

**CRAFTING COMPENDIUMS, MAKING LAW: OTTOMAN LEGAL
COMPENDIUMS AND THE RECONFIGURATION OF LEGAL
AUTHORITY IN THE SEVENTEENTH CENTURY**

by
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Submitted to the Graduate School of Social Sciences
in partial fulfilment of
the requirements for the degree of Master of Arts

Sabancı University
July 2025

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ABSTRACT

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History, M.A. Thesis, July 2025

Thesis Supervisor: Prof. ABDURRAHMAN ATÇIL

Keywords: Ottoman Empire, *kânunnâme*, *kânun mecmûası*, legal compendium,
fatwa

This study examines a late seventeenth-century Ottoman legal compendium (*kânun mecmûası*) comprising *kânuns*, fatwas, decrees, and excerpts from provincial *kânunnâmes*. Through an analysis of three manuscript copies—Manisa 5819, Sarajevo Oriental Institute R.3, and Istanbul Laleli 1263—it delineates a three-stage process of compendium-making: formation, expansion, and consolidation, with each stage executed by a principal actor, respectively, author-compiler, glossator, and copyist. This study discusses how textual variations across copies reflect active intellectual engagement rather than mechanical reproduction. It shows that marginal annotations, later integrated into the main text, reveal a dynamic process of legal knowledge production shaped by members of the learned hierarchy (*ilmiye*). By tracing the accretion of marginalia across the three copies, the study demonstrates how compendiums functioned as platforms for articulating and debating legal knowledge, particularly through the interaction between *kânun* and fatwa discourses. The act of compendium-making reflects a distinct form of *kânun* consciousness among scholar-bureaucrats, and it culminated in the development of the Ottoman fatwa as an official statement of law. This study ultimately argues that the legal compendium emerged as a major legal genre that played a key role in shaping lawmaking beyond the sultan's chancery in the seventeenth century.

ÖZET

MECMUA DERLEMEK, HUKUK YAPMAK: ON YEDİNCİ YÜZYILDA OSMANLI KANUN MECMUALARI VE HUKUKİ OTORİTENİN YENİDEN DÜZENLENMESİ

FURKAN YALÇINKAYA

Tarih, Yüksek Lisans Tezi, Temmuz 2025

Tez Danışmanı: Prof. Dr. ABDURRAHMAN ATÇIL

Anahtar Kelimeler: Osmanlı İmparatorluğu, *kânunnâme*, *kânun mecmûası*, fetvâ

Bu çalışma, 17. yüzyılın sonlarına tarihlenen ve kanunlar, fetvalar, fermanlar ile sancak kanunnamelerinden iktibaslar içeren bir Osmanlı kanun mecmuasını incelemektedir. Manisa 5819, Saraybosna Şarkiyat Enstitüsü R.3 ve İstanbul Laleli 1263 numaralı üç el yazması nüsha üzerinden yürütülen analiz, mecmua yapım sürecinin oluşum, genişleme ve pekişme olmak üzere üç aşamada gerçekleştiğini ortaya koymakta, her aşamanın sırasıyla müellif-derleyiciler, haşiyeciler ve müstensihler tarafından şekillendirildiğini göstermektedir. Bu çalışmada nüshalar arasındaki metinsel farklılıkların mekanik bir çoğaltma sürecinden ziyade aktif bir entelektüel etkileşimi yansıttığı savunulmaktadır. Kenar notlarının zamanla ana metne dahil edilmesi ilmiye mensuplarının katkısıyla gelişen dinamik bir hukuk bilgisi üretim sürecine işaret etmektedir. Üç nüshadaki kenar notlarının izini süren bu çalışma, özellikle kanun ve fetva arasındaki ilişki bağlamında, mecmuaların hukuk bilgisinin ifade edilmesi ve tartışılması için bir zemin sunduğunu göstermektedir. Kanun mecmuası oluşturma pratiği alim-bürokratlar arasında özgün bir kanun bilincinin geliştiğini ortaya koymakta ve bu sürecin, fetvanın hukukun resmi bir ifadesi haline gelmesiyle sonuçlandığını göstermektedir. Sonuç olarak bu çalışma, 17. yüzyılda kanun mecmualarının sultanın nişancısının ötesinde, hukuk yapımında belirleyici bir rol oynayan başka yazım türlerinden biri olarak ortaya çıktığını ileri sürmektedir.

ACKNOWLEDGEMENTS

First and foremost, I am grateful to my supervisor, Abdurrahman Atçıl, for his rigorous guidance and unwavering support. He introduced me to this topic and sparked my interest in this particular juncture of Ottoman studies. Alongside his academic mentorship, he extended moral support at various stages of my endeavor. I am deeply thankful to him. Without his guidance, this study would not have been possible. I also thank my jury members, Ayşe Ozil and Güneş Işıksel, for carefully reading my thesis and sharing their insightful comments.

I extend my heartfelt gratitude to my professors at Ibn Haldun University, from whom I learned the basic principles of historical research. Halil Berktaş, Suraiya Faroqhi, Mehmet Şakir Yılmaz, Muhammed Fatih Çalışır and Faruk Yalıçimen are the ones who shaped my academic formation in Ottoman history. I will always remain thankful to them.

My sincere thanks go to Ahmet Çınar Ağabey for his warm receptiveness to my questions on historical manuscripts. His expertise guided me in discovering these sources that formed the backbone of my research. He also taught me a lot about the Ottoman script during our classes and weekend excursions to historical sites of Istanbul. I also extend my gratitude to Bilal Küçükkaya, whose deep knowledge of classical Ottoman institutions shaped our daily conversations and made a contribution to this study. My warm thanks are due to Hugh Jefferson Turner for editing my thesis. He read my chapters word by word and shared his comments with me. He is the one who eased the task of my readers.

My friends deserve special thanks, as they were with me at all stages of my journey. Hüseyin Bahri Kurt was always there to answer my questions, whether academic or otherwise. He read an early draft of this thesis and provided his feedback. Furkan Erdem was my IT consultant, assisting with figures and digital tools that improved my work. I could not skip without mentioning the Humus family, whose support I always felt by my side. The moral support of my friends—too many to name one by one—was what I needed most during the most stressful stages of this thesis.

I am delighted to be part of the OTTOLEGAL project team, with whom I have spent the last two years. Our weekly meetings and personal discussions constituted a major building block of my academic adventure. The project provided a fruitful research

environment, and it extended financial support for my study. It was thanks to the project's rich database that this study became possible. The moment I discovered legal compendiums (*kânun mecmûası*) was during my exploratory research in the database.

I also consider myself fortunate to be a research assistant at ISAM (Center for Islamic Studies), where I benefited from both the library and the surrounding research environment. This thesis was entirely written at ISAM, and I am thankful to my friends and staff there. I also acknowledge the financial support of TÜBİTAK's (The Scientific and Technological Research Institution of Turkey) 2210 Scholarship Program.

I am deeply indebted to my family, whose love and prayers have always been an invisible support. They made life easier for me by providing support of any kind, always believing in me, and encouraging my decisions. Without them, I would not be the person I am today.

Finally, I remember with love and longing my brother in Allah, Muhammed Sait Dağlıoğlu, who departed this world for the Afterlife while I was writing this thesis. I will always cherish his beloved memory. That is why I dedicate this thesis to him.

To the beloved memory of Muhammed Sait

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1. INTRODUCTION

This study grew out of my research on a text known as *Kânunnâme-i Cedîd*, which is believed to have been composed in the late seventeenth century. As I was going through multiple copies of the text in an effort to explore its taxonomy, I came to believe that it was not possible to identify a single urtext from which all copies derived. I soon realized that *Kânunnâme-i Cedîd* could not be reduced to a single, stable text; rather, it functioned as a living legal tradition that shaped lawmaking processes in the post sixteenth-century Ottoman world. Various legal texts named as *kânunnâme*, *kânun mecmûası*, or *kânunnâme-i cedîd*, addressed different aspects of governmental order. Confronted with the scale of work to be done on these sources, I chose to focus on a single iteration of this legal genre, hoping to illustrate how such texts emerged, evolved, and expanded over time. Thus, in this study, I will concentrate on a *kânun mecmûası* from the last quarter of the seventeenth century by framing it within a literary genre that I will address as “legal compendium.”

Kânun mecmûası (legal compendium) stands as one of the most significant, yet understudied, sources of Ottoman legal history. Today, manuscript libraries around the world contain a large number of legal compendiums that were once produced and owned by the intellectuals and bureaucrats of the Ottoman Empire. Despite their abundance, researchers of Ottoman history have often overlooked these sources in favor of more standardized sources such as land registers (*tahrîr*), provincial *kânunnâmes*, and archival documents like *mühimme* records.

Legal compendiums bring together documents on various aspects of governmental order, including administration, land tenure, taxation, judicial procedure, and so on. Some compendiums remained as private collections of legal materials that their owners would utilize them for personal reference or for pure scholarship. However, in some cases, individually compiled compendiums entered wider circulation within scholarly networks, undergoing successive rounds of copying, annotation, and revision. Through this process, these compendiums gradually acquired the appearance of coherent, structured reference books. This coherence and wide circulation can

mislead modern researchers into assuming the existence of an original urtext for compendiums from which all other copies were derived, whether with minor or substantial changes. Focusing on a particular compendium, deconstructing it into its constituent parts and tracing its different copies reveals that the composition of the text was often an organic process of editing, commenting, and copying involving multiple hands over time. Rather than remaining static, these texts were living documents, continuously shaped by the interventions of their owners, copyists, and readers through revisions, insertions, and reorganization.

This thesis concentrates on a particular legal compendium from the late seventeenth century, a period of Ottoman history often characterized by transformation and change. Compiled by scholars and circulated across a geographically large area thanks to the expansion of scholarly networks, this compendium offers a unique lens into how compendiums functioned as a space for legal thinking and practice. This study delves into several interrelated questions: What exactly is a compendium, and how was it made? Who were the people involved in its creation? Does the formation of a compendium have anything to say about the intentions of its compiler? Does the act of copying merely reproduce texts, or does it reflect a deeper intellectual engagement? Do the subsequent alterations made during copying processes tell us about scholarly attitudes toward lawmaking? Does the process of compiling and copying bring a new relevance to the copied text even long after its original production? Can personal compendiums be considered as fecund sources for the study of Ottoman legal history? Through these questions, this thesis reconceives of the compendium as a legal genre in its own right that contributed to the formation of a distinct Ottoman legal culture.

Legal compendiums often functioned as a medium for the articulation of administrative regulations (i.e., matters of public law) and the principles underpinning them. They typically addressed topics such as land tenure, taxation, penal law, and various administrative procedures. Among these, land tenure was particularly central, as it intersected with nearly every other facet of governance. That is why a legal compendium whose major focus is on the principles of the *mîrî* system and transactions on such lands will be the focal point of this study. In order to better contextualize the development of the *mîrî* system and different phases of its systematization in legal compendiums, I will begin, in the following section, by offering a brief overview of the *mîrî* system's historical development, and the particularly critical juncture in which this specific legal compendium emerged. I will then return to the subject of the legal compendium more broadly, examining the *mecmûa* as a major literary genre of growing popularity during the seventeenth century, before moving on to a discussion of the *kânun mecmûası* as a significant, though hitherto

neglected, sub-genre.

1.1 Historical Background: Some Notes on Land Tenure

Ebussuud Efendi, who occupied the post of chief mufti for three decades during the second half of the sixteenth century, took crucial steps to systematize the prescriptions of what was known as the *mîrî* land regime. In his fatwas and fatwa-like short treatises, Ebussuud Efendi sought to establish a theoretical framework for the status of arable lands in Ottoman Anatolia and Rumelia based on the principles of Hanafi legal doctrine.¹ He secured the authority of the sultan in determining the legal status of conquered lands. According to his interpretation, lands in Anatolia and Rumelia were retained for the treasury (*beytûlmâl*) upon the conquest, making their status *mîrî*. As the custodian of the public treasury, the sultan, or the Ottoman government acting in his name, had the right to determine the principles regulating transactions on these lands.² The system found its best articulation in the introductions to the land surveys of Budin (Buda), Selanik (Thessaloniki), and Üsküp (Skopje), all prepared by Ebussuud Efendi.

The preamble (*mukaddime*) by Ebussuud Efendi attached to the land survey (*tahrîr*) of the districts (*livâ*) of Selanik and Üsküp during the reign of Selim II acknowledged that the status of the empire's lands had not been properly articulated in the previous census registers, misleading the usufruct holders (*mutasarrıf*) to regard the lands they were holding as tithe lands (*öşrî*, the kind of land that requires its holders paying one-tenth tax in kind), thus giving them the right to refuse paying the one-eighth tax in kind.³ To remedy this confusion, Ebussuud Efendi drew up a theoretical framework for the property regime governing the arable lands in Anatolia and Rumelia. After defining the concepts of *öşrî* and *harâcî* lands, Ebussuud

1. For Ebussuud's role in the articulation of the principles governing *mîrî* lands, see Colin Imber, *Ebu's-Su'ud: The Islamic Legal Tradition* (Edinburgh: Edinburgh University Press, 1997), 115–39; Halil İnalcık, "Islamization of Ottoman Laws on Land and Land Tax," in *Essays in Ottoman History* (Beyoğlu, Istanbul: Eren Yayıncılık, 1998), 155–173; Malissa Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire* (Bloomsbury Publishing, 2023), 31–48; Bayram Pehlivan, "Sultan, Reaya ve Hukuk: Klasik Dönem Osmanlı Devleti'nde Tarım Topraklarının Mülkiyeti Sorunu" (PhD Diss., Marmara Üniversitesi, 2023), 66–90.

2. Engin Deniz Akarlı, "The Ruler and Law Making in the Ottoman Empire," in *Law and Empire: Ideas, Practices, Actors*, ed. Jeroen Duindam et al. (Leiden: Brill, 2013), 100.

3. TKG.KK. TT.d. 196, Tapu ve Kadastro Genel Müdürlüğü Arşivleri (TKGM), fols. 3v-4v. For the published versions, see Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vol. 7 (Istanbul: Osmanlı Araştırmaları Vakfı Yayınları, 1994), 664–668; Ömer Lûtfi Barkan, *XV ve XVI'inci Asırlarda Osmanlı İmparatorluğunda Ziraî Ekonominin Hukukî ve Malî Esasları, Birinci Cilt: Kanunlar* (Istanbul: İstanbul Üniversitesi Edebiyat Fakültesi Türkiyat Enstitüsü, 1943), 297–300.

introduced another type of property regime, one which until that point was not as well known in the books of fiqh as the previous two. He dubbed this new property regime as the *arz-ı memleket*, or *arz-ı mîrî*, as it was known in Rumelia. While upon their conquest, the sole ownership (*rakabe*) of these lands was retained for the treasury (*beytûlmâl*), their usufruct rights were conditionally given to the peasants tilling the land as part of a lease contract.⁴

Ebussuud explained that holding *mîrî* lands required peasants to make two payments annually, one in kind and another in cash. The in-kind payment was called *öşr*, and it comprised some portion of the harvest, ranging from one-third to one-tenth based on the productivity of the land. This was different from the *öşr-i şer'î* collected from *öşrî* lands, which comprised a flat one-tenth of the harvest. The in-cash payment was called *resm-i çift*, and it was collected as a fixed amount of cash depending on the size of the arable field. These two respectively made the sum of *harâc-ı mukâseme* and *harâc-ı muvazzaf*.⁵

According to Ebussuud, since the usufruct holders did not have sole ownership, they could not undertake some transactions on these lands, including bequeathment, sale, endowment, and so on. Since the *mîrî* land was not considered as free-hold property, it was not bequeathed to legally established heirs. The only heir who could inherit the lands was the son, who could inherit only directly from his father. The mother could not transfer her usufruct rights. In the absence of a son, the land remained vacant. Anyone who wanted to acquire the usufruct rights over such a land could do so by making a payment, called *resm-i tapu*. According to Ebussuud's exposition, the women had no right to inherit the land of their deceased father. However, in the absence of brothers, they had the right of priority through preemption, which required the payment of *resm-i tapu*.⁶

Any transaction that resulted in the transfer of the land to a new holder by *resm-i tapu* was called *tefvîz*, thus distinguishing it from regular sale (*bey'c* and *şirâ*). Each such transaction required the permission of the *sâhib-i arz* or *sipâhî*, the deputy

4. TKG.KK. TT.d. 196, Tapu ve Kadastro Genel Müdürlüğü Arşivleri (TKGM), fols. 3v-4v. Bayram Pehlivan has recently shown that Ebussuud had differing views towards the nature of this contract. Namely, Ebussuud shifted his interpretation of the nature of the contract from that of gratuitous loan (*âriyet*) to voidable contract of tenancy (*icâre-i fâside*) towards the end of his life. See Pehlivan, "Sultan, Reaya ve Hukuk," 176–81.

5. TKG.KK. TT.d. 196, Tapu ve Kadastro Genel Müdürlüğü Arşivleri (TKGM), fols. 3v-4v.

6. The *Kânunname* of Sultan Süleyman did not elaborate on the rights of first refusal on vacant lands, since it was only the son who had the right of inherit; nobody else was deemed eligible, even upon offering to pay the *resm-i tapu*. In 975 (AD 1567-68), a new edict was issued, recognizing the daughter as having priority in claiming the land through payment of the *resm-i tapu*. Malissa Taylor, "Keeping Usufruct in the Family: Popular and Juridical Interpretations of Ottoman Land Tenure Law in Damascus," *Bulletin d'études orientales*, no. 61 (2012): 432, <https://doi.org/10.4000/beo.1010>; Pehlivan, "Sultan, Reaya ve Hukuk," 234–39. See also, TSMK B.347, fols. 142v-143r.

of the central government who oversaw the administration of these lands in return for some of their revenues. These deputies were granted this authority through an appointment certificate (*berât*) issued by the sultan. The transaction fee, called *resm-i tapu*, was assigned to the deputy as the major beneficiary of the revenues collected from the *mîrî* land. In a situation where the late usufruct holder left behind a daughter who applied to the deputy to reclaim the lands held by her late father, the deputy was expected to assign the daughter as the new holder on the condition that she paid the *resm-i tapu*.

Ebussuud's definition of the *mîrî* regime elevated several concepts to new prominence. The first was *tefvîz* (designation) or *ferâğ* (release), which referred to the transactions of transfer conducted for *mîrî* lands. These serve as the *mîrî* counterpart of *beyc* (regular sales transactions) within the sphere of private lands. The second one is *hakk-ı tapu*, which was more or less the *mîrî* counterpart of *şüfca*, referring to the right of first refusal. For example, the daughter had *hakk-ı tapu* upon the death of her father if she did not have a brother. In other words, she had the right to reclaim the vacant lands of her late father by paying *resm-i tapu* to the deputy.

Ebussuud Efendi systematized the prescriptions of land tenure using the language of sharia, marking the beginning of a new era in the legal order that would continue until the dissolution of the empire. Later jurists built upon the foundation laid down by Ebussuud Efendi, sometimes diverging from his interpretation and sometimes staying in line with him. In other words, systematization was an ongoing process that unfolded as new challenges relating to land tenure arose over time. In the following centuries, aspects of transactions on the *mîrî* lands, articulated as part of *tapu* principles, were a central issue that occupied the agenda of scholars. One major problem during later systematization was to expand on the rights of cultivation, namely, to determine the principles of *hakk-ı tapu* that defined the manner of eligibility in attaining the right of first refusal. Establishing the rights of *tapu*, which were different from regular inheritance rights explained in the books of *ferâiz*, was a major concern of the post-Ebussuud period.

The turn of the seventeenth century, a time of social and economic catastrophe, was a turning point in terms of regulations on *mîrî* lands. Tensions on both the eastern and the western fronts, accompanied by the eruption of the *celâlî* revolts, dominated the political scene and threatened the stability of agricultural production. A fiscal crisis ensued, with the low supply of arable lands in relation to the ever-increasing population driving peasant groups from their villages to urban spaces in search

of new opportunities.⁷ This situation made violence and uncertainty an inherent characteristic of rural Anatolia and Rumelia so that agricultural production was jeopardized.

In response, the empire’s lawmakers reconsidered the principles of *mîrî*, particularly those pertaining to the right of first refusal. To keep usufruct holders on the land, they sought to strengthen their ties to it by extending the right of first refusal to more heirs.⁸ And at this critical juncture, it was within the space of legal compendiums that these principles were discussed and elaborated. The compendium under scrutiny in this study deals precisely with this topic and various aspects of the property regime in *mîrî* lands. Its major focus is to systematize the principles governing the *mîrî* regime. It is out of this historical background that this legal compendium found its way onto the hands of numerous people, possibly exposed to notes, revisions, and interpolations on the way.

1.2 *Mecmûa*

The *mecmûa* is a distinctive literary genre characterized by the compilation of multiple texts within a single volume. It may consist of independently authored, standalone texts bound together for practical purposes. In such cases, it is possible to assess each constituent text on its own terms, especially if the texts were copied at different times and later assembled into a single codex. On the other hand, a *mecmûa* may be a more fluid compilation—an amalgamation of excerpts, marginalia, or dispersed notes—possibly sketched at different instances by one or more individuals. In this sense, it is a collective intellectual space, bringing together texts from diverse scholarly fields, organized around a common theme, or simply accumulated as miscellanies in an ad hoc fashion. In the latter case (i.e., miscellanies whose constituent texts do not unite under a single theme), it is often difficult to discern the underlying rationale for the compilation. Authorship also remains unknown and cannot be attributed to a single person, as the compilation might be the outcome of a collaborative work stretching over time.

The word *mecmûa* means “collection,” and it derives from the Arabic root *cemaʿa*, meaning “to collect” or “to gather.”⁹ Often, authors start their works with the

7. Oktay Özel, “The Reign of Violence: The Celalis c. 1550–1700,” in *The Ottoman World*, ed. Christine Woodhead (London: Routledge, 2011), 187.

8. Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire*, 45–46.

9. Mustafa İsmet Uzun, “Mecmua,” in *TDV İslam Ansiklopedisi* (TDV İslâm Araştırmaları Merkezi, 2003), accessed July 7, 2025, <https://islamansiklopedisi.org.tr/mecmua>.

phrase *kad cema^ctu*, or “I have collected.”¹⁰ In this case, the *mecmûa* may represent a coherently authored work like a proper book. In fact, many works can be seen as *mecmûa* in this sense as long as they compile pieces from diverse sources into a unified whole.¹¹ On the other hand, it is difficult to evaluate miscellanies as standalone works as they resemble draft books more than finished works. However, through repeated copying and refining, even these miscellanies might turn and evolve into polished, book-like texts.

Mecmûas are usually classified based on the literary genre of their constituent texts, such as *mecmûa-i eṣ^câr* (collection of poems), *mecmûa-i ahâdîs* (collection of hadiths), *mecmûa-i fıkhiyye* (collection of fiqh works), and *mecmûa-i fevâid* (collection of useful notes). Another significant form is the *mecmûa-i kavânîn*, or *kânun mecmûası*—collection of *kânuns*. It is also referred to as *risâle-i kânuniyye* or *kânunnâme*. Many examples of this genre appear especially in the post-sixteenth century period, presumably reflecting the changing dynamics of governance and the legal system.

In one of his talks, Cemal Kafadar described the seventeenth century as an age of *mecmûas* and *çelebîs*, emphasizing the rise of a new urban culture in response to shifting social realities, marked by the emergence of new social spaces (e.g., coffee-houses) and new human typologies. This, he argued, led to the development of a new literary form: the *mecmûa*.¹² While Kafadar focused on the period’s changing social dynamics, my focus shifts to a different aspect of this story: the rise of *mecmûas* as a medium for the articulation and production of legal knowledge. Nevertheless, we converge on the idea that the *mecmûa* was a newly emerging literary form, shaped by and responding to the new realities arising due to the changing dynamics of the seventeenth century.

1.3 *Kânun Mecmûası*

Studies in Ottoman *kânun* and *kânunnâme* are ample. However, the *kânun mecmûası* as a major literary and legal genre remains largely understudied.¹³ This lack of attention may be attributed to the early scholarly consensus that *kânun-*

10. For example, see Laleli 1263, fol. 1v.

11. Cemal Kafadar, “Sohbete Çelebi, Çelebiye Mecmûa...,” in *Mecmûa: Osmanlı Edebiyatının Kırkambarı*, ed. Hatice Aynur et al. (Istanbul: Turkuaz Yayınları, 2012), 46.

12. Ibid., 45–46.

13. For the most recent survey of the *kânunnâme* studies, see Linda T. Darling, “Kanun and Kanunname in Ottoman Historiography,” *Journal of the Ottoman and Turkish Studies Association* 9, no. 1 (2022): 151–177, <https://doi.org/10.2979/tur.2022.a876785>

nâmes were formal legal codes issued exclusively by reigning sultans, who held the sole authority to legislate. Nobody else other than the sultan had this special right, because law was central and sultanic. Any attempt to compile a *kânunnâme* outside the sultan's prerogative was deemed as a scholarly or practical endeavor serving only individual purposes and lacking official status. Nevertheless, scholars always recognized that such works existed, sometimes even stressing that studying *kânun* compilations prepared based on individual initiatives could contribute to a more refined understanding of the Ottoman legal system. However, they never treated these compilations as an independent genre within a broader narrative underlying a transformation in the legal mechanisms of the empire.

It appears that Ömer Lûtfî Barkan, more than anyone else, shaped our understanding of Ottoman *kânun*. His almost century-old publications still remain foundational on the taxonomy of Ottoman *kânun*, and his ideas remain influential, even dominant, among many scholars today. In his extensive publication of Ottoman *kânunnâmes*, Barkan makes a distinction between *defter* (register) and *kânun dergisi* (*kânun* compilation). The former, he says, refers to official registers of Ottoman *kânuns* (e.g., land surveys that have provincial *kânunnâmes* attached at the beginnings), whereas the latter denotes unofficial compilations of Ottoman *kânun*. In this sense, he uses the words *kânun dergisi*, *kânun mecmûası*, and *kânunname* synonymously.¹⁴

Barkan treats all compilations of Ottoman *kânun* as unofficial and individual initiatives aimed at describing different aspects of Ottoman customary law by drawing upon documents preserved in official repositories held by the Land Registry (*defterhâne*).¹⁵ However, he viewed these compilations as unreliable sources for tracking the development of the Ottoman legal system because they were non-systematic compilations that did not distinguish between laws that were still in force and those that had been abrogated (*mensûh*). In such compilations, official laws lost their original identities due to a multiplicity of copying, most of the time without references to the original source. He argued that their compilers were more concerned with documenting *kânun* than with its actual application.¹⁶

Barkan also adhered to a rigid dichotomy between customary (*örfî*) and religious (*şer'î*) law and asserted that the fluid and context-dependent nature of customary law resisted standardization and codification. *Kânun* was based on custom, and its constantly evolving nature did not allow it to be encoded into compilations.¹⁷ That is why Barkan viewed these compilations as the result of individual initiative, not as products of official effort to compile pieces of Ottoman *kânun* into universally

14. Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, xx–xxi.

15. Ibid., xxii–xxiv.

16. Ibid., xxvii.

17. Ibid., xxxiii–xxxiv.

applicable *kânun* compilations.

In response to Barkan, Halil İnalçık contended that some *kânun* compilations were indeed officially enacted lawbooks, sealed with the sultan's cipher (*tuğrâ*) and distributed to provincial officials with the explicit instruction to enforce their provisions. This was the case, particularly for imperial *kânunnâmes*, which compiled empire-wide applicable *kânuns* into general lawbooks. They were as official as the land surveys were. Copies of such compilations were sent to judges with orders to implement their provisions in court hearings.¹⁸ Judges and governors would consult the central authorities to verify whether the compilations they possessed were accurate and up to date. The chief scribe (*reîsülküttâb*) had the most current version of these imperial compilations, and he was the one who checked other compilations regarding their authenticity.¹⁹ İnalçık viewed the official versus unofficial debate as anachronistic and as a reflection of modern European notions of state and governance that do not make sense in the pre-nineteenth-century Ottoman context.²⁰

According to İnalçık, general imperial *kânunnâmes* were instruments of sultanic legislation, akin to decrees and other documents.²¹ He suggested viewing *kânun* compilations in the form of general imperial *kânunnâmes* as legislated documents, and he therefore called them law codes.²² These law codes were constantly interpolated on the margins of *kânunnâmes* and new copies were made accordingly. Sultans in the pre-seventeenth century were so actively involved in legislation that Sultan Süleyman earned the epithet *kânunî* (lawgiver). Each ruler, upon succession, reaffirmed or revised existing codes by issuing a new *kânunnâme*.²³ İnalçık regarded the lack of such law codes in the seventeenth century as stemming from the rise of sharia and its edging out of *kânun*. On this view, Ottoman sultans ceased to publish new *kânunnâmes* in the seventeenth century because sharia had come to dominate the

18. Halil İnalçık, "Suleiman the Lawgiver and Ottoman Law," in *The Ottoman Empire: Conquest, Organization and Economy* (London: Variorum Reprints, 1978), 116.

19. Halil İnalçık, "Kanunnâme," in *TDV İslam Ansiklopedisi* (TDV İslâm Araştırmaları Merkezi, 2001), accessed April 19, 2025, <https://islamansiklopedisi.org.tr/kanunname>.

20. It seems that İnalçık's stance has become the hegemonic view dominating the field of *kânunnâme* studies. Later scholars took İnalçık's views on this debate for granted and not a single criticism has yet been made, probably because his "Kanunname" entry in the *Encyclopedia of Islam* by Brill and later the *İslam Ansiklopedisi* by the Türkiye Diyanet Vakfı became the reference texts. Both entries are identical, except for few manuscript references. See Uriel Heyd, *Studies in Old Ottoman Criminal Law*, ed. V. L. Ménage (Oxford: Clarendon Press, 1973), 172–73; Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vol. 1 (Istanbul: Fey Vakfı Yayınları, 1992), 100; Darling, "Kanun and Kanunname," 160.

21. "General *kânunnâme*" and "imperial *kânunnâme*" are terms coined by Halil İnalçık. These signify those legal compendiums that bring together administrative regulations on taxation, criminal law, and various aspects of administration. See İnalçık, "Kanunnâme."

22. İnalçık, "Suleiman the Lawgiver and Ottoman Law," 106.

23. *Ibid.*, 138.

field of legislation, even in the matters that hitherto had been regulated by sultanic legislation.

Douglas Howard proceeded along similar lines to İnalçık concerning the legislative roles of sultans in publishing law codes. He further asserted that the seventeenth-century private compilations of Ottoman *kânun* (e.g., *Telhîsu'l-beyân* by Hezarfen Hüseyin Efendi) were not only unofficial attempts but also belonged more to the mirror for princes (*nasîhatnâme*) genre.²⁴ They were not *kânunnâmes* in the sense that they determined legal affairs. In other words, they were not meant as legal documents. Confusing such works with real *kânunnâmes*, Howard warned, could lead to serious problems in the understanding of classical Ottoman law.²⁵

Ahmed Akgündüz has probably made the largest contribution to the field of *kânunnâme* studies in terms of making primary *kânun* sources accessible for secondary use. His approach towards *kânunnâmes* and their functioning within the Ottoman legal system seems to rely upon the findings of İnalçık, and so is grounded in a highly centralized, patrimonial understanding of Ottoman law. According to Akgündüz, sultans were the ultimate source of law. Thus, all valid *kânunnâmes* were either published by the sultan through his chancellor or drafted by state officials under his directive. The lack of such sources after the sixteenth century is explained by the rise of other genres: *lâyiha* and *risâle*.²⁶

Akgündüz organized his monumental *Osmanlı Kanunnâmeleri* chronologically by the reigns of sultans, reinforcing the notion that *kânun* emanated exclusively from the sovereign. However, this assumption occasionally led him to factual mistakes. For example, he attributes a certain collection of decrees addressed to provincial officials to Sultan Ahmed I without justification.²⁷ In another case, he identifies a legal text as the *kânunnâme* of Sultan Ahmed III based solely on a scribal error in the date (1117 instead of 1017) stated in the title. Akgündüz assumed that it was the *kânunnâme* of Ahmed III, only depending on the fact that 1117 corresponded to the reign of Ahmed III.²⁸ His strictly sultan-oriented view of *kânunnâmes* led

24. Douglas A. Howard, "Ottoman Administration and the Tîmâr System: Şûret-i Kânûnnâme-i 'Osmânî Berây-i Tîmâr Dâden," *Journal of Turkish Studies* 20 (1996): 50.

25. Douglas A. Howard, "Historical Scholarship and the Classical Ottoman Kânunnâmes," *Archivum Ottomanicum*, no. 14 (1996): 82–84.

26. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 261.

27. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vol. 9 (Istanbul: Osmanlı Araştırmaları Vakfı Yayınları, 1996), 491–92. Akgündüz mentions three *kânunnâmes* that he thinks were published by Ahmed I, but none of these bear signs pointing to this sultan. And one was even recorded as prepared by Ahmed b. Ömer during his tenure as a scribe in the court of Gelibolu in the year AH 1082 (AD 1672), some sixty years after the end of Ahmed I's reign. For this, see Fatih 3507, fol. 78v.

28. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 97. For the compendiums mentioning this date as 1017, see Manisa 5819, fol. 1v.; Ayasofya 2894, fol. 13r; Oriental Institute R.3, fol. 1v; Laleli 1263, fol. 97v.

him to invent *kânun* compilations for sultans even when they did not have such compilations. Despite these issues, Akgündüz rightly emphasizes the value of *kânun* compilations as crucial repositories of legal materials, sometimes preserving imperial *kânunnâmes* that are otherwise not known to us.²⁹

The traditional scholarship, as discussed based on the writings of Barkan, İnalcık, Howard, and Akgündüz, deemed *kânunnâme* as a sultanic way of legislation. They did not give credit to non-sultanic agents, such as members of bureaucracy at multiple levels, as contributors to the establishment of the legal system. Rather, they viewed disappearance of *kânunnâme* legislation as reflecting the demise of *kânun* in the seventeenth century onward. This approach no longer suffices towards a refined understanding of the post-seventeenth century institutions of the empire, as recently discussed by the contemporary scholarship.

Başak Tuğ is probably among the pioneers who have critiqued the views of these earlier scholars. She challenges the notion that *kânun* was in a period of decay following the turn of the seventeenth century.³⁰ According to her, the traditional historiography's perception of the dichotomous relationship between *kânun* and sharia, with the latter winning out and supplanting the former, is no longer a meaningful way of viewing Ottoman legal history. *Kânun* was still prevalent during the seventeenth and eighteenth centuries, contrary to mainstream arguments about its decay.³¹

What made the seventeenth and eighteenth centuries special, in her view, was the transformation of *kânun* into the common language of politics and governance. It was no longer a field reserved for sultans. So, the lack of imperial *kânunnâmes* during this century should be interpreted as an outcome of an institutional change. The promulgation of *kânunnâmes* during the fifteenth and sixteenth centuries served to standardize legal and administrative practices to establish a universal, uniform, and cohesive system in the provinces and to achieve legal orthodoxy vis-à-vis local power holders. Changing power dynamics after the sixteenth century resulted in the emergence of *kânun* in a more fluid way, not in the form of fixed codifications, but as diffused into politico-legal culture.³² *Kânun* was left flexible, which helped oligarchic power elites establish themselves amid the changing economic and social conditions of the day. Mustafa II's decree prohibiting referencing to *kânun* at the end of decrees meant to leverage the flexibility of sharia as a means of reestablishing the sultan's authority over these elites. It was not meant for legal practice. As

29. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 17. For an inventory list of *kânun* compilations accessed by Akgündüz, see *ibid.*, 17–41

30. Başak Tuğ, *Politics of Honor in Ottoman Anatolia: Sexual Violence and Socio-Legal Surveillance in the Eighteenth Century* (Leiden: Brill, 2017), 22.

31. *Ibid.*, 24.

32. *Ibid.*, 56.

a revisionist sultan seeking to restore his absolutist power, Mustafa II sought to curry favor with the ulama and to use sharia as a rhetoric of power in his project to empower himself vis-à-vis the grand vizier.

Tuğ conceptualizes *kânun* as a cumulative legal practice rooted in the imperial archives kept by state offices. There was not one and only one statement of law, represented by a single text; there may have been many.³³ The standardization and codification of statutes applicable across the empire was a sixteenth century reality, whereas it ceased to operate under the constantly changing configurations of the seventeenth and eighteenth centuries. So, there was not a static framework for the legal order solidified and universalized under codified regulations. *Kanun* forced the ruling elite to constantly reconfigure and reestablish its relations with provincial power holders.³⁴

Most recently, Hüseyin Yılmaz has suggested that *kânun* consciousness took a new form during the seventeenth century, one that was unofficial and based on personal prerogatives. The new genre of law books (i.e., private *kânun* compilations) emerged outside the office of the chancellor due to the slowing pace of formal *kânun*-making, which failed to meet the rising demand from below.³⁵ Private *kânun* compilations of the seventeenth century, he says, aimed to reassert the rule of Ottoman *kânun*, which, according to the compilers, was on the verge of being forgotten and manipulated by unconscious rulers. The rise of private compilations, Yılmaz contends, reflected the constitutional tendencies of state officials who, through compiling legal documents of various sorts, discussing them, and commenting upon them, dictated the principals of right government.³⁶

Scholars such as Tuğ and Yılmaz have shown that we can no longer stay stick to the traditional historiography regarding the place of *kânun* in the governance of the Empire after the sixteenth century. Given these insights, it no longer makes sense to view *kânun* in a constant process of decay due to the rise of sharia or the empowerment of jurists' law.³⁷ The post-sixteenth century exhibited different dynamics from the previous centuries as a result of the constitutional reconfiguration of the empire. The limitation of royal authority and the expansion of the political nation characterized the period in question, which in turn influenced the legal dynamics

33. Tuğ, *Politics of Honor in Ottoman Anatolia*, 69–70.

34. Ibid., 70–71.

35. Hüseyin Yılmaz, “Law and State in Ottoman Political Thought,” in *Histories of Political Thought in the Ottoman World*, ed. Nedim Nomer and Kaya Şahin (Oxford: Oxford University Press, 2024), 26–27.

36. Ibid., 28–29.

37. Tezcan advocated for the idea that jurists' law became the sole articulation of law during the seventeenth century, covering the fields of both private and public law. See Baki Tezcan, *The Second Ottoman Empire: Political and Social Transformation in the Early Modern World* (New York: Cambridge University Press, 2010), 19–45.

of the empire.³⁸ A patrimonial perception of Ottoman political culture is no longer tenable, because many more people were thinking of politics. *Kânun* was no longer defined by the sultans' discretionary powers and monopoly over legislation, it turned into the collective property of those who took part in politics.

In my view, the rise of legal compendiums should be viewed within the context of this emerging political environment in the post-sixteenth century. Scholar-bureaucrats took an active role in assembling various sorts of imperial documents into private collections, viewing *kânun* as central to the functioning of imperial politics and governance. They did not push it back to turn sharia into the only law regulating imperial affairs. They compiled *kânun* documents and discussed their clauses by commentaries in the form of fatwas. The fatwa was not merely a way of transmitting the provisions of *kânun* to the public, it was a way of interpreting and expanding upon *kânun*. Scholars incorporated *kânun* into their broader world of what had been primarily scriptural sources.

The rise of legal compendiums reflects what we might call a *kânun* consciousness that established itself within the ruling elite. It was not a nostalgic idealization of a past regime due to a deterioration of the ideal form of administration.³⁹ It referred to a practical legal awareness grounded in ongoing administrative needs. In other words, scholars could not ignore *kânun* when dealing with administrative issues. Viewing the rise of legal compendiums within this framework can help respond to a crucial question that occupied the agenda of historians, namely, why the post-sixteenth century sultans did not issue new *kânunnâmes*.

The question of the disappearance of sultan-issued *kânunnâme* after the sixteenth century is one that can be addressed in light of the contemporaneous rise of legal compendiums. In the seventeenth century, the sultan, or the central government acting in his name, was not the sole arbiter of law. *Kânunnâme* was subsumed by *kânun mecmûası*, thus legal compendium, in the hands of members of bureaucracy. Legal compendiums were glossed on, copied, and revised by these people to sustain the process of lawmaking as a collective activity. Therefore, legal compendiums were a major platform of lawmaking, or they are simply the lens through which we today can access the functioning of the legal system.

In this study, I treat *kânunnâme* and *kânun mecmûası* as analytically synonymous. Both refer to compilatory texts that gather existing legal materials into new, cohesive compositions. This is my justification behind adopting the term “legal compendium”

38. Tezcan, *The Second Ottoman Empire*, 53.

39. For the use of this concept in rather a traditional sense, see Cornell H. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire: The Historian Mustafa Ali (1541-1600)* (Princeton University Press, 2014), 191–200.

to describe this genre. The nature of legal compendiums varied across time. The major characteristic of the post-sixteenth-century examples is their integration of fatwas alongside *kânun* provisions. We do not know whether the primary agents referred to these compendiums as *kânunnâmes*. However, we do know that later generations approached these works as *kânunnâmes*, especially as these works were repeatedly copied and circulated within scholarly networks.

1.4 Sources and Methods

This study depends primarily on my research conducted on legal compendiums preserved in manuscript libraries across the world. For the purposes of this study, I have focused mainly on three copies of a legal compendium from the last quarter of the seventeenth century. These are the Manisa, Sarajevo, and Istanbul copies, which I will examine in detail in the following chapters.⁴⁰ In addition to these, I have identified five other copies: Beyazıt 4789 (fols. 1-47), Kılıç Ali Paşa 491 (fols. 216-236), Ayasofya 2894 (fols. 13-61), Esad Efendi 851 (fols. 54-68), and Yazma Bağışlar 3562 (fols. 1-46). There are likely more copies. However, identifying them requires going through all miscellanies in library catalogues, as this legal compendium is usually found under entries named *mecmûa*, *kânun mecmûası*, and *kânunnâme*.

Referring to these manuscripts as “copies of each other” is perhaps incorrect, as none of them are identical. Each one exhibits distinctive features. For example, the Yazma Bağışlar copy contains a broader set of documents than the one in the Manisa copy, which I analyze in Chapter 2. It incorporates *kânun* provisions prepared by Ankaravi Mehmed Efendi that are not found in any of the other copies.⁴¹ Likewise, the Beyazıt copy includes fatwas issued by Ali b. Mehmed, the mufti of Silistre (likely because he owned the copy), none of which appear in the other copies.⁴² Although my analysis draws on the Manisa, Sarajevo, and Istanbul copies, I have consulted the other copies when necessary for the sake of comparison.

One of the main challenges of working with historical manuscripts is the difficulty of contextualizing all available sources within a concise narrative, especially within the scope of a master’s thesis. This is the reason behind my decision to focus on three copies of a legal compendium from the last quarter of the seventeenth century. I acknowledge the risks of making generalizations based solely on these

40. These are, respectively, Manisa 5819, fols. 1-15; Oriental Institute R.3, fols. 1-73; and Laleli 1263, fols. 97-159.

41. Yazma Bağışlar 3562, fol. 42r.

42. Beyazıt 4789, fols. 48-49.

three manuscripts. My aim, however, is to portray a condensed image of the world of legal compendiums through the lens of a particular story that unfolds over the course of three decades. It is like a snapshot that, perhaps unusually, illustrates a coherent narrative. However, I am still aware that there might be different cases that offer a more complicated and ambiguous picture. I believe that it is through this three-folded narrative that we can begin to enter the world of legal compendiums.

Another challenge in working with legal compendiums lies in the lack of copy dates. When the date of the copy is not explicitly recorded, it is often difficult to discern it. One way of identifying copy dates is to examine the broader codex to see whether any of its constituent texts are dated, or whether the owner left behind any personal notes. Reconstructing the textual history and taxonomy of a manuscript requires examining in detail its paratextual elements, including, but not limited to, colophons, ownership seals, endowment records, and marginal annotations that record significant events such as births, appointments, and deaths.

Recent decades have witnessed a growing body of research that has highlighted the importance of paratextual elements in the study of Ottoman manuscripts. These studies demonstrate how such elements serve as valuable instruments for constructing the genealogy of a text and the intellectual worlds of its users. One such study was made by Gottfried Hagen, who examined several draft copies (*müsvedde*) of Katip Çelebi's *Cihannümâ*.⁴³ Focusing on marginal annotations written by the author himself, namely, those identified as *minhu* (i.e., belonging to him the author), Hagen demonstrated that these notes functioned as modern footnotes, offering revisions and commentary by the author himself. His study was a glimpse into the dynamic nature of manuscript production, as exemplified in the work of a seventeenth-century Ottoman intellectual.

In a similar vein, a number of researchers have explored manuscripts once owned by Carullah Efendi, with a particular focus on the marginalia he left in books covering diverse genres, including jurisprudence, Sufism, and linguistics.⁴⁴ They have shown the usefulness of such notes for various ends, in building a biography of Carullah Efendi and in reconstructing his intellectual mind through the notes he wrote as reflections on the contents of the books.

Building upon these approaches, and in a similar line as Hagen, A. Tunç Şen has studied *minhu* records across various copies of *Netâyicu'l-fünûn* by Nev'î Efendi.⁴⁵

43. Gottfried Hagen, "El Yazmasının Kenarındaki Hayat: Cihânnümâ Müellif Hatları ve Coğrafyacının Atölyesine Bir Bakış," in *Doğumunun 400. Yıl Dönümünde Kâtip Çelebi*, ed. Bekir Karlığa and Mustafa Kaçar (Ankara: T.C. Kültür ve Turizm Bakanlığı, 2009), 173–187.

44. Berat Açı, ed., *Osmanlı Kitap Kültürü: Cârullah Efendi Kütüphanesi ve Derkenar Notları* (Ankara: Nobel, 2015).

45. A. Tunç Şen, "Authoring and Publishing in the Age of Manuscripts: The Columbia University

He observes that while some of these notes appeared consistently in multiple copies, others did not. In other words, some notes were inauthentically attributed to the author. His work has shown that textual production in “the age of non-mechanical production” was a collaborative process—one that involved authorial as well as non-authorial agents, including readers, copyists, and students. As such, books in manuscript culture can be treated as works in progress, comprising the contributions of authors, readers, and scribes who adopted their notes in the form of marginalia.

Sami Arslan has contributed further to the literature by focusing on yet another paratextual element: copyist notes (*istinsah kayıtları*), found on the colophon page.⁴⁶ In his book, Arslan argues that copyists were not mechanical transmitters of texts but active agents in their production. His study shows that copyists intervened in authorial works to such an extent that the resulting work could no longer be regarded as a faithful reproduction of the original. He suggests viewing copyists as co-authors, and copy notes as functionally equivalent to authorial colophons (*ferâğ kayıtları*). Thus, books in manuscript culture were cumulative products, layered with contributions from authors, copyists, and readers over time.

Inspired by these studies, this thesis approaches paratextual elements as central to understanding the text itself. Rather than treating marginalia, ownership notes, and copyist records as secondary, I consider them as an inalienable part of the compendium in question. By utilizing these notes, I aim to reconstruct the textual genealogy of the legal compendium under study. I will particularly dedicate Chapter 2 to a deconstruction of the compendium’s contents, tracing how discrete copies of Ottoman *kânun* documents were eventually compiled into a single volume. Chapter 3 examines the Sarajevo copy, focusing on the marginal annotations dispersed throughout the manuscript, along with ownership statements and multiple other notes that inform us of the compendium’s use and transmission. Chapter 4 shows how these marginal notes were later incorporated into the main body of the text, thus culminating in the formation of a new version of the compendium.

1.5 Objectives and Structure of the Thesis

This thesis aims at delineating the process of compendium-making, with a focus on three successive and interrelated stages: formation, expansion, and consolidation.

Copy of an Ottoman Compendium of Sciences with Marginal Glossing,” *Philological Encounters* 5, nos. 3-4 (2020): 353–377, <https://doi.org/10.1163/24519197-BJA10008>.

46. Sami Arslan, *Osmanlı’da Bilginin Dolaşımı: Bilgiyi İstinsahla Çoğaltmak İznik - Süleymaniye Medreseleri Dönemi* (Istanbul: Ketebe Kitap, 2020).

Each stage is executed by a distinct agent, respectively the author-compiler, glossator, and copyist. To discuss each of these stages, I will employ three copies of a legal compendium made during the last quarter of the seventeenth century. Though all three copies retain the urtext, each of them has certain unique characteristics, especially the second and third copies. Departing from the physical characteristics of these copies, I will ask several questions regarding the implementation of *kânun* and instrumentalization of fatwas as legal statements.

In Chapter 2, I trace the process of forming a legal compendium by examining the Manisa copy. In this chapter, I will address several questions, including how a legal compendium was made, what its constituent chapters are, who the people involved in this process were, and what motivated them to compile *kânun* documents into a cohesive manual. I will deconstruct the contents of the Manisa copy to find how individual copies of *kânun* documents once circulating within personal collections of scholars eventually made their way into this compendium. I will discuss the act of compiling as a component of authorship. Thus, I will refer to the agents involved in the first stage of compilation as “author-compilers.” The second part of the chapter will be dedicated to the question of *kânun*’s decline during the seventeenth century. I will discuss whether the rise of legal compendiums that compiled documents on *kânun* along with fatwas might lead us to an alternative view of legal culture in the seventeenth century. Noting the institutional transformation of the chancellor’s role in this period and the parallel rise of networks of scholars, I suggest that the chancellor’s role of compiling *kânun* trickled down to a larger group of bureaucrats.

Chapter 3 is dedicated to the different forms a legal compendium could take after its formation. As one of the compendium’s copies, the Sarajevo copy will be at the center of the discussion. This copy erects a new layer upon the structure laid down by the author-compiler of the Manisa copy discussed in Chapter 2 through marginal annotations dispersed around the main text. By merging hundreds of marginal notes, including the fatwas of muftis from multiple geographic regions and excerpts from *kânunnâmes*, the Sarajevo copy is a distinctive compilation of *kânuns* and fatwas. The glossator of this compendium has gone through various legal compendiums to bring together fatwas issued by both chief and provincial muftis and jotted them down in the margins of the Sarajevo copy. Akin to the *hâşiye* tradition, writing fatwas in the margins of a legal compendium served to expand upon the knowledge found within Ottoman *kânun*.

Chapter 4 will cover yet another copy of the compendium, the Istanbul copy. However, it is now more difficult to describe it as a copy of it because the entire text appears to have been revised. The copyist regarded both the main text and marginal notes of copies like those discussed in the previous chapters as part of a unified com-

position, so he integrated the Sarajevo copy's marginal notes into the main text, thus coming up with yet another distinctive compendium. By taking this copy as a reference point, this chapter asks whether these compendiums possessed an official status, or as Barkan's reading, remained the informal products of individual initiative, and whether the incorporation of fatwas into a compilation of *kânuns* offers any insights into the nature and authority of Ottoman fatwas. Reflecting upon these questions, the chapter argues that the copying of fatwas alongside *kânuns* suggests that these fatwas formed part of the official doctrine on land law.

The compiler of the Manisa copy acted as an author while bringing together individual copies of official documents. The commentator of the Sarajevo copy engaged in meticulous research, integrating provincial mufti fatwas hitherto scattered in personal collections, *kânunnâme* excerpts, and references from land registers into the margins. The copyist of the Istanbul copy undertook an innovative task by treating marginalia as intrinsic to the main text, thereby reshaping the compendium into a coherent whole. By analyzing the three stages of formation (Manisa), expansion (Sarajevo), and consolidation (Istanbul), this study illuminates the compendium's role as a dynamic legal genre in the seventeenth century. It contributes to scholarship by emphasizing the legal compendium as a site of intellectual exchange and a crucial medium for the articulation of Ottoman politico-legal culture.

2. THE MAKING OF A *MECMÛA*: THE CASE OF MANİSA 5819

2.1 Introduction

Kânunnâmes are generally thought of as a body of Ottoman laws enacted by the reigning sultan to regulate matters of public law. This is the approach that Ahmed Akgündüz follows in his extensive, multi-volume publication on the Ottoman *kânunnâmes*.¹ Though he acknowledges the existence of certain *kânunnâmes* composed by individuals either by commission from the court or via individual initiative, he treats *kânunnâmes* from a sultan-centered perspective; for him, *kânunnâmes* were, as a rule, produced by or on behalf of the sultans. In this chapter, diverging from this sultan-centered patrimonial narrative, I argue that the seventeenth-century witnessed a growing number of scholars who compiled edicts and administrative laws into unique compositions. These scholars' personal preferences and choices about what to include and what to exclude shaped the compilations they produced, making the process of collecting Ottoman *kânun* texts in one place as much an act of authorship as of compilation. This went hand in hand with an increasing consciousness on the part of these "author-compilers" of law not as sultanic decree but instead as the outcome of this process of author-compilation, thus shifting the locus of *kânun* from the sultan to the scholarly establishment.

The *kânunnâme*, also referred to as *kânun mecmûası*, *mecmûa-i kavânîn*, or *risâle-i kânuniyye*, constitutes a distinct literary and legal genre characterized by the compilation of multiple legal texts within a single volume. While the term *kânun mecmûası* literally means a collection of sultanic laws, the content of such *mecmûas* often extends beyond this narrow definition, encompassing a wide array of documents, from sultanic laws and legal opinions to decrees and excerpts from provincial *kânunnâmes*. This broader content is particularly pronounced in post-seventeenth-century examples, one of which—the manuscript Manisa 5819 and its variants—stands at the

1. See the work of Akgündüz. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*.

center of this research. I will call this textual genre as “legal compendiums”—of the texts variously referred to as *kânunnâme*, *kânun mecmûası*, *risâle-i kânuniyye*, and *mecmûa-i kavânîn*—to emphasize the genre’s inclusive nature and the diverse types of documents such compendiums bring together.

The first part of this chapter is devoted to exploring the definitions of *kânun* and *kânunnâme* along with their multiple meanings, with the aim of arriving at a more comprehensive understanding of the term *kânunnâme*, or *kânun mecmûası* as a legal compendium. The next section will examine the formation of a particular seventeenth-century legal compendium that has several copies in manuscript libraries. This part will focus on reconstructing the contents of the compendium in order to understand how individual copies of Ottoman *kânun*, circulating within a highly complex scholarly network, were compiled alongside other forms of legal texts.

The last section will investigate the identity of the author-compilers and the transmission of the knowledge of *kânun* from chancery officials to members of the scholarly establishment. I will provide a brief overview of the rise of scholars as an inalienable part of the Ottoman bureaucracy during the fifteenth and sixteenth centuries. I will then turn to the role of the office of chancery in the emergence of *kânun* as a body of regulations, textually available in the compendiums. I will stress the correlation between the chancellor’s shifting role from that of a central figure highly influential in the central bureaucracy to that of the master of protocols and the rise of an increasingly bureaucratic scholarly institution. Subsequently, I will devote some space to exploring the interactions between chancellors as the head of scribal bureaucracy and scholars during the seventeenth century, focusing specifically on the transmission of the knowledge of *kânun* to scholarly circles. This section aims to better contextualize the formation of legal compendiums in this period, emphasizing their direct reliance on the accumulated knowledge of legal materials of various sorts.

2.2 What Is a *Kânun Mecmûası*?

2.2.1 *Kânun*

Kânun is viewed as one of the three fundamental principles of the Ottoman legal tradition, the other two being custom and sharia.² Customs were negotiable between

2. For a brief survey of the three constitutive elements of the Ottoman legal tradition, see H. Yilmaz, “Law and State in Ottoman Political Thought,” 18–21.

the state on the one hand and guilds, janissaries, and so on, on the other hand. They were adaptable to the day, and they signified the currently applied practices whether codified in written law or not. When the locally applied customs were officially registered, they gained the status of *kânun*.³ *Kânun* derived its authority from religion, tradition, and the discretion of a ruler. While *kânun*, as the Arabic derivative of the Greek *kanon*, was introduced into the Muslim world, following the conquest of former Roman lands, as a term defining land taxes, the term did not remain limited to the fiscal sphere. It came to signify, in a broader sense, any sultanic or governmental legislation made to regulate the state order, thus mainly concerning the topics of public law, including taxation, penal law, and state organization.⁴

The development of *kânun* as a legal institution relating mostly to administrative practices was concurrent with introduction of the Turko-Mongolic tradition of statecraft into the Islamicate world. Following the Mongol invasions, the idea of *kânun*, as a field of sultanic lawmaking pertaining to public affairs, strengthened in Muslim polities across Central Asia, India, Timurid dominions, and the Ottoman Empire, with rulers issuing decrees on state organization, military affairs, land-tenure, taxation, and penal law.⁵ Tursun Bey, a fifteenth-century Ottoman intellectual and statesman, explained the necessity of having an institution of lawmaking under the sultanic authority, calling this as *siyâset-i sultânî*, *yasag-ı pâdişâhî*, or *örf*.⁶ The crystallization of an all-encompassing body of rules and practices, recognized as a legitimate source of law by sharia, thus happened following the introduction of Turkic statecraft to the Muslim political world.⁷

Islamic law, or sharia, acknowledged political authorities' rights to elaborate on the principles regulating civic and political spheres based on the principle of *maslaha* which enabled rulers making binding laws that did not directly derive from the revealed knowledge. This principle granted rulers legitimacy in imposing legal prescriptions on their own accord in pursuit of the public interest.⁸ In this respect,

3. Akarlı, "The Ruler and Law Making in the Ottoman Empire," 101–3.

4. Halil İnalcık et al., "Kânûn," in *Encyclopaedia of Islam New Edition Online (EI-2 English)*, ed. P. Bearman (Brill, 2012), accessed May 12, 2024, https://doi.org/10.1163/1573-3912_islam_COM_0439.

5. Ibid.

6. Halil İnalcık, "Şerî'at ve Kanun, Din ve Devlet," in *Osmanlı'da Devlet, Hukuk, Adâlet*, 2nd (Eren Yayıncılık, 2005), 42–43.

7. Halil İnalcık, "Türk Devletlerinde Devlet Kanunu Geleneği," in *Osmanlı'da Devlet, Hukuk, Adâlet*, 2nd (Eren Yayıncılık, 2005), 28; Halil İnalcık, "Osmanlı Hukukuna Giriş: Örfi-Sultani Hukuk ve Fatih'in Kanunları," *Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi* 13, no. 2 (1958): 104–5. For a counter-argument raised by Imber in response to İnalcık's view, see Colin Imber, "How Islamic was Ottoman Law?," in *Islam Papers: Ottoman Thought, Ethics, Law, Philosophy-Kalam*, ed. Seyfi Kenan (İstanbul: İSAM Yayınları, 2013), 77–90. In this paper, Imber argues that *kânun* was not rooted in pre-Islamic state practices of Turkic peoples, it was the heritage of pre-Ottoman Greek and Roman taxation system prevalent in Anatolia and Balkans.

8. Engin Deniz Akarlı, "Maslaha from "Common Good" to "Raison d'État" in the Experience

rulers' administrative acts were considered morally legitimate and legally binding in the eyes of the public so long as they promoted the general well-being of the society. In his compendium of Ottoman administrative practices, Hezarfen Hüseyin Efendi viewed the *kânuns* of Ottoman sultans as superior to the *kânuns* of other rulers because they were made in compromise with sharia, rationality, reason, experience, and wisdom.⁹

The Ottomans used the word *kânun* to define several meanings: (1) legality in general, (2) a unique institution concerning the sultan's right to make regulations for public order, (3) a decree or regulation promulgated by the sultan, (4) or a collection of regulations enacted by the ruler relating to a certain matter or group.¹⁰ According to the first meaning, *kânun* was the equivalent of "the law," whereas, based on the second meaning, it referred to a particular notion of lawmaking contained within sultanic authority. The third and fourth meanings were basically the products—firmans, etc.—of the ruler's discretionary power to command in matters concerning public order. The last two are particularly important because it is through the collective instrumentalization of these two meanings of *kânun* that legal compendiums came into being.

The most common type of document issued by the Imperial Council (*dîvân-ı hümayûn*) in the name of the Ottoman sultan was the firman. This was an imperial decree prepared by the chancery, sealed with sultan's *tuğrâ*, and addressed to specific individuals like governors, judges, and people from the *reâyâ* class concerning specific issues in administrative, financial, or penal fields. As a form of legal statement, *kânun* was also prepared by the office of chancellor, which would write down a decree in the form of a firman or *berât* and present it to the grand vizier to be confirmed with the word *sahh*. With the grand vizier's confirmation, decree received the *hatt* of the sultan and took on the form of *kânun*.¹¹ A firman was always time-specific and space-limited, whereas *kânun* was not necessarily so. Different

of Istanbul Artisans, 1730-1840," in Hoca, *‘Allame, Puits de Science: Essays in Honor of Kemal H. Karpat*, ed. Kaan Durukan, Robert W. Zens, and Akile Zorlu-Durukan (Istanbul: The Isis Press, 2010), 65–67. For an inspiring view of Islamic public law considering the relationship between the ruled and the ruler as part of the relationship of *vilâye*, bestowing upon the ruler the right to act in accordance with the well-being of the ruled and exercise his lawful discretion to further their interests, see Mohammad Fadel, "Maşlaḥa as "Flourishing" and Its Place in Sunnī Political Thought," *Journal of Islamic Ethics*, ahead of print, 2022, 1–31, <https://doi.org/10.1163/24685542-12340085>; Mohammad Fadel, "Islamic Law Reform: Between Reinterpretation and Democracy," *Yearbook of Islamic and Middle Eastern Law Online* (Leiden, The Netherlands) 18, no. 1 (2017): 44–90, https://doi.org/10.1163/22112987_01801005. For a survey of Muslim jurists' views on the ideal of *maslaḥa*, see Felicitas Opwis, "Maşlaḥa in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12, no. 2 (2005): 182–223.

9. Hezarfen Hüseyin Efendi, *Telhîsü'l-beyân fî Kavânîn-i Âl-i Osmân*, ed. Sevim İlğürel (Ankara: Türk Tarih Kurumu, 1998), 37.

10. Heyd, *Studies in Old Ottoman Criminal Law*, 167.

11. İnalcık et al., "Kânûn."

from a firman, *kânun* did not necessarily pertain to a specific event or a person. It signified the principal regulations to be permanently applied forever, unless superseded by a new *kânun*. In this respect, *kânun* might refer to an abstracted form of a firman—that is, with spatial and time-related details being eliminated.¹² Thus, *kânun* was sometimes made by way of stripping a specific decree of its contextual details, thereby turning it into a general statement.

2.2.2 *Kânunnâme* as Legal Compendium

Having provided a brief survey of *kânun* with its several meanings, I now turn to explain what *kânunnâme* is and how it differs from *kânun*. While *kânun* and *kânunname* were used synonymously in some cases, *kânunnâme* did have a larger connotation in terms of its content. *Kânunnâme* may signify a sultanic decree in terms of a piece of legislation addressing a specific subject, or a specific group. In this respect, it looks like a single edict, regulating the rules governing a certain issue (e.g., the *kânunnâme-i sultânî berâ-yı tapu-yı zemîn* regarding the rules of transaction on *mîrî* lands).¹³ A typical type of *kânunnâme* was the provincial *kânunnâme* prepared during the cadastral survey of a region, establishing the principal rules to be applied there, mostly relating to taxation, but also covering penal and administrative laws. Attached to the introduction of the land register (*defter*), a provincial *kânunnâme* was prepared by the superintendent (*ahır emînî*) overseeing the surveying process and mediating negotiations between central and provincial agents.¹⁴

Alongside its meaning as a single decree and a body of regulations attached to the beginning of a land survey, *kânunnâme*, in the sense of a legal compendium, meant a collection of multiple legal genres, composed by people from scholarly and bureaucratic circles. In this regard, it was synonymous with *mecmûa-i kavânîn*,¹⁵ *kânun mecmûası*, *risâle-i kânuniyye*,¹⁶ and so on. While the existing literature distinguishes between different types of legal compendiums concerning the breadth of their scope and the patronage relations under which they were made, in this study, I treat all collections of Ottoman *kânun*, under the term legal compendiums.¹⁷ These

12. Heyd, *Studies in Old Ottoman Criminal Law*, 171.

13. Manisa 5819, fols. 10v-12v.

14. Ömer Lûtfi Barkan, “Türkiye’de İmparatorluk Devirlerinin Nüfus ve Arazi Tahrirleri ve Hâkana Mahsus İstatistik Defterleri (II),” *İstanbul Üniversitesi İktisat Fakültesi Mecmuası* 2, no. 2 (1941): 221–28.

15. Beyazıt 4789, fol. 1r.

16. Mihrişah Sultan 440, fol. 61r; DİB 5355, fol. 50v.

17. Based on the systematization of İnalcık, Howard distinguishes between general *kânunnâmes*, collections of directives, and regional *kânunnâmes*. Howard, “Ottoman Administration and the Tîmâr System: Şûret-i Kânûnnâme-i ‘Osmânî Berây-i Tîmâr Dâden,” 46–50.

compendiums were not legislated by central authorities. However, their constituent parts involved documents directly issued by central administrative agents.

These compendiums were collected by people whose official responsibilities did not include compiling administrative laws but whose professions leads them to deal with issues of *kânun*. These people include judges, muftis, court scribes, and employees of the central bureaucracy under the Imperial Council. The act of compiling centrally issued legal documents alongside other legal genres is exemplified by one of the agents that we come across in legal compendiums: author-compilers. These people were interested in *kânun* because they were part of the Ottoman bureaucracy, appointed by the court to fulfill certain tasks in their respective localities. Their compilation of centrally issued legal documents into unique volumes signifies more than mere copying: it represents their approach to the Ottoman *kânun*.

As I will further discuss in this chapter in the “Systematic or Unsystematic” section, author-compilers were involved in an unending process of reproducing *kânun* materials in their personal notebooks, which, in time, turned into structured compositions inalienable from a purposefully authored text. Thus, the making of a legal compendium was an organic process as far as it was a deliberate act of composition.

Kânunnâme, in the sense of a legal compendium, was made through the merging of firmans, fatwas, and administrative law codes, but not necessarily covering all three. These compendiums were usually named after either the reigning sultan or, if known, the author-compiler. For example, one legal compendium named after Mehmed II, concerning state administration and the rules of bureaucracy, was prepared by his chancellor (*nişancı*) Leyszade Mustafa. The chancellor said in the introduction that his intention was to bring together already existing *kânuns* issued by the previous sultans and to make insertions where necessary to eventually culminate in the composition of an empire-wide applicable *kânunnâme* whose prescriptions would be implemented by the agents of Imperial Council.¹⁸ Leyszade conducted the mission of an author-compiler, perhaps by going through the repositories of Ottoman *kânun* documents. There is another *kânunnâme* named after Mehmed II which concerns criminal laws, taxation, and the rights and responsibilities of Ottoman subjects. It is like the previous one in the way that it brings together already existing *kânuns* in a systematized composition. This compendium was expanded in the post-Mehmed II period and its clauses were subjected to revisions and additions at the hands of subsequent author-compilers.¹⁹ Another legal compendium, considered a later and

18. ÖNB Cod. H.O. 143, fols. 5v-8v. For a published version of this *kânunnâme*, relying on another copy, see Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 317–32.

19. Leslie Peirce, “Domesticating Sexuality: Harem Culture in Ottoman Imperial Law,” in *Harem Histories: Envisioning Places and Living Spaces*, ed. Marilyn Booth (Durham & London: Duke University Press, 2010), 107; Howard, “Ottoman Administration and the Tîmâr System: Şûret-i

extended version of Mehmed II's second compendium, has an introduction composed by its author-compiler in which he asserted that he conducted the mission of bringing together Ottoman *kânuns* scattered around in multiple registers within a single volume.²⁰ In fact, his occasional references to the provincial *kânunnâmes* and land registers reveal that he accessed repositories of Ottoman *kânun* to eventually culminate in the making of an all-encompassing legal compendium on the customary laws of the Ottomans.

2.3 The Making of a Legal Compendium

Having said that *kânunnâme* may refer to both single statutes enacted by the Imperial Council in the name of the Ottoman sultan and to the collection of more than one *kânunnâme*, the following section will be dedicated to the making process of a *kânunnâme* in the sense of a legal compendium. The creation of a legal compendium often requires the consideration of multiple sources simultaneously. The author-compiler consults various sources, brings together the texts they have gathered, and constructs a new composition. While the new composition may appear disorganized at first glance, it possibly gains a structured shape with the interventions of future readers, commentators, and copiers who act like authors. To determine the motivation behind the creation of a legal compendium, it is necessary to break it down into its parts and evaluate each part individually.

A compendium may have several copies in manuscript libraries, but they are not necessarily identical copies. Each copy may exhibit unique characteristics regarding its content. So does the legal compendium that forms the focal point of this study. Among its many copies, I will devote particular attention to Manisa 5819, Sarajevo Oriental Institute R.3, and Istanbul Laleli 1263.²¹ An examination of these copies reveals that they are textually different from one another: later versions expand earlier ones, materials appear in altered forms across copies, and content is selectively omitted or reorganized. The Manisa copy represents the earlier version of the compilation, as other copies reveal significant revisions.

I will first introduce the compendium, as it appears in the Manisa copy, pointing particularly to its sources and the way it was compiled. Then, I will discuss the

Ḳânûnnâme-i ‘Osmânî Berây-i Tîmâr Dâden,” 47; İnalçık, “Suleiman the Lawgiver and Ottoman Law,” 124–25.

20. See Koyunoğlu 12401. For a published version, see Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, 387–95.

21. From now on; Manisa, Sarajevo, and Istanbul respectively.

author-compilers and the widespread scholarly network of the seventeenth century that was so influential in the dissemination of legal knowledge and thus responsible for the prevalence of the production of legal compendiums. In this regard, the relationships between chancery officials and muftis in the formation and interpretation of the knowledge of *kânun* will form part of the discussion.

2.3.1 Manisa 5819

The compendium under study aggregates legal texts on land tenure and taxation, including administrative laws, fatwas submitted to the sultan for enactment as statute law, and official correspondences regarded as official statements of law. Though it is not systematically divided into chapters and sub-chapters, a general outline can be drawn. The first chapter includes sultanic laws enacted during the reign of Ahmed I, some of which are named after the chancellors holding office at the time. The second chapter is about the correspondence between a chancellor and Ali Efendi, the mufti of Manisa, regarding prevailing land regulations. The following chapter lists the legal opinions (fatwas) that the chief mufti Yahya Efendi presented (*arz olunan*) to the sultan. The fourth chapter also includes a correspondence between a chancellor and a mufti—namely, Seyyid Mehmed Rıza, the mufti of Cisir-i Ergene. The last chapter is about legal matters submitted (*arz olunan*) by Ebussuud Efendi to Sultan Süleyman.

Dating these copies poses challenges, as colophons rarely record creation dates. Fortunately, the Sarajevo and Istanbul copies provide copy dates, albeit atypically placed at the end of the fifth chapter rather than at the end of the entire text. The Sarajevo copy specifies Şaban 1085 (31 October – 28 November 1674), while the Istanbul copy dates to Muharrem 1118 (15 April – 14 May 1706).²² The Manisa copy is undated. However, internal evidence suggests a timeframe: the fourth chapter references the post-Crete campaign *kânunnâme-i cedîd* of 1081 (1670-1671). This can provide us a *terminus post quem* for the compilation. The *terminus ante quem*, on the other hand, is the copying date of the Sarajevo version. Given that the Manisa copy's main text is identical to the Sarajevo copy's main text—the only exceptions being two extra chapters in the Sarajevo copy—we can say that the interval 1081-1085 (1670-1674) was the probable compilation date. This assumes that the content in the Manisa copy was compiled during this interval, though the Manisa copy may have been produced later. In short, the compendium's content, as reflected in the Manisa copy, was compiled during 1081-1085. The Sarajevo copy was made in 1085,

22. Oriental Institute R.3, fol. 55r; Laleli 1263, fol. 145r.

and the Istanbul copy was completed in 1118.

The dating inscriptions in the Sarajevo and Istanbul copies begin with *temmeti'l-kazâya'l-ma'ârûza* (“the copying of the submitted legal issues was completed”), indicating that the note pertains specifically to the fifth chapter of the text: legal matters submitted (*arz eyledikleri kazâyâ*) by Ebussuud Efendi to Sultan Süleyman. Rather than appending a general note to the entire text, the author-compiler chose to date only this chapter, likely because it marked the endpoint of the text before later expansions, as represented in the Manisa copy. The Sarajevo copy’s compiler retained the inscription in its original position, merely inserting the copy’s completion date (1674) and continuing afterwards to complete the compendium to seven chapters. The scribes of the Sarajevo and Istanbul copies considered this chapter as the ending of the text—a fact that explains why the Manisa copy, despite the uncertainty of its date, is central to this study. While the Sarajevo copy does not have supporting evidence to cross check its dating, Istanbul copy’s dating can be confirmed thanks to the other constituent texts within the codex, which are dated 1117 and 1118.

2.3.2 Compiling: Sources

The absence of an introduction (*mukaddime*) or explicit details about the compiler complicates efforts to reconstruct the origins of this compendium. However, its constituent chapters recur in personal *mecmûas* compiled by the members of learned hierarchy, suggesting a networked process of aggregation. For example, the first part of the beginning chapter, entitled “*Kânunnâme* on Land Tenure, Issued on 11 Zilkade 1017 [16 February 1609]” is a commonly copied text in legal compendiums but appears under different headings in different sources.²³ In the collection of Dellakzade Hafız Mustafa Efendi, the temporary judge (*muvakkaten kâdî*) of Üsküp (Skopje) by 1081 (1671), it is entitled “Prescriptions on Land Tenure” (*ahkâmû'l-arâzî*) and its source is referred to as the “collection of the fatwa clerk (*fetvâ emînî*) of current chief mufti Yahya Efendi, dated 1047 Receb (November-December 1637).”²⁴

By contrast, Halil Efendi, a judge in Segedin, has a collection that appears, based on the concluding notes, to have been completed during the 1080s (1670s).²⁵ He attributes the same text to the “collection of the late chief mufti Bursalı Mehmed

23. The Ottoman Turkish version: “Bin on yedi senesi zilkadesinin on birinci gün arz olunmuş arâzîye müte'allik kânunnâmedir ki zikr olunur.” Manisa 5819, fol. 1v.

24. Lala İsmail 706, fols. 311r. and 355v.

25. For example, one of the pamphlets is dated Evâhir-i Şaban 1086 (9 – 18 November 1675). Esad Efendi 3612, fol. 135r.

Efendi.”²⁶ Both Dellakzade and Halil Efendi referred to the collection of Bursalı Mehmed Efendi (also known as Esiri) when they copied the *kânunnâme* of 1017 in their personal collections. However, the discrepancy in the title of Bursalı Mehmed Efendi—referred to as a fatwa clerk in the collection of Dellakzade, but as chief mufti in the collection of Halil Efendi—reveals that they consulted him at different dates.

Some parts of the first chapter recur in a *kânun* composition prepared by Zekeriyyazade Yahya Efendi and addressed to İbrahim Efendi upon his appointment as the *muftî* of Budin (Buda).²⁷ It comes under the title of *kânunnâme-i cedîd-i osmânî* (the new Ottoman *kânunnâme*).²⁸ Also, some parts of this chapter are found in the *cerîde*(personal register) of Luhumi Ali Efendi, judge of Sarajevo (d. 1111/1700), under the title “*kânunnâme-i cedîde-i ma‘mûlun bihâ* (the currently in-force new *kânunnâme*).”²⁹ This text appears in the compendium under different headings. Similarly, Halil Efendi, the judge of Segedin (Szeged), traces parts of the third chapter to the collection of Altıparmak Abdülfettah Efendi (d. 1071/1661), chief fatwa clerk under Ebusaid Mehmed Efendi (d. 1072/1662).³⁰

I argue that these citations in the personal collections of multiple scholars reveal that the compendium emerged through the merging of the already existing texts produced by the central administrative departments of the empire that later began circulating within personal networks before being included in the legal compendium under study. The author-compiler, probably a scholar like Luhumi Ali Efendi, Abdülfettah Efendi, Dellakzade Hafız Mustafa Efendi, Halil Efendi, or İbrahim Efendi, would have had access to multiple copies of the text from different multiple personal collections, which he then aggregated to produce a cohesive manual on land tenure. Thus, the emergence of the compendium was through a multi-authorial process of aggregation, perhaps lasting for several decades.

It seems that each chapter of the text may potentially be a compilation of pre-existing *kânuns* and fatwas. For example, the fifth chapter is entitled “The copy of legal issues (*kazâyâ*) submitted (*arz eyledikleri*) by Ebussuud Efendi to Sultan Süleyman to ensure order.”³¹ The chapter begins with a fatwa on the statute of

26. Esad Efendi 3612, fol. 256r.

27. Manisa 5819, fols. 1v-2r.

28. For some copies, see Ali Emiri KVN.76, fols 45v-46v; GHB R-5758/6; GHB R-8560, fols. 79v-80r.

29. Oriental Institute R.1, fol. 85v. Luhumi Ali Efendi (d. 1111/1700) was the judge of Sarajevo from 1104 to 1106. Şeyhî Mehmed Efendi, *Vekâyi‘u’l-Fuzalâ: Şeyhî’nin Şakâ‘ik Zeyli*, ed. Ramazan Ekinci (Istanbul: Türkiye Yazma Eserler Kurumu Yayınları, 2018), 2147–48.

30. Esad Efendi 3612, 270v. Altıparmak Abdülfettah Efendi was the fatwa clerk of Ebu Said Mehmed Efendi during Ramazan 1061 (August-September 1651) and Şaban 1062 (July-August 1652). *ibid.*, 831–32.

31. “Merhûm Ebussuud Efendi Sultan Süleyman Hân aleyhi’r-rahmetu ve’r-ridvân hazretlerine

limitations, also found in *Marûzat*, and continues with a discussion of Ebussuud's legal opinion on illegal tree grafting on *mîrî* land, after which it lists *kânuns* on several taxes.³² The following copies—namely, Sarajevo and Istanbul—expand on this text by appending more *kânuns*, issued during the tenures of Celalzade Mustafa Çelebi and Hamza Paşa as chancellor, some of which are part of the compendiums named after Celalzade.³³

It seems that this chapter's title overlaps with the title of Ebussuud Efendi's posthumous work *Maruzat*. Although this chapter was not entitled *Maruzat*, the phrase *nizâm-ı intizâm için arz eyledikleri kazâyâ* recurs in the introduction of *Maruzat* with slight differences, thus it resembles to it at first glance.³⁴ The resemblance between the titles of both works led cataloguers in manuscript libraries to misidentify the chapter as a copy of *Maruzat* although the two are fundamentally different in content.³⁵ The existence of more than one text defined as a collection of issues presented (*ma^crûz*) by the chief mufti to the sultan leads us to ask whether *ma^crûzat* was a genre rather than a single text.

An interesting feature of this text is that it has a sub-title called the third chapter (*el-bâbu's-sâlis*) right after the initial fatwa, which suggests that this text must be part of a broader one with at least three chapters. Although none of the copies I was able to access mentioned the full text, some research on various copies recorded as *marûzât* in manuscript libraries revealed that this chapter was part of a larger composition made up of Ebussuud's fatwas and the author-compiler's interpretation of them, including references to canonical works of the Hanafi legal school, mostly on joint property (*müşterek*, *müşâ^c*).³⁶

nizâm-ı intizâm için arz eyledikleri kazâyânın sûretidir." Manisa 5819, fol. 13v.

32. "Maruzat" here refers to the standard copy of Maruzat text, that is widely accepted as a collection of Ebussuud Efendi's fatwas, later made into a unique composition with an introduction written by the compiler, who also presented the fatwa to the sultan of his time to gain them an empire-wide binding status. For this text, see Ahmed Akgündüz, *Osmanlı Kanunnâmeleri ve Hukukî Tahlilleri*, vol. 4 (Istanbul: Fey Vakfı Yayınları, 1992), 32–76; Pehlul Düzenli, *Ma^crûzât Şeyhülislâm Ebussuûd Efendi* (Istanbul: Klasik, 2013).

33. For example, the content of a legal compendium, entitled "pieces copied from the *kânunnâme* composed by Celalzade Mustafa Çelebi," overlaps with the content of the chapter to some extent. See Yazma Bağışlar 1202.

34. The title of this chapter: "Merhûm Ebussuud Efendi Sultan Süleyman Hân aleyhi'r-rahmetu ve'r-ridvân hazretlerine nizâm-ı intizâm için arz eyledikleri kazâyânın sûretidir. Manisa 5819, fol. 13v. The introduction of Maruzat proper: Bundan akdem merhûm şeyhülislâm ... Ebussuûd ... Sultân Süleyman Hân aleyhi'r-rahmetü ve'r-ridvân hazretlerine nizâm-ı din ü devlet ve intizâm-ı ahvâl-i memleket iktizâ etmeğin bazı mesâilde eimme-i dînden bazı müctehidîn ... kavilleri üzere amel eylemek münâsib olduğunu arz buyurup ol minvâl üzere amel olunmağa fermân-ı sultânî ve hükm-i cihân-bânî sâdır olup vülât-ı İslâm ve kuzât ve hükkâm ol vechile ameile mu^ctâdlardır." Ali Emiri Manzum 630, fol. 137v.

35. The confusion paradoxically aided the discovery of additional copies of the legal compendium under study. For these copies, see "Sources" in the Introduction chapter.

36. Hüsrev Paşa 812.

It seems that a post-Ebussuud author-compiler brought together some fatwas belonging to Ebussuud and *kânuns* on several issues and he entitled it “issues submitted by Ebussuud Efendi to Sultan Süleyman.” The later author-compiler of the compendium in question prepared an abridged version of the text in line with his own particular concerns and made it part of his larger compendium on land tenure. This author-compiler either saw this text and disregarded some of its content because it was not directly relevant to the focus of his compendium, or else copied the text from another source which had already abridged the original (which seems more probable, as most copies of this text have only the abridged version). The author-compiler also deemed it appropriate to append several *kânuns* at the end on various customary taxes, including *arûs* (groom) and *âsiyâb* (mill) taxes.

It makes sense to consider that some parts of this *Maruzat* text were disregarded, as the first chapters are not directly related to the concerns of the compendium in question. They explain the legal matter of illegal tree grafting as narrated in books of fiqh, thus not paying specific attention to the case of *mîrî* lands. The text distinguishes between two views regarding the distribution of harvests made from illegally grafted trees on *mîrî* lands. The author-compiler refers to Ebussuud Efendi as *bahru’r-rûm* (i.e., the ocean of the lands of Rum), meaning the most distinguished scholar of the lands of Rum, and regards his view as the soundest opinion on this issue.

It is still not known who compiled *Maruzat* and presented it to the reigning sultan, with some arguing that it was during the reign of Selim II, while others saying Murad III.³⁷ This text casts doubt on the notion that there was only one text called *Maruzat*. Both the fifth chapter of the compendium and extended content of Hüsrev Paşa 812 suggest that *Maruzat* had different forms, or that there were different texts, most probably composed by different author-compilers, referred to as *Maruzat*. The Hüsrev Paşa text contains three successive titles: The first one concerns the issues presented by Hâce Çelebi (i.e., Ebussuud Efendi), to Sultan Selim. Some of these fatwas are part of the *Maruzat* published by Akgündüz and Düzenli, while most are not. The second one, “the issues in which *kânun* and sharia are reconciled by the sultan,” is a three-chapter text, one chapter of which is made part of the legal compendium in question.³⁸ The last one is the standard *Maruzat* text that starts with an introduction written by the post-Ebussuud author-compiler.

In short, the making of this compendium was not a single, discrete event. Rather,

37. Heyd, *Studies in Old Ottoman Criminal Law*, 184; R. C. Repp, *The Müfti of Istanbul: A Study in the Development of the Ottoman Learned Hierarchy* (London: Ithaca Press, 1986), 280.

38. “Taraf-ı şehriyariden şer’c ve kânun tatbîk olunan mesâildir mesele cevâbuhumâ li-bahri’r-rûm hayri’l-ulûm Ebussuud el-merhûm.” Hüsrev Paşa 812, seq. 42. This manuscript does not have folio records; thus, it is cited based on the sequence number in the digital collection.

it unfolded over several decades and involved the contributions of many people. Its compilation was made possible by a complex scholarly network that facilitated the circulation of legal texts sent from the imperial center to various officials. This network enabled the mobility of intellectual knowledge across the empire. Scholars in the court's service, whether in the center or in the provinces, were open to sharing their copies of Ottoman *kânuns* with other members of the scholarly establishment. The ongoing process of assembling sultanic laws into cohesive manuals on land tenure not only brought together dispersed materials but also transformed them into new forms by shortening them, or merging them with texts of a different genre, such as fatwas and decrees.

2.3.3 Systematic or Unsystematic

The lack of a formal introductory section may signal the compendium's status as a miscellaneous mixture of texts rather than a purposeful composition. Distinguishing between the two is crucial, as they imply differing views towards the making of a compendium. In the first case, it is no more than a draft notebook, while in the second one, it signifies a purposefully composed intellectual work, intended for legal and scholarly use. It might be said that the compendium was a natural outcome of collective scholarship that emerged in the personal collections of scholars. However, at some point during its formation, it turned into a purposeful composition. The dating inscription at the end of the fifth chapter is an indicator of this statement. Since the text was considered as an independent volume on land tenure, a certain compiler appended dating inscription to the end, and the subsequent compilers kept the dating although they made slight changes to the text.

Is this compendium best described as a miscellaneous collection made up of parts found in different collections, or does it qualify as a systematic legal compendium organized into chapters? Ömer Lütfi Barkan distinguished between two types of legal compendiums.³⁹ On the one hand, there are systematic ones, produced under sultanic directive (e.g., *kânunnâmes* named after reigning sultans), or by individual initiatives (e.g., works by Ayn Ali Efendi and Hezarfen Hüseyin Efendi). These required access to state repositories, kept by such officials as the *defter emîni* (registerer) and *reîsülküttâb* (chief scribe), and were organized into chapters (*bâb*) and sub-chapters (*fasl*).

On the other hand, there were unsystematic compilations prepared for teaching

39. He often names them as either "*kânun dergisi*" or "*kânunname*." See Barkan, *Zirâi Ekonominin Hukukî ve Malî Esasları*, xxi–xxxiv.

purposes or practical use. According to Barkan, the compilers of these compilations prioritized aggregating accessible materials over organizing them, since they lacked the easy access to the repositories of official *kânun* documents enjoyed by those produced systematic compilations. Barkan attaches greater importance to this kind of compilation for revealing the fluid, context-dependent nature of customary law (*örfî hukuk*), the nature of which did not allow it to be encoded into a single text, since it had multiple forms and multiple understandings that changed according to space and context. He argued that legal compendiums, crafted by scholars in an unsystematic manner for intellectual purposes, constituted the second most significant source of Ottoman legal culture after archival documents.⁴⁰

The compendium under study defies Barkan's binary categorization. It does not conform to the model of a systematic compendium, as it is not divided into chapters and sub-chapters. Instead, it is an amalgamation of diverse texts, each retaining its original title rather than being harmonized into a single, unified work. In this respect, it aligns with the second category, that is, private unsystematic compilations. However, unlike a typical notebook or manual used solely for personal reference, this compilation did not remain static. The evidence of widespread copying and revision, as seen in the Manisa, Sarajevo (1674), and Istanbul (1706) copies, as well as others, suggests that the work evolved into a structured reference text, circulating among legal experts. This trajectory aligns more closely with the first category, that is, systematic compendiums. This work thus represents a form that tends to transition from an unsystematic compilation to a structured legal reference book, while never fully conforming to either category.

The compendium does not have a formal Introductory section. It was probably not a one-off project. Instead, it came into being as an outcome of the integration of parts of several texts into a single one. Individual texts that once circulated within the personal notebooks of scholars and bureaucrats took on a more structured shape over time. These came no longer to be regarded as draft copies but considered as compositions legislated by the central lawmaking authorities.

An Important question remains: did this text come into being through a process of assembling indiscriminately, or did it follow a deliberate objective? The structure and content suggest that it was assembled intentionally. For instance, the fifth chapter, on issues submitted to the sultan by Ebussuud Efendi, deals with the illegal exploitation of *mîrî* land, distinguishing between freehold and miri property. As already discussed before, this passage is part of a longer three-chapter text, explaining the issue of exploitation of another's land for tree grafting. The author-

40. Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, xxxiii.

compiler selected only the final chapter, which pertains to *mîrî* lands, while omitting the first two. This suggests that he was not interested in the earlier discussions, as they did not align with the focus of his compendium. Thus, rather than being a random assortment, this work reflects deliberate choices, shaped by an interest in *kânun* knowledge and juristic reasoning found in legal opinions. It reveals that this compendium was not a haphazard assemblage but a purposefully curated work, reflecting the concerns of its compiler.

This shows that the compendium was a scholarly effort to consolidate *kânun* sources on land tenure and taxation. Yet it did not conclude the process; rather, it inaugurated a new phase of active engagement. Owners and readers transformed copies into dynamic sites of knowledge production, jotting down marginal notes, appending chapters, and revising content. Each iteration reflects both continuity and distinctiveness, retaining core features while acquiring distinct characteristics.

2.4 On the Compilers

Having said that the compendium was made by members of the scholarly establishment, I now want to examine the complexity of scholarly networks during the rise of compendium production in the seventeenth century. In what follows, I will discuss the rise of scholars as an inalienable part of the Ottoman bureaucracy and their cooperation with chancellors to receive the knowledge of *kânun*, which took place simultaneously with the transformation of chancellor's office.

2.4.1 Scholars and the Establishment of a Central Bureaucracy

During the formative periods of the Ottomans, scholars kept their distance from the ruling elite. However, the conquest of Istanbul marked the beginning of a new era. Mehmed II's policies included the integration of scholarly circles into state hierarchies to fulfill educational, legal, and administrative tasks. As an outcome of initiatives taken by Mehmed II, scholars were first given the opportunity of a lifetime career in state service. Towards the end of Mehmed's reign, with the articulation of those rights in his *kânunnâme* on state bureaucracy and protocol rules, scholars in the government service became indistinguishable from members of the bureaucracy. They gained secure positions, protected by law and state.⁴¹

41. For a detailed survey of the initiative taken by Mehmed II, see Abdurrahman Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire* (Cambridge: Cambridge University Press, 2017),

The fifteenth and sixteenth centuries witnessed the incorporation of scholars into state positions in a hierarchical manner, creating an empire-wide network of scholars, each trained in madrasas across the central cities of the empire, and appointed as professors, judges, and jurists following their education, to serve as agents of the central state. The institutional transformation of formerly independent interpreters of sharia into a major group within the Ottoman bureaucracy brought about the emergence of a distinct Ottoman legal culture in which scholars participated in making binding laws out of sharia knowledge.⁴²

The sixteenth century witnessed the construction of more madrasas and the creation of more judgeship posts, which were organized in a hierarchical manner. Judgeships were of two kinds: dignitary (*mevâli*) posts and town judgeships (*kasabât*), the former of which was a step towards higher ranks in bureaucracy, while the latter did not offer much upward mobility.⁴³ While judges were centrally appointed, deputy judges (*nâib*) had the potential to be appointed from among local subjects, thus sustaining a central system, strongly connected with local dynamics. The highest two ranks within the judicial hierarchy were the chief judgeships (*kazaskerlik*) of Anatolia and Rumelia—two posts that had permanent memberships on the Imperial Council, the highest decision-making authority, and high court in the empire.⁴⁴

The Ottomans initiated the practice of dividing judicial labor between judges and muftis by appointing official muftis alongside judges in provinces, thus leading to the formation of a parallel hierarchy. The head mufti was the mufti of Istanbul, who, during the 1560s, particularly in the post-Ebussuud Efendi period, assumed the leading role in the scholarly hierarchy.⁴⁵ Thus, the highest rank a scholar-bureaucrat could reach was that of chief mufti following the consolidation of scholarly networks and the standardization and regularization of a scholarly bureaucracy during the sixteenth century.

2.4.2 Chancellors

The Ottoman bureaucracy was born out of the ranks of madrasa-trained scholars. After the consolidation of scholars into a relatively discrete professional body, the bureaucracy further divided into chancery and financial specializations in the

59–82.

42. Abdurrahman Atçıl, “Political Power and Lawmaking in the Ottoman Empire: ‘Ulamâ’ and Sultans Vis-à-Vis Sharia,” in *Histories of Political Thought in the Ottoman World*, ed. Nedim Nomer and Kaya Şahin (Oxford: Oxford University Press, 2024), 115–18.

43. Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire*, 188–211.

44. Akarlı, “The Ruler and Law Making in the Ottoman Empire,” 93–95.

45. R. C. Repp, *The Müfti of Istanbul*, 294–96.

mid-late sixteenth century.⁴⁶ The office of chancery functioned from the reign of Mehmed II up until its formal dissolution during the Tanzimat reforms.⁴⁷ Apart from ensuring the maintenance of an appropriate literary style in major items of sultanic correspondence (*inşâ*), chancellors were entrusted with drafting sultanic laws, authorizing them by affixing the sultan's imperial signature, receiving questions on current *kânun*, and checking the alignment of new regulations with existing *kânun*.⁴⁸ This is why Mustafa Ali named them *müfti-i kânun*, drawing attention to the significance of the post as speaking on behalf of *kânun*. Mustafa Ali also viewed the chancellor as representing half of the moral conscience of the state, with the chief mufti representing the other half.⁴⁹ However, the chancellor's roles did not remain the same over the post's three-century existence. It was a central administrative office during the sixteenth century, after which it gradually became isolated from bureaucratic affairs as a diverse bureaucracy sprang up around it.⁵⁰ The shifting role of the office was related to Ottoman *kânun*'s transformation into a written corpus in the hands of fifteenth- and sixteenth-century chancellors, increasingly allowing scholars to instrumentalize it as a body of legal material.

Christine Woodhead divides the history of chancery into three periods based on the career paths of the post-holders. During the first period, from Mehmed II's designation of the chancellor as one of the main members of Imperial Council until 1580, the post was dominated by madrasa-trained officials. According to Mehmed II's *kânunnâme* on administrative protocols surrounding the imperial bureaucracy, chancellors were appointed from among the *dâhil* and *sahn* professors of Islamic law.⁵¹ This regulation reveals that knowledge of Islamic law was a prerequisite for holders of the post. In the post-1580 period, the post was dominated mainly by chancery-trained personnel who did not come from a high career background in madrasa. This development was mostly an outcome of the efforts of Celalzade Mustafa Çelebi, who during his long tenure from 1534 to 1556 standardized and regularized bureaucratic procedures, thus establishing the office of chancery as the preeminent *kânun* authority, offering an educational program within the office.⁵²

46. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire*, 45.

47. Christine Woodhead, "After Celalzade: The Ottoman Nişancı c. 1560-1700," in *Studies in Islamic Law: A Festschrift for Colin Imber* (Oxford: Oxford University Press, 2007), 1. References to this article are cited from the version on the author's Academia page at <https://durham.academia.edu/ChristineWoodhead>.

48. Richard C. Repp, "Qānūn and Sharī'a in the Ottoman Context," in *Islamic Law: Social and Historical Contexts*, ed. Aziz. Al-Azmeh (New York: Routledge, 1988), 126–27. See also Erhan Afyoncu, "Nişancı," in *TDV İslam Ansiklopedisi* (TDV İslâm Araştırmaları Merkezi, 2007), accessed April 19, 2025, <https://islamansiklopedisi.org.tr/nisanci>.

49. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire*, 174.

50. Woodhead, "After Celalzade," 2.

51. Afyoncu, "Nişancı." See the manuscript version in ÖNB Cod. H.O. 143, fol. 6r.

52. For Celalzade's tenure as chancellor and his endeavor in the standardization of the bureaucratic language, see Kaya Şahin, *Empire and Power in the Reign of Süleyman: Narrating the*

The consolidation and professionalization of bureaucracy opened a new career line for free-born Muslims who were not madrasa trained.⁵³ By the seventeenth century, during the third phase, chancellors were appointed from among palace-educated people rather than those going through scribal training following hierarchical ranks. The office in the post-1618 period was mostly held by career administrators with neither madrasa nor chancery backgrounds.⁵⁴

It seems that there is a discontinuity between the sixteenth and seventeenth centuries as to the scholarly and bureaucratic qualification of the chancellors. During the latter phase, the post was influenced by an environment in which factional politics was dominating the appointments. The post holder was decided by households and factions rather than by the sultan. A distinctive feature of this period was the influence of statesmen such as grand viziers and chief muftis on the appointment of the chancellor. So, the post evolved during the seventeenth century into a patronage post despite its formal status as a symbolic reflection of the sultan's legal authority. Chancellors had lost much of their former glory and prestige by the end of the century because their official duties were taken by the chief scribe following the movement of grand vizier's office outside the palace. By the second half of the century, chancellors assumed only the role of master of court ceremonies. Their role as the composer of imperial *kânunnâmes* gradually disappeared.⁵⁵ Therefore, the chancellor turned into a court official who did not assume a major role in the central administration.

The change in chancellor's institutional workload and the fall of his former prestige was related to the seventeenth century reality that *kânun* had already emerged as a ready corpus thanks to the efforts of fifteenth- and sixteenth-century chancellors who, by crafting sultanic laws and collecting them into cohesive manuals, turned *kânun* into a body of written legal material.⁵⁶ The last influential bureaucrats to hold the post of chancellor were perhaps Celalzade Mustafa Çelebi and Hamza Paşa, whose efforts in the crafting of sultanic laws were most appreciated by the compiler of *Kânunnâme-i Cedîd*, who frequently referred to their *kânuns*. Apart from his single *kânuns*, Celalzade also has collections of *kânuns*, systematically made and divided into chapters and sub-chapters.

Sixteenth-Century Ottoman World (Cambridge: Cambridge University Press, 2013), 220–30.

53. Fleischer, *Bureaucrat and Intellectual in the Ottoman Empire*, 218–22.

54. Woodhead, "After Celalzade," 4–5.

55. *Ibid.*, 15–16.

56. İnalcık, "Suleiman the Lawgiver and Ottoman Law"; Snjezana Buzov, "The Lawgiver and His Lawmakers: The Role of Legal Discourse in the Change of Ottoman Imperial Culture" (PhD Diss., Chicago University, 2005), 112–33; Mehmet Şakir Yılmaz, "'Koca Nişancı' of Kanuni: Celalzade Mustafa Çelebi, Bureaucracy and 'Kanun' in the Reign of Süleyman the Magnificent (1520-1566)" (PhD Diss., Bilkent University, 2006), 213–14.

The transformation of the chancellor's office reflected a shifting institutional framework in which the task of compiling administrative regulations into legal compendiums gradually moved beyond the chancellor's responsibilities and diffused to a broader group of people, encompassing employees of the Ottoman court at various hierarchies, whether in the center or in the provinces. The legal compendium under study reflects this transformation, as it is an anonymous compilation of administrative regulations, not attributed to any sultan or chancellor. This anonymity is perhaps because the resulting work was the collaborative outcome of multiple contributors, particularly judges and muftis serving in various towns across the empire.

2.4.3 From Chancellors to Scholars: Cooperation Between the Two Offices

Based on the principles of the land regime systematized by Ebussuud Efendi, there was room for sultanic authority to decide on regulations governing transactions (*tapu*) conducted on *mîrî* lands.⁵⁷ These regulations identified who had the eligibility to reclaim vacant *mîrî* lands following the demise of their usufruct holders (*mutasarrıf*).⁵⁸ Since *mîrî* lands belonged to the public treasury (*beytûlmâl*), they were leased to peasants in turn for an annual payment in kind and in cash. If a holder passed away, they could leave the land to their sons (but only if the usufruct holder was male). In any other case that did not involve father and son, right of first refusal (*hakk-ı tapu*) determined the next holder. However, with the payment of a fee, called *resm-i tapu*. This one as well as any other transaction on these properties would require the buyer to pay *resm-i tapu* to the deputy officially appointed to oversee the land. The major topic for all chapters of the compendium is to define these regulations.

The turn of the seventeenth century witnessed major changes in the regulations of *tapu*. As the chancellor had the greatest access to official repositories of *kânun* and was therefore the most knowledgeable official in *kânun* matters, muftis had to stay in touch with the office of chancery to stay abreast of the regulations currently in force. Since the chancellor was a member of the Imperial Council, and so had a role in the legislation processes, he was a central figure for legal consultation, particu-

57. Pehlivan, "Sultan, Reaya ve Hukuk," 19–49. Also see İnalcık, "Islamization of Ottoman Laws on Land and Land Tax," 155–73.

58. For example, the first chapter lists the decrees, issued during the reign of Ahmed I, that allowed for the expansion of post-mortem transmission rights to all heirs, but under certain conditions, which were previously limited to sons and later daughters. One of them states: "the [usufruct rights of the] lands held by a mother were previously not transferred to her sons. However, these were decreed to be transferred to the sons on 15 Şevval 1012, with the accession of Ali Efendi to the service of tughra [i.e. with his appointment as the chancellor]." Manisa 5819, fols. 2r–2v.

larly in matters concerning the land regime, on which sultanic laws were deemed authoritative.⁵⁹ Therefore, the systematization of *kânun* on land rights during the seventeenth century was conducted by muftis in collaboration with chancellors.⁶⁰

In some situations, muftis received these regulations through the office of chief mufti. For example, a *kânun* composition on the provisions of land was addressed by Zekerîyyazade Yahya Efendi to İbrahim Efendi, upon the latter's appointment as the mufti of Budin. In the note attached to this composition, the chief mufti instructed the provincial mufti to issue his fatwas on land in alignment with the new Ottoman *kânuns*.⁶¹ The chief mufti's instruction was to let him utilize the aforementioned *kânun* composition as a prescriptive manual while responding to people's questions in such issues. So, sultanic regulations on land were deemed authoritative and binding for muftis. The content of this composition overlaps with the prescriptions of the first chapter of the compendium. This might show that Zekerîyyazade's instruction was not an exceptional situation. Scholars keeping the copies of such *kânun* compositions were aware that it was part of their official duties to respond to people's questions on issues concerning *kânun* in alignment with the regulations legislated by the court.

The systematization was an ongoing process, and muftis regularly applied to the office of the chancellor for details on the applicable regulations they were required to issue fatwas in alignment with. It was because the chancellor's duty was to check alignment with *kânun*. This is borne out in two chapters of the compendium that are copies of correspondence between chancellors and muftis, thus reflecting the collaboration between the two offices: one between Ali Efendi, the mufti of Manisa, and the other between Seyyid Mehmed Rıza, the mufti of Cısr-ı Ergene, and the chancellors of their time.⁶² Ali Efendi's chapter is structured in standard fatwa format, with questions (*mesele*) posed by Ali Efendi and answers (*el-cevâb*) provided by the chancellor. In one instance, for example, Ali Efendi asks the chancellor, "A sister's right to *tapu* was abolished in the year 1017. Is this law still valid?" The

59. Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire*, 51–52.

60. For a discussion on the collaboration between Celalzade Mustafa and Ebussuud, see Heather L. Ferguson, *The Proper Order of Things: Language, Power, and Law in Ottoman Administrative Discourses* (Stanford, CA: Stanford University Press, 2020), 116–19, <https://doi.org/10.1515/9781503605534>.

61. The full text is as follows: "Kânun-ı cedîd-i osmânî budur. Merhûm Budin Müftüsü İbrahim Efendi Budin'e müftî oldukda merhûm ve mağfûrun leh Şeyhülislam Yahya Efendi hazretleri bu kânunnâme-i cedîd-i osmânî sûretini verip arâzîye müteallik fetvâ düşdükde bununla amel edip fetvâ veresiz deyu emr etmeleriyle mutemed aleyh olanın bu mahalle kayd olundu." Ali Emiri KVN.76, fol. 46v.

62. Please note that these were not the only instances where provincial muftis received administrative regulations to apply them while issuing their fatwas. For example, İbrahim Efendi, the mufti of Karahisar-ı Sahib, received a decree concerning the regulations on *tapu*, dated Ramazan 1035 (May-June 1626). See, Selimiye Yazmalar, seq. 107-108 (Universal pagination is not available in this manuscript as it is a later-bound miscellany with each component paginated separately.).

chancellor replies, “She can attain the land by tapu.”⁶³ It is hard to identify Ali Efendi due to the commonality of his name and the absence of titles. However, internal evidence suggests that his communication was during the interval between 1017 and 1027 (1608/09 – 1617/18).⁶⁴

On the other hand, Seyyid Mehmed Rıza can be traced in the biographical dictionaries and the secondary literature on fatwa collections. Two scholars named Seyyid Mehmed Rıza are recorded, with death dates in 1672⁶⁵ and 1755,⁶⁶ respectively. The fatwa collection known as *Fetâvâ-yı Rızâ* is attributed to the later Rıza.⁶⁷ However, this is likely the result of a confusion between the two scholars. The concluding notes (*ferâğ kaydı*) of a copy of this fatwa collection reveal that this work was completed by Seyyid Mehmed Rıza on 15 Safer 1068 (22 November 1657), confirming that it belongs to the earlier Seyyid Mehmed Rıza.⁶⁸ The note also mentions that its author was previously the judge of Akçakızanlık and Dubniçe before temporarily holding the post of mufti in Cısr-i Ergene. The earliest copy available, dated 1665, is further evidence that the collection could not have been authored by the later Seyyid Mehmed Rıza, who died in 1755.⁶⁹ An examination of this fatwa collection shows that Seyyid Mehmed Rıza further integrated some of the *kânuns* he received from the chancellor into his fatwa collection by composing a separate chapter at the end, solely dedicated to the issues of land and taxation. This suggests that his communication with the court was purposeful, aimed at obtaining authoritative clarification on sultan laws.

Another sign of collaboration comes from the efforts of Zekerıyyazade Yahya Efendi, a chief mufti who served for eighteen years during the first half of the seventeenth century, and Okçuzade Mehmed Şahi, whose tenure as chancellor was concurrent with the tenure of Zekerıyyazade as chief mufti at some point.⁷⁰ Zekerıyyazade re-

63. Manisa 5819, fol. 8r.

64. The evidence is that one of the issues within this chapter refers to a regulation in the year 1017, as was mentioned before. Also, part of Ali Efendi’s communication is found in different collections under the title “The issues answered by the chancellor in 1027.” See Esad Efendi 587, fol. 81v; Ali Emiri KVN 76, fol. 45r; Oriental Institute R.1, fol. 129r. In his study on provincial muftis, Köse mentions two muftis who had service in Manisa during these years: Geveze Ali Efendi and Ali-i Hamidi Efendi. Either of them is likely to be Ali Efendi mentioned in this study. Ömer Faruk Köse, “Osmanlı Devleti’nde Taşra Müftüleri (1550-1700)” (PhD Diss., Fatih Sultan Mehmet Vakıf Üniversitesi, 2023), 129.

65. Ş. M. Efendi, *Vekâyi’u’l-Fuzalâ*, 1603.

66. Şükrü Özen, “Osmanlı Dönemi Fetva Literatürü,” *Türkiye Araştırmaları Literatür Dergisi*, no. 5 (2005): 311.

67. Ibid., 311.

68. GHB R-6400, 292r.

69. Zeytinoğlu 157, fol. 121r. The concluding notes at the end: “The book was completed with the help of God through the hands of the humble servant Osman b. Abdullah b. Aliyyuddin Rumi el-Ustrumcavi, formerly the judge of Zadrima and Leş. The completion was completed during *asr* (afternoon prayer) on the 10th of Ramazan 1075 in the house of Ali Bey, famously known as the steward of the city of Edirne.”

70. Ş. M. Efendi, *Vekâyi’u’l-Fuzalâ*, 440–55; Kâtip Çelebi, *Fezleke: Osmanlı Tarihi (1000-*

ceives frequent references in *Kânunnâme-i Cedîd* both with regards to his fatwas and the *kânuns* in the composition of which he was deemed the primary agent.⁷¹ Zekerîyyazade, after consulting Okçuzade to acquire for him the currently applied regulations on *tapu* from the Imperial Council, shared this piece of a *kânun* compendium with the members of the *ilmiye*.⁷² I have already referred to both İbrahim Efendi, the mufti of Budin, and Bursalı Mehmed Efendi, the fatwa clerk of Zekerîyyazade, who then assumed the post of chief mufti.⁷³ Zekerîyyazade Yahya Efendi was among the people who had a part in the formation of the compendium in question. Thanks to his efforts and relations with Okçuzade, he delivered Ottoman *kânun* among the scholarly networks and instructed them to issue fatwas in alignment with the state-enacted regulations, thus establishing Ottoman *kânun* as an inalienable part of scholars' broader intellectual agenda. Legal compendiums offered scholars a fruitful platform to engage with *kânun* and further elaborate on it, an idea that will be further discussed in the next chapter.

Together, the two sections involving the correspondences of Seyyid Mehmed Rıza and Ali Efendi, as well as the major roles of Zekerîyyazade Yahya Efendi and Okçuzade Mehmed Şahi, demonstrate that muftis relied on chancellors at the sultan's court as authoritative sources of specialized legal knowledge, particularly on state-enacted matters not covered in the standard fiqh corpus. These correspondences also indicate that muftis received questions from the public on state-enacted matters and registered these questions in their collections. Seventeenth-century fatwa collections often include independent chapters on taxation, land tenure, and other governmental issues under titles such as *el-mesâilu'l-müteallika bi'l-arâzi*.

According to Barkan, the correspondence of Ali Efendi with the chancellor at court proves that scholars acknowledged the authority of court officials in *kânun* legislation.⁷⁴ He argues that this correspondence signifies that scholars recognized they

1065/1591-1655), ed. Zeynep Aycibin, vol. 2 (Istanbul: Çamlıca, 2016), 843–44; Christine Woodhead, "Ottoman İnşa and the Art of Letter-Writing Influences Upon the Career of the Nişancı and Prose Stylist Okçuzade (d. 1630)," *Osmanlı Araştırmaları* 07–08, nos. 07-08 (1988): 152.

71. Bünyamin Punar, "Kanun and Sharia: Ottoman Land Law in Şeyhülislam Fatwas from Kanunname of Budin to the Kanunname-i Cedid" (master's thesis, Istanbul Şehir University, 2015), 81–84.

72. The phrase comes as follows: "Şeyhülislam merhûm Yahya Efendi talebiyle Dîvân-ı Hümâyûn'dan Okçuzade Efendi'nin ihrâc etdirdiği kânundur ki nakl olundu." Koyunoğlu 11337, fol. 8r.

73. The *Kânunnâme-i Cedîd* refers to a certain Bosnevi Mehmed Efendi as the secretary (*mek-tupçu*) of Zekerîyyazade. However, as far as I have been able to determine within the course of research, he is not mentioned in any other source. It is possible that because of a scribal mistake, *brûsevi* (بروسوي) has turned into *bosnevi* (بوسنوي) as both words are potentially confusable in a manuscript culture. Both Halil Efendi, the judge of Segedin, and Dellakzade Hafız Mustafa Efendi, the judge of Üsküp, referred to the *kânun* composition in question as having been received from the collection of Brusevi Mehmed Efendi.

74. Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, xl.

were not authorized to expand on *kânun* knowledge. He also asserts that fatwas in legal compendiums do not reflect intellectual engagement with textual sources on *kânun*; instead, muftis merely delivered sultanic laws to the lay public as they were. Expanding on *kânun*, Barkan asserts, was the task of court agents authorized to make sultanic laws, such as chancellors. Seeking legal opinions of muftis in the matters of *kânun* was according to Barkan to support administrative decisions by fatwas through religious legitimization.⁷⁵

In disagreement with Barkan, Uriel Heyd contends that muftis considered themselves appointed to provide legal opinions not only in the private sphere but also in the public sphere. Thus, Heyd argues, Barkan's view that muftis did not consider themselves capable of replying to questions concerning *kânun* should be revisited. Their occasional consultation of chancellors, as in the cases of Ali Efendi and Seyyid Mehmed Rıza, stemmed from their concern to receive authoritative legal statements to base their rulings on, in matters governed by sultanic laws, not from legitimacy concerns.⁷⁶

2.5 Conclusion

This chapter has examined the formation of a legal compendium through the lens of a late-seventeenth-century example of the genre. The compendium has an inclusive nature, providing an open platform for not only sultanic laws but also legal documents of various sorts. In this respect, I distinguished *kânunnâmes*, in the form of individual decrees or region-specific regulatory texts produced during land surveys, from *kânunnâmes* as legal compendiums, which were created by compiling different texts into a single volume.

The analysis of the Manisa 5819 manuscript revealed that the compendium emerged as a result the efforts of a highly complex network of scholar-bureaucrats and the broader Ottoman bureaucratic structure, which facilitated the transmission of the sultanic regulations, standardized in *kânun* compositions, to scholars serving in the provinces, either through bureaucratic channels, or through informal, personal networks sustained by the circulation of private collections compiled and preserved for scholarly use. The formation of the legal compendium thus unfolded through a gradual, organic process of aggregating *kânun* knowledge from personal collections and compiling it into cohesive manuals on certain aspects of governance. Author-

75. Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, xxxvii.

76. Heyd, *Studies in Old Ottoman Criminal Law*, 188–89.

compilers played a central role in this process. They received official documents, mostly originating from the chancery, and recycled them into new literary forms, often transforming the material in the process, which justifies the designation “author-compilers.”

By the seventeenth century, the chancellor was no longer the sole figure involved in the compilation of *kânuns*.⁷⁷ *Kânuns* were compiled by individuals whose formal duties involved neither crafting *kanûns* nor collecting them.⁷⁸ Scholars also took an active role, incorporating the *kânuns* into their personal collections, which eventually developed into independent volumes on land tenure. Members of the *ilmiye* thus spearheaded a new wave of *kânunnâme* production by compiling and reorganizing texts on *kânun*.

Furthermore, I argue that legal compendiums should be considered to be valuable sources of intellectual knowledge. Both the Manisa and Istanbul copies appear within larger collections of treatises that served as handbooks for scholars. The Istanbul codex consists primarily of authoritative Hanafi legal texts, including the *Fetâvâ* of Kariulhidâye (829/1426) and Zeynüddin b. Nüceym’s (970/1563) *el-Fevâidü’z-zeyniyye fî mezhebi’l-hanefiyye* and *el-Fetâva’z-zeyniyye*. The Manisa copy, by contrast, is more eclectic, encompassing texts on fiqh, hadith, tasawwuf, kalam, and Arabic language, in addition to three more legal compendiums. This diversity reflects the way scholars treated legal compendiums, containing both sultanic statements and juristic opinions, as integral components of their broader intellectual world, on par with other disciplinary sourcebooks. It also signals that the knowledge of *kânun* was preserved and transmitted through the same mechanisms by which other authoritative texts were maintained as reference works.

77. Woodhead, “After Celalzade,” 14–15.

78. H. Yilmaz, “Law and State in Ottoman Political Thought,” 27; Woodhead, “After Celalzade,” 14.

3. NOTES IN THE MARGINS: THE CASE OF ORIENTAL INSTITUTE R.3

The legal compendium under study exists in several manuscript copies, but these are not entirely identical. The key differences often lie in the fatwas integrated into the main text, whether as part of independent chapters attached within the text or as marginal notes. Among these copies, one is particularly interesting as it contains hundreds of marginal notes spread throughout the text. A certain glossator, acting as a diligent researcher of legal sources, copied diverse documents into the margins, thereby expanding upon the knowledge found within *kânun*. His primary tool in this process was the marginal space.

A fundamental distinction must be drawn between textual production in print and manuscript cultures. Manuscripts, unlike printed texts, remain open to revision, renewal, and reinterpretation by both authorial and non-authorial agents long after their initial creation.¹ While printed texts achieve a fixed form upon publication, manuscripts resist finality, embodying a collaborative process involving authors, copyists, and readers. This participatory dynamic allows non-authorial agents to reshape texts through marginal annotations, interpolations, and structural revisions, sustaining a continuous process of textual production.²

Inspired by this contrast between manuscript and print cultures, in this chapter, I will introduce a late-seventeenth-century copy of the legal compendium under study to demonstrate that manuscripts were not devoid of later interventions by authors, copyists, scribes, and readers. Drawing upon the *hâşiye* tradition, I will discuss how the expansion of *kânun* knowledge in legal compendiums, through gloss writing in the form of legal opinions, eventually culminated in the rise of fatwas on *kânun* as a distinct sub-genre within the Ottoman fatwa tradition.

In this chapter as well as the following one, I explore the significance of paratextual

1. Gerald L. Bruns, "The Originality of Texts in a Manuscript Culture," *Comparative Literature* 32, no. 2 (1980): 113–14, <https://doi.org/10.2307/1770504>.

2. Şen, "Authoring and Publishing in the Age of Manuscripts," 367–74.

notes in the world of manuscripts. I will concentrate mostly on the notes written in the marginal space, but I will also make use of other relevant data, including colophon notes, endowment seals, and ownership statements. By analyzing the paratextual elements in a late-seventeenth century copy of the compendium, I show how legal knowledge expanded through the circulation of such texts among scholarly networks. This phenomenon arose from scholars' growing interest in compiling diverse legal documents, an interest that might be termed an archival consciousness.

3.1 Different Copies, Different Trajectories: Oriental Institute R.3

The legal compendium has several copies in manuscript libraries, but almost no two are identical. Although its content, as represented by the Manisa copy, is, to a large extent, preserved by these copies, they differ from each other with additional chapters and marginal notes. It is often the content of its marginal space that makes a copy distinctive. Among these copies are Beyazıt 4789, Ayasofya 2894, Kılıç Ali Paşa 491, Esad Efendi 851, and Yazma Bağışlar 3562. In this chapter, I will focus on the copy Oriental Institute R.3.

The manuscript under study is housed in the collections of the Oriental Institute in Sarajevo, with the shelf mark R.3.³ It has an incipit page with a decorated titlepiece, and each folio is framed to separate the main text from the margins (Figure 1). Like the Manisa copy, it contains neither traditional textual formulae (i.e., *besmele*, *hamdele*, and *salvele*) nor a preface to the work. However, a later scribe added the title *kânunnâme* to the title page.⁴ There are twenty lines on each page, and the text is written in black ink, with chapter headings and the word *mes'ele*, marking the start of legal opinions, highlighted in red ink. There are also paragraph marks in the form of inverted commas that separate the *kânun* provisions, giving them a structure akin to modern legal codes. The colophon appears on 55r, yet the scribe

3. It is one of the few manuscripts to survive the 1992–96 siege of Sarajevo, during which the Oriental Institute's collections, which had contained around two thousand manuscripts, were set alight by Serbian artillery attacks, resulting in the destruction of all but a few manuscripts. Manuscript number 3 is one of the fewer than fifty manuscripts that survived this destruction. I was able to access it during my visit to Sarajevo in 2024 to examine the manuscripts in GHB and Oriental Institute. I am indebted to Nenad Filipović and Nihad Dostović for their warm welcome. I extend my gratitude to both. For the fate of Oriental Institute collections, see András Riedlmayer, "The Bosnian Manuscript Ingathering Project," in *Ottoman Bosnia: A History in Peril*, ed. Markus Koller and Kemal Haşim Karpat (Madison: The University of Wisconsin Press, 2004), 27–35; Lejla Gazić, "The State of Sarajevo's Collections of Oriental Manuscripts," in *Ottoman Bosnia: A History in Peril*, ed. Markus Koller and Kemal Haşim Karpat (Madison: The University of Wisconsin Press, 2004), 43–49.

4. Oriental Institute R.3, fol. 1r.

seems to have continued expanding on the copy by inserting additional chapters, ultimately extending it to seventy-three folios. According to the dating inscription, the copy was made in Şaban 1085 (31 October–28 November 1674).

Figure 3.1. Incipit page of the Sarajevo copy



The dating inscription presents some challenges. The phrase *temmeti'l-kazâya'l-ma^crûza*, meaning “the issues that have been submitted [for sultanic approval] have been completed,” raises some questions: Does it refer to the final chapter of the compendium on the issues submitted by Ebussuud Efendi to Sultan Süleyman, which was discussed as a form of *Maruzat* in the previous chapter? Or did the scribe view the entire work as *Maruzat*, given that the three of its five chapters address issues presented by muftis to sultans? The first chapter, for instance, records *kânun* provisions decreed by the sultan in 1017 following a petition (*arz*), possibly by Zekeriyazade Yahya Efendi; this text is known to be the *kânunnâme* of Okçuzade and Zekeriyazade.⁵ The remaining two chapters are on the issues submitted respectively by Yahya Efendi and Ebussuud Efendi. This raises yet another question: Did the practice of submitting legal opinions to the sultan for enactment as administrative

5. A miscellaneous collection of texts has a copy of the 1017 decree and refers to it as “ma^crûzât mine'l-kavânîni'l-müteallika bi'l-arâzî ba^cdehû evkâf-ı selâtîn ilâ âhirihi.” Hacı Mahmud Efendi 1238, fol. 88r.

law catalyze the emergence of *Maruzat* as a distinct literary genre?⁶

Unlike the Manisa and Istanbul codices, this codex contains only the legal compendium in question (i.e., it is not part of a composite volume, or a miscellaneous collection), which suggests that the scribe considered it worth copying as a standalone work. The manuscript has gone through the hands of several people. The core text seems to have been written by one scribe, with the glosses probably made later. Although most marginal notes were added by a single glossator, some of them apparently belong to other people. Variations in handwriting suggest at least four contributors, excluding those who added ownership statements and miscellaneous notes to the title and final pages.

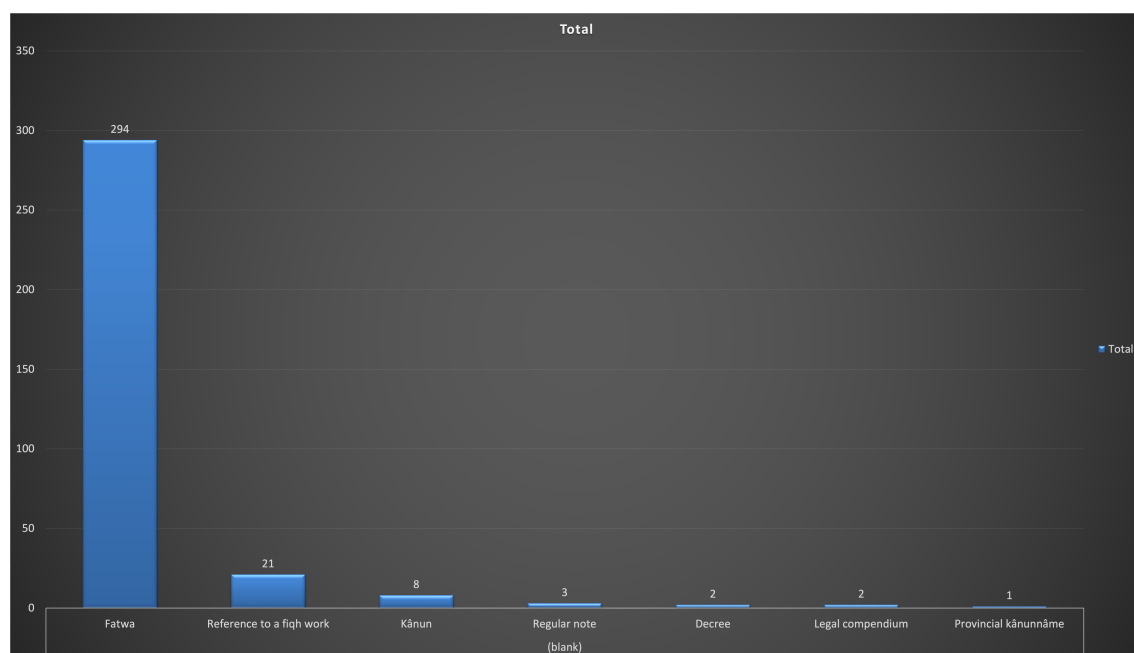
This copy is distinctive because it is not an exact copy of the Manisa 5819. The scribe composed two new chapters, one between the first and second chapters, and the other one appended to the end; both comprise fatwas on various issues, including a sub-chapter on the fatwas of *iltizâm* (tax-farming). The copy has 331 marginal notes, aggregating texts of different genres, most of which are fatwas. They are written by either the scribe of the main text, or another person. However, it is hard to decide whether the scribe and the glossator were the same person or not, because the handwriting of the main text and the marginalia is probably with the same hand. Apart from the fatwas, there are twenty-one references to the doctrinal works of Hanafi legal school, eight pieces of Ottoman *kânuns*, three regular notes, two references to different legal compendiums, one statute from a provincial *kânunnâme* and two sultanic decrees (Figure 2).

The glossator acted as a meticulous researcher of diverse legal materials. He made use of multiple sources and integrated them into the compendium contextually. All texts recorded in the margins discuss the same issue discussed in a given chapter of the main text. The glossator's major sources included legal compendiums as well as fatwa collections. He had access to the fatwas of not only chief muftis but also provincial muftis of his time, about whose legal activity little is known to us today, since few left behind fatwa collections to draw the attention of modern researchers. The glossator might have also had consulted the Imperial Council or local Imperial Registry (*Defterhâne*) to obtain the copies of official *kânun* documents.

Although most of the notes belong to a single glossator, the copy continued circulating in different locations and was expanded by future glossators. The Sarajevo copy is interesting in terms of mobility. Although it is not stated where the copy was made, it traveled through several towns and cities of Rumelia following its making, including the sub-district (*kazâ*) of Kraviçe in Yenişehir (Larissa), Kesendire in

6. Atçıl, "Political Power and Lawmaking," 129.

Figure 3.2. Distribution of marginal notes in the Sarajevo copy



Selanik, and Baba-yı Atik in Edirne.⁷ Based on an ownership statement on the title page (*zahriye*), the manuscript was at one point in the possession of Osman Nuri b. Mustafa, the judge of Duğna in Travnik and temporary deputy of the inspector of *harameyn* endowments (*vekîl-i müfettişi'l-harameyn*), which was probably the last destination of the manuscript before finding its way to the Oriental Institute in Sarajevo.⁸ During its journey in these cities, new fatwas were added to its margins, like those of Abdullah Efendi, the mufti of Selanik, which were clearly written by a different scribe at a later time.⁹ Also, a certain scribe copied several fatwas submitted to the sultan for approval onto folios 55 and 56.

3.2 Instrumentalization of Marginal Space in a Manuscript Culture

Paratextual notes were commonly employed to expand on texts in a manuscript culture. These notes often utilized a manuscript's marginal space, which functioned as a fertile ground for intellectual engagement.¹⁰ Manuscripts typically feature a

7. Oriental Institute R.3, fols. 74, 1r, and 0r.

8. Oriental Institute R.3, fol. 1r.

9. Oriental Institute R.3, fol. 55r.

10. Gottfried Hagen's article on different copies of Katip Çelebi's *Cihannüma*, written and later revised by the author himself with notes in the margins, illustrates the process of making a work in a manuscript culture. Hagen, "El Yazmasının Kenarındaki Hayat: Cihânnümâ Müellif Hatları ve Coğrafyacının Atölyesine Bir Bakış."

frame around the text, separating the main body from the marginal space. This space functioned as a site for annotations, analogous to modern footnotes, allowing authors and readers to comment on, discuss, and record their thoughts on the text. Though physically marginal, these annotations are often highly relevant.¹¹ Later copyists and compilers incorporated them into the main text during reproduction. In the Islamic scholarly tradition, margins facilitated the development of *hâşiye* (glosses), a genre that transformed texts through layered commentary. This practice underscores that textual production in a manuscript culture was a multi-authorial process, shaped by the contributions of authors, copyists, commentators, and compilers.

The *hâşiye* genre assumed significance especially in the Islamic post-classical period, when preparing glosses that built upon the *metns* became a major way in which Muslim intellectuals wrote and produced knowledge. Until recently, the rise of the *hâşiye* genre in the post-classical period was often taken as a sign of stagnation and decline of Islamic civilization, a Muslim “Dark Age”—an idea that comfortably fit the meta narrative of colonial powers and legitimized their civilizing mission.¹² However, recent scholarship has offered an alternative understanding of the *hâşiye* tradition, one that views glosses and margins as innovative sites of knowledge production.¹³ Scholars instrumentalized margins to present their distinctive opinions on certain matters. Thus, textual production continued in the margins.

Due to their significance, copyists tend to preserve the marginal notes, especially if they belong to the author himself, or another prominent scholar, or if they relate to the main content, thus helping to frame the issue at hand in a better way. Glossators who make notes in the marginal space usually record source of the information to which they refer to buttress the authority of the note. If these notes were taken by the author himself, they were copied to later copies, same as they were in the marginal space, with a note at the end indicating their belonging to the initial author: “*minhu*,” meaning “from him [the author]” (i.e., marginal notes tracing back to the author).¹⁴ If the marginal note was a citation from another source, that source was usually stated at the end of the note.

As part of an ongoing culture of literacy, authors and copyists of legal compendiums

11. For an inspiring volume on the usefulness of paratextual notes in manuscripts, see Andreas Görke and Konrad Hirschler, *Manuscript Notes as Documentary Sources* (Würzburg: Ergon, 2011).

12. Asad Q. Ahmed and Margaret Larkin, “[Introduction]: The Ḥaṣhiya and Islamic Intellectual History,” *Oriens* 41, nos. 3/4 (2013): 213.

13. For the revisionist literature on the *hâşiye* tradition, see the whole volume of *Oriens* 41, no. 3/4 (2013). See also İsmail Kara, ““Unuttuklarımı Hatırla!” Şerh ve Haşiye Meselesine Dair Birkaç Not,” *Divan: Disiplinlerarası Çalışmalar Dergisi*, no. 28 (2010): 1–67.

14. Orhan Engakar, “Osmanlı’da Şerh-Haşiye Geleneği: Dürer Haşiyeleri Örneği,” in *Osmanlı’da İlm-i Fıkıh*, ed. Mürteza Bedir, Necmettin Kızılkaya, and Hüseyin Sağlam (İsar, 2022), 25–26.

also seem to have followed this tradition. For example, one of the multiple copies of the legal compendium known as *Kânun-ı Pâdişâhî* is entitled the “The Valid Sultanic Legal Compendium and the Glossary of the Late Chancellor Pasha.”¹⁵ The chancellor’s notes on this compendium were deemed significant, so they were copied alongside the main text. Thus, the making of a legal compendium was often a continuous process, sustained by annotators, copyists, scribes, and commentators, who reproduced the text in alignment with their purposes, thus turning the making of the text into an unending activity.¹⁶

3.3 Fatwas

The Sarajevo copy has a total of 422 fatwas in the margins and in the additional two chapters. Determining the ultimate source of these fatwas is problematic. Out of these, 303 belong to chief muftis, all of whom held the office during the seventeenth century, except for three: Kemalpaşazade, Çivizade, and Ebussuud Efendi. Thirty-six fatwas are attributed to provincial muftis from different cities. The rest, however, are of uncertain provenance, with most cited from unnamed fatwa collections, referred to as *mecmûatü’l-fetâvâ*, or *kütübü’l-fetâvâ*. In the fatwas credited to provincial muftis, sometimes the city is not mentioned, as in Mehmed *el-me’zûn*, Ahmed *el-muftî*, and İsmail *el-me’zûn bi’l-iftâ*.¹⁷ It is also not possible to distinguish between two chief muftis if they bear the same name. For example, there is a certain Ali *şeyhülislam*, who might be either Zenbilli Ali Efendi (d. 932/1526) or Çatalcalı Ali Efendi (d. 1103/1692), both of whom are known to have fatwa collections. Similarly, there is a certain Mustafa *şeyhülislâm*, but there is no further detail to identify him. He might be Ebulmeyamin (d. 1015/1606), Balizade (d. 1073/1662), or Bolevi (d. 1086/1675).

It is not surprising that the majority of chief mufti fatwas belong to Ebussuud Efendi, who assumed a leading role in the systematization of land regime practices

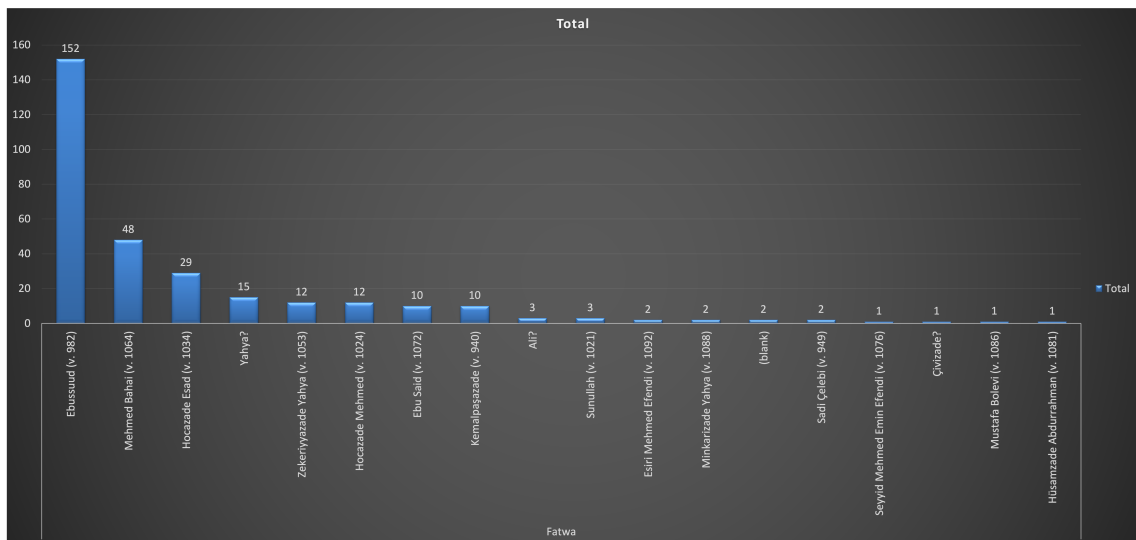
15. “Kâunnâme-i sahîh-i pâdişâhî ve kenâr-ı merhûm nişancı paşa.” Neky 2730.

16. For some publications on textual production in the age of manuscripts, see Şen, “Authoring and Publishing in the Age of Manuscripts.” Şen delves into the paratextual notes of a seventeenth-century copy of a popular science book, originally composed by a sixteenth-century author. Inspired by Süheyl Ünver’s appreciation for manuscript paratexts (*metin hârici notlar*), Şen has found that the continuous interventions of authors as well as copyists and readers enrich the text and change the original content. See also John Dagenais, *The Ethics of Reading in Manuscript Culture: Glossing the “Libro De Buen Amor”* (Princeton (NJ): Princeton University Press, 1994); Ronit Ricci, “Thresholds of Interpretation on the Threshold of Change: Paratexts in Late 19th-Century Javanese Manuscripts,” *Journal of Islamic Manuscripts* 3, no. 2 (2012): 185–210, <https://doi.org/10.1163/187846412X631063>.

17. Oriental Institute R.3, fols. 11r, 13v, and 46r respectively.

in his fatwas and fatwa-like short treatises. Since the compendium's main focus was on land law and transactions conducted on *mîrî* and waqf lands, Ebussuud's pioneering role was acknowledged by the compiler and the glossator. Ebussuud is followed by Mehmed Bahai and Hocazade Esad, two members of the famous *hocazâdeler* family, whose members dominated the post of chief mufti during the seventeenth century.¹⁸ The next in the list is a certain Yahya Efendi, some of whose mentions are marked by either the old (*el-atîk*) or the second (*es-sânî*), respectively referring to Zekeriyazade and Minkarizade, though many mentions do not specify which Yahya Efendi is being referred to. The list goes on to include a total sixteen chief muftis, thirteen of which held the post during the seventeenth century (Figure 3).

Figure 3.3. Distribution of chief muftis by number of fatwas



Apart from chief mufti fatwas, there are a total of forty-four fatwas by provincial muftis. These are attributed to twenty-two provincial muftis, affiliated with fourteen different cities (Figure 4).¹⁹ Since these mufti names do not bear titles to further identify them, it is difficult to track them in written sources.²⁰ Seven of them were identified, mostly thanks to the remarkable study of Ömer Faruk Köse, in which he provides an inventory of provincial muftis based on *ruûs* registers:

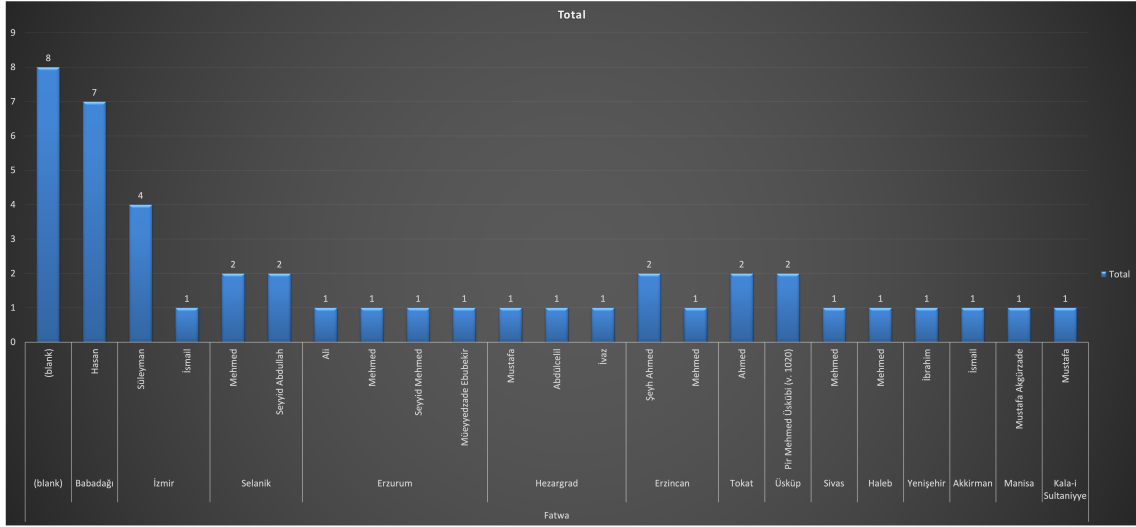
1- Pir Mehmed Üskübi (d. 1020/1611): He is probably the most renowned provincial mufti. His tenure in Üsküp till his death earned him the title of *üskübî*. He is known for his two books, which were widely circulated among scholars. One, *Zahîru'l-*

18. For a full list of the family, see Sadık Tekin, “Osmanlı Devleti’nde Çok Yönlü Bir Ulema Ailesi: Hocazâdeler” (PhD Diss., Mimar Sinan Güzel Sanatlar Üniversitesi, 2022), 33–96.

19. Some city names are not specified by the glossator, so they are shown as “(blank)” in the graph.

20. Identifying each of these provincial muftis requires dedicated archival research, which is a task beyond the scope of this study.

Figure 3.4. Distribution of provincial muftis by number of fatwas



kudât, that largely deals with issues pertaining to *kânun*. It is sometimes referred to as *Üskübî fî hakkı'l-kânun*, meaning “the work of Üskübî concerning *kânun*.”²¹ It contains fatwas issued by the author himself alongside the fatwas of several chief muftis. The other one, *Muînu'l-muftî fi'l-cevâb ale'l-müsteftî*, is a fatwa collection with references to authoritative books of Hanafi doctrine. Two of Üskübî's fatwas are listed in the compendium, both of which found in *Zahîru'l-kudât*.²²

2- Akgürzade Mustafa, the mufti of Manisa: He is listed in Köse's thesis as serving as a professor in the Tekke Medresesi in Manisa before his dual appointment as professor and mufti in İzmir on 5 Zilhicce 1061 (19 November 1651), following which he was appointed as a professor in Sultan Selim Medresesi in İzmir on 21 Ramazan 1067 (3 July 1657), co-entrusted with the task of issuing fatwas.²³ He has only one fatwa mentioned in the margins of the compendium.

3- İbrahim, the mufti of Yenişehir: Based on the information provided by Köse, a certain İbrahim Efendi was appointed as the mufti of Yenişehir on 1 Muharrem 1064 (22 November 1653).²⁴ It is possible that both were the same person.²⁵ İbrahim Efendi has only one fatwa in the compendium.

4- Ahmed, the mufti of Tokat: According to Köse's findings, he was appointed as

21. See Beyazıt 4789, fol. 49v and Esad Efendi 587, fol. 129v.

22. Oriental Institute R.3, fols. 5r and 39r. Both are found in *Zahîru'l-kudât*, see Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 410.

23. Köse, “Osmanlı Devleti'nde Taşra Müftüleri (1550-1700),” 207.

24. Ibid., 93.

25. Fatwas of İbrahim Efendi, the mufti of Yenişehir, are listed in other legal compendiums as well. For example, a legal compendium which has inscription notes dated to 17 Cemaziyelahir 1101 (28 March 1690) and 20 Rebiulevvel 1108 (17 October 1696) mentions some of his fatwas. See, Mihrişah Sultan 440, fols. 191-192.

the mufti of Tokat on 16 Şaban 1062 (23 July 1652).²⁶ Two of his fatwas are listed in the Sarajevo copy.

5- Seyyid Mehmed, the mufti of Erzurum: He is probably the famous Vani Mehmed Efendi, the father-in-law of chief mufti Feyzullah Efendi, and the preacher of the Kadızadeli movement. Seyyid Mehmed was appointed as the mufti of Erzurum on 27 Muharrem 1068 (5 November 1657).²⁷ One of his fatwas is mentioned in the compendium.

6- İvaz, the mufti of Hezargrad: In Köse's thesis, there are two muftis named İvaz in Hezargrad during the last quarter of the seventeenth century. One held the post as the professor of the İbrahim Paşa Medresesi from 1653 to 1657. The other one was entrusted with the position from a certain date till his death in 1661.²⁸

7- Mustafa, the mufti of Hezargrad: Based on an appointment paper issued in Evâil-i Şaban 1079 (4-14 January 1669), Mustafa Efendi was appointed as the mufti of Hezargrad for a life-long service there.²⁹ One of his fatwas is mentioned in the compendium.³⁰

3.3.1 The Consolidation of the Provincial *İftâ* System

While it is not surprising that the glossator had access to the fatwas of several chief muftis, it is worth asking how he was able to access the fatwas of twenty-two provincial muftis across fourteen cities. Despite the existence of collections compiling the fatwas of chief muftis, no comparable literature exists for provincial muftis, leaving their fatwas scattered in personal collections.³¹ This may be because chief muftis employed secretaries (*fetvâ emîni*) who assisted them in the issuance and recording of fatwas, whereas it remains unclear whether a similar practice was

26. Köse, "Osmanlı Devleti'nde Taşra Müftüleri (1550-1700)," 230.

27. Ömer Faruk Köse, "The Fatwa Collection of an Ottoman Provincial Mufti, Vani Mehmed Efendi (d. 1685)" (master's thesis, Boğaziçi University, 2015), 1.

28. Köse, "Osmanlı Devleti'nde Taşra Müftüleri (1550-1700)," 206-7.

29. A. {DVN., 54/2, Cumhurbaşkanlığı Devlet Arşivleri (BOA).

30. Fatwas of a certain Mustafa Efendi, the mufti of Hezargrad, are mentioned in a copy of the *Kânunnâme-i Cedîd* as well. See GHB R-8255.

31. In recent years, several researchers have made crucial contributions to our understanding of the provincial *iftâ* system. See, Selma Zecevic, "On the Margin of Text, On the Margin of Empire: Geography, Identity and Fatwa-Text in Ottoman Bosnia" (PhD Diss., Columbia University, 2007); Köse, "The Fatwa Collection of an Ottoman Provincial Mufti, Vani Mehmed Efendi (d. 1685)"; Guy Burak, "Şeyhülislâm Feyzullah Efendi, the Hanafî Mufti of Jerusalem and the Rise of the Provincial Fatâwâ Collections in the Eighteenth Century," *Journal of the Economic and Social History of the Orient* 64, no. 4 (2021): 377-403, <https://doi.org/10.1163/15685209-12341540>; Fatih Doğan, "Lawmaking in an Ottoman Frontier Province at the Turn of the Sixteenth Century: The Mufti of Akkirman, His Fatwas and Authority" (master's thesis, Sabancı University, 2022); Köse, "Osmanlı Devleti'nde Taşra Müftüleri (1550-1700)."

systematically applied in the provinces.³² This raises critical questions: How did the glossator amass such a geographically diverse corpus? What instruments and networks enabled this transmission?

The glossator's access to such a wide array of provincial fatwas aligns with the rising network of provincial muftis by the seventeenth century. Up until this period, the main career tracks within the Ottoman scholarly bureaucracy were that of professorship and judgeship.³³ However, with the Ottoman center's appointment of provincial muftis beginning in the late fifteenth century, a new career line became available for scholars.³⁴ It has been argued that the increasing number of provincial mufti appointments was related to a parallel increase in the demand for positions by madrasa graduates.³⁵

No source shows the existence of centrally appointed muftis in the provinces before this period. There were local juristconsults who took questions from the lay public. However, they were not authorized by the Ottoman center, so their fatwas were not as regarded as highly in legal procedure as those of appointed muftis, especially if a lawsuit concerned an administrative issue, or a topic of public law governed by *kânun*. Non-official muftis were occasionally even prevented from issuing fatwas.³⁶

Two concurrent developments took place during the mid-sixteenth century: the establishment of the chief mufti's position as the head of the scholarly bureaucracy and the rise of provincial mufti appointments. Before this period, central cities like Bursa, Edirne, and Istanbul had an appointed mufti to whom people could apply for legal consultation. The chief mufti was the mufti, who assisted in legal matters directed at him from the surrounding regions. By mid-sixteenth century, mufti of Istanbul was promoted to the position of the head of the scholarly bureaucracy. It has been argued that early *muftîlik* (i.e., in the pre-fifteenth-century period) was a venerated an honorary position, serving as a department within the state, distinctly as a "religious" figure. The post of *muftî* served for the purpose of balancing the

32. Atçıl, "Political Power and Lawmaking," 125. It is reported that the fatwas of Üskübi Pir Mehmed were post-humously collected by his son, whom he employed as his fatwa secretary. See Şükrü Özen, "Pir Mehmed Üskübî," in *TDV İslam Ansiklopedisi* (TDV İslâm Araştırmaları Merkezi, 2007), accessed May 15, 2025, <https://islamansiklopedisi.org.tr/pir-mehmed>. There is another case where the former fatwa clerk of the mufti of Budin was appointed as the city's mufti following the death of his master—a case that further shows the presence of fatwa clerks in provinces. For the register of his appointment as well as a somewhat detailed description of the case, see A.{DVN., 66/47, Cumhurbaşkanlığı Devlet Arşivleri (BOA).

33. For multiple career tracks within the scholarly bureaucracy extending from town judgeships (*kasaba kadılığı*) to dignitaries (*mevâlî*), see Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire*, 188–211.

34. While it remains unclear who the first appointed mufti was, existing sources suggest that it was Molla Fenari. Köse, "Osmanlı Devleti'nde Taşra Müftüleri (1550-1700)," 10.

35. *Ibid.*, 52.

36. Guy Burak, *The Second Formation of Islamic Law* (Cambridge University Press, 2015), 50–55.

executive power, strengthening a “religious figure” to act as check against the administrative establishment.³⁷ Gerber suggested that the empowerment of the post of chief mufti by its elevation to the head of scholarly bureaucracy was to create a strong scholar bureaucrat figure to respond to an increasingly more bureaucratic state organization. Chief muftis acted as consultants assisting in the establishment of legal system.³⁸

It was also in parallel with the establishment of chief mufti’s position that fatwa issuance was subjected to a sort of systematization and bureaucratization, to the extent that an office merely for the fatwa institution was created under the directorship of *fetvâ emîni*.³⁹ The post-holder acted as the secretary of the chief mufti and sometimes assumed his post upon its becoming vacant, as was the case with Bursalı Mehmed Efendi, the fatwa secretary of Zekeriyazade Yahya Efendi. The systematization of fatwa institution has given birth to a re-definition of Ottoman fatwa as a semi-official statement of law.⁴⁰ Fatwa was a means for legal consultation sought by lay people who were not in a position to look up a law-book themselves.

In the period following the mid-sixteenth century, the network of provincial muftis became more established and widespread. The number of muftis appointed in towns and cities across the empire increased significantly, reaching 110 sub-districts (*kazâ*) by the mid-seventeenth century.⁴¹ The rise of mufti network created a parallel system of legal consultation in the provinces alongside with judges. The turn of the seventeenth witnessed yet another development with regards to the provincial fatwa system. Zecevic has found that the way muftis were appointed in Bosnia has changed in the seventeenth century. After this period, most muftis were Bosnian-born, and thus accustomed to local traditions, they were educated in central educational institutions of the empire before their appointment as local muftis in their hometown to undertake the job till their death, as the muftiship now turned into a life-long appointment.⁴² Burak also found that following the seventeenth century, most muftis of Damascus were not sent from Istanbul; they were trained in local madrasas before

37. Repp argued that the early *muftîlik* functioned as a state department with a distinctly religious role, taking little, if not any, part in state administration. He supported this assertion with two observations concerning its nature: first, the lack of a defined path for succession to the post of chief mufti; and second, the fact that the office usually remained with its holder for life. See R. C. Repp, *The Müftî of Istanbul*, 297–305.

38. Haim Gerber, *State, Society, and Law in Islam: Ottoman Law in Comparative Perspective* (Albany: State University of New York Press, 1994), 92–93.

39. Uriel Heyd, “Some Aspects of the Ottoman Fetvâ,” *Bulletin of the School of Oriental and African Studies* 32, no. 1 (1969): 47.

40. Gerber, *State, Society, and Law in Islam*, 79–82.

41. Heyd asserted their number was 210 by the late eighteenth century. However, recent scholarship indicates that the real number must have been much higher. Heyd, “Some Aspects of the Ottoman Fetvâ,” 53–54. See Köse, “Osmanlı Devleti’nde Taşra Müftüleri (1550-1700),” 52.

42. Zecevic, “On the Margin of Text, On the Margin of Empire: Geography, Identity and Fatwa-Text in Ottoman Bosnia,” 337.

their appointment as official muftis in their same locality.⁴³ In parallel with these findings, Doğan observed that there was a similar institutional change in Akkirman.⁴⁴

The establishment of a central web of muftis spread throughout the imperial dominions was a distinctive characteristic of the Ottoman fatwa institution that did not have a predecessor in the Islamic history. These muftis were trained in imperial madrasas and were instructed to issue legal opinions based on the soundest opinion (*asahh-ı akvâl*) articulated in the books of fiqh; in the absence of such a precedent, they relied on rulings endorsed by sultanic decrees.⁴⁵

3.3.2 Fatwas in the Margins

In her study on the development of the fatwa institution in Bosnia, Zecevic has found that many local Bosnian muftis, whose names had not previously been known, wrote their fatwas in the margins of *Fetâvâ-yı Ahmediyye*—an eighteenth-century fatwa collection that was widely circulated among Bosnian scholars during the eighteenth and nineteenth centuries. Zecevic was a pioneer in emphasizing that marginal space in fatwa collections provided an open platform for muftis to engage in intellectual discussions by asserting their legal opinions, revealing that legal interpretation was alive that it can be followed through fatwas in the margins.⁴⁶ Expanding on her work, I argue that legal compendiums of all sorts served as a medium for intellectual engagement. Muftis wrote their fatwas on these compendiums to expand on the knowledge found within *kânun*.

I suggest that it was through a survey of these legal compendiums that the glossator of the Sarajevo copy was able to reach the fatwas of provincial muftis. In other words, the glossator was aware of this tradition (i.e., contributing to legal compendiums with fatwas), so his access to legal compendiums paved the way for the making of the Sarajevo copy's margins. He critically examined these repositories as valuable sources of the Ottoman legal system and picked up fatwas corresponding to his focus. By amassing this corpus and jotting down the fatwas in the margins in a contextual manner, the glossator's work culminated in the making of a distinctive legal compendium, covering fatwas of multiple chief and provincial muftis in its

43. Burak, *The Second Formation of Islamic Law*, 50–55.

44. Doğan, "Lawmaking in an Ottoman Frontier Province at the Turn of the Sixteenth Century: The Mufti of Akkirman, His Fatwas and Authority," 38–39.

45. Atçıl, "Political Power and Lawmaking," 123–28. Also, for a sample mufti appointment paper, see Ms. or. quart 1209, fol. 48r and A.{DVN., 54/2, Cumhurbaşkanlığı Devlet Arşivleri (BOA).

46. Zecevic, "On the Margin of Text, On the Margin of Empire: Geography, Identity and Fatwa-Text in Ottoman Bosnia," 176.

margins.

The owners of both the Manisa and Sarajevo copies recorded fatwas either in the margins or by appending new chapters, some of which are shared between different copies. For example, the Manisa copy, despite its rare instrumentalization of marginal space, mentions several muftis from Manisa and İzmir in its margins, including İsmail Efendi, identified as *İzmiri* (“from İzmir”) in one instance and as *el-müftî bi-İzmir* (“the mufti of İzmir”) in another; Mahmud, the mufti of Manisa; and Mehmed, the mufti of İzmir.⁴⁷ Neither the Sarajevo nor the Istanbul copies mention these muftis, except for İsmail Efendi. This discrepancy between different versions may indicate two things: the local characteristics of legal compendiums and the practice of recording fatwas in such texts.

The Manisa copy’s paratextual notes are enough to say that it remained anchored in Western Anatolia for quite a long time. It contains a copy of a decree submitted to İsmail Efendi, the judge of İzmir, dated Şevval 1115 (February 1704).⁴⁸ Also, notes on the title page (*zahriye*) indicate that by 1 Receb 1185 (10 October 1771), the note-taker and his sister held shares in several inns in Manisa and İzmir. These show that the Manisa copy was a local one—the fact that explains why it incorporated the fatwas of only local muftis from nearby vicinities. This also shows that some copies may exhibit distinctly local characteristics.

The Sarajevo copy is more interesting in terms of the geographical range of its fatwas, which extend from Aleppo in Levant to Akkirman in the Northern Black Sea and from Erzurum in Northeastern Anatolia to Üsküp in the Balkans. It was thanks to the dynamism of legal compendiums and the efforts of the glossator that these fatwas were brought into dialogue with one another in a single volume. The glossator likely went through many compendiums and copied them in the margins of a single one; or else the fatwas may have come together through a more organic process. Paratextual notes in this manuscript show that it was quite a mobile one, traveling through several cities in Rumelia. While it is unknown where the copy was made, it can be detected where it travelled after its creation. It found its way to the sub-district (*kazâ*) of Kraviçe in Yenişehir (Larissa), Kesendire in Selanik, Baba-yı Atik in Edirne, and Duğna in Travnik.⁴⁹ This mobility does not explain how these fatwas were brought together, as they were written prior to the aforementioned notes. However, it indicates that this copy circulated beyond a certain locality. In other words, it was not bound to a particular context, and its clauses were adaptable across a wide geographical area.

47. Manisa 5819, fols. 12r, 3r, 1r, and 6v.

48. Manisa 5819, fol. 15v.

49. Oriental Institute R.3, fols. 74, 1r, 0r, and 1r.

Additional copies reveal how muftis continued expanding these compendiums. One example is a personal collection that contains, among other texts, a copy of the compendium in question. A treatise in this collection mentions on its colophon page Ali b. Mehmed, the mufti of Silistre, as the copyist, with 1126 (1714-15) as the copy date.⁵⁰ Based on material evidence (folios, handwriting, and ink), Ali b. Mehmed was likely the compiler of the whole codex. Besides the muftis mentioned in the Sarajevo and Istanbul copies, Ali b. Mehmed references additional ones, both in the margins and within the text, including Ali (Sofya), Nimetullah (Baba), Ali (Akkirman), and Fethullah el-Kırımî.⁵¹ Ali b. Mehmed gathered fatwas from muftis across Rumelian cities, jotting them down in his collection, while also recording his own fatwas, mostly on waqf.⁵²

An endowment statement on the *zahriye* of Ali b. Mehmed's compendium indicates that this codex was later endowed by a certain Mustafa Ağa from Vidin, with the condition that it be used only by the muftis of Vidin.⁵³ The endowment of this compendium as a reference book for muftis might signify that legal compendiums were regarded as valuable lawbooks. They were perhaps inherited by the holders of the local mufti's post, just as court records were passed to the new judge upon the dismissal of the old one.⁵⁴

Both the *mecmûa* of Ali b. Mehmed, the mufti of Silistre, and the Manisa copy show that some of the copies exhibit distinctively local characteristics, reflected in the fatwas of local muftis, while retaining core features rooted in the sultanic laws included within the text. They remained based in their limited localities, thus utilized and developed by local muftis. The Sarajevo copy was distinct, however, as it collected fatwas of twenty-two muftis from fourteen cities. The Sarajevo copy's glossator would have had to consider various collections held by different scholars. Only the growing network of muftis during the seventeenth century would have made it possible to access fatwas from across such a wide territory. Legal compendiums allowed their owners to comment on the existing texts through their own fatwas or those of others. This practice shows that these books were not mere repositories of legal texts; instead, they were active sites of legal knowledge production.

50. Beyazıt 4789, fol. 119v.

51. Beyazıt 4789, fols. 45-47.

52. Beyazıt 4789, fols. 48-49.

53. "Dâru'l-cihâd ve'l-mücâhidîn mahrûse-i Vidin sükkânından Mustafa Ağa ibnu'l-hâc İsmail Ağa-yı ser-yeniçeriyân târîh-i hicret-i nebevviyeden bin yüz seksen iki senesinin mâh-ı zilka^cdesinde mahrûse-i mezbûrede iftâya me^zûn olanlara me^rûta olmak üzere hasbeten lillâhi teâlâ vakf ve tescil ve teslim ile'l-mütevellî eylediği ? işbu mecmûa-i kavânîn-i sultâniyye ve bazı ferâiz sâbıku'z-zikr Mustafa Ağanın vakf-ı sahîhi olduđu..." Beyazıt 4789, fol. 0r.

54. For the transmission of court records, see Suraiya Faroqi, "Sidjill," in *Encyclopaedia of Islam*, vol. 9 (Leiden: Brill, 1997), 540; Wael B. Hallaq, "The "Qāḍī's Dīwān (Sijill)" Before the Ottomans," *Bulletin of the School of Oriental and African Studies, University of London* 61, no. 3 (1998): 425-26.

3.3.3 Fatwas on *Kânun*

Fatwas in the margins reflect muftis' perception and interpretation of Ottoman *kânun*. They respond to questions on how to tax, how to deal with transactions on *mîrî* and waqf lands, and how to consider relations between ruler and ruled. While responding to these questions, muftis consult both scriptural sources of sharia (i.e., the books of fiqh) and Ottoman *kânun*. Does their reliance on Ottoman *kânun* signify that they acted as intermediaries in transmitting central regulations to the provinces? What was their approach to the Ottoman *kânun*? Did they consider it a valid source of law? How did they instrumentalize *kânun* regulations in their legal opinions? To answer these questions, I turn now to some of these fatwas.

Scholars have long recognized that Ottoman muftis issued their fatwas based on sultanic rules. However, the nature of muftis' agency in these fatwas remains a subject of debate. Barkan argued that these fatwas did no more reformulate *kânun* in the language of sharia, so to enable madrasa graduates have an understanding of Ottoman *kânun*, which presented a different form of lawmaking than that of sharia. He asserted that the number of fatwas on matters of public law during the seventeenth and eighteenth centuries increased because the court needed to legalize its acts more than before. Many fatwas copied in legal compendiums were written by something of a subterfuge, with the main objective of proving the legality of *kânun* on land and feudal relations. Thus, according to Barkan, fatwas on these issues were legal fictions to legitimize sultanic authority.⁵⁵

In line with Barkan, Heyd took it for granted that the muftis were incapable to answer the questions, which required consulting *kânun* authorities, merely by referring to the scriptural sources of sharia because they were officially not authorized to ignore *kânun*. He viewed the Ottoman legal system through the dichotomy between sharia and *kânun*, each respectively referring to religious and secular law. Unlike Barkan, however, he viewed muftis within this dichotomy as legists in both sharia and *kânun*. Heyd claimed that people applied to muftis in matters of *kânun* for practical reasons. Since they could not reach the chancellor in the court, they asked muftis, who were in contact with the chancellor, and so were familiar with *kânun*.⁵⁶

Recently, Malissa Taylor argued that not all fatwas built upon *kânun* were mere illustrations of its statements. Inspired by Punar's study on the fatwas of chief muftis, Taylor suggests that throughout the seventeenth and eighteenth centuries, there appeared two camps within the *ilmiye*, or, to be more accurate, there appeared two approaches towards on *kânun* relating to land law. Fatwas within the autonomist

55. Barkan, *Ziraî Ekonominin Hukukî ve Malî Esasları*, xxxiv–xxxlii.

56. Heyd, *Studies in Old Ottoman Criminal Law*, 187–89.

tradition were deferential to the *kânun* of Ottoman sultans on the issues of land, as they viewed *mîrî* land as *sui generis*, determined exclusively by sultanic authority. On the other hand, analogist fatwas viewed Ottoman land law in analogy with the land law stated in the books of *fiqh*, so they considered both Ottoman *kânun* and traditional scriptural sources of sharia as valid basepoints when issuing their legal opinions, in most cases through analogy with *waqf*.⁵⁷

I argue that understanding fatwas on *kânun* requires an understanding of the methodological discourse of scholars in their scholarly production. I would like to draw some parallels between the writing of *hâşiyes* in the Islamic post-classical period and the emergence of fatwas as commentaries on *kânun*. Recent scholarship has come to acknowledge that commentaries and glosses provided active sites for scholarly discussion and intellectual growth. Writing *hâşiyes* was a wide-spread scholarly exercise that led Muslim thinkers to become more innovative.⁵⁸ Drawing upon the *hâşiye* tradition, I argue that scholars viewed *kânun* as a body of knowledge that can be built upon. They perceived the margins of legal compendiums as an open platform through which to engage with *kânun* knowledge. They added their own fatwas in the margins, whether as fictions or drawn from real cases. Providing a legal opinion for a real case, complicated as it is, based on what is given in the scriptural sources of *kânun*, necessarily required muftis to conduct their legal reasoning and to refer to the sources of sharia. They utilized *kânun* alongside their broader world of scriptural sources.

A fatwa on *kânun* could be issued in several ways. First, *kânun* could be interpreted by reference to the sources of sharia, as in the fatwa of Mustafa, the mufti of Kal'a-i Sultâniyye (Çanakkale):⁵⁹

Question: Zeyd dies leaving no male heir behind, and the lands held by him become eligible for *tapu*. Amr, the deputy, does not grant these lands to another cultivator via *tapu* but instead cultivates them himself for several years. After Amr's death, Bekr becomes the new deputy and assigns the lands to Bişr via *tapu*. Bişr cultivates them for three years. Then, Hind, Amr's daughter, claims the lands, arguing, "My father held these lands," and offers to pay Bişr the *tapu* fee he had paid. Can Hind reclaim and take possession of the lands?

Answer: She cannot. This is in contradiction with both sharia and *kâ-*

57. Taylor, *Land and Legal Texts in the Early Modern Ottoman Empire*, 49–67. See also Punar, "Kanun and Sharia: Ottoman Land Law in Şeyhülislam Fatwas from Kanunname of Budin to the Kanunname-i Cedid."

58. Asad Q. Ahmed, "Post-Classical Philosophical Commentaries/Glosses: Innovation in the Margins," *Oriens* 41, nos. 3/4 (2013): 344–46.

59. Oriental Institute R.3, fol. 6v.

*nun. If the sultan wishes to take possession of the land himself, the more prudent way for him is to sell it to another party and then repurchase it from the buyer. In such transactions, the fief-holder [sâhib-i arz] acts as the sultan's deputy. This is stated in el-Mes'ûdiyye. From Zehîratu'l-fetâvâ. It also aligns with the sultan's law.*⁶⁰

It is crucial to note that this fatwa is written in the margins of a *kânun* that forbids the deputy and his son from claiming the usufruct rights of a parcel of vacant land via *tapu*.⁶¹ Given that context, Mustafa Efendi rejected Hind's claim to the right of first refusal (*hakk-ı tapu*) because he did not recognize Amr's initial possession of the lands as legitimate. In a situation where Amr is not the deputy but a regular subject peasant, he would probably have recognized both his and his daughter's rights to the land. However, as a deputy of the sultan, Amr's personal cultivation of the lands violated the law.

Mustafa Efendi considered the situation in comparison with the sultan's possession of lands and referred to a canonical Central Asian Hanafi legal book. The citation stated that if the sultan wished to claim the land for himself, it was better for him to sell it to a third party and then purchase it back. Here we see two personalities of the sultan. First, he sells the land as a ruler acting in the name of the whole community. In the second transaction, he, as an individual, purchases the land from its holder to cultivate it for himself. Mustafa Efendi viewed the fief-holder as the sultan's deputy, so forbade him from claiming the vacant lands for himself before selling them to another party. While the main *kânun* text did not mention any way for the deputy to legitimately claim the land's usufruct rights, Mustafa Efendi did offer a way by referring to a jurisprudential work of Hanafi legal school. The deputy was allowed to cultivate the land by assigning its usufruct rights to a third party and purchasing them for himself afterwards. Mustafa Efendi mentioned that his fatwa was in alignment with the sultan's *kânun*. As part of his research into the fatwas of chief and provincial muftis, the glossator found this fatwa and placed it alongside the aforementioned *kânun* to add a further layer to the issue stated in the sultanic provision and to illustrate its complexity.⁶²

Another way of issuing legal opinions on matters of *kânun* was through transmitting state regulations, as in the following fatwa of Mustafa, the mufti of Hezargrad.⁶³

60. The italicized part is an Arabic citation in the original.

61. "Bir yer sâhib-i arzın timârî toprağından kânun üzere tapuya müstehakk oldukda sâhib-i arz kendi için zabt edemez kendinin oğluna dahi veremez nihâyet tevâbiine verse olur kânundur." Oriental Institute R.3, fols. 6r-6v.

62. There are more fatwas that interpret Ottoman *kânun* based on and inspired by the rulings of fiqh books. See for example the fatwa of Akgürzade, the mufti of Manisa, on 16r and fatwas of Hasan, the mufti of Babadağı on 43v and 60v.

63. Oriental Institute R.3, fol. 11.

Question: What is the manner in which the inhabitants of a village distribute and collect among themselves the extraordinary imperial taxes and oppressive levies [*avâriz-ı dîvâniyye ve tekâlîf-i şâkka*] that exceed the proper limits?

Answer: The elders of the village gather in one place and assess the property of the villagers, whether vineyards, sheep, cattle, slaves, concubines, lambs, horses, mares—in short all their properties—in a just manner. For instance, those in the highest bracket may be charged 150 akçe each, those in the next bracket 120 akçe, then 90, then 60, and the lowest at 30 akçe. As for those who are poor and own no property, or young men who have reached maturity but remain under their fathers' guardianship, a contribution equivalent to three days' worth of labor, or the cost of a *kaftan*, is levied. This method of collection is closest to maintaining the worldly order. If the authorities punish [*ta'zîr*] those who collect more than in this prescribed manner, and seize their property, God willing, they will be rewarded for their actions. Our duty is only to convey [the norm] [ما علينا إلا البلاغ].

Mustafa Efendi explained the just manner of collecting taxes from the inhabitants of a village and noted at the end that he was only in charge of conveying the ruling, in this case sultanic ruling given to him. A similar situation can be observed in the fatwa of Hasan, the mufti of Babadağı.⁶⁴

Question: Amr holds usufruct rights over several plots within the *timâr* of Zeyd the deputy. These plots have [traditionally] been plowed and cultivated once every two years. However, Amr has left them fallow six years or more, neither cultivating them himself nor loaning [*âriyet*] them to others to plough them—so causing a loss to the deputy's revenue. If Zeyd, the deputy, reclaims the land from Amr and grants it to Bekr by [receiving the payment of] *tapu*, would this transfer be legally valid and enforceable?

Answer: According to the royal *kânunnâme*, if a plot that is normally plowed once every two years is left fallow for six years, or if an annually cultivated plot is left fallow for three years, the deputy gains the right to grant it to another cultivator.

Similar to the previous fatwa, Hasan Efendi conveys the regulation as stated in the *kânunnâme*.

Examining the MTM copy of the *Kânunnâme-i Cedîd*, Taylor argued that this text was compiled by someone prioritizing the autonomist view, so omitting analogist fatwas. The compiler, she argued, did not give credit to fatwas limiting the deputy's

64. Oriental Institute R.3, fol. 25v.

powers, as most of these were subordinate to the Ottoman *kânuns* that recognized the deputy's authority in transactions on *mîrî* lands. It seems that Taylor's findings with regards to the *Kânunnâme-i Cedîd* cannot be projected onto this legal compendium, although both texts had the same objective of compiling land law based on Ottoman *kânun*. The glossator did not have concerns to prioritize either the deputy or the land holder over the other one.

After Ebussuud Efendi, the most cited muftis in the compendium are Mehmed Bahai and Hocaşade Esad, whose fatwas represent two endpoints of a spectrum with regards to Taylor's dual classification of muftis' approaches to land law. Copying the opposing fatwas of these two muftis in a single book would lead to a contradiction, at least on Taylor's account. However, that is exactly what is done by the glossator of the Sarajevo copy. For example, the issue of the validity of the *causa mortis* (*marazu'l-mevt*) transfer of one's lands is regarded in different ways by Bahai and Esad. The glossator typed both fatwas in the margins. The former confirmed the validity of transfer, while the latter did not.⁶⁵ The same fatwa of Bahai Mehmed is found in a copy of the *Kânunnâme-i Cedîd*, with a note in the margin, saying that a *causa mortis* transfer is irrevocable in the case of *mîrî* land because it is no different from a regular transfer, as it is not considered an exceptional case.⁶⁶ Hocaşade Esad, on the other hand, rejected such transaction probably on the grounds that it was made in contemplation of death, so making no distinction between *mîrî* and non-*mîrî* fields. The glossator viewed the fatwas of both chief muftis crucial and copied them in the margins.

What I would like to say is that the compendium has multiple copies and each of them contains different fatwas, so each copy potentially represents a distinctive understanding of Ottoman *kânun*. For example, another late-seventeenth-century copy of this compendium has a completely different arrangement with respect to its fatwas.⁶⁷ So, it may be a trap of anachronism to regard all copies of a legal compendium as mere copies of each other, especially within a manuscript culture. Different copies of a legal compendium may not necessarily reflect the same approach towards law. Fatwas in the margins build a layer upon the knowledge found within *kânun*, so they turn legal compendiums into dynamic fields where the knowledge of

65. Hocaşade Esad's fatwa: "Zeyd mutasarrıf olduđu tarlayı maraz-ı mevtinde oğlu Amr var iken kızı Hind'e marifet-i sahib-i arz ile tefvîz eylese sonra Amr tarlayı taleb ve ahze kadir olur mu? el-Cevab: Olur." Oriental Institute R.3, fol. 28r. Mehmed Bahai's fatwa: "Zeyd sıhhatinde řu tarlaları Hind'den tevellüd eden oğulları Amr ve Bekir ve Bişr için tapu ile aldım deyu musırın fevt olsa hâlâ Zeyd'in âhar oğulları biz dahi ol tarlaları babamız tasarruf etmekle hisse alırız deyu ol tarlalara müdâhaleye kâdir olurlar mı? el-Cevâb: Amr ve Bekir ve Bişr'in sığârları halinde dedi ise olmazlar." See Oriental Institute R.3, fol. 7r.

66. Arâzî hakkında maraz-ı mevt cârî değıldir sıhhat gibidir dahl olunmaz." Ali Emiri Şer. 95, fol. 11r.

67. See Kılıç Ali Paşa 491, fols. 216-236.

kânun is continuously reproduced. Given that the *Kânunnâme-i Cedîd* is perhaps the most copied of the many Ottoman legal compendiums, a consideration of its multiple copies circulating in different geographies of the empire with a special focus on its margins has the potential to reveal different approaches towards law.

3.4 Citing *Kânun* in the Fatwas

Apart from fatwas, the glossator of the Sarajevo copy integrated decrees, passages from provincial *kânunnâmes*, and excerpts from old legal compendiums. In one instance, for example, the glossator copies a *kânun* from the marginal space of an old legal compendium (*hâmiş-i kânunnâme-i atîk*).⁶⁸ At another point, he refers to the provincial *kânunnâme* of Silistre.⁶⁹ The phrase *kezâ fi'd-defteri'l-hâkânî* (“in line with arrangements in the sultanic registers”) also recurs in several annotations.⁷⁰ The broad range of legal materials utilized by the glossator reveals that the view of the binding nature of the archival documents had been widely accepted. These documents were actively checked and copied on legal compendiums for their authoritative significance.

It was not uncommon for officials to consult the Land Registry, the department of Ottoman bureaucracy that was responsible for the general management of official registers (*defter*). Under the directorate of the registrar (*defter emîni*), the Land Registry was one of the three main departments of the Ottoman bureaucracy, the other two being the offices of the chancellor, and treasurer (*defterdâr*).⁷¹ The office took care of different registers, including those of *tîmâr*, *ruznâmçe*, *cebe*, *yoklama*, and *arz sûreti*. This office witnessed a time of institutionalization during the second half of the sixteenth century because the period in question saw a rise in the number of land surveys undertaken in different parts of the empire. It was also during this period that the surveys were conducted by bureaucrats appointed by the center, mostly from among the scribes of the central bureaucracy, including the Land Registry, *Defterdarlık*, and *Mâlîye*.⁷² In the seventeenth century, the Land Registry was still functioning, though some of its duties were taken over by the chief scribe (*reîsülküttâb*) following the mid-century establishment of the grand vizier's office (*bâb-ı âsafî*) outside the palace.⁷³

68. Oriental Institute R.3, fol. 24r.v

69. Oriental Institute R.3, fol. 32v.

70. Oriental Institute R.3, fol. 37v.

71. Erhan Afyoncu, *Osmanlı Devlet Teşkilâtında Defterhâne-i Âmire (XVI.-XVIII. Yüzyıllar)* (Ankara: Türk Tarih Kurumu, 2014), 6–8.

72. Ibid., 22–24.

73. Ibid., 75–76.

The glossator might have petitioned the Imperial Council by presenting a petition (*arz*), to receive the copy of the *kânunnâme* of Silistre, as it was possible for people to ask for the copies of *kânunnâme* documents that were preserved by the Land Registry.⁷⁴ Or, the glossator may have assumed only the role of a compiler, like the author of Manisa 5819—that is, he could have simply collected these documents from different legal compendiums. In one instance, he cites a *kânun* provision and notes at the end that it was copied from a source that had copied it from the original document in the Land Registry.⁷⁵ In another instance, he refers to a marginal note found in an old legal compendium, which shows that he considered the marginal notes as significant as the main text itself.⁷⁶

Apart from his references to Ottoman *kânuns*, he incorporates fatwas that consider the official registers as valid evidence. For example, Mehmed, the mufti of Erzincan, rules on the authenticity of sultanic registers in disputes over ownership claims in his following fatwa:⁷⁷

Question: Zeyd has since old/ancient times had a piece of land registered as private property (*mülk*) in the copy of the sultanic register. Given that he has been using the land as a free-hold property without *tapu*⁷⁸ for a long time and that his daughters are willing to continue its use in the same manner upon Zeyd's death, is the deputy able to give it by *tapu* without an official proof?

Answer: He is not. The old [practice] is left as it is.

This fatwa reveals that Zeyd first applied to the Imperial Council by a petition to receive a copy of the relevant part of the sultanic register. With this copy in hand, he consulted Mehmed Efendi, the officially appointed mufti in his vicinity, and asked for his legal opinion. Mehmed Efendi considered the document issued by the Land Registry as evidence and ruled in favor of Zeyd. It was possible for not only people from upper echelons of the society but also regular people to apply to the Land Registry to receive copies of relevant parts of the register, especially to present them as legal evidence during disputes.⁷⁹

In another case, İsmail, the mufti of Akkirman, also treats the land register as a

74. Afyoncu, *Defterhâne-i Âmire*, 65–67.

75. “Kezâ fi'd-defteri'l-hâkânî nukile ammâ nekale an aslıhî.” Oriental Institute R.3, fol. 37v.

76. “Min hâmiş-i kânunnâme-i atîk” Oriental Institute R.3, fol. 24r.

77. Oriental Institute R.3, fol. 43r.

78. Meaning without paying the *tapu* fee to the deputy, or without certifying his claims to the land with a title deed, in which the land is considered as *mîrî* property. The word *tapu* can be understood in both ways, and these are not mutually exclusive.

79. Afyoncu, *Defterhâne-i Âmire*, 65.

valid source in legal disputes, even as a more authoritative one than the deputy:⁸⁰

Question: Zeyd has been settling in a neighborhood for more than twenty years. He has no relation with the village of his father Amr, nor is he recorded in the village's subject-people register. Can the deputy of Amr's village as well as its people demand Zeyd to pay the tax of subjecthood on the grounds that Amr does so?

Answer: They cannot.

This fatwa does not specify whether Zeyd had access to a copy of the land register. However, it is plausible to say that the register was checked at some point during the process. İsmail Efendi relied on such official documents as evidence while issuing his opinion. However, there might be cases when the official documents come into conflict with each other, as can be seen in the following fatwa of Hocazade Esad Efendi, the chief mufti for several years during the first quarter of the seventeenth century:⁸¹

Question: A village is granted as free-hold property by the exalted sultanate to Amr scholar, and a deed of ownership (*mülknâme*) is issued. The aforementioned Amr includes within the text of his deed some lands and pastures, alongside the rivers flowing in those territories, but this is in contrary to the reality, located within the borders of a village that is part of Zeyd's *timar* near said village. But then Zeyd comes up with upright witnesses from another village to prove that the aforementioned lands and pastures fall within the known boundaries of his *timar* village, and a judicial ruling is issued accordingly. Is the mere inclusion of those lands in Amr's deed reliable after the ruling?

Answer: It requires petitioning to the sultan.

This shows that in a case where the official documents conflict with each other, the final decision is left to the sultanic order. It is also possible to say that if one party comes up with a document directly issued by the sultan, such as an imperial deed of grant (*temliknâme-i hümayûn*) and imperial patent (*berât*), the mufti delivers the issue to the court.

The reliability of state documents in support of evidentiary truth claims seems to have been a subject of debate among the scholars of Greater Syria. The debate concerns the validity of archival sources, particularly Ottoman registers deposited

80. Oriental Institute R.3, fol. 40r.

81. Oriental Institute R.3, fol. 50v.

in the Land Registry. The point of contention was whether documents without human testimony could be used as uncorroborated evidence during legal disputes. Alaeddin el-Haskafi, a seventeenth-century Damascene jurist, argued that the Ottoman archives were the most reliable of all forms of documentary evidence because they were made and later stored with great care and security in depositories sealed with the sultan's tughra, so requiring special permission to access. There was also a collective witnessing of Ottoman officials, including scholars, scribes, and other bureaucrats, serving as agents during the production and preservation of these documents. On the other hand, there were opposing views as well, for example the one raised by Hayreddin er-Remli, a seventeenth-century Palestinian jurist, who issued a fatwa rejecting the idea that official documents sufficed as the only evidence during legal disputes.⁸² It seems that the glossator working on this compendium was on the former side. He did not hesitate to incorporate documents from the Land Registry into his legal manual, which was to be used as a sourcebook when issuing fatwas.

The glossator's referral to the Ottoman registers might be related to the rise of an archival consciousness among Ottoman scholars, in this case muftis.⁸³ They viewed various documents as part of a whole and fused them into legal compendiums. They were conscious of the power and significance of their written records. They considered these documents as an effective tool for the management, legitimization, and assertion of state authority. The collective effort of muftis to gather these documents into compendiums signifies the extension of central authority into the provinces.⁸⁴ By preserving and displaying centrally issued documents, compendiums secured the government's power in the provinces.

3.5 Conclusion

The previous chapter showed that one of the actors working on legal compendiums was author-compilers. This chapter revealed yet another agent in the making of compendiums, namely, glossators who glossed on the existing compilations by legal texts of various genres, mostly fatwas. The glossator of the Sarajevo copy gathered

82. Guy Burak, "Evidentiary Truth Claims, Imperial Registers, and the Ottoman Archive: Contending Legal Views of Archival and Record-Keeping Practices in Ottoman Greater Syria (Seventeenth–Nineteenth Centuries)," *Bulletin of the School of Oriental and African Studies* 79, no. 2 (2016): 238–51.

83. For a general assessment on the rise of archival consciousness, see Guy Burak, "'In Compliance with the Old Register': On Ottoman Documentary Depositories and Archival Consciousness," *Journal of the Economic and Social History of the Orient* 62, nos. 5–6 (2019): 799–823, <https://doi.org/10.1163/15685209-12341494>

84. Ferguson, *The Proper Order of Things*, 283–84.

the fatwas of twenty-two muftis across fourteen different cities via dedicated research into legal compendiums, which served as dynamic platforms for muftis to discuss the issues of *kânun*. The Sarajevo copy represents just one iteration of this compendium. Additional copies would likely reveal divergent approaches to Ottoman *kânun*, reflecting the role of provincial muftis who acted as mediators between central regulations and local realities. Their interpretations were necessarily shaped by the political, economic, and social specificities of their respective localities, illustrating the adaptive nature of the Ottoman legal system.

My examination of the Sarajevo copy demonstrates that the formation of a legal compendium was followed by its expansion in the hands of legal experts, in this case, muftis. After attaining the sultanic principles governing topics of public law, muftis expanded on *kânun* by issuing their legal opinions. The glossator of the Sarajevo copy seems to have been particularly dedicated to collecting fatwas on *kânun*, issued by muftis across a wide territorial expanse.

4. FROM FATWAS TO *KÂNUN*: THE CASE OF LALELÎ 1263

I have so far examined two copies of the compendium to discuss two successive stages of compendium-making. The first one (i.e., the Manisa copy) has shown that legal compendiums were made by merging of already existing material, dispersed in different collections and forms. The second one (i.e., the Sarajevo copy), on the other hand, has revealed that glossators commented on the compendiums by writing legal statements in the margins, mostly those of fatwas. Both these copies were distinctive iterations of the compendium. The third one is also representative of a distinctive form. Unlike the Sarajevo copy, it has few if any marginal notes. What makes it interesting is its incorporation of the Sarajevo copy's marginal notes into its main text. The scribe of this copy treated the marginalia in the Sarajevo copy as intrinsic to the main text, thus reproducing the entire work into a new form. In this chapter, I will first describe the Laleli copy and, focusing on the act of copying and its implied meanings, I will discuss the copyist as a major agent in compendium-making. Next, depending on the fact this copy synthesized administrative laws and fatwas into a unified composition, I will inquire into the nature of the Ottoman fatwa and its authority in legal procedure. I will argue that this synthesis blurred the lines between state-enacted administrative laws and fatwas. This chapter will show that the act of copying constituted a major building block of compendium-making. In other words, it will show that copyists did not always conduct mechanical reproduction.

4.1 An Attempt of Synthesis: Laleli 1263

This copy, which I will henceforth refer to as the Istanbul copy, is found within the collections of Laleli Library, and numbered 1263.¹ The compendium is the last one of the four texts within the codex, spanning folios 97 to 159. Pages are not framed by rectangular lines. However, the main text is clearly detached from

1. I extend my gratitude to Muhammed Taha Kara for bringing this manuscript to my attention.

the marginal space. Each page is organized in twenty-five lines. Special words, like chapter headings and fatwa question and answer marks, are written in red ink. Also, the names of muftis and other reference notes are marked by red lines on top of them. The entire codex seems to have been written by the same scribe, in the *naskh* script. A later reader of the text left some notes in the marginal space, usually topic titles, sometimes marked with the word “*matlab*,” which is used to designate chapter headings. Apart from these, the margins are mostly empty. There are occasional endowment seals marking the codex as belonging to the waqf of Sultan Selim III.² There is also an ownership statement revealing that the codex was at some point in the possession of Sarrafzade Ali.³

The compendium is dated Muharrem 1118 (15 April – 14 May 1706). As in the colophon page of the Sarajevo copy, the scribe here preserved the dating inscription within the text, not moving it to the end of the work. Both considered this inscription as part of the text, and so did not replace it with another one, instead merely changing the dates while keeping the inscription sentence: “the presented issues have been completed.” Since the entire codex was written by the same scribe, dating can be crosschecked with other texts. While the first work, that is, *el-Fevâidü’z-zeyniyye fi Mezhebi’l-hanefiyye*, does not have a dating note, *Fetâvâ-yı Kâriu’l-hidâye* is dated 22 Şaban 1117 (9 December 1705) and *Fetâvâ-yı İbn Nüceym* is dated 11 Muharrem 1118 (24 April 1706). The compendium was concluded most probably with İbn Nüceym’s work, as the scribe followed an order in both copying and organizing these works within the codex. It was a planned attempt to copy these works together in a single volume. It took the scribe a few months to complete the copying process.

What makes this copy special is that the copyist merged the main text and marginal annotations, thereby producing what is essentially a new text. All the marginal notes found in the Sarajevo copy, with only a few exceptions, were incorporated into the main text. The copyist followed a method of transcribing one page from the main text and the corresponding glosses before switching to the next page, or in some cases, two or three pages. The almost complete overlap between the two copies implies that the copyist has either seen this copy or another one identical to it. The glosses that did not find their way to the Istanbul copy were likely added by a later glossator and thus were probably not observed by the copyist. This assumption relies on the fact that these glosses significantly differed than the rest in terms of ink and handwriting.⁴ This means that the copyist was not selective about marginal notes: he fused all that was there to the main text without exceptions.

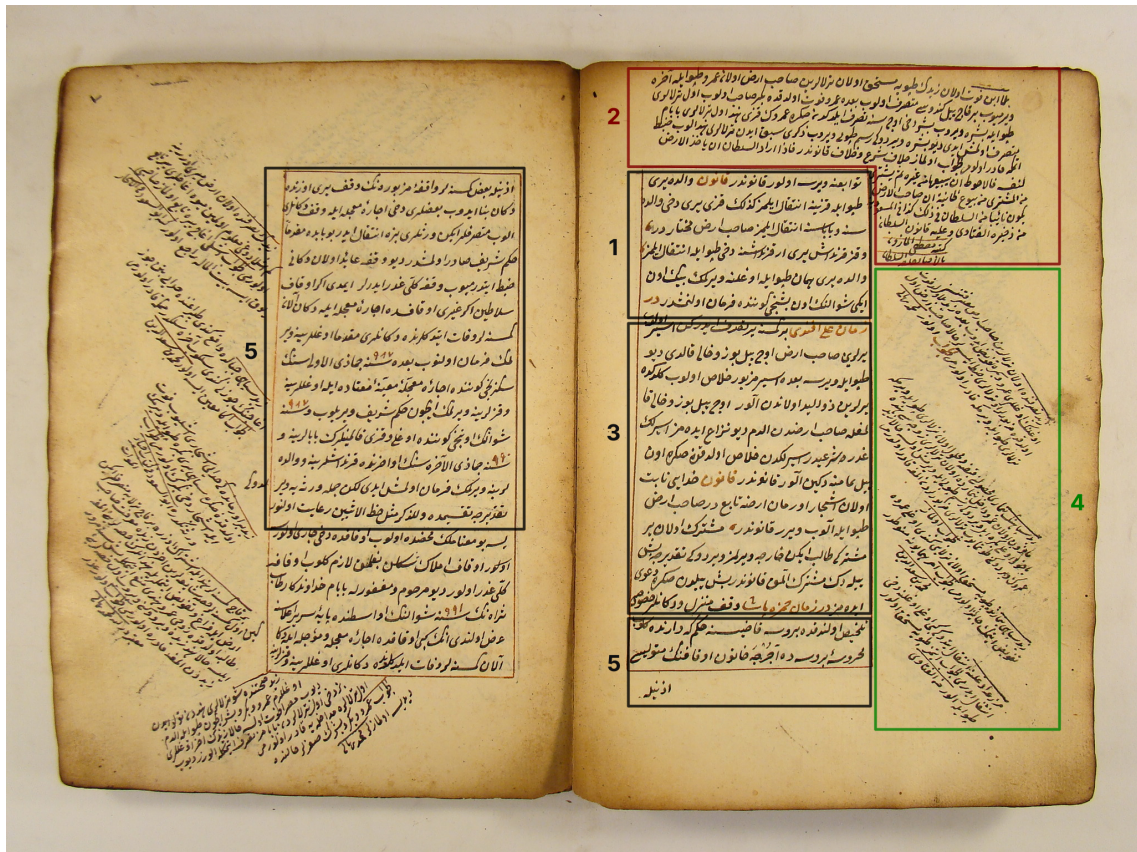
2. Laleli 1263, fols. 1r, 42r, 44r, 97r, 107r, 139r, and 159v.

3. Laleli 1263, fol. 1r.

4. See, for example, Oriental Institute R.3, fol. 55r.

The following pages from the Sarajevo and Istanbul copies, respectively, illustrate that the copyist initially copied Part 1 and then continued with the corresponding marginal note, Part 2. Later, he copied Part 3 from the main text and integrated Part 4 from the marginal space. Lastly, Part 5 was copied alongside the corresponding marginal notes in the recto page, however running over to the next page (Figures 5 and 6).⁵

Figure 4.1. The Sarajevo copy with glosses



The inter-connectedness between the two copies reveals that the making of the Istanbul copy was a planned effort. The copyist had with him either the Sarajevo copy or another one completely identical to it. Or he just made an identical copy of an earlier copy which had already subsumed within its main text the marginal notes of the Sarajevo copy. In any case, the copyist made a significant contribution to the making of this compendium. This shows that the act of copying could transcend the mechanical reproduction of a text. And it raises several questions concerning the copyists' agency in text formation and their role in the making of the legal system.⁶

5. Oriental Institute R.3, fols. 6v-7r; Laleli 1263, fols. 102v-103v.

6. I bear in mind that the copyist of the Istanbul manuscript may not have directly witnessed the Sarajevo copy. He might have basically made a copy of an earlier copy that had already merged the main text and the marginal notes of the Sarajevo copy into a clean draft. In that case, it is the copyist of this earlier version to whom I am referring. However, for the sake of simplicity, I will refer to this agent as the copyist of the Istanbul copy, since it makes little difference which

Figure 4.2. The Istanbul copy incorporating glosses into the main text



4.2 Copyist as An Agent in Legal Compendiums

The previous two chapters focused on discovering the aspects of two different agents in compendiums: author-compilers and glossators. I will dedicate this chapter to exploring yet another compendium maker: the copyist. Unlike author-compilers and glossators, the task of the copyist did not require doing research within scholars' personal collections, nor exploring different copies of a given compendium. His task was merely that of copying the main text together with the margins, synthesizing the marginalia with the main body. However, this should not lead us to disregard his agency in the process of compendium-making. In the case of the Istanbul copy discussed here, the copyist's work—namely, his consideration of the marginalia as intrinsic to the main text—carries profound implications for our understanding of how contemporary authors conceived of the relationship between fatwas and the official doctrine on land law.

Sami Arslan makes a notable distinction between book and copy in a manuscript culture. While book denotes the initial study as made by its author, its subsequent versions are unique copies produced by copyists. Each copy represents a distinct manuscript did the earliest attempt of synthesis.

copy of the initial book, as if each one is a new authorial work.⁷ This distinction between a book and a copy stems from the idea that a text in a manuscript culture is a collective work of authors, copyists, and readers. A book is produced by an author. However, copies are works of readers and copyists, who lend them new shapes by annotations, replacements of words, and so on.⁸ Arslan mentions several points where the copyist intervenes in the copy he examines: (a) inscribing a word in a wrong manner because of a previous mistake made by the copyist, (b) inscribing the word in a wrong manner because of bad reading, (c) recognizing the correct word but inscribing it in a wrong manner, (d) inscribing based on speculation due to an inability to recognize the correct word, (e) correcting a certain word, thinking that it was written wrong by a previous copyist, (f) and correcting a certain word, thinking that it was mistakenly written by the author.⁹

The Istanbul copy I examine here suggests that copyists sometimes made far greater interventions than any of the above. By integrating the marginalia of a work into the main body, a copyist could come up with an entirely new text. This is perhaps the most daring intervention in an author's work. In such cases, copyists undertake a more critical task than just reviewing a certain word regarding its authenticity or censoring it. They integrate into the text notes jotted down in the margins at different instances as if they constitute an inalienable part of the main text. In this way, copyists construct a new composition that is thoroughly different from the one made by the initial author.

What led the copyist to perceive himself as an agent capable of intervening in the work of the author? Perhaps he viewed legal compendiums as an intellectual space where legists had the right to contribute, or viewed *kânun* as a field of study that can be negotiated and developed through intellectual discussions. In fact, this legal compendium was an anonymous compilation of Ottoman *kânun* that was not attributed to a known person. It was a legal guide to land tenure and taxation that was collectively made by the contributions of various agents over time. Likely aware of this aspect of the nature of this collective work, and thinking of himself as a capable legist, the copyist would have felt justified in synthesizing the copy he had in hand into an entirely new work. It is also possible that it was the copyist's employer who preferred to merge the main text with marginalia. In this case, the copyist just acted through the directives of his employer.

In any case, the use of the language of *kânun* and fatwa in the making of a private compilation discussing issues of taxation, property, and land regime took place

7. Arslan, *Osmanlı'da Bilginin Dolaşımı*, 19–24.

8. Ibid., 26.

9. Ibid., 97–98.

against the backdrop of an institutional transformation of *kânun*, originally reserved for sultans' discretionary power, into a tool and common language for administration. The copyist or his employer were able to take the initiative to compose a distinctive legal text because *kânun* was no longer an area reserved only for Ottoman sultans to articulate imperial policy. Instead, it had already turned into the common property of all circles of the bureaucracy. It is no longer sufficient to view *kânun* within a sultan-centric narrative. Law was the common enterprise of a constitutional order. Members of the imperial bureaucracy instrumentalized *kânun* language to discuss imperial politics.¹⁰ Thus, the copyist, like other *kânun* compilers during the seventeenth century, made compendiums because they perceived *kânun* as a collective property. This turn reflects a shift on the part of the state administration towards a more abstract vision of governing and politics than one centered on person of the sultan.¹¹

4.3 Fatwa as a Component of the Ottoman Legal System

The integration of fatwas into a text of administrative laws raises several questions regarding the nature of the Ottoman fatwa. Were these legal opinions considered part of the official, *kânun*-based doctrine on land tenure and taxation? What did it mean to incorporate theoretically non-binding legal opinions into a compilation of state-enacted rulings? Does this say anything regarding the authority and historicity of the Ottoman fatwa? In an attempt to respond to these challenging questions on the nature of the Ottoman fatwa, some of which have long occupied the agenda of legal historians, I will first refer to a phenomenon instrumentalized to explain the development of madhhab doctrines, namely the integration of fatwas in substantive law books. Then I will discuss the nature of the Ottoman fatwa in light of existing literature by highlighting its distinctiveness from the previous fatwa tradition.

To begin with, what is a fatwa, and how did Ottoman fatwas differ from earlier fatwas? "Fatwa" literally means to respond to and to remove uncertainty. It was a means to respond to people's questions on matters of sharia.¹² Fatwas were compiled into extensive manuals to dictate solutions to newly arising issues unaddressed by previous jurists. The founding texts of Hanafi legal doctrine are those constituting of the opinions of the founding fathers of the school: *zâhiru'r-rivâye* and *nâdiru'r-*

10. Tuğ, *Politics of Honor in Ottoman Anatolia*, 61–63.

11. Ibid., 64–65.

12. Murteza Bedir, "Fetva ve Değişim: Geleneksel Fıkıhın Son Fakihi İbn Abidin ve Fıkıh Yönteminde Büyük Kırılma," in *Hanefîlerde Mezhep Usûlü: Şerhu Ukûdi resmi'l-müftî*, ed. Şenol Saylan (Istanbul: Klasik, 2016), 15–16.

rivâye.¹³ Later jurists compiled their opinions in the books called *vâkıât*, *nevâzil*, or *fetâvâ*.¹⁴ These books included both fatwas articulated vis-à-vis new legal issues that appeared in the face of new situations and fatwas implementing the opinions of the founding fathers as stated in the books of *zâhiru'r-rivâye* and *nâdiru'r-rivâye*. Since they included opinions purely based on the jurists' own interpretation (*ictihâd*), these books paved the way for the development of madhhab doctrine.¹⁵

In his article on the development of the fatwa within the madhhab literature, Wael Hallaq contends that it was through the fatwa that the madhhabs developed over the centuries.¹⁶ Fatwas issued by jurists were regularly incorporated into *furû*^c works.¹⁷ Hallaq suggests dividing fatwas into two analytical groups: primary and secondary. The former signifies fatwas that represent real cases, not hypothetical problems originating in the minds of jurists; thus, they contained real names and people. As for the latter, by employing such methods as *tecrîd* and *telhîs*, jurists turned these real cases into abstracted legal statements stripped of their contextual details. As a result of this process, the fatwa transformed from being part of a particular case of law in a particular context into an abstracted universal case fitting to the content of a *furû*^c work.

However, not all fatwas were integrated into *furû*^c works. Fatwas that repeat the opinions of former jurists (*el-iftâ bi'l-hıfz*), fatwas based on weak opinions (*er-ra'y ez-za'if*), and fatwas dealing with the state establishment (e.g., based on Ottoman *kânun*) were not incorporated to primary fatwa collections and were thus excluded from *furû*^c works.¹⁸ Those that find their way into *furû*^c works represent statements of law that deal with new facts and situations. As a result, after the formation of substantive law in the first two centuries of Islam, law was elaborated not by judges or anyone else, but mainly by muftis; in other words, it was effectively the exclusive domain of muftis to elaborate on law. Fatwas were instrumental in the development of doctrines, and muftis acted as pioneers during this process.

13. The opinions of the eponyms of the school were compiled by Imam Muhammad into several manuals. The distinction between the first genre and the second one is based on their authenticity in transmission. The former does have a more authentic chain of transmission than the latter one has, so its authority within the madhhab is almost un-questionable. See Murteza Bedir, *Buhara Hukuk Okulu: Vakıf Hukuku Bağlamında X-XIII. Yüzyıl Orta Asya Hanefî Hukuku Üzerine Bir İnceleme*, 3rd ed. (Istanbul: İSAM Yayınları, 2019), 76–77.

14. Ibid., 76–77.

15. Ibid., 78.

16. Wael B. Hallaq, "From Fatwās to Furū^c: Growth and Change in Islamic Substantive Law," *Islamic Law and Society* 1, no. 1 (1994): 55–65, <https://doi.org/10.2307/3399430>.

17. These were the substantive law books that represented the canonized version of the law and standard reference for the legal profession. Meaning "branches," the term *furû*^c was coined to distinguish it from *usûl*, the books of legal theory. These books included *zâhiru'r-rivâye* and *nâdiru'r-rivâye*, *muhtasars* compiling multiple opinions, and commentaries and glosses written to expand on these books. See Ahmet Akgündüz, "Fürû," in *TDV İslam Ansiklopedisi* (TDV İslâm Araştırmaları Merkezi, 1996), accessed July 2, 2025, <https://islamansiklopedisi.org.tr/furu>.

18. Hallaq, "From Fatwās to Furū^c," 54–55.

The transmission of fatwas within madhhab literature—namely, from fatwa books to commentaries, glosses, and *muhtasars* (i.e., books summarizing the core doctrines of a legal school)—reveals the standardization of fatwa from being an individual opinion to becoming a universal case of law, implemented by the jurists. The three-folded process of compendium-making explained so far—that is, the successive formation of legal compendiums by author-compilers, their expansion by glossators, and their consolidation by copyists—may represent a parallel development of the fatwa within the Ottoman legal system. Fatwas initially written as glosses on *kânun*, as discussed in the previous chapter, were later made part of the doctrine with their inclusion in legal compendiums side by side with administrative laws. In this case, the fatwa transforms from being an individual opinion of a particular mufti to being an official statement of law, as binding and authoritative as administrative laws. This, I suggest, is likely what motivated the copyist of the Istanbul copy to consider the fatwas in the margins intrinsic to the main *kânun* composition—his perception of fatwas as authoritative as administrative laws issued by the court, thus sanctioned by state authority.

Just as with Hallaq's discussion of fatwa in madhhab literature, it seems that there were two successive stages to the process in the Ottoman case. The first one was a transformation from primary fatwas to secondary ones. This process turned fatwas from specific cases into universal ones. The form of the Ottoman fatwa was already in alignment with the form of secondary fatwas, and its form remained little changed from the fifteenth to the twentieth century.¹⁹ The Ottoman fatwa did not mention the names of real people; instead, it substituted them with hypothetical names, such as Zeyd, Amr, Bîkr, Hind, and Bîşr. The answer was mostly short, including little debate on the issue. From the seventeenth century onward, it was standard for Ottoman muftis to answer the question by either of these two words: *olur* (yes), or *olmaz* (no).²⁰

With regards to transition to doctrine, it is difficult to offer a general assessment on the nature of the Ottoman fatwa within the scope of a study as modest as this one, and it remains unclear whether the fatwa turned into a general statement of law, gaining a kind of binding authority for later muftis. But the integration of fatwas on administrative issues into a composition of state regulations does seem to suggest that fatwas came to be viewed as inalienable from *kânuns*, and both genres seem to have been melded together in legal compendiums. I suspect that the fatwas of Ottoman muftis on administrative laws were as authoritative as the law itself because they reflected the official view of the state.

19. Heyd, "Some Aspects of the Ottoman Fetvâ," 37.

20. Ibid., 42.

The fatwa was traditionally a non-binding opinion reflecting the views of its issuer. However, the Ottoman fatwa had certain characteristics that distinguished it from its predecessors, characteristics stemming from the establishment of a central network of scholars and the bureaucratization of the fatwa institution. Although the literature on the Ottoman fatwa is extensive, I will focus here on the bureaucratization of the fatwa institution during the mid-sixteenth century, asking how this process ended up in turning the Ottoman fatwa into a major component of the legal system. During the mid-sixteenth century, the office of the chief mufti arose as the head position in the scholarly bureaucracy.²¹ With this development, fatwa issuance was also subject to a sort of systematization. It was during the reign of Sultan Süleyman that a dedicated office was created for the fatwa institution, under the directorship of *fetvâ emîni*.²² The chief mufti was no longer hanging a basket from his window to submit fatwa papers—the practice that gained Ali Cemali the sobriquet *zenbilli* (the basket man). Issuing a regular fatwa in the office required going through a process involving the contributions of draftsmen (*müsevvid*), fatwa clerks (*fetvâ emîni*), fair copyists (*mübeyyiz*), the chief mufti, collators (*mukâbeleci*), and fatwa deliverers (*müvezzi*).²³ The appointment of muftis to the provinces starting in the early fifteenth century was part of this institutional change, as explained in the previous chapter.

The Ottoman fatwa appears to be an intervention into the centuries-long tradition of fatwa issuance. Theoretically, unlike a qadi's judgement, a fatwa was not a binding or enforceable ruling (*mülzim bi'l-hukm*), but merely authoritative legal advice (*muhbir ani'l-hukm*).²⁴ Uriel Heyd argued that although theoretically a mufti's legal opinion was not binding, the highly bureaucratized nature of the Ottoman fatwa institution lent the fatwa the force of law, especially if the fatwa was given by chief mufti, because their fatwas could not be ignored in lawsuits.²⁵

By the end of the sixteenth century, the chief mufti had already appeared as an indispensable agent in both the internal and external bureaucracy. In his research on the chief mufti's office, Repp argued that the office transformed during the mid-sixteenth century from that of a moral one to that of a highly bureaucratic one, involved in decision-making processes at a large scale. With the chief mufti's office becoming the top position in the learned hierarchy during the time of Sultan Süleyman, the chief mufti's legal opinions, traditionally and theoretically unbinding, gained weight in bureaucratic interactions, internally and externally. Joshua White has shown how officials in Istanbul and foreign powers acquired fatwas from

21. For more on this development, see R. C. Repp, *The Müfti of Istanbul*

22. Heyd, "Some Aspects of the Ottoman Fetvâ," 46–47.

23. Ibid., 47.

24. Ibid., 56.

25. Heyd, "Some Aspects of the Ottoman Fetvâ," 56.

chief muftis to support their cases against one another with legal opinions to be presented as evidence during court deliberations. He defined chief mufti fatwas as “a legal trump card of great value.”²⁶

A number of scholars studying court records have shaped our understanding of the usage of fatwas in court procedure. While they agree that fatwas played a supporting role of fatwas in court hearings, they differ on the matter of their practical strength. In his research on Kayseri court records during the seventeenth century, Ronald Jennings asserted that the fatwas of local muftis were respected but did not compel judges to heed them because muftis were not involved in the deliberation process. Fatwas were the last thing heard during a case, and judges decided their legal merits depending on whether the fatwa fit the case at hand.²⁷ Based on his research in Bursa court records in the seventeenth century, Haim Gerber has found that although judges were not forced to apply the prescriptions of fatwas, they respected fatwas and fatwa bearers, so the party with a fatwa always won the case.²⁸ In his analysis of court records in Kastamonu and Çankırı, Boğaç Ergene found that legal opinions issued by official muftis were of considerable weight in lawsuits.²⁹ In his study on the muftiship in Damascus, Guy Burak asserted that the fatwas of official muftis were of considerable strength in lawsuits and that disobedience to official mufti fatwas made one blasphemous.³⁰

Gerber suggested that chief muftis ought to be viewed as policymakers undertaking political and legal tasks.³¹ As the bureaucratization of the state increased, the role of the chief mufti in legal consultation became more apparent, and the office of the chief mufti underwent more bureaucratization.³² Gerber argued that chief muftis presented their legal opinions as pragmatic statements of law, which reflect that they were highly bureaucratized politicians pursuing the public order.³³ As a reflection of the idea that muftis viewed themselves as part of the state bureaucracy, they gave legal opinions on “extra-sharia matters” (i.e., areas of law not forming part of the

26. Joshua M. White, “Fetva Diplomacy: The Ottoman Şeyhülislam as Trans-Imperial Intermediary,” *Journal of Early Modern History* 19, nos. 2-3 (2015): 203, <https://doi.org/10.1163/15700658-12342457>.

27. Ronald C. Jennings, “Limitations of the Judicial Powers of the Kadi in 17th C. Ottoman Kayseri,” *Studia Islamica*, no. 50 (1979): 157–59, <https://doi.org/10.2307/1595562>.

28. Haim Gerber, *Economy and Society in an Ottoman City: Bursa, 1600-1700* (Jerusalem: Hebrew University, 1988), 208.

29. Boğaç A. Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastamonu (1652-1744)*, Studies in Islamic Law and Society 17 (Leiden: Brill, 2003), 30–31.

30. Burak, *The Second Formation of Islamic Law*, 41–42. For a critique of Burak’s arguments, see Murat Sarıtaş, “Fıkıh, Mezhep ve Sultan: 16. Yüzyıl Osmanlı Merkez Topraklarında Mahkeme Kararlarında Hangi Hukukî Görüşlerin Esas Alınacağı İle İlgili Emr-i Sultânîler” (PhD Diss., Istanbul University, 2024), 149–62.

31. Gerber, *State, Society, and Law in Islam*, 64.

32. Ibid., 92–93.

33. Ibid., 106.

sharia).³⁴

Gerber viewed the fatwa institution as an important component of the Ottoman legal system not only because fatwas were very widely used in court hearings but also because they provided a semi-official statement of law. According to Gerber, the fatwa collections of chief muftis were a significantly important corpus because they included many fatwas that were not presented before the court. People sought fatwas to gain legal and semi-legal knowledge on certain matters.³⁵ He viewed fatwa collections as “realistic sources that reflect more or less fully the legal universe of the *mahkama*, the court.”³⁶ Law applied in the court (i.e., law in practice) was no different from the so-called theoretical statements of law (i.e. fatwas of chief muftis). The muftis’ law was not an imposed one. It was in conformity with reality, revealing that law was not an immutable and stagnant corpus but a living tradition, governed by muftis’ opinions.³⁷ Thus, according to Gerber, the fatwas of chief muftis are the nearest we can get to the official view of the law.³⁸

In a similar vein, Leslie Pierce, in her study on the Aintab court records during the mid-sixteenth century, drew our attention to the institutionalization of fatwa issuance during the process stretching from the time of Ali Cemali to the time of Ebussuud, transforming from being a personal act to an institutional one under detailed procedure.³⁹ While acknowledging that people sought fatwas to support their cases because a mufti’s opinion was strong enough to influence a judge’s decision, Pierce concentrates more on the outside-court side of the fatwa institution. She asserted that the fatwa institution was a means for legal consultation, fulfilling the functions of the court. In other words, people’s application to muftis would leave them in no position to appeal to the court afterwards.⁴⁰ This was especially the case with the elite people of Aintab, who largely eschewed the courts and sought fatwas from the chief muftis instead.⁴¹

Murat Sarıtaş argues that the authority of the fatwa in court procedures did not depend on its having been issued by the chief mufti or an officially appointed mufti, as claimed by Burak. He draws our attention to the fact that all judges were required to rule in line with the soundest opinion (*esahh-ı akvâl*) within Hanafi doctrine as a condition of their appointment. According to Sarıtaş, a fatwa would become binding

34. Gerber, *State, Society, and Law in Islam*, 110.

35. *Ibid.*, 86.

36. *Ibid.*, 95.

37. *Ibid.*, 111–12.

38. *Ibid.*, 94.

39. Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (Berkeley: University of California Press, 2003), 109.

40. *Ibid.*, 114.

41. *Ibid.*, 162.

for the judge when it was in accord with the soundest opinion within madhhab.⁴² Similarly, a judge could only reject a fatwa if it was not in alignment with the soundest opinion. But not all judges had even this right. While dignitary judges (*mevleviyet kâdîları*) did, town judges (*kasaba kâdîları*) lacked necessary scholarly skills to reject these fatwas.⁴³

The implementation of soundest opinion was not an Ottoman innovation. The juristic genre of *muhtasar* was invented to compile the preferred opinions within the doctrinal school. From the tenth century onward, jurists compiled such books at a large scale to articulate authoritative opinions within their madhhab.⁴⁴ The genre of *muhtasar* arose out of a desire to avoid legal pluralism and to provide uniformity and predictability in law.⁴⁵ In the Ottoman case, managing legal pluralism was possible by establishing a network of scholar-bureaucrats, all educated in central institutions of education operating on the same curriculum. The Ottoman innovation was to require scholar-bureaucrats to rule in accordance with the soundest opinion within the madhhab. So, the Ottoman government, from the sixteenth century onward, became involved in rule determination through two parallel interventions: by introducing the Hanafi doctrine as the basis for legal conduct, and by officially instructing judges to act in accordance with the soundest opinion.⁴⁶ In doing so, the government acted like an intermediary in the articulation of soundest opinions. It did not designate them, but through appointing official muftis to rule in accordance with the soundest opinion, it was indirectly involved in the process of rule determination.

The implementation of soundest opinion was so crucial that provincial muftis were required to support their fatwas with references (*nukûl*) to books of high repute.⁴⁷ In fact, their appointment certificates detailed such requirements.⁴⁸ However, chief muftis did not cite any source in their fatwas, because they principally relied on the soundest opinion.⁴⁹ Endorsing the implementation of soundest opinions required scholars to compile the fatwas of chief muftis as well as provincial ones into independent collections, and also to prepare collections of soundest opinions (*menkûl fetvâ mecmûaları*).⁵⁰ The reliance of these collections on the soundest opinion available

42. Sarıtaş, "Fıkıh, Mezhep ve Sultan," 159–62.

43. Ibid., 162.

44. Atçıl, "Political Power and Lawmaking," 119–20.

45. Mohammad Fadel, "The Social Logic of Taqlid and the Rise of the Mukhataşar," *Islamic Law and Society* (Leiden, The Netherlands) 3, no. 2 (1996): 197, <https://doi.org/10.1163/1568519962599122>.

46. Atçıl, "Political Power and Lawmaking," 121.

47. H. H. Efendi, *Telhîsü'l-beyân fî Kavânîn-i Âl-i Osmân*, 200.

48. For a sample appointment paper, see Ms. Or. Quart. 1209, fol. 48r.

49. Sarıtaş, "Fıkıh, Mezhep ve Sultan," 163.

50. Atçıl, "Political Power and Lawmaking," 126–127. For an inventory of Ottoman fatwa collections, see Özen, "Osmanlı Dönemi Fetva Literatürü," 335–373.

allowed judges and muftis to instrumentalize them as reference manuals.⁵¹

From what has been discussed so far, the Ottoman fatwa was distinctive because of two developments. First, the fatwa institution was made part of the state bureaucracy under the observation of the chief mufti as the highest authority within the scholar-bureaucrat establishment. The fatwa was a means of asserting legal opinions concerning state administration, and one could potentially be sought possibly by all who appealed to the Ottoman court, whether Ottoman subjects or foreign dignitaries. Second, the state requirement that muftis had to observe the soundest opinion within the Hanafi madhhab while issuing their fatwas lent these legal weight, as least insofar as they complied with that requirement. These two developments culminated in the rise of fatwa collections as legal manuals that served as reference books for judges and muftis.

I argue that legal compendiums served a similar purpose as fatwa collections because they stated the authoritative legal statements to be followed by state officials. My argument depends on the preference of the copyist of the Istanbul copy to make this legal compendium part of a larger codex. It should not come as a surprise that this legal compendium is bound together in the same volume with fatwa collections considered as books of high repute (*mu'teber*) within the Ottoman legal and political framework. These works include *el-Fevâidü'z-zeyniyye fî mezhebi'l-hanefiyye*, *Fetâvâ-yı ibn nüceym*, and *Fetâvâ-yı kâriu'l-hidâye*. The first two belong to Zeynuddin b. Nuceym (970/1563), the first one being a collection of restatements (*fevâid*) prepared by the author himself, and the second one a posthumous edition and reorganization of his fatwas by Şemseddin Muhammed el-Hatib. The last text is a posthumous collection of the fatwas of Ebû Hafs Sirâcüddîn Ömer b. Alî (829/1426), who was known as Kâriu'l-hidâye.

Both İbn Nüceym and Kâriu'l-hidâye were Hanafi jurists who were widely esteemed by Ottoman scholars; thus, their works were frequently cited. The works of İbn Nüceym were circulating so widely among late Hanafi jurists in the Ottoman dominions that they became part of the imperial jurisprudential canon (i.e., the books of high repute).⁵² For example, *el-Bahru'r-râik fî şerh-i kenzi'd-dekâik* by İbn Nüceym was the most cited source in the fatwa collection of Çivizade, in which the father and son chief muftis compiled authoritative Hanafi opinions.⁵³ It was by far the most

51. Atçıl, "Political Power and Lawmaking," 127.

52. Samy Ayoub, *Law, Empire, and the Sultan: Ottoman Imperial Authority and Late Hanafi Jurisprudence* (New York: Oxford University Press, 2020), 31. The term "imperial jurisprudential canon" was borrowed from Burak's following article: Guy Burak, "Reliable Books: Islamic Law, Canonization, and Manuscripts in the Ottoman Empire (Sixteenth to Eighteenth Centuries)," in *Canonical Texts and Scholarly Practices*, ed. Anthony Grafton and Glenn W. Most (Cambridge University Press, 2016), 14–33, <https://doi.org/10.1017/CBO9781316226728.002>.

53. Çivizade Muhyiddin Mehmed Efendi (d. 954/1547) and his son Çivizade Mehmed Efendi

frequently cited source, with 519 references, the closest competitor being Kâdîhân, with 178 references.⁵⁴ The fatwa collection of İbn Nüceym also appears at top in a list that ranks the references made by an early eighteenth-century collection.⁵⁵ The compiler of İbn Nüceym's fatwas says in the introduction that his intention was to organize the late jurist's fatwas based on the systematization of fiqh books, because these fatwas contained the issues that muftis and judges consulted most frequently. He also adds that his aim was to compose a book of high repute.⁵⁶ Although not as highly reputed as İbn Nüceym, Kâriu'l-hidâye was also referred to in fatwa collections.⁵⁷

It seems that the copyist aimed at making a codex of texts with high repute. This codex was intended to be a collection of soundest opinions that could be instrumentalized by judges and muftis in their legal deliberations. By attaching a legal compendium of administrative laws and fatwas within this codex, the copyist sought to make a comprehensive legal manual, perhaps to have these works always available to him. This shows that the legal compendium was of great a value as the other constituent texts. However, the eclectic nature of legal compendiums, consisting of both administrative laws and fatwas, raises several questions. Specifically: Is the applicability of these fatwas unlimited? Do they remain in effect forever?

In a situation where fatwas gained their authority from administrative laws but simultaneously depended on those laws for their validity, there arise two interrelated problems concerning the authenticity and applicability of these fatwas, because administrative regulations tended to be revised at certain instances, if not regularly. The first problem stems from the impermanent nature of these sources. What happens when a regulation was revised by the court? Did the fatwas issued in accordance with these regulations turn invalid? The following quotation from a nineteenth-century chief mufti sheds some light on this matter. It is part of the correspondences made during the preparation of the 1263 (1847) inauguration of the new law on land. After consulting the Fatwa Office, the chief mufti replies to the grand vizier:⁵⁸

(d. 995/1587) were both chief muftis. The fatwa collection named *Mecmûatü'l-Fetâvâ* was a collaborative work of the father and son. See Pehlul Düzenli, "Osmanlı Fetvasında "Muteber Kaynak" ve "Müfta Bih Mesele" Problemi," *Türkiye Araştırmaları Literatür Dergisi* 11, no. 22 (2017): 38.

54. Ibid., 38.

55. Ibid., 45.

56. Laleli 1263, fol. 48v.

57. Düzenli, "Osmanlı Fetvasında "Muteber Kaynak" ve "Müfta Bih Mesele" Problemi," 41, 45, 49, and 52.

58. As part of a chain of correspondences made between the grand vizier on the one hand and keeper of the registers (*defter emînî*), Supreme Council of Judicial Ordinances (*Meclis-i Vâlâ-yı Ahkâm-ı Adliyye*), palace chancery (*mâbeyn bâş kitâbeti*), and chief mufti (in coordination with the Fatwa Office) on the other hand, Mustafa Reşid Paşa, the grand vizier of the time, petitioned Arif Hikmet Bey, the chief mufti, concerning the recently issued imperial command (*irâde-i seniyye*) on

The copies of fatwas recorded in the fatwa collections of former chief muftis, issued in accordance with the old laws and pertaining to the aforementioned matters, are annulled under the new law. Thus, they are no longer valid for implementation. Henceforth, it is more appropriate and sound to act and to issue fatwas in compliance with the stipulations of the new law. This decision should be formally declared to the provincial muftis.⁵⁹

Although this statement was made in the nineteenth century, it might well say something about the situation in the seventeenth century, because land issues were already discussed by seventeenth-century muftis in their collections. Furthermore, the regulations on transactions on *mîrî* lands had already attained their final shape by the early seventeenth century, which they would retain until a major revision was made during the nineteenth century. The chief mufti in the quote above clearly stated that provincial muftis used the fatwas of former chief muftis recorded in their fatwa collections as a guide in responding to people's questions on the issues of *tapu* because they were in alignment with the in-force sultanic laws. However, these fatwas were declared to be invalid with the issuance of new regulations. So, muftis were informed not to rely on these collections anymore. This correspondence shows that the fatwas on administrative issues were official statements of law that were observed by official muftis in their legal conduct. Fatwa collections were thus more than mere repositories of fatwas of former muftis. They represented the official view; thus, any change in official doctrine would directly influence the applicability of these fatwas.

The second of the two problems mentioned above is also related to issue of outdated laws in legal compendiums, as seen in the following quotation from a decree:

This is a copy of the *kânun* issued regarding transactions on *mîrî* lands in the year [11]67. Disputes often arise concerning the right of first refusal [*hakk-ı tapu*] in the lands in districts, towns, and villages when those in possession of such land die, leaving behind heirs, some of whom do and some of whom do not have the right to inherit the usufruct rights. In such disputes, the heirs find it necessary to seek a legal opinion. Legal opinions are given to both parties, [but these are] based on outdated laws

the new land law (*kânun-ı cedîd*). The grand vizier asserted that although the decree was reviewed by the Fatwa Office (*Fetvâhâne*) for compliance with sharia, judges and jurists in the provincial domains had not been officially informed of the new regulations on land tenure. Noting that this issue has led to disputes on land in the provinces, the grand vizier emphasized the importance of disseminating this information to ensure a cohesive system of land tenure and to avoid disputes in the provinces. It was in response to this petition from the grand vizier that the chief mufti wrote the lines quoted here.

59. İMSM, 21/513, Cumhurbaşkanlığı Devlet Arşivleri (BOA).

that have been nullified. When the parties appear before the judge, the judges are not sure about which legal opinion to base their judgment on, as the contents of the legal opinions contradict each other. Therefore, grievances and injustices against people, contrary to the law, have reached my imperial ear. To resolve these problems, it is necessary to specify the currently applicable law regarding *mîrî* lands. The *kânun* on this matter has been requested from the relevant office of the Imperial Council.⁶⁰

This quotation from the mid-eighteenth century reveals that it was not uncommon for litigants and defendants to consult the fatwa authorities in hopes of receiving fatwas to support their cases. Judges relied on these fatwas when making their rulings. However, conflicts arose when both sides submitted conflicting fatwas. Given the weight and authority that fatwas enjoyed in the court, judges were placed into an untenable situation. Central authorities aimed to solve this problem by submitting to the muftis the regulations currently in force to guide them while issuing their fatwas.

These quotations show two things: first, the fatwas on matters of *kânun* recorded in fatwa collections reflected the official view on land tenure, and the second, these fatwas were valid and authoritative in lawsuits as long as the source *kânun* was in force. So, the above quotations respond to the question of the fatwa's temporality. Ottoman muftis responded to questions on matters of *kânun* because they were part of the ruling structure. They issued their legal opinions to inform people of the official statements of law. So, these fatwas were considered as valid and authoritative documents in the lawsuits. We can also say that the bindingness of fatwas depended on whether the relevant administrative law was in force or not.

4.4 Conclusion

The Istanbul copy signified the last step in compendium-making: synthesizing existing texts into a single composition. Through a close examination of this copy, this chapter underlined the crucial but overlooked role of the copyist. By incorporating glosses into the main body of the text, the lines between fatwas and administrative laws blurred, turning what were once individual legal opinions into official statements of law. The act of synthesis was more than a passive transmission of textual data. Instead, it reflected a broader institutional change within the imperial political

60. TSMK Revan 1938, fol. 98v.

and legal spheres. As *kânun* gradually turned into a shared language of governance among state officials, scholars treated it as a collective property that they had the right to discuss and develop. Legal compendiums were a medium for such interaction. Furthermore, with the integration of the fatwa institution into the imperial bureaucracy, fatwas turned into official statements of law. Their incorporation into legal compendiums, side by side with administrative laws, marked the elevation of the fatwa from being an individual opinion into part of the official doctrine. This chapter has shown how traditionally unbinding legal opinions gained a level of practical authority within the legal system, guiding court procedure and governance.

By the seventeenth century, the practice of issuing fatwas on administrative issues had become so widespread that the fatwa collections included independent chapters at the end, solely dedicated to these issues, entitled as *el-mesâilü'l-müteallika bi'l-arâzî* or *ahkâmu'l-arâzî*. Sometimes these collections just copied the 1017 decree, part of the first chapter of this compendium.⁶¹ By the eighteenth century, fatwas on *kânun* crystallized as a sub-genre of Ottoman fatwas, referred to as *fetâvâ-ı kânuniyye* or *kânuna müteallık fetvâlar*.⁶² Rooted in both *kânun* principles and the scriptural sources of sharia, these legal opinions concerning state administration, taxation, and the duties of subject people were considered authoritative statements, but only as long as the referenced *kânun* remained in force.⁶³ The conditional validity of fatwas on *kânun* was explicitly affirmed during the preparations for the promulgation of the 1263 (1847) Land Law, when the Fatwa Office instructed provincial muftis to disregard legal opinions issued by former muftis in accordance with the old laws (*kânun-ı kadîm*), declaring them nullified under the new law (*kânun-ı cedîd*), so that they should no longer be referred to by them.⁶⁴ This reveals the contextual and contingent nature of fatwas on *kânun*, whose prescriptions were derived from contemporary administrative provisions

61. See *Zahîru'l-kudât* by Üskübi Pir Mehmed which is entirely on the issues of *kânun*. Ahmed Akgündüz, *Osmanlı Kanunnâmeleri*, 395–483. See also *Fetâvâ-ı Zekerîyyazade Yahya Efendi*, Lala İsmail 109, fols. 277-284; *Fetâvâ-ı Seyyid Mehmed Rıza*, Zeytinoğlu 157; *Fetâvâ-ı Akkirmânî*, Hafid Efendi 98, fols. 191v-194v.

62. See TSMK B.347, fol. 184v; GHB R-9007/2; GHB R-922/2.

63. M. Macit Kenanoğlu, “Osmanlı Devleti’nde Kanun-Fetva İlişkisi ve Örfî Fetva Kavramı,” in *Osmanlı Hukukunda Fetva*, ed. Süleyman Kaya, Yunus Uğur, and Mustafa Demiray (Fatih, İstanbul: Klasik, 2018), 119.

64. İ.MSM, 21/513, Cumhurbaşkanlığı Devlet Arşivleri (BOA).

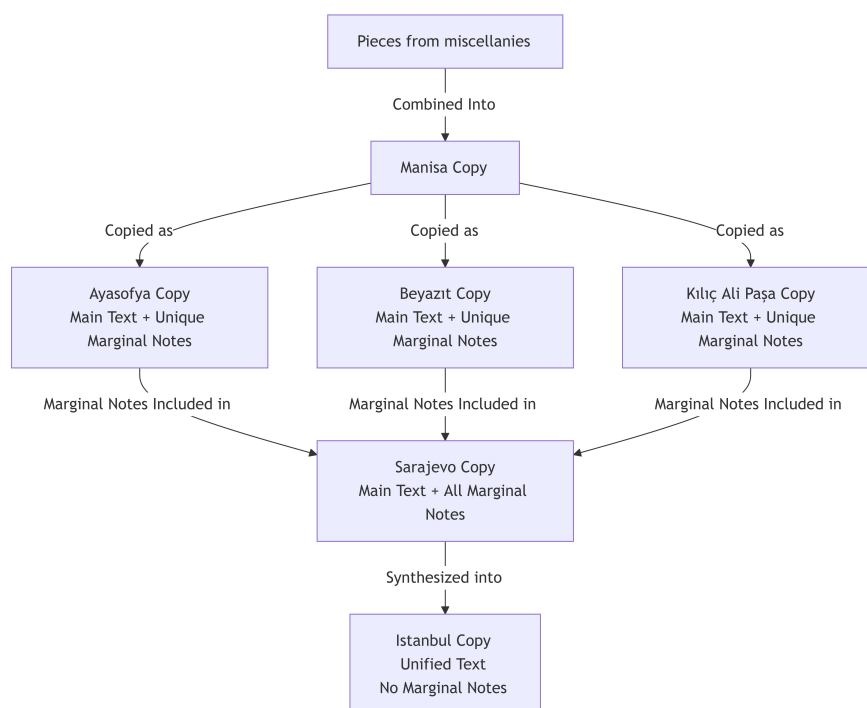
5. CONCLUSION

This study began with a sense of wonder at the inter-connectedness between multiple copies of a legal compendium. It ends with a recognition that compendium-making was not merely a means of repositing administrative regulations but also a living space where the law was in motion and constantly remade. It has showed that the law was not only the regulations enacted by principal agents sitting in the sultan's imperial court, but instead a collaborative outcome of multiple people contributing at multiple stages, whether by selectively compiling legal materials into compendiums, providing marginal annotations, or making synthesized copies of them. Legal compendiums were not marginal to the functioning of the legal system; they were central, particularly in the provinces.

This thesis has focused on the rise of compendiums as a major legal genre during the seventeenth century by analyzing different stages of compendium-making with three case studies. The diagram below illustrates the process of how the three copies were made (Figure 7). First, individual copies of Ottoman *kânun* were transferred by central agents to provincial scholars through official channels of communication. These people copied the documents onto their private miscellanies and shared them with other individuals within their scholarly networks. Thus, the transmission of documents in this stage was conducted more through personal registers (e.g. those of Altıparmak Abdülfettah, Halil, Bursa Mehmed, and Luhumi Ali). Members of the scholarly bureaucracy were keen to acquire copies of official documents to apply their provisions during their legal deliberations. This was possible either through consulting the Imperial Council and asking them to dispatch the current regulations or through personal contacts.

Gradually, the aggregation of such materials crystallized into more structured compendiums, as represented by the Manisa copy. Here, the author-compiler emerged as a critical figure, not merely compiling documents but also authoring them, because it was their preferences of what to include and what to exclude that eventually gave the resulting compilation its final form. The Manisa copy was presumably compiled

Figure 5.1. Three-stage process of compendium-making



selectively by the aggregation of multiple texts found in personal collections. This might have been either a deliberate effort or an organic process, as discussed in Chapter 2.

The first stage done, different copies of the Manisa version took distinct forms in the hands of glossators working on these copies, as discussed in Chapter 3. This is exemplified in the Sarajevo copy, in the production of which a diligent researcher of Ottoman law went through multiple compendiums and acquired their marginal notes. Additionally, to acquire copies of administrative regulations, he also possibly consulted state departments that deposited archival materials. The glossator presented his findings in the margins of the Sarajevo copy by commenting on the existing text in the form of fatwas, mostly, but through *kânuns* as well. In doing so, he reveals that provincial muftis were not merely receivers of law but active participants in its interpretation and critique.

The process of compendium-making culminated with the contributions of copyists who considered the marginalia added by glossators to be as central as the main text originally prepared by author-compilers. As Chapter 4 shows through the example of the Istanbul copy, the result was a testament to the role of the copyist as a creative actor. Rather than reproducing the text mechanically, the copyist considered marginalia as integral to the main text, thereby elevating fatwas to the level of regulatory norms. This raises a critical question on the nature of the Ottoman fatwa,

as to whether it was an official legal instrument as authoritative as administrative regulations.

Taken together, these three stages—formation, expansion, and consolidation—map out a cycle through which law was made, discussed, and refined in compendiums. These were the three stages of lawmaking in compendiums.

The process of lawmaking described here did not necessarily end with the Istanbul copy. The same cycle could repeat, as new readers added glosses or produced further copies. The ongoing nature of this process reveals that the compendiums were not final products. They were legal workshops, always open to discussion and development. Legal compendiums provided an active space for the making of law, as they were dynamic fields that welcomed contributions by their readers and copyists.

This study sought to explore the rise of legal compendiums as a major site through which to discuss the imperial politics and the functioning of the legal system. It has found that many people were thinking of *kânun* and interpreting its clauses as part of an endeavor to achieve a balance between legal theory and practice. While *kânun* emanated from the court, it was shaped in the hands of legists through the instrumentalization of compendiums as a medium for the practical application of law. So, unlike the previous century, by the seventeenth century, *kânun* compilation was no longer a chancellor-oriented task but instead trickled down to a larger group of bureaucrats, particularly to judges and muftis, as discussed in this study.

Acknowledging this shift puts to rest a question that has vexed Ottomanist scholarship for decades, namely, why sultans stopped issuing general *kânunnâmes* after the sixteenth century. This is a question that has been asked many times but has yet to receive a satisfying answer—largely, I submit, because the question itself is wrong-headed. It assumes a sultan-centric patrimonial understanding of the Ottoman legal system. According to the proponents of this question, the inauguration of *kânunnâmes* by sultans was a defining feature of *kânun* law that disappeared entirely after the sixteenth century.

Rather than asking why sultans stopped issuing general *kânunnâmes*, we might instead ask: who else began reflecting on *kânun*? The answer, as suggested by this thesis, lies in author-compilers, glossators, and copyists. No longer the exclusive domain of the office of chancellor, *kânun* became a textual tradition negotiated and reconstructed by judges and muftis working at the interstices of imperial authority and local practice. They authored and compiled *kânun* materials, glossed on them their fatwas, and finally synthesized these materials into distinctive compositions to serve them as legal manuals in their professional work. So, it should come as no surprise that one of the copies of this compendium was made into an endowment

with the condition that it be used only by the muftis of the specific town where it was endowed, namely, Vidin.¹ The endower ensured that this legal compendium stayed in the hands of local muftis, as it functioned as a crucial medium for legal practice within that particular context.

The disappearance of sultanic *kânunnâmes* was perhaps because the functions once served by centrally prepared *kânunnâmes* were now met through the private labor of scholars and bureaucrats in legal compendiums. The law, once rooted in the person of the sultan, had become the shared property of the empire's legists. This means that the general *kânunnâmes* did not disappear at all, but instead were subsumed in a new genre of legal compendiums. However, past generations of scholars have often overlooked these texts, dismissing them as non-professional drafts or reducing them to the mirror for princes genre.

The various copies of the compendium examined in this thesis were only one iteration of this genre, and perhaps a small one at that. There were more commonly copied texts, such as the *Kânunnâme-i Cedîd*, that have received little, if any, attention up until recently. These were compilations that were commonly copied and developed by judges and muftis. Whether their compilers regarded themselves as lawmakers who were preparing *kânunnâmes* as guides in lawsuits remains uncertain; what is clear, however, is that later generations treated these works as *kânunnâmes* and used them as such.²

This study represents only one line of inquiry that could be done pertaining to legal compendiums. Future research should concentrate on different examples of legal compendiums to further discuss the rise of this genre in relation to a shift from sultan-enacted *kânunnâmes* to individually crafted legal compendiums. These sources, long dismissed as inauthentic copies, are likely to contribute to our understanding of this period of Ottoman history once we appreciate compendium-making as a professional labor that was interwoven with lawmaking processes.

1. Beyazıt 4789, fol. 0r.

2. See, for example, Oriental Institute R.3, fol. 1r where Osman Nuri b. Mustafa—the then-owner of the copy—entitled the manuscript “*Kânunnâme*.”

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