhān,* etc.

In the early period, the most popular books taught in the *madrasas* were the *Hidāya,* the *Wiqāya* and the *Mukhtaṣar* of al-Qudūrī[8]. Uzunçarşılı also includes the *Kanz al-Daqā'iq*[9]. *These four main* works, which were used as sources for the compilation of the *Multaqā,* were to be rendered largely redundant in practice by the adoption of the latter as a basic text-book of Hanafite law.

While it is quite true that the *Multaqā* supplanted the preceding generation of legal text-books, this process was necessarily a slow one for a number of reasons. The conservative nature of the *madrasa* was not conducive to the acceptance of new works. First was the fact that the curriculum in many institutions had been prescribed for posterity by the founder, a fact which necessitated the retention of the old works. Secondly, teachers generally tended to teach those texts

4 By 'Alī b. al-Ḥusayn b. 'Alī al-Iṣfahānī Abū Shujā' Tāj al-Dīn (d. 593/1196), see C. Brockelmann, *Geschicte der Arabischen Litteratur, (GAL),* Leiden, 1937-49, G1, 392.

'A. al-Hilālī, *Tārīkh al-Ta'līm fi'l-'Irāq fi'l-'Ahd al-'Uthmānī* (Baghdād, 1959), p. 99.

6 M. Bilge, *İlk Osmanlı Medreseleri,* (İstanbul, 1984) p. 63.

7 *Ibid,* same page.

8 *Ibid,* pp. 48, 49.

9 See İ.H. Uzunçarşılı, *Osmanlı Devletinin İlmiye Teşkilâtı,* p. 4.

they themselves had studied. It would seem probable that the introduction of a new work into the syllabus could be accomplished only when the text had been taught to sufficient students to create a corps of teachers who would, in their turn, teach it as a text. Thus it can be seen that a text would require several generations before it could gain a dominant position and even then would not be to the complete exclusion of the older texts. However, despite all these obstacles to its adoption as the standard work of Hanafite legal practice, it is certain that by the seventeenth century the *Multaqā* had gained widespread recognition.

In one of the earliest European sources to describe the Ottoman educational system, Toderini makes mention of this work :

> Il en parut un autre plus étendu plus complet sous le Sultan Soliman Ier. Ce code fut compilé avec beaucoup de méthode par Ibrahim d'Alep, nominé Moltaki Alabhar, ou la réunion de mers, pour avoir rassemblé tout ce qu'avoient écrit Coduré, Mokhtar, Vakaiat, Hadaiah, habiles jurisconsultes[10].

Ḥajjī Khalīfa, one of the prominent figures of the seventeenth century, whilst giving the account of his career as a teacher, points out the place of the *Multaqā* among the other text-books in the *madrasas* and states :

> ... meanwhile my pupils had been having lessons on the elements of accidence, Fanārī and the *Shamsiyya* on logic, *Jāmī*, the *Mukhtaṣar*, the *Farā'iḍ*, the *Multaqā* and the *Durar*[11].

Al-Hilālī notes the constant use of the *Multaqā* in Iraqi *madrasas* during the Ottoman period, a fact which indicates the recognition given to the work not only in the *madrasas* of the Capital but also in those of more distant provinces[12].

10 L. Toderini, *Lettérature Turchesca*, tr. into French by Courrand (Paris, 1789), I, 41.

11 Ḥajjī Khalīfa, *Mīzān al-Ḥaqq*, Eng. Trans. G.L. Lewis, *The Balance of Truth*, (London, 1957), p. 141.

12 All-Hilālī, *op. cit.*, p. 99.

The *Multaqā* had become the standard text-book throughout the Empire by the beginning of the nineteenth century. The author of the *Qāmūs al-Aʿlām* was to note :

> The work of al-Ḥalabī contains the whole of the knowledge of the science of *fiqh* in an easy and fluent style; and in our present time it is accepted as a text-book throughout the Ottoman state and is found currently in the hands of the students[13].

Lybyer in the chapter on Ottoman legislation states :

> Mouredgea D'Ohsson took the *Multaqā* as the basis of his excellent work *Tableau général de l'Empire Othoman* and gave the translation of it with its comments to which he has added observations of great value, based on historical studies on his investigations during many years' residence in Turkey[14].

In his account of the *madrasas* and their curriculum D'Ohsson names the chief text-books and gives priority to the *Multaqā* in the branch of jurisprudence : «On étudie la jurisprudence dans Multaka, Durer, Tewzihh, Telwihh etc»[15].

The *Multaqā* was also one of the main works taught in the Ottoman Palace School[16] which no doubt reflected the curriculum of the ordinary madrasas in its choice of text-books.

Finally, it must be added that most of the commentators on the *Multaqā* were actually teaching it. For example, the author of *Ghawwāṣ al-Biḥār*, Darwīsh b. Aḥmad al-Rūmī states that he was teaching the *Multaqā* to his students[17]. The date of his commentary's composition, 1654-55, shows us that the *Multaqā* had

13 S. Sāmī, *Qāmūs al-Aʿlām*, I, 568.

14 A.H. Lybyer, *The Government of the Ottoman Empire in the Time of Suleiman the Magnificent*, Cambridge, 1913, p. 153.

15 M.D.'Ohsson, *Tableau General de L'Empire Othoman*, Paris, 1788-91, 11, 469.

16 B. Miller, «The Curriculum of the Palace School of the Turkish Sultans», in *The MacDonald Presentation Volume*, (Princeton, 1933) p. 314.

17 See *Ghawwāṣ al-Biḥar*, Ms. in Süleymaniye, Halet Efendī, No. 114.

taken its place in *madrasa* curriculum by this date. Such commentaries seem to be essentially the formal reduction of a *mudarris'* teaching notes in the form of a text-book. The very number of such commentaries, well over fifty, attests to the extensive use of the *Multaqā* which began during the lifetime of its author and lasted for almost four centuries. However, it should be pointed out that while those authors who describe the *madrasa* system all note the supremacy of the *Multaqā,* many also note the existence of its predecessors, a fact which would indicate that these still held a place on the syllabus.

The *Multaqā*'s influence can also be seen in the popular catechisms of religion (*'ilm-i ḥāl*) and compilations of a similar nature. For example a seventeenth century work, known as the *Kitāb al-Usṭuwānī*[18] relies heavily on the *Multaqā,* a great deal of the text being merely al-Ḥalabī's prose translated into Turkish. However, we may also observe a certain amount of reliance on alternative works, such as al-Ḥalabī's commentary on the *Munyat al-Muṣallī,* the *Baḥr al-Rā'iq,* the *Sirāj al-Wahhāj,* the *Hidāya* and its commentaries. At the end of every case (*mas'ala*) the source of information is given, as for example, in the chapter on «Actions which invalidate prayer», which he enumerates as follows, citing his source :

بده نده اولان اغريدن ويا مصيبتدن او تری آه ايدوب اغلمق
اما جنت ويا جهنم اكمدن ايسه ضرر ايتمز ، ملتقی ده يزار .
امامنك غيريه فتح اتمك ، ملتقی ده يزار
نمازك ايجنده ايكن بر مصيبت اشتسه انالله و انااليه راجعون
ديمك ، ملتقی ده و ابراهيم حلبيده يزار

18 This is the work of Usṭuwānī Muḥammed Efendī (1608-1668) who was a *wā'iẓ* in Istanbul. According to him the practices of *samā'* and *raqṣ* of the sufis are unlawful. His attitude towards sufism and their practices is similar to that of al-Ḥalabī. Although he was born after half a century of al-Ḥalabī's death he must have been influenced through the latter's writings. His views on certain controversial matters, such as *raqṣ, samā', dawarān,* music etc. are given in his above-mentioned work.

While still on the subject of ritual prayers he continues :

جمعه نمازينك فرض اولسنك التى شرط واردر اولكى شهرده مقيم اولق ايكنجى ار اولق اوجنجى صاغ ارلق دردنجى حر اولق بشنجى كوزى صاغ اولق التنجى ايقلرى سالم اولق ملتقى ده يزار نمازى جماعتله قلمق بزم مذهبمزده سنت مؤكده‌در ملتقى ده يزار.

بر كمسه طشره‌ده اولسه نماز قلدوغى وقتده اذان اوقمق لازمدر ملتقى ده يزار

B — *The Multaqā as a Reference Book for Qāḍīs*

In the Ottoman state all legal cases were resolved in the *shar'ī* courts according to the principles of the Hanafite rite. *Qāḍīs* would therefore refer to the wellknown and accepted Hanafite works and *fatāwa* collections in order to adjudicate the cases presented before them. Although *qāḍīs* were free to use any text within the rite, their choice was often circumscribed by the availability, practicability and popularity of the texts. Von Hammer enumerates seven works which were regarded as being classical and canonical: The *Mukhtaṣar* of al-Qudūrī, the *Hidāya,* the *Wiqāya,* the *Kanz al-Daqā'iq,* the *Durar al-Ḥukkām* and finally the *Multaqā'l-Abḥur*[19]. Von Hammer assumed, without providing any supporting evidence, that

> al-Ḥalabī was probably asked by Sulaymān to compile such a book, just as, for example, Muḥammad II had asked Mullā Khusraw to compile the *Durar al-Ḥukkām*[20].

This theory has gained wide acceptance by scholars such as, for example, Lybyer, who characterised the *Multaqā* as :

19 Von Hammer, *Staatsverfassung und Staatsverwaltung des Osmanischen Reischs* (Vienna, 1815) pp. 10, 11.

20 *Ibid,* p. 11,

> ... a new code of law, therefore better adopted to the more widely Moslem character which the empire had assumed.. Sulaymān charged Sheykh Ibrāhīm with the task of preparing such a code[21].

In another chapter he again repeats this assumption:

> Before 1549 Ibrāhīm Ḥalabī, the jurist, prepared by command of Sulaymān the codification of the sacred law which bears the name of *Multaka al-Ebhur*[22].

Y. Meron quoting Hitti, also asserts that Ibrāhīm al-Ḥalabī was charged by the Ottoman sultan Sulayman the Magnificent with compiling the *Multaqa 'l-Abḥur*[23]. However, al-Ḥalabī makes no mention of such a commission by the government in his introduction. Furthermore, the *Multaqā,* according to the account given in the manuscripts, was completed on 23rd Rajab 923/11th September, 1517, and Sulṭān Sulaymān's accession to the throne was not until 17th Shawwāl 926/30th September 1520. Thus, if there was any commission by the government it must have been during the reign of Sultan Selīm I. In the light of this, Von Hammer's theory seems to be incorrect, probably as a result of the unavailability of manuscripts at the time. It is perhaps more surprising that this assumption has been repeated uncritically by many scholars from Lybyer to Meron[24].

21 Lybyer, *The Government of the Ottoman Empire,* p. 153.

22 *Ibid.,* p. 318.

23 Y. Meron, *L'Obligation alimentaire entre Epoux en Droit* Musluman Hanefite, (Paris, 1971) pp. 64, 65.

24 Meron adopts a very negative attitude towards the *Multaqā* and makes remarks such as «In fact, from the point of view of the development of legal thought it is nothing but one more decadent text»... etc. (see «The Development of Legal Thought in Hanafi Texts», p. 116) However, the author himself seems to be ill-informed as to several basic facts about the *Multaqā.* For example, he speaks of the *Multaqā* as being «an abridgement, based on the *Hidāya*» (see *L'Obligation alimentaire* ... p. 10) whereas al-Ḥalabī defines the contribution of the *Hidāya* as «a small piece» (*nabdha*) (see *Multaqā,* p. 2).

In contrast to its relatively slow acceptance in the *madrasas* of the Empire, the *Multaqā* quickly achieved a certain popularity among Ottoman jurists, as evidenced by the number of commentaires by *qāḍīs* and *muftīs* which began to appear almost immediately after al-Ḥalabī's death in 956/1549. These jurists were not bound to the use of any prescribed legal reference work in the way that *Madrasa* teachers sometimes were.

On the section about the Ottoman *shar'* code and *qānūns* Levy writes:

> In theory indeed, the Ottoman law was based on the *shar'* according to the Ḥanafī interpretation, the standard authority after the middle of the sixteenth century being the *Multaqā al-abḥur,* compiled in Arabic, as were all the works of *fiqh, by* Ibrāhīm al-Halabī, who died in 1549[25].

However, a more important cause for its quick and extensive recognition among the *qāḍīs* was the ordering of its materials and its comprehensive nature[26]. This has been emphasised by many writers on this subject:

> It (the *Multaqā*) owes its advantage partly to its greater order and completeness and partly to the circumstance that it dates from Sulaymān's time[27].

Another writer on the Ottoman legal system considered that the particular advantage of the *Multaqā* lay in its medial position between the classical works, of which al-Qudūrī's *Mukhtaṣar* is given as an example, and those modernist treatises as an example of which he cites Ibn 'Ābidīn's *Durr al-Mukhtār*:

25 R. Levy, *The Social Structure of Islam,* (Cambridge 1969) p. 268.

26 An effort has been made to demonstrate to the reader this comprehensive nature of the *Multaqā* in Appendix B of the thesis, by comparing certain chapters of the *Multaqā* with those of its sources. A quick glance at this appendix will demonstrate the fact that the *Multaqā* contains all the information given in its sources. The points which were omitted by al-Ḥalabī are noted in the footnotes but these omissions seems to be restricted to certain highly improbable or unimportant cases and do not include any important principle.

27 Von Hammer, *Op. cit.* p. 11.

> We give preference to the treatise of Ibrāhīm al-Ḥalabī, known under the name of *Multaqā ul-Ebhoûr,* which holds a middle path between these two extremes and which forms, by virtue of its clearness and simplicity, the most widespread and the most highly esteemed treatise in Turkey[28].

The arrangement of the material in the *Multaqā* is far more thorough and ordered than that of its predecessors. Therefore, it was more convenient as a work of reference, and, since the *Multaqā* contained almost all the information found in its sources, as a practical handbook in a single volume, it rendered its predecessors largely redundant. For this reason alone Von Hammer could claim that it was «the most complete and best ordered work of the time[29]». This completeness can be illustrated numerically. For example, while al-Qudūrī's work, the *Mukhtaṣar,* is said to contain 12,000 cases (*masā'il*)[30], the *Multaqā* encompasses well over 17,000[31].

There is no reason to doubt that the *Multaqā* enjoyed the support of the government and that its use by *qāḍīs* and teachers was encouraged presumably with the aim of implementing uniformity of law in the state. We believe that the work was widely recognised during Sultan Sulaymān's time, and almost all sources agree on this point. A European writer on the Ottoman state commented:

> The author [al-Ḥalabī] comprised in it [the *Multaqā*] all decrees from the foundation of Islamism concerning the various subjects of law and theology that had proceeded from the doctors of law before his time. All points respecting dogmas, Divine worship, morals, civil and political law etc. are so immutably settled in this work as to dispense with all future glosses and interpretation. Since the reign

28 A. Heidborn, *Droit Public et Administratif de L'Empire Ottoman* 3 vols. (Vienna, 1908) 1, 54.

29 Von Hammer, *Op. cit.* p. 11.

30 Ḥājjī Khalīfa Muṣṭafā b. 'Abd Allah, *Kashf al-Ẓunūn 'an Asmā' al-Kutub wa'l Funūn,* 2 vols. (Istanbul, 1360-62 AH.) 11, 1631.

31 M. Mawqūfātī, *Mawqūfāt,* 2 vols. (Istanbul, 1312 AH.) 1, 3.

> of Sulaymān it has been regarded as an authority without appeal[32].

All the authorities who wrote on the subject pointed out the comprehensive nature of the *Multaqā*. Since it contained all the basic information given in its sources those who consulted the work did not need to refer to any of them, at least in most cases, and this fact rendered the duties of the *qāḍī* and *muftī* easier to perform. This obvious point is also stated by D'Ohsson:

> «This work the (*Multaqā*) is written with clarity and precision which seldom makes it necessary for the lawyers to refer to the previous canonic books upon which the new code is entirely based[33].

In this al-Ḥalabī's guidance to the «most sound» or «most correct» decision played an important role: such guidance gave a «moral justification» to the lawyers of less knowledge and saved them from struggling between two decisions. Von Hammer points out that the *Multaqā* gained popularity and recognition at the expense of its predecessors, especially of al-Nasafī's work: «Since the time of Sulaymān, the *Multaqā* has replaced the *Kanz* as a handbook for *qāḍīs* and *muftīs*»[34].

However, Professor Uzunçarşılı, with greater caution, does not project its dominant position as far back as the sixteenth century, writing that:

> After the second half of the 17th century *qāḍīs* began forming their decisions according to the principles laid down

32 M.A. Ubicini, *Lettres Sur la Turquie,* English translation by Lady Easthope (London, 1856), I, 139.

33 *Tableau Général,* I, 22.

34 Von Hammer, *op. cit.,* p. 27. Meron (*op. cit.,* p. 65) praises the conciseness of the *Kanz* and states that the *Multaqā* is lacking in this. As is shown in the appendix B, the *Multaqā* contains a great number of articles which are omitted in the *Kanz*. Especially with regard to the *Multaqā* it would be more accurate to describe this as «incompleteness» rather than «conciseness».

> in Ibrāhīm Ḥalabī's *Multaqa 'l-Abḥur fi 'l-Furū' al-Ḥanafiyya* and its commentaries.

After naming the sources of the work he adds :

> Before the *Multaqā,* the above mentioned works were used for the same purpose. Through this work, al-Ḥalabī rendered the duty of *qāḍīs* much easier than it had been before[35].

Certainly by the beginning of the 19th century Thornton speaks of the *Multaqā* as being the «code of laws governing the Ottoman Empire»[36]. Although clearly this is an exaggerated statement, Thornton had spent some fifteen years in Istanbul at the end of the 18th century, and his statement must reflect the prominence of the *Multaqā* as a law book at that time.

As has been noted, the *Multaqā* served a double role, not only as a text-book for the *madrasas* but also as a handbook for *qāḍīs* and *muftīs*. In fact the former factor must have influenced the latter greatly, for as the *madrasa* was a training ground for the legal career, it was natural and more convenient for the students who had studied the *Multaqā,* to use it when they obtained positions as *qāḍīs* and *muftīs*. We thus see that alongside its increasing use as a legal textbook in the *madrasas,* it achieved a growing popularity among the *qāḍīs* and *muftīs,* and it seems reasonable to assume that these developments were related. This popularity of the *Multaqā'* is reflected even in the decisions of the Shaykh al-Islams, where it is one of the most commonly cited sources.[37]. However, at no time did the *Multaqā* dominate the study and practice of law to the complete exclusion of all other texts and reference books despite to the fact that it achieved a superior position as the most important legal work in the state. Thus Savvas Pacha (d. ca. 1900) held that: «Jurists consider the

35 Uzunçarşılı, *İlmiye Teşkilâtı,* p. 115.

36 See T. Thornton, *The Present State of Turkey,* (London, 1807) pp. 91-92.

37 See Muḥammad b. Aḥmad b. al-Shaykh Muṣṭafā al-Kadūsī, *Natijat al-Fatāwā ma'a'l-Nuqūl,* Istanbul, 1265 A.H.

Multaqā as a base for codification of the laws»[38]. Lybyer adopts the same attitude and describes al-Ḥalabī's work in the same manner:

> The *Confluence of the Seas* (the *Multaqā'l-Abḥur*) remained the foundation of Ottoman law until the reforms of the 19th century[39]

In the light of the information given by Ottoman scholars and Western observers who actually spent some time in the Empire, we can confidently say that the *Multaqā* was employed widely, and especially in the seventeenth century and onwards became a standard Hanafite text, taking its place in the *madrasas* and being among the most consulted legal works. Therefore «the generous esteem given to the *Multaqā*» is not «grossly exaggerated» as suggested by Meron (*op.* cit., p. 64). The very fact that some fifty commentaries have been composed on the *Multaqā* is enough to confirm and justify this esteem. One of the recent authorities on Islamic law describes the *Multaqā* as «one of the latest and most highly esteemed statements of the doctrine of the school, which presents Islamic law in its final, fully developed form without being in any way a code»[40].

We also can see the contribution of the *Multaqā* in the works compiled by *qāḍīs* and *muftīs,* most of which were, most probably, written as personal reference works rather than as text-books intended for a wider dissemination. A clear example of this can be seen in a work by 'Abd al-Laṭīf b. Luṭf, better known as Luṭf Qāḍī (d. after 1224/1809). The work itself is entitled the *Hadiyya*[41] and covers almost the whole area of *fiqh.* The author first presents the case in Turkish, then cites the text in Arabic and gives its source. Besides the *Multaqā* other well-known Hanafite works also appear in this work, books such as the *Hidāya, al-Ashbāh wa'l-Naẓā'ir,* the *Tātārkhāniyya,* the *Mukhtaṣar* of al-Qudūrī, the *Durr al-Mukhtār,* etc. A few examples of the *Multaqā*'s use in the *Hadiyya* are as follows:

38 Savvas Pacha, *Etude sur la theorie du droit musulman,* 2 vols. (Paris, 1898) 1, 118.

39 Lybyer, *Op. cit.* p. 153.

40 See J. Schacht, *An Introduction to Islamic law,* p. 112.

41 The *Hadiyya,* 290 X 200 mm, 452 ff., compiled in 1224/1809, Ms. in the possession of the author.

بر كمسه عملنك ثوابنى غيريه ايله مسى شرعا جائز اولور .
وللانسان أن يجعل ثو اب عمله لغيره فى جميع العبا دات. ملتقى الابحر فى باب الحاج

طاهر اولان صوده اولمش صو قوربغسى بولنسه او صوده آبدست آلمق جائز اولور

و موت مايعيش فى الما ء فيه لاينجسه كالسمك و الدفدع والسرطان ملتقى فى الطهارة

صلات جمعه‌ده لا اقل اوج اركك بولنمق شرطدر
و اقل الجماعة ثلثة سوى الامام ، ملتقى ، باب الجمعة

نصابه مالك اولميان فقير كمسه‌نك اوزرينه صدقه‌يى فطر ويرمك لازم كلمز

هى و اجة على الحر المسلم المالك لنصاب فاضل عن حوايجه الاصلية و ان لم يكن ناميا ، ملتقى ، فى باب صدقة فطر

و ديعه حفظ ايجون بر كمسه‌يه ايداع اولنان مالدر
و الوديعة مايترك عند الامين للحفظ مالا كان اوغيره ملتقى ، فى الوديعة

هبه بلا عوض بر مالى آخره تمليك ايتمكدر
الهبة هى تمليك عين بلا عوض ، ملتقى ، فى الهبة

عاريت مجانا يعنى بلا بدل منفعتى تمليك اولنان مالدر
هى تمليك منفعة بلا بدل ، ملتقى ، فى العارية

In the nineteenth century we find the British authorities requesting the Ottoman Sultan, presumably in his capacity as «Grand Caliph of the Muslims» to provide a well-trained scholar who would solve the disputes occurring within the Muslim community in the Cape colony. Sultan 'Abd al-Majīd was to respond to this request by sending a certain Abū Bakr Efendi[42] to London, whence he was sent to Capetown. In 1869, a few years after his arrival Abū Bakr compiled a book entitled the *Bayān al-Dīn*[43], which is based on two languages, the text in Arabic and the commentary in «Cape Dutch» but in Arabic characters. Although Abū Bakr was a renowned jurist capable of issuing *fatwas* according to the four principal rites of Islam, his commentary actually achieved its success in the region due to the fact that it was based on the *Multaqā*, rather than as a result of his personal prestige as a jurist. M. Brandel Syrier thus wrote :

> It (the *Bayān al Dīn*) derives its authoritativeness from the fact that it is a close copy of al Ḥalabī's *Multaqā* ... and not from the fact that it was written by a recognised *muftī*.

This undoubtedly demonstrates the continuing authority of the *Multaqā* even in the second half of the nineteenth century, and its influence on the various compilations on Islamic juridical practice[44]. The *Multaqā* attracted the attention also of other Western writers on the Ottoman Empire, especially in the nineteenth century. The Ottoman reforms of that period encouraged the interest of Western writers and scholars and as a result we have a number of observations on the Ottoman judicial system, its canon law and its sources[45]. For example, J.L. Farley, after commenting on the reforms and the position of non-Muslims in the Empire, states :

42 Abū Bakr Efendī b. 'Umar, known as al-Khashnawī, died in 1880.

43 This works has been translated into English and edited with an introduction by Mia Brandel-Syrier, under the name of *The Religious Duties of Islam as Taught and Explained by Abū Bakr Effendī* (Leiden, 1960 and 1971).

44 M. Brandel-Syrier, *op. cit.*, p. XXIV.

> Revered almost equally with the Koran, the *Multeka* is the civil, penal, political and military code of the Ottoman Empire ...[45]

He then adds :

> The *Multeka,* or digest of the Mahommedan Canon Law, was written in Arabic by a Turkish lawyer several centuries ago. It gives the decisions arrived at by the two great legists of Sunni Mahommedanism, and is text-book and authority in the law courts throughout Turkey. Indeed, all Sunnī legists in Turkey, and in other Sunnī countries, study this book, and make their references to it. Cadis and Muftis take it, with other similar books, as a guide to their decisions, as our judges consult the decisions of their predecessors. It is, however, of a far greater authority than any such decisions can be amongst ourselves; because it is a fundamental principle in Turkey that no one, neither the Sultan nor the Government combined, can change or abrogate the Canon Law of that country. The Sultan rules over the Turks, but the Koran and the Multeka rule over the Sultan[46].

While this statement is certainly not without some degree of exageration, it at least represents the view of a foreign analyst of Ottoman legal practice, an observer who was struck by the importance of this work in the period in which he was writing.

We may conclude by quoting the lines of the Turkish national poet M. Âkif Ersoy, which show that the renown of the *Multaqā* has spread over into the realms of poetry:

> Sayısız hâdise var ortada tatbik edecek;
> Hani bir tane usûl âlimi, yâhu bir tek?
> Böyle âvâre düşünceyle yaşanmaz heyhat,
> «Mülteka» fıkhınızın nâmı, usûlün «Mir'ât».
>
> (Safahat, p. 418)

45 J.L. Farley, *Turks and Christians, A Solution of the Eastern Question* (London, 1876), u. 155.

46 *Ibid.,* p. 156.

C — *The Contribution of the Multaqā to the Compilation of the Majalla*

The 19th century Ottoman Empire witnessed several political, social and military reforms, amongst which legal reforms occupied much attention. Early in the century various attempts had been made to change the structure of the courts or to introduce new legal systems, but none of these was really successful. Above all, there emerged a growing need in the Empire for a new codex to solve disputes concerning trade between Muslims and non-Muslims. Such cases needed to be heard in special commercial courts since non-Muslims could not appear on equal terms with Muslims before *shar'ī* courts, but the judges in commercial courts did not have a comprehensive knowledge of *fiqh;* as a result, it was agreed «to have that part of *fiqh* that had reference to commercial transactions translated into a language which could be understood by all and to make it into a codex»[47].

The first committee failed to complete the work which was to be called *Matn-i Matīn* and was ultimately dissolved. The reason for this failure was that most of the members of the committee were not themselves thoroughly versed in *fiqh*[48]. Meanwhile there appeared a movement to adopt the French Civil Code in the Empire, but an opposition group led by Aḥmad Jawdat Pasha[49] desired that the *shar'ī* provisions which were in harmony with the demands of the times should be made into a compendium and used as *shar'ī* law in disputes involving Muslims and as *qānūs* (i.e. secular law) in those involving non-Muslims. At the end of a series of discussions a seven-member commission of experts in *fiqh* and other Islamic Sciences was established under the chairmanship of Jawdat Pasha[50]; it was requested to compile a codex using the basic Hanafite texts. The introduction and the first chapter of the new codex, entitled

47 A. Cevdet Paşa, *Tezâkir,* I, 62, translated in Ş.A. Mardin, «Some Explanatory notes on the Origins of the 'Mecelle'», (in the *MW,* LI, 1961, pp. 189-196 and 274-279) p. 275.

48 See *Tezâkir,* I, 63.

49 On him see E. Mardin, *Medenî Hukuk Cephesinden Ahmet Cevdet Paşa,* Istanbul, 1946.

50 E. Mardin, *op. cit.*

Majalla-i Aḥkām-i ʿAdliyya were completed in 1869; the last chapter was concluded in 1876. The aim was to produce «an easily understandable work on the practical aspects of the *sharī'a* in relation to transactions amongst individuals, containing only agreed opinions and free of matters of dispute which could be used by everyone as a guide to his own conduct of affairs and which would benefit the members of the courts and government officials»[54]. Another point was that modern conditions of manufacture, industrial organisation and the customs prevailing in society had to be taken into consideration by the committee in selecting the most suitable views of the Hanafite lawyers with reference to current affairs and practicability.

The Majalla was derived completely from Hanafite sources and in its compilation the *Multaqā* and its commentaries, *Majmaʿ al-Anhur* and the *Mirwaḥa* were used extensively.

The contribution of the *Multaqā* to the *Majalla* may be seen in every chapter and many of the definitions are directly derived from it. About 270 articles were taken from the *Multaqā* and *Majmaʿ al-Anhur* and another 80 were also partly derived from them. As shown in the table[52] the *Multaqā* and the *Majmaʿ al-Anhur* contributed the largest proportion, more than 20 %, and they are followed by *Fatāwāy-i Hindiyya* and *Durr al-Muhtār* contributing 10 % and 8 % respectively. This fact demonstrates beyond any doubt the importance of the *Multaqā* and its place in the Ottoman Empire[53]. The main reason for this extensive borrowing would seem to be that the concise style of the *Multaqā* was very appropriate for such a compilation. It was possible in many cases where it is quoted to take an article and translate it into Turkish as it stood[54]. In some cases,

51 See «Majalla Maḍbaṭası», quoted in Mas'ūd Efendī al-Qayṣarī, *Mir'āt-u Majalla-i Aḥkām-ı ʿAdliyya* (Istanbul, 1302 A.H.), p. 4.

52 See the thesis p. 338.

53 This information is based on *Mir'at-u Majalla,* a study of the sources of the *Majalla* by a former *muftī* of Kayseri Mas'ūd Efendī. This work was printed in 1302/1884-85 i.e. within nine years of the promulagtion of the *Majalla* and appears to be a most reliable source.

54 For examples see articles 167, 673, 837 etc.

naturally, the information had to be modified slightly, expanded or shortened in the process of establishing a principle in Turkish[55].

Since the *Multaqā* had itself been derived from six basic Hanafite texts and was considered entirely reliable, it was sufficient for the commission to consult it on many matters without the necessity of going through its sources. Indeed this point emerges clearly from *Mir'āt-u Majalla* since the sources of the *Multaqā* were used rarely. Of the sources, the most frequently occurring is the *Hidāya* which contributed only about 1 % of the contents of the *Majalla*. Others, the *Majma' al-Anhur,* the *Mukhtār,* the *Kanz* and the *Mukhtaṣar* are mentioned only a few times.

Moreover, under the system of education in that period, every member of the commission had probably studied the *Multaqā*; and some of them being teachers in the *madrasas,* were most probably using it in their classes. Jawdat Pasha in his *Tezâkir* mentions the *Multaqā* as one of the basic books he studied in *fiqh*[56] and most presumably it was the foundation for his knowledge in this field. Professor Mardin, in his comments on the education and career of Jawdat Pasha, says that the latter was always encouraged and advised by his grandfather to join the *'ilmiyya*. He then states that Jawdat Pasha studied *fiqh* books such as *Ḥalabī*[57] and the *Multaqā* and comments : «The *Multaqā* is a 'solid text' (*matn-i matīn*) which deals with all cases of *fiqh*»[58]. The widespread use of this text throughout the Empire ensured that the new code based upon it, the *Majalla* would not seem too innovative and unfamiliar to jurists working outside or at a distance from the capital.

To illustrate the manner in which the *Multaqā* was incorporated into the *Majalla,* the following examples may be cited :

55 See articles 169, 497, 706, 1000 etc.

56 A. Cevdet Paşa, *Tezâkir,* IV, 4-5.

57 I.e. al-Ḥalabī's *Ghunyat Mutammallī,* which is usually referred to by this title.

58 E. Mardin, *op. cit.,* p. 12.

I. *Kitāb al-Buyūʿ*

Article 167 :

ایجاب و قبول ایله بیع منعقد اولور

«A sale is constituted by an offer and an acceptance.»

ینعقد (العقد) بایجاب و قبول

Multaqā, Kitāb al-Buyūʿ, p. 107.

Article 169 :

ایجاب و قبول ایچون اکثر یا ماضی صیغه صی استعمال اولنور

«The past tense is generally used for the offer and acceptance.»

و ینعقد بایجاب وقبول بلفظی الماضی کبعت و اشتریت

Multaqā, Kitāb al-Buyūʿ, p. 107.

Article 268 :

اوزرنده میوه اولان أغاجك تسلیمنده میوه سنی
دوشیرب اغاجی تخلیه ایتمکه بایع مجبور اولور

«A seller is compelled to clear a tree by picking its fruit, at the time of delivery of the tree, having fruit upon it.»

ولایدخل الثمر فی بیع الشجر الا باشتراطه وان ذکر
الحقوق والمرافق و یقال للبائع اقلعه اقطعها و سلم المبیع ...

Multaqā, Kitāb al-Buyūʿ, pp. 108-109.

II. *Kitāb al-Ijāra*

Article 497:

بیعده اولدیغی کبی اجاره ده دخی خیار شرط جاری اولەرق احد طرفین یا خود ایکیسی بردن شو قدر کون مخیر اولق اوزره ایجار و استیجار جائز اولور

«As in a contract of sale, so in a contract of hiring, a stipulation giving an option is permitted; and a letting and hiring, on the condition that one of the parties or both should have an option for so many days, is allowed.»

و یثبت فیها (ای الا جارة) خیار الشرط والرؤیة و العیب

Multaqā, Kitāb al-Ijāra, p. 161.

III. *Kitāb al-Kafāla*

Article 648 :

کفالتده اصیلك بری اولسی شرط قلنور ایسه حواله یه منقلب اولور

If in a guarantee, the principal debtor is granted immunity, (the debt) is then transferred to the guarantor [i.e. the *kafāla* contract becomes *ḥawāla.*]

و للطالب مطالبة ای شاء من کفیله و اصیله الا اذا شرط براءة الاصیل فتکون حوالة ...

Multaqā, Kitāb al-Kafāla, p. 123.

IV. *Kitāb al-Ḥawāla*

Article 673 :

حواله دینی بر ذمتدن دیکر ذمته نقل ایتمکدر

«*Ḥawāla* is to make a transfer of a debt from one debtor account to the debtor account of another.»

هی (الحوالة) نقل الدین من ذمة الی ذمة

Multaqā, Kitāb al-Ḥawāla, p. 127.

V. *Kitāb al-Rahn*

Article 706 :

راهن و مرتهنك ایجاب و قبولی ایله رهن منعقد اولور فقط قبض بولنمدقجه تمام و لازم اولز بناً علیه راهن قبل التسلیم رهندن رجوع ایده بیلور

«The pledge becomes a concluded contract by the offer and acceptance of the pledger and pledgee. But until it is received, it is not complete and irrevocable. Therefore the pledger, before delivery can renounce the pledging.

(الرهن) ینعقد بایجاب و قبول و یتم بالقبض ...
و للراهن ان یرجع عنه قبل القبـ ـض فاذا قبض لزم ...

Multaqā, Kitāb al-Rahn, pp. 197-98.

VII. *Kitāb al-Hiba*

Article 837 :

هبه ایجاب و قبول ایله منعقد و قبض ایله تمام اولور

«A gift (*hiba*) becomes a valid contract by offer and acceptance, and is completed by receipt.»

و تصح (الهبة) بايجاب و قبول و تتم بالقبض

Multaqā, Kitāb al-Hiba, p. 158.

VI. *Kitāb al-Wadī'a*

Article 763 :

و ديعه حفظ ايجون بر كيمسه‌يه ايداع اولنان مالدر

Wadī'a is property left with someone for safekeeping.

الوديعة ما يترك عند الامين للحفظ و هى أمانة

Multaqā, Kitāb al-Wadī'a, p. 156.

IX - *Kitāb al-Ḥajr wa'l -Ikrāh wa'l- -Shuf'a*

Article 1000 :

مديون مفلسك مدت محجوريتنده كرك كندو وكرك اوزرنه نفقه‌سى لازم اولان كمسنه‌لر كند وسنك مالندن انفاق اولنور

During the time when an insolvent debtor is under prohibition both himself and those whose maintenance is supplied by him, are supported out of his property.

و ينفق من مال المفلس عليه و على من تلزمه نفقته

Multaqā, Kitāb al-Ḥajr, p. 172.

X - *Kitāb al-Sharika*

Article 1338 :

سرمايه‌نك نقود قبيلندن اولمسى شرطدر .

It is a condition that the capital be some kind of silver or gold money.

ولايصح مفاوضة ولاعنان الا بالدراهم او الدنانير

Multaqā, Kitāb al-Sharika, p. 104.

XI - *Kitāb al-Wakāla*

Article 1528 :

موكلك وفاتيله وكلليك وكيلى دخى منعزل اولور

By the death of the principal, *wakīl* of the *wakīl* is also discharged.

فان اذن فوكل كان الثانى وكيل الموكل الاول لا الثانى فلاينعزل بعزله ولابموته وينعزلان بموت الاؤل (الموكل) .

Multaqā, Kitāb al-Wakāla, p. 140.

XIII. *Kitāb al-Iqrār*

Article

ديون صحت ديون مرض اوزرينه مقدمدر يعنى تركەسى غريم اولان كيمسەنك حال صحتنده ذمتنه تعلق ادن ديونى مرض موتندەكى اقراريله ذمتنه تعلق ايدن ديونى اوزرينه تقديم قلنور

«Debts contracted in health take priority over debts contracted in sickness.

That is to say, the debts of a person, whose estate (*taraka*) is in debt, which attach to his debt while in a state of health, are made to take precedence over his debts which attach to his debit by virtue of admission made while in a state of mortal sickness.

دين صحته وما لزمه فى مرضه بسبب معروف سواء ويقدمان على ما أقر به فى مرضه و الكل مقدم على الارث .

Multaqā, Kitāb al-Iqrār, p. 149.

XIV. *Kitāb al-Daʿwā*

Article 1623 :

مدعا به عقار ايسه حين دعوى و شهادتده بلدەسى و قريسى ويا محلەسى وزقاغى وحدود اربعەسى يا خود ثلثەسى وحدودينك صاحبلرى وار ايسه آنلرك و بابا و دەدەلرينك اسملرى ذكر اولنمق لازمدر .

«If the subject matter of the action is immovable property it is necessary at the time of the claim, or when evidence is given, that its town or village, or quarter and street and its four or three boundaries, and if there are owners on the boundaries their names and those of their fathers and grandfathers be stated.»[1]

ولابد فيه (فى العقار) من ذكر البلد والمحلة والحدود الاربعة فى الدعوى والشهادة و اسماء اصحابها ونسبهم الى الجد .

Multaqā, Kitāb al-Daʿwā, p. 142.

XV - *Kitāb al-Bayyināt waʾl -Taḥlīf*

Article 1762 :

زيادة بينەسى اولادر مثلا بايع و مشترى ثمنك يا مبيعك مقدارنده اختلاف ايتسەلر زياده دعوى ايدەنك بينەسى ترجيح اولنور .

1 This is the first part of the article 1623, the second part is based on the information borrowed from *Durar-u Ghurar.*

«The evidence of the greater is preferred. For example, when the seller and buyer differ about the amount of the price of a thing sold, the evidence of the claim for the greater is preferred.»

ولواختلفا فی قدر الثمن او المبیع او فیهما حکم لمن برهن وان برهنا فلمثبت الزیادة .

Multaqā, Kitāb al-Bayyināt wa Taḥlīf, p. 143.

XVI. *Kitāb al-Qaḍā*

Article 1795 :

حاکم مجلس محاکمه‌ده آلیش ویریش وملاطفه کبی مهابت مجلس ازاله ایده‌جك افعال و حرکاتدن اجتناب ایتملدر .

«The judge must abstain from all actions and deeds which will destroy the majesty of the court, like buying and selling and joking during the sitting of the court.»

ولا یبیع (الحاکم) ولایشتری فی مجلسه ولا یمازح

Multaqā, Kitāb al-Qaḍā', p. 128.