BRILL

ISLAMIC LAW AND SOCIETY 27 (2020) 53-82

Islamic Law and Society
brill.com/ils

Scholars, Spice Traders, and Sultans: Arguing over the Alms-Tax in the Mamluk Era

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Abstract

Amidst the politics of the Mamluk-era spice route, why did the standard-bearers of Islamic law routinely oppose the sultanate's imposition of an alms-tax on merchandise (*zakāt al-tijāra*), despite the abundance of support for such a tax within the classical tradition of Islamic law? Rather than contending – as some modern scholars have – that prominent jurists developed loopholes that circumvented the original intent of the law to protect the wealthy and the ruling class, I argue that it was precisely the jurists' careful defense of exemptions and exclusions that allowed them to define the essence of *zakāt* against forms of taxation they considered unlawful. By narrowing the scope of *zakāt*, jurists attempted to achieve a moral aim that went beyond the ritual purification of wealth: a limit on the sultanate's otherwise arbitrary power to tax Muslims as it wished. In doing so, they alleviated some of the tax burden for spice merchants and camel herders alike.

Keywords

Zakāt – commercial law – moral economy – *lex mercatoria* – mercantile capitalism – *fatwā*s – commentaries – Ibn Ḥajar al-ʿAsqalānī – al-Nawawī – Ibn al-Humām – Ibn al-Ḥājj

1 Introduction

It was the summer of 1387, 789 years after the *hijra*, and Egyptian merchant ships began arriving in Yemen for the season. Any merchants who disembarked there would have been likely to find fresh walnuts, dates, ripe peaches, jasmine in abundance, and probably some fleas. Meanwhile, we are told, those

 | DOI:10.1163/15685195-00260A08

merchants who stayed at home in Cairo met less happy circumstances. According to a contemporary observer, Ibn al-Furāt, the traders were ordered to assemble in a large group at a prestigious *madrasa* called the Ṣalāḥiyya, where the regulator of the marketplace, the *muḥtasib*, read aloud a decree from the sultan, Malik al-Ẓāhir Barqūq.[1] The merchants were to assess the value of their merchandise and declare how much they owed for the alms-tax that year. Unless they could swear an oath testifying that they owed nothing, they were required to hand over the full amount at once. All four high court judges representing the major Sunni schools of Islamic law lent their support to the sultan's order. And yet, just twenty days after the initial decree was enacted, under tremendous pressure from both merchants and competing legal scholars, the order was rescinded, the money was returned, and the sultan installed a new chief judge who favored exempting merchants from the tax. It was now late in the summer, and Suhayl, one of the brightest stars in the Egyptian sky, was visibly rising at dawn.[2]

The alms-tax on merchandise, known to specialists as *zakāt ʿurūḍ al-tijāra*, or simply *zakāt al-tijāra,* occupied a paradoxical place in Islamic commercial law during the Mamluk period, an era in which Egypt enjoyed a prime location along the spice route in its heyday.[3] A cursory reading of the legal literature of

1 Muḥammad Ibn al-Furāt (d. 807/1405), *Tārīkh* (Beirut: American Press, 1936), 12-15. The order was announced on 19 Rajab and then rescinded on 9 Shaʿbān of 789, or August 5 and August 25 of 1387; Malik al-Ẓāhir Barqūq reigned intermittently from 784-801/1382-1399. Corresponding accounts can be found in Aḥmad ibn ʿAlī al-Maqrīzī, *Kitāb al-Sulūk li-maʿrifat duwal al-mulūk*, 9 vols. (Beirut: Kutub al-ʿIlmiyya, 1997), 5:199; Ibn Ḥajar al-ʿAsqalānī, *Inbāʾ al-ghumr bi-abnāʾ al-ʿumr fī al-tārīkh*, ed. Ḥasan Ḥabashī, 4 vols. (Cairo: al-Majlis al-Aʿlā liʾl-Shuʾūn al-Islāmiyya, 1969), 1:337. See also Adam Sabra, *Poverty and Charity in Medieval Islam: Mamluk Egypt, 1250-1517* (Cambridge: Cambridge University Press, 2000), 40; Kristen Stilt, *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2011), 187-90.

2 For an overview of the maritime traders who linked Yemen and Egypt, see Eric Vallet, *L'Arabie marchande: État et commerce sous les sultans Rasūlides du Yémen, 626-858/1229-1454* (Paris: Publications de la Sorbonne, 2010), 471-539; John L. Meloy, *Imperial Power and Maritime Trade: Mecca and Cairo in the Later Middle Ages* (Chicago: Middle East Documentation Center, 2010), 68-72. On agricultural, astronomical, and trading patterns in Egypt and Yemen during the summer season, see D.M. Varisco, *Medieval agriculture and Islamic science: the almanac of a Yemeni sultan* (Seattle: University of Washington Press, 1994), 36-7.

3 In this article, I may periodically refer to the "spice route" or the "spice trade" as a shorthand for what is sometimes termed the "India trade" or the "Red Sea trade." Just as silk was not the only commodity on the silk road, the spice trade encompassed much more than spices, pharmaceuticals, incenses, and precious stones. It was a robust maritime corridor in which not only luxury goods were exchanged but also cotton textiles, grains, and other bulk items between the Indian Ocean and the Mediterranean by way of the Red Sea. The list of goods based on contemporaneous chronicle sources includes "agricultural products, textiles, silk, wood,

the time shows that jurists were in unanimous agreement that an increase of wealth from merchandise was liable to be taxed for alms. And yet, the imposition of an alms-tax on merchandise was typically met with swift and effective resistance from a number of leading Muslim jurists.[4]

One historical explanation for the juristic opposition to *zakāt al-tijāra* is that the exigencies of spice-trade politics and mercantile capitalism required jurists to dispense with their high-minded religious ideals in order to protect the merchants' economic interests. A version of this perspective, first advanced by A.L. Udovitch, strongly suggests that Islamic legal structures largely assimilated a *lex mercatoria* or 'Law Merchant' through the invention of legal devices and exemptions, exclusions, and specifications in commentaries, handbooks, substantive law, and *fatwā* collections.[5] Indeed, the only serious academic study of the imposition of the alms-tax on merchandise, undertaken by Baber Johansen almost forty years ago, echoes Udovitch by arguing that the discursive elaboration of *zakāt al-tijāra* restructured the tax with countless

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wheat, flour, sugar, rice, weapons, armor and other valuables of Yemen," (Walter J. Fischel, "The Spice Trade in Mamluk Egypt: A Contribution to the Economic History of Medieval Islam," *Journal of the Economic and Social History of the Orient* 1:2 [1958]: 161). For a description of items traded based on the Geniza documents, largely for the Fatimid and Ayyubid periods, see S.D. Goitein and Mordechai A. Friedman, *India Traders of the Middle Ages: Documents from the Cairo Geniza* (*"India Book"*), 2 vols. (Leiden: Brill, 2011), 1:15-21. Other items can be culled from documents in a 13th-century warehouse found at the port city of Quṣayr – which Li Guo notes was dominated by the grain trade – as well as a Rasulid-era manual for Yemeni administrators in which a long list of regularly traded goods are itemized. See Li Guo, *Commerce, Culture, and Community in a Red Sea Port in the Thirteenth Century: The Arabic Documents from Quseir* (Leiden: Brill, 2004); al-Ḥasan b. 'Alī Ḥusaynī et al., *A medieval administrative and fiscal treatise from the Yemen: the Rasulid Mulakhkhaṣ al-fiṭan by al-Ḥasan b. 'Alī al-Ḥusaynī* (Oxford: Oxford University Press, 2006).

4 Controversies and public consternation concerning the imposition of the alms tax were not new or unique to the late Mamluk period. Shihāb al-Dīn al-Nuwayrī's (d. 733/1333) chronicle account of the Ayyubid and early Mamluk periods details numerous instances in which sultans are awarded praise and condemnation for levying or lightening various species of *zakāt* across Egypt and the Ḥijāz, including *zakāt al-tijāra*. For examples, see Shihāb al-Dīn al-Nuwayrī, *Nihāyat al-arab fī funūn al-adab,* 33 vols. (Beirut: Dār al-Kutub al-'Ilmiyya, 2004), 28:296 (589/1193, Egypt); 30:5 (658/1260, Egypt); 30:96 (666/1268, Ḥijāz); and 31:55 (680/1281, Egypt). Likewise, in Yemen in 625/1228, a sultan's attempt to impose *zakāt* on merchandise was short-lived. According to Eric Vallet, "Nūr al-Dīn 'Umar imposa bien le règlement d'une *zakāt* par tous les marchands pour des montants très élevés, ce système fut rapidement abandonné par la suite." See Vallet, *L'Arabie marchande*, 284.

5 See A.L. Udovitch, "'Law merchants' of the medieval Islamic world," in *Logic in Classical Islamic Culture*, ed. G.E. von Grunebaum (Wiesbaden: O. Harrassowitz, 1970), 113-30. The argument advanced in that essay was republished in Udovitch's monograph, *Partnership and Profit in Medieval Islam* (Princeton, NJ: Princeton University Press, 1970).

exemptions and qualifications to the benefit of the urban elite, flush with wealth from merchandise.[6]

To be fair, both Johansen and Udovitch qualify their arguments with a number of important caveats. But if this historiography were to be taken in an explicitly normative direction, as it is in the recent work of Timur Kuran, it risks leading one to the conclusion that the moral stakes of *zakāt* "ceased to command attention" for later jurists altogether.[7] Part of the problem, according to Kuran, was that it was "the rates [of *zakāt*] rather than the underlying equity objective that retained the attention of Islam's later interpreters. Gaining precedence over the initial motivating principle of [*zakāt*] itself, the rates acquired sacredness."[8] While Kuran elsewhere suggests that the principles of Islamic law may have proved harmful in the long run to economic development in the Islamic world, here later juristic discourses on *zakāt* represent a "missed opportunity" to limit predatory taxation and to achieve a more equitable society.[9]

While acknowledging my debt to this earlier historiographic tradition, my approach here will be somewhat different. The picture of Islamic commercial law that emerges from my case study is not one in which a seemingly fixed rule – "*zakāt* is as attached to trade as cattle are to the grass upon which they graze" – comes undone through commentary and later juristic interpretation in order to accommodate the customs of the marketplace or an opportunistic ruling class. On the contrary, as I will argue, some leading jurists of the Mamluk period maintained that it was precisely by conforming to those exemptions, qualifications, and conditions *in practice* that they realized the very essence of *zakāt*. In fact, it was through articulating exemptions that many prominent jurists distinguished *zakāt* from other kinds of tolls, tariffs, and taxes (*mukūs,* sg. *maks*) that they claimed were not grounded in Islamic law (*ghayr sharʿī*), and in so doing championed a broader moral aim of *zakāt*, beyond the oft-cited ritual purification of wealth: defending Muslim subjects – spice traders

6 See Baber Johansen, "*Amwāl Ẓāhira* and *Amwāl Bāṭina*: Town and Countryside as reflected in the Tax System of the Hanafite School," in *Studia Arabica et Islamica*, ed. Wadad al-Qadi (Beirut: American Univeristy of Beirut Press, 1981), 247-64.

7 Timur Kuran, "Zakat: Islam's Missed Opportunity to Limit Predatory Taxation," *Economic Research Initiatives at Duke* (ERID) Working Paper No. 284 (2019): 15. Available at <http://dx.doi.org/10.2139/ssrn.3368292>.

8 Ibid., 14.

9 Kuran, "Zakat: Islam's Missed Opportunity," 3. Kuran's critique of the Islamic legal framework and its alleged inability to accommodate the kind of corporate partnerships central to Europe's economic ascendance, see Timur Kuran, *The Long Divergence: How Islamic law held back the Middle East* (Princeton: Princeton University Press, 2013).

and camel herders alike – from burdensome and unpredictable tax policies, some of which long pre-dated the rise of Islam.[10]

One broader conclusion from this approach is that it may be more rewarding to characterize the evolution of norms and practices of Islamic commercial law as an inherent feature of the tradition rather than a sign of its decline. In ethicist Jeffrey Stout's words, "conformity to the norms [of a given practice] opens up the possibility of novel performances which have the dialectical potential to transform the practice, thus changing its norms."[11] How, then, do we gain insight into the way competing voices within the Islamic tradition struggled to define the proper norms and practices of Islamic commercial life, or what has been termed the "moral economy of Islam"?[12] And how did these

10 On customs duties and tolls in Egypt and along spice-trade ports along the Red Sea during the Roman era, see S.L. Wallace, *Taxation in Egypt from Augustus to Diocletian* (Princeton: Princeton University Press, 1938), 255-76.

11 See Jeffrey Stout, *Democracy and Tradition* (Princeton: Princeton University Press, 2004), 79. Stout, in turn, relies on Robert Brandom, "Freedom and Constraint by Norms," in *Hermeneutics and Praxis,* ed. Robert Hollinger (South Bend: University of Notre Dame Press, 1985), 173-91.

12 The term "moral economy," popularized in the classic studies by Karl Polanyi, E.P. Thompson, and James C. Scott respectively, has been employed in different but related ways in Islamic studies by Boaz Shoshan, Edmund Burke, Charles Tripp, and Wael Hallaq. Although definitions vary, some use the term "moral economy" to describe a conception of economic justice formed by indigenous or popular consensus that emerged partly as a response to the transformations of modern and late capitalist economic systems. This valence of a "moral economy" would surely be anachronistic in a pre-modern Islamic context. By contrast, Laurence Fontaine, in her recent work, resists defining the term but connects it to the formation of a set of internally competing values and locally embedded cultural practices, a framing which could be very useful when extended to studies of pre-modern societies. To this end, readers of this article may consider a "moral economy" to be a world of commerce that stands accountable to an historically-extended moral and legal tradition – in our case, the *sharīʿa* – that socially-embedded and sometimes competing actors – both popular and elite – regularly invoke, refine, and even transform in order to manage the scope of legitimate and illegitimate commercial practices in a given time and place. See Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957); E.P. Thompson, "The Moral Economy of the English Crowd in the Eighteenth Century," *Past & Present* 50 (1971): 76-136; James C. Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (New Haven: Yale University Press, 1977); Laurence Fontaine, *The Moral Economy: Poverty, Credit, and Trust in Early Modern Europe* (New York: Cambridge University Press, 2014); Boaz Shoshan, "Grain Riots and the 'Moral Economy': Cairo, 1350-1517," *Journal of Interdisciplinary History* 10:3 (1980): 459-478; Edmund Burke III, "Understanding Arab Protest Movements," *Arab Studies Quarterly* 8:4 (1986): 333-345; Charles Tripp, *Islam and the Moral Economy* (New York: Cambridge University Press, 2006); Wael Hallaq, *The Impossible State: Islam, Politics, and Modernity's Moral Predicament* (New York: Columbia University Press, 2013), 139-154; and Rasmus Olsen, "Just Taxes?: Tracing 14th Century [*sic*] Damascene Politics through Objects, Space and Historiography" (Ph.D. Thesis, University of London, 2017), 16, 76.

evolving norms and practices interplay with the overlapping and sometimes fractious contexts of the *madrasa*, the court, and the trade route?

While the Geniza sources and the Ḥaram documents have offered valuable insights into the commercial agreements commonly made between individuals, such as partnership and debt contracts, documentary evidence relating to many other aspects of commercial life, such as the imposition of the alms-tax, has been more limited.[13] This is not to mistakenly claim, as the *Encyclopedia of Islam* has, that "virtually nothing is known about the details of the official collection of *zakāt* throughout most of its history," nor that "by 493/1100, governmental collection of *zakāt* across the Muslim world had become largely a thing of the past."[14] On the contrary, ʿUthmān ibn Ibrāhīm al-Nābulusī's register of rural Egypt in 642/1244-5, a veritable 'Doomsday Book' of Ayyubid Fayyūm, has recorded the specific amounts of alms-tax that were collected by government officials from each village with detailed amounts listed for commercial capital, fruits (subdivided by variety) and livestock (subdivided by species).[15] To a lesser extent, Ibn Shaddād's survey of rural Syria in the 660s/1260s is suggestive of similar practices.[16] Likewise, administrative handbooks, such as Ibn Mamātī's (d. 606/1209) *Qawānīn al-dawāwīn* and al-Qalqashandī's (d. 821/1418) *Subḥ al-aʿshā,* describe in some detail the official *zakāt*-collection practices during the

13 For studies that make use of the Geniza to explore state tax policy and its relationship to juristic discourses, as well as Jewish experiences of the poll-tax (*jizya*), see Eli Alshech, "Islamic Law, Practice, and Legal Doctrine: Exempting the Poor from the *Jizya* under the Ayyubids (1171-1250)," *ILS* 10:3 (2003): 348-75; S.D. Goitein, "Evidence on the Muslim Poll Tax from Non-Muslim Sources: A Geniza Study," *Journal of the Economic and Social History of the Orient* 6:3 (1963): 278-95.

14 *EI²*, s.v. "Zakāt" (Aron Zysow). Kuran's further claim that "no public controversies over rates or coverage emerged" or that "one can read celebrated tomes" on the history of the Mamluks "without encountering a single reference to zakat" simply does not hold. Kuran, "Zakat: Islam's Missed Opportunity." Ibid., 14, 20.

15 ʿUthmān ibn Ibrāhīm al-Nābulusī, "Kitāb Lumaʿ al-qawānīn al-muḍiyya fī dawāwīn al-diyār al-Miṣriyya," *Bulletin d'études orientales / Institut français de Damas* 16 (1958-1960): 29, 36, 73; idem, *The 'Villages of Fayyum': A Thirteenth-Century Register of Rural, Islamic Egypt*, trans. Yossef Rapoport and Ido Shahar (Turnhout: Brepols, 2018); Claude Cahen, "Le régime des impôts dans le fayyūm ayyūbide," *Arabica* 3:1 (1956): 8-10; Yossef Rapoport, *Rural Economy and Tribal Society in Islamic Egypt: A Study of al-Nābulusī's Villages of the Fayyum* (Turnhout: Brepols, 2018), 91, 99, 127, and 134.

16 ʿIzz al-Dīn ibn Shaddād, *al-Aʿlāq al-khaṭīra fī dhikr umarāʾ al-Shām waʾl-Jazīra*, trans. Anne-Marie Eddé-Terrasse (Damascus: Institut Francais du Proche-Orient, 1984), 14-15; Anne-Marie Eddé, *La Principauté Ayyoubide d'Alep* (*579/1183-658/1260*) (Stuttgart: Verlag, 1999), 331-42.

Ayyubid and Mamluk periods respectively.[17] And yet, even as these documentary and administrative sources offer us a snapshot of *zakāt* collection from a bird's-eye view in a given year or decade, relying on such sources alone would leave the traditionally-defined moral stakes of *zakāt* out of focus.

The problem arises in reverse, however, as Johansen conceded in his 1981 article, if we were to rely solely on highly technical legal commentaries for clues into the real-world implications and moral consequences of the imposition of the alms-tax for merchants.[18] While such commentaries are an obvious and useful starting point for understanding the state of normative debates at a given time, they offer only glimpses of the commercial practices that filled the worlds of their authors. Our prospects for understanding Islamic law at the intersection of legal norms and political realities would improve if we supplemented analyses of commentaries with analyses of *fatwā*s, as Johansen, Wael Hallaq, and others have done on other legal matters, but certain obstacles would remain.[19] For instance, on occasion, some *fatwā*s can be so underdetermined that they neglect to explain the legal grounds on which a ruling is reached, or they can be so detailed that they are, in effect, as theoretical as any commentary addressed to specialists.[20] And while certain *fatwā*s may wield a kind of soft power, perhaps by influencing incremental changes in substantive

17 Asʿad ibn Mamātī, *Kitāb Qawānīn al-dawāwīn* (Cairo: Maktabat Madbūlī, 1991), 308-17; Aḥmad ibn ʿAlī al-Qalqashandī, *Subḥ al-aʿshā,* 14 vols. (Cairo: Matbaʿat al-Amīriyya 1914), 3:461-70; Claude Cahen, "Contribution à l'étude des impôts dans l'Égypte médiévale," *Journal of the Economic and Social History of the Orient* 5:3 (1962): 252-56.

18 See Johansen, "*Amwāl Ẓāhira* and *Amwāl Bāṭina*," 247-64. Norman Calder briefly addresses the imposition of *zakāt al-tijāra* in his examination of the typologies of *fiqh* writing; see Norman Calder, *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 74-115.

19 In his work on land rent, Johansen moves comparatively across commentaries and *fatwā*s. The exhortation to scholars to analyze *fatwā*s as a nexus of theory and practice was advanced in one of the first articles published in this journal: Wael Hallaq, "From *Fatwā*s to *Furūʿ*: Growth and Change in Islamic Substantive Law," *ILS* 1:1 (1994): 29-65. In that essay, Hallaq argued that collections of *responsa* have the potential to shed light on change and continuity in Islamic law across time. In this essay, my interest is more narrowly focused on understanding the interaction between traditionally transmitted legal norms and the political and economic exigencies of a specific era.

20 For a critique of Hallaq's article, and a re-classification of the genre of *fatwā*s, see Norman Calder, "The Social Function of Fatwas," in *Islamic Jurisprudence in the Classical Era* (Cambridge: Cambridge University Press, 2010), 167-200. The secondary literature on *fatwā*s is extensive, but anyone seeking further readings should begin with *Islamic Legal Interpretation: Muftis and Their Fatwas*, ed. M.K. Masud et. al. (Cambridge: Harvard University Press, 1996).

law, in many contexts it is difficult to pinpoint the extent of a non-binding legal opinion's influence on individual and communal practices.[21]

Could one way to overcome these obstacles be found in the chronicle genre? What if we were to read accounts of *fatwā*s delivered at the conclusion of a fraught case by the chief judges appointed to represent their respective schools? Although a chronicle account itself is shaped by its narrator's political, economic, and intellectual interests, such a description may yet offer us important insights. After all, it is precisely because such *fatwā*s were embedded in narratives crafted to memorialize the event that they not only offer us a portrait of how the practice of legal reasoning related to the politics of a given moment, but also an impression of which legal arguments were reported to have carried the day within a politically constrained scene and for an educated – but not overly specialized – reading audience.

It is our bad luck, however, that the source for the anecdote that opens this essay, Ibn al-Furāt, tells us nothing of what was intellectually at stake in the debate over the alms tax. He does acquaint us with his sense of the politics in which the imposition of the alms-tax on merchandise emerged: the threat posed by Tamerlane's incursions in Syria, and Sultan Barqūq's effort to raise new sources of revenue to keep Tamerlane from pushing any further west. We know that earlier in the 8th/14th century, a Syrian governor from the sultanate arranged readings of *Ṣaḥīḥ al-Bukhārī* in the hope of bringing about a miracle that would ward off the Mongol threat, so we cannot rule out the possibility that Sultan Barqūq was seeking God's help in his war by reviving the alms-tax, or at least was seeking to burnish his religious credentials.[22] However, we are told that although the business community expressed tremendous resistance to the decree, it nevertheless submitted to it, reflecting either the authority of the judges appointed by the sultan, the coercive power of the sultanate, or a little of both. Meanwhile, when the sultan sought to name a replacement for the Shāfiʿī chief judge, his nominee, according to Ibn al-Furāt, demanded as a condition of his appointment that the tax revenue taken from the merchants be refunded. The sultan, we are told, acceded, ending the fiasco. Still, the precise reasons that the judges advanced for and against the alms-tax on merchandise is omitted from the historical narrative.[23] The description of events

21 For a notable exception, see David Powers and Etty Terem, "From the *Miʿyār* of al-Wansharīsī to the New *Miʿyār* of al-Wazzānī: continuity and change," *Jerusalem Studies in Arabic and Islam* 33 (2007): 235-60.

22 Kamāl al-Dīn al-Udfuwī, *Al-Ṭāliʿ al-saʿīd: al-jāmiʿ li-asmāʾ al-fuḍalāʾ waʾl-ruwāh bi-aʿla al-ṣaʿīd* (Egypt: al-Maṭbaʿa al-Jamāliyya, 1914), 323-24.

23 Ibn al-Furāt, *Tārīkh*, 12-15.

mark the pendulum swings of power rather than the competition over legal norms and ideas.

Fortune smiles on us, or at least simpers in our direction, when we examine a second struggle over the imposition of the *zakāt al-tijāra* that arose in 827/1424, also in Cairo. A different narrative source – Ibn Ḥajar al-ʿAsqalānī's (d. 852/1449) *Inbāʾ al-ghumr* – preserves the text of two brief *fatwā*s on the matter: one from the Shāfiʿī chief judge – Ibn Ḥajar al-ʿAsqalānī himself – and the other from the Ḥanafī chief judge, Zayn al-Dīn al-Tafahnī, who served from 822-829/1419-1425.[24] These two *fatwā*s, albeit brief, summarize the legal grounds underlying the opinions.

The fact that Ibn Ḥajar's chronicle represents a first-hand account has both advantages and disadvantages. The primary advantage is that the narrator was an eye-witness and can credibly offer more details of the court case than most other chroniclers. The primary disadvantage is that, as a participant in the event, the narrator deliberately crafts his telling to elevate himself and his allies and to belittle his adversaries. To this end, we will supplement Ibn Ḥajar's telling by consulting a summation of the same event by another contemporaneous chronicler, Aḥmad ibn ʿAlī al-Maqrīzī (d. 845/1442).[25] Still, it is precisely Ibn Ḥajar's own sense of what his cross-generational audience of readers will find to be the most compelling and persuasive case against the sultanate's imposition of the alms-tax on merchandise that is most revealing. The historical description of these *fatwā*s would have been crafted for an audience who had attained a high level of education but would not necessarily have been learned specialists in the granular details of the *fiqh* literature. In other words, even though these *fatwā*s are, in essence, a high administrative ruling on the law, their narrativization in the chronicle genre brings us closer to a kind of high vernacular understanding of whether or not the sultan's attempt to impose the alms-tax on merchandise is legitimate according to the norms of the *sharīʿa*.

This high vernacular understanding was not shared by Mamluk Cairo's downtrodden or by subaltern pastoralists in the countryside who buoyed the sultan's land revenues, even though, as we will see, they had much to lose and much to gain in the debate over *zakāt*. Regrettably, their voices are omitted from these sources. Nevertheless, by reading less technical summations of the practice of legal reasoning in genres crafted for broader, albeit educated, reading audiences, we draw a little closer to the concerns of those on the margins who were subject to the whims of arbitrary power and political domination.

24 al-ʿAsqalānī, *Inbāʾ al-ghumr*, 3:327; Shams al-Dīn al-Sakhāwī, *al-Jawāhir wa'l-durar* (Beirut: Dār Ibn Ḥazm, 1999), 633.

25 al-Maqrīzī, *Kitāb al-Sulūk li-maʿrifat duwal al-mulūk*, 7:98.

Indeed, what was at stake in this case, in part, was the preservation of *zakāt* as a socially diffuse practice, largely insulated from the ruler's power and centralized collection.

More to the point, however, this historical study draws our attention to what happens when the sultan's decrees are inconsistent with the legal reasoning advanced in the literal (and sometimes figurative) margins of a canonical text, i.e. those specific exemptions and exclusions outlined in the commentary tradition expounding upon a general rule. Even though, in the case of *zakāt al-tijāra,* the merchants stood to lose or gain the most from the final outcome, I will argue that the reasons advanced in contemporaneous legal commentaries should be taken seriously on their own terms, rather than being reduced to mere instruments of mercantile interests. In fact, as I will show, according to Ibn Ḥajar's chronicle, these kinds of reasons had the normative power to push back against the alternative conception of *zakāt* advanced by the citadel and sought to protect spice merchants and camel herders alike from burdensome taxation.

Before we can examine Ibn Ḥajar's chronicle account of the case that reached the high court, we must familiarize ourselves with some representative Shāfiʿī and Ḥanafī legal commentaries of the Mamluk period. These texts exemplify the range and sophistication of arguments that each of the jurists in our historical account surely would have consulted before ruling on the case.[26] After attending to some of the major issues animating the textual tradition internally amongst specialists, we will turn to a text directed at a less rarefied audience, a moralizing treatise authored by a Mālikī jurist who lived in Cairo during the era of the spice trade that broadly articulates the political and legal problems of imposing the alms-tax on merchants.[27] Lastly, we will examine Ibn Ḥajar's chronicle narrative of the sultan's attempt to impose an alms-tax on merchandise and the *fatwā*s embedded within it, observing what kinds of reasons were reported to have carried the day. Along the way, we will supplement our analysis with contemporaneous administrative sources and corroborating accounts from other chronicles when pertinent.[28] At that point, we

26 For the Shāfiʿīs, I have selected Abū Zakariyyā al-Nawawī's (d. 676/1277) *al-Majmūʿ sharḥ al-Muhadhdhab*, 18 vols. (Cairo: Maṭbaʾat al-ʿĀṣimah, 1966). For the Ḥanafīs, Kamāl al-Dīn Ibn al-Humām's (d. 861/1457) *Fatḥ al-qadīr*, 10 vols. (Egypt: Muṣṭafā al-Bābī al-Ḥalabī 1970). I explain these choices below.

27 Ibn al-Ḥājj al-ʿAbdarī (d. 737/1336), *al-Madkhal*, 4 vols. (Cairo: Maktabat Muṣṭafā al-Bābī al-Ḥalabī, 1960).

28 Two supplementary sources in particular are pertinent for our study: Aḥmad ibn ʿAlī al-Maqrīzī's (d. 845/1442) *Kitāb al-Sulūk li-maʿrifat duwal al-mulūk* and al-Qalqashandī's (d. 821/1418) *Subḥ al-aʿshā,* cited above.

should be on firmer ground in our attempt to capture the complex interplay between the external pressures and internally-defined aims of Islamic commercial law.

II A Shāfiʿī Perspective on the Alms-Tax on Merchandise in the Mamluk Period

The collection of the alms-tax on merchandise can be traced back to the formative period of Islam and there is evidence that the practice was the subject of lively debates by Shāfiʿī jurists since the formation of the school, and perhaps even in the 2nd or 3rd century AH by al-Shāfiʿī himself. My aim here, however, is not to map the origin and evolution of the alms-tax on merchandise, but to give readers a representative sampling of the range of arguments and opinions advanced on the margins of Shāfiʿī texts that would have been studied and consulted by Mamluk-era circles of law students and judges, the period leading up to our chronicle accounts on the imposition of the alms-tax on merchandise. For this reason, I have chosen to sample a work of an iconic Shāfiʿī scholar of the Mamluk period who preceded Ibn Ḥajar al-ʿAsqalānī: Abū Zakariyyā al-Nawawī's (d. 676/1277) *Majmūʿ*, a classic commentary on Shāfiʿī law.

al-Nawawī is an apt selection in part because of his influence in shaping and reshaping the textual resources of the Shāfiʿī school. He was precisely the kind of scholar whose work a chief judge of the Shāfiʿī school in the 8th/15th-century would have been required to pore over. But al-Nawawī is also apt because he was immortalized by scholars as a courageous opponent of excessive taxation, and mythologized by storytellers as a pious folk hero who provoked the sultan's ire and even suffered exile for refusing to legitimate the sultan's tax increases.[29] As we read al-Nawawī, we may begin to imagine how some of the abstract topics he discusses may have had political stakes for the broader reading public, in

29 Shams al-Dīn al-Sakhāwī, *al-Manhal al-ʿadhb al-rāwī fī tarjamat quṭb al-awliyāʾ al-Nawawī*, ed. Aḥmad Farīd al-Miziyadī (Beirut: Dār al-Kutub al-ʿIlmiyya, 2005), 47ff., 52ff; al-Nuwayrī, *Nihāyat al-arab fī funūn al-adab*, 30:233. For further references and a discussion of al-Nawawī's opposition to taxes – as well as that of other Shāfiʿī authorities – in relation to the 711/1311 tax levies, see Olsen, "Just Taxes?: Tracing 14th Century [*sic*] Damascene Politics through Objects, Space and Historiography," 68-70. W. Heffening writes that al-Nawawī's willingness to stand up to the sultan is "commemorated in the popular romance *Sīrat al-Ẓāhir Baybars* … in which the sultan, cursed by al-Nawawī, becomes blind for a time," *EI²*, s.v. "al-Nawawī" (W. Heffening).

addition to holding intellectual and religious stakes for jurists, chief judges, and students of law.

In the section on the alms-tax on merchandise in the *Majmūʿ*, al-Nawawī begins by quoting an earlier work on Shāfiʿī law by Abū Isḥāq al-Shirāzī (d. 476/1083), the base text upon which al-Nawawī commented. According to al-Shirāzī: "The alms-tax (*zakāt*) on merchandise is obligatory. Abū Dharr recounted what the Prophet said: 'There are alms (*ṣadaqa*) on camels. There are alms on cattle. There are alms on textiles (*bazz*).' Because accumulation of wealth is sought through trade, *zakāt* is as attached to (trade) as cattle are to the grass upon which they graze."[30]

Although al-Shirāzī's summation of the rule would seem to leave little doubt about the taxability of merchandise, al-Nawawī here introduces the possibility that there may be some difference of opinion on this matter, as suggested by al-Shāfiʿī himself. Perhaps the strongest evidence against the tax, according to al-Nawawī, are two texts: a companion report attributed to Ibn ʿAbbās that states that "there is no alms-tax on merchandise (*ʿurūḍ*)"; and an opinion attributed to Mālik that horses and slaves are exempt from the alms-tax. Such evidence, al-Nawawī observes, was convincing enough to some opponents of the tax, who, along with the Ẓāhirīs, argued that the alms-tax on merchandise is not obligatory. In response to such objections, al-Nawawī argues that these proof texts – when read alongside other hadith and juristic opinions supporting the alms-tax on merchandise – shield from taxation only those goods (horses and slaves) not intended for trade or resale.[31] For this reason, he notes that al-Shirāzī's initial assessment holds firm and that the Shāfiʿī school is agreed on this point. This opening discussion would leave no room for any Shāfiʿī judge to reject an alms-tax on merchandise outright.

How then can one discern which goods qualify as 'merchandise' that is taxable for alms? In the base text, al-Shirāzī argues that, to be considered merchandise, a person must first take ownership of a good by affirming a contract that stipulates a payment or exchange. Examples would include a sale, a lease, or a financial arrangement arising from a marriage or divorce. Second, that same person must intend at the point of entering into the contract to resell that good for a profit. It follows that a store of goods received through a sudden inheritance does not qualify as 'merchandise' that is taxable for alms. Gifts are also sheltered from taxation. Even if, at a later date, one resells that stock of goods for a profit, it cannot be subject to the alms-tax, since "what cannot be

30 al-Nawawī, *al-Majmūʿ*, 6:43.

31 Ibid., 6:43-45.

taxed for alms at the outset cannot later be taxed merely by a change in one's intention."[32]

As he did with al-Shirāzī's initial assessment, al-Nawawī explores a range of other opinions that, *contra* al-Shirāzī, suggest that a mere change in intention is sufficient to reclassify a gifted or inherited item under the rubric of merchandise that is taxable for alms. Ultimately, however, al-Nawawī affirms that the school stands largely with al-Shirāzī's definition of merchandise, as well as the opinion that a gifted item that was traded at a later date should be treated "separately from the laws regulating trade, without any disagreement."[33]

al-Shirāzī then poses a question related to a change of intention. If a farmer has a good year and trades away the surplus of his cattle, his orchard, or date palm farm for a healthy profit, is he to be taxed on that wealth according to the alms-tax on merchandise or according to the alms-tax on his property for personal use (*bi'l-ʿayn*)? Or is he taxed twice? al-Nawawī answers unequivocally that one should not be taxed more than once but outlines a number of competing reasons why one might favor one tax classification over the other. If one takes the benefit to the poor as the main principle in classifying this farmer's tax liability, the alms-tax on merchandise is the clear choice, as the tax payer is more likely to pay a greater sum under that heading.[34] However, if one wants to pay the minimum amount of alms-tax and not a dirham more, the alms-tax due on personal property is the better of the two options.

As al-Nawawī explores several challenging alms-tax scenarios for merchants, it becomes clear that judges will need to tailor their rulings to individual merchants, the nature of their circumstances, the goods involved, and the intended use of the goods at the outset. For instance, al-Nawawī discusses a trader who acquires a woman adorned in jewelry (*ḥalī*), confiscates that jewelry and then adorns himself with it, even though both the woman and the jewelry she was wearing were initially acquired for the purposes of trade. This surely would have been harrowing for any woman who was treated by a trader in such a way, but here al-Nawawī is blithely concerned with its tax implications: does the trader pay the alms-tax on the jewelry as if it were property for his own personal use? Or does he pay the alms-tax as if it were merchandise? al-Nawawī avers the latter, without any disagreement, even if the trader were to wear the jewelry himself. al-Nawawī reasons that since one would owe *zakāt al-tijāra* on the use of a man acquired to bring the trader's livestock to market,

32 Ibid., 6:47.
33 Ibid.
34 Ibid., 6:47-48.

by analogy, one would owe *zakāt al-tijāra* on any jewelry legally acquired for the purpose of increasing wealth through trade.[35]

al-Nawawī also discusses a merchant's need to prepare an estimate of his assets near the end of the holding-period or *ḥawl,* typically one lunar year.[36] During the tax assessment process, many other exemptions might arise. For instance, what happens if a trader prepares his estimate near the end of the holding-period, pays his alms-tax, but then makes a sale of his goods in which his profit exceeds the original estimate? In this case, al-Nawawī explains that the trader is exempt from paying taxes for alms on the excess of what was estimated for the current holding-period. However, the same trader should take that excess profit into account as he prepares an estimate during the following holding-period.[37]

Lastly, al-Nawawī discusses the alms-tax due on any profit earned from a business partnership agreement (*qirāḍ*) and how the amount of taxable net income is divided amongst the partners.[38] In these cases, as in the others, the importance of intention in preparing estimates, identifying exemptions, and entering into contracts is key to understanding how shared business assets should be taxed for alms. Although these examples may seem abstract, it is important to keep in mind that many of the situations he described would have appeared as practical to readers as those discussed by contemporary muftis and judges with regard to credit card usage, the permissibility of life-insurance, the validity of agreeing to contracts over the phone, and so on.[39]

And yet, for al-Nawawī, if the alms-tax is due on one's merchandise, to whom are such alms to be paid? To the ruler? Or directly to the needy and other qualified recipients? And what limits and freedoms does an individual merchant have in choosing to whom his alms-taxes are paid? In theory, the answer to this set of questions should have even greater bearing on the issue with which the chief judges would grapple in the Mamluk period: the legitimacy of the ruler's imposition of the alms-tax.

35 Ibid., 6:51.

36 Ibid., 6:57.

37 Determining the holding period is itself a matter of discussion, as are the collusive exchanges that traders use to avoid having a taxable surplus at the end of the holding period. Again, if their intentions are sincere at the time of the exchanges, the practices are valid. But if the aim of their exchanges is to defer the payment of the alms-tax, the position of the Shāfiʿīs, according to al-Nawawī, is to forbid it. Ibid., 6:64.

38 Ibid., 6:67-72.

39 *Zakāt* is also discussed in practical terms – such as the tax liability on retirement savings accounts and government grants – by a well-known contemporary Egyptian muftī, based in Qatar. See Yūsuf al-Qaraḍāwī, *Fiqh al-Zakāt*, 2 vols. (Beirut: Muʾassasat al-Risāla, 1973), 1:138-39.

Since the distinction between goods for trade and goods for personal use generally can be discerned from the merchant's intentions, al-Nawawī affirms the view held by al-Shirāzī and other Shāfiʿī scholars: merchandise should be categorized with other fungible goods like silver and gold that are considered "hidden wealth" (*amwāl al-bāṭina*). In this case, they are 'hidden' in the sense that the ruler would need intimate knowledge of the individual's intention in order to estimate the amount of alms-tax due. By contrast, the tax due on "visible wealth" (*amwāl al-ẓāhira*), such as livestock and crops, is based on a simple headcount or measure of weight or volume and is thus generally knowable by tax collectors regardless of their ability to discern the tax payer's intention. Of course, depending on the size of the assets, some calculations of 'visible' wealth may be complex. Nevertheless, the precise numerical thresholds that define a surplus liable to be taxed for alms was laid out explicitly in hadith, companion reports, and juristic opinions.

According to al-Nawawī, the Shāfiʿī school viewed the ruler – just or unjust – to hold an absolute right to collect the alms-tax on 'visible' goods. From the perspective of any sultan seeking to revive the collection of *zakāt*, so far so good. However, if the ruler's corruption raised doubts about whether the monies would reach the desired qualified recipients, al-Nawawī avers that the Shāfiʿī school reserved the right for Muslims of means to pay the alms-tax on 'hidden' wealth directly to those in need. This means that the legitimacy of the ruler's authority to collect *zakāt* on merchandise would be contingent on whether he and his appointed officials are free from corruption, a normative standard open to some measure of debate. Of course, al-Nawawī concedes that the payment of the alms-tax on merchandise as a religious duty is technically fulfilled even if it is handed over to an unjust ruler. But the best practice, in his view and in the view of the Shāfiʿī authorities upon whom he built his argument, was to pay the alms-tax directly to the needy to ensure that they received it.[40]

al-Nawawī's commentary commenced with al-Shirāzī's notion that the alms-tax is as indelibly linked to trade "as cattle are to the grass upon which they graze." So upon what grounds did the Shāfiʿī high court judge of Mamluk Cairo deny the imposition of the alms-tax on merchandise? Was the moral status of the ruler the deciding factor? If so, this would be a subversive comment on the authority of the Mamluk sultanate. Or perhaps the grounds for refusing the alms-tax was a more modest claim that the merchants qualified for one of the many tax-exemptions buried amongst the layers of Shāfiʿī commentary, leaving the question of the ruler's legitimacy largely intact. We will discover

40 al-Nawawī, *al-Majmūʿ*, 6:163-64; Calder, *Islamic Jurisprudence in the Classical Era*, 82-86.

the outcome of the court case soon enough. First, however, let us acquaint ourselves with the leading Ḥanafī approaches of the time.

III A Ḥanafī Perspective on the Alms-Tax on Merchandise in the Mamluk Period

Kamāl al-Dīn Ibn al-Humām (d. 861/1457) discusses the alms-tax on merchandise in his *Fatḥ al-qadīr*, a late Mamluk-era commentary on a canonical Ḥanafī text by Burhān al-Dīn al-Marghīnānī (d. 593/1197). Ibn al-Humām was born in Alexandria – one of the most active port cities on the spice route – and later became a figure of some influence and renown among scholars of hadith and law in Cairo. He attended the same study circles as Ibn Ḥajar al-ʿAsqalānī, the author of the chronicle (and one of the *fatwā*s) that we will examine shortly. He even heard hadith from Ibn Ḥajar and transmitted knowledge to several of Ibn Ḥajar's most distinguished students.[41] Although we have no biographical details that would offer clues to his personal preferences for or against the alms-tax on merchandise, it is likely that Ibn al-Humām wrote *Fatḥ al-qadīr* with some knowledge of the Mamluk-era legal battles over the imposition of *zakāt al-tijāra* that bookend this article.

Like al-Nawawī, Ibn al-Humām begins by defining 'merchandise,' which, he argues, is constituted by an intention to resell a good for profit at the moment of its initial acquisition. To underline the importance of intention, Ibn al-Humām explores a dreadful issue: he compares the restitution of a slave who was purchased with the intent of resale but who was accidentally killed to that of a slave who was purchased without the intent of resale but who was murdered premeditatively. Although al-Nawawī did not address this specific case, we do not observe any foundational disagreements between al-Nawawī and Ibn al-Humām on the importance of taking intention into consideration when ruling on such a case. Like al-Nawawī, Ibn al-Humām lists numerous tax exemptions that arise on account of one's intention and explains how the rate of taxation may or may not be affected by a change in one's intention subsequent to the initial purchase. For instance, no alms-tax would be due on any profit earned on the resale of a slave who was initially purchased for the sole intention of doing domestic work.[42]

41 On Ibn al-Humām, see Shams al-Dīn al-Sakhāwī, *al-Ḍawʾ al-lāmiʿ li-ahl al-qarn al-tāsiʿ*, 12 vols. (Beirut: Dār al-Jīl, 1992), 8:127-32.

42 Ibn al-Humām, *Fatḥ al-qadīr*, 2:218-19.

One difference between Ibn al-Humām and al-Nawawī on the taxation of merchandise for alms relates to the broader number of tax exemptions he allows for business accessories. For instance, one is required to pay *zakāt al-tijāra* on a slave who one intentionally purchased for resale but not on that slave's temporary clothing, food, transportation, and so on, since those expenses were not explicitly made with the intent for resale. By analogy, Ibn al-Humām notes, a pharmacist (*ʿaṭṭār*) is exempt from paying *zakāt al-tijāra* on the glass containers in which his drugs, syrups, perfumes, and spiced-confections are stored.[43] By contrast, al-Nawawī held that a slave's jewelry, acquired through trade, should be taxed as if it were merchandise, if the intention behind acquiring and wearing the object was to increase one's wealth through trade.

Ibn al-Humām also addresses the tax implications of the mobility of mercantile assets. For instance, if a merchant sends his slave on business to another country, any taxes that the merchant owes on his slave are accounted for in that country at the end of the holding period. If his slave ends up in a desert at the end of the holding period, the taxes should be paid in the town (*miṣr*) nearest to his slave's location. The principle here is that a merchant pays only one tax on the same asset even though his wealth is in motion, as it were, passing from country to country. Similarly, al-Nawawī insisted that a single asset may not be taxed more than once even if it qualifies for multiple categories of *zakāt*.[44]

As for the proper role of the ruler in collecting taxes – crucially at stake for our Mamluk-era legal battles – Ibn al-Humām quotes al-Marghīnānī, who argues that "the toll collector (*ʿāshir*) is the person who the Imām appointed along [the trade] route to take alms-taxes from merchants. If one of these [toll collectors] denies the [importance of] the holding period or the fulfillment of religious law (*dīn*), any duty [to pay him] should be denied."[45] Ibn al-Humām nuances al-Marghīnānī's broad proclamation by limiting the kinds of wealth a trader is liable to pay to even a righteous toll collector whom he meets on his route, i.e., the alms-tax on 'visible' wealth. No alms-tax is due to the toll collector if a merchant swears that he has already paid the alms tax to another collector. Nor does the ruler have a right to collect the alms-tax on goods that the merchant swears he has no intention of selling for a profit, or on goods in his possession that he swears belong to another merchant.

43 Ibid., 2:219. On the intersecting worlds of pharmacists and scholars in this period, see Leigh Chipman, *The world of pharmacy and pharmacists in Mamlūk Cairo* (Boston: Brill, 2010), 131-34, 153-57, 176-77.

44 Ibn al-Humām, *Fatḥ al-qadīr*, 2:219.

45 Ibid., 2:224.

However, if a merchant travels with 'hidden' wealth – including his merchandise – a righteous tax collector appointed by the ruler, under certain circumstances, is entitled to collect the alms-tax for that 'hidden' wealth. This is because, Ibn al-Humām explains, the moment the merchant uses a toll-road or a port protected by the ruler to move his merchandise, all of his goods, 'hidden' and 'visible,' are legitimately subject to inspection by an official appointed by the ruler.[46] However, a merchant is exempt from paying the alms-tax on merchandise to the ruler – even a righteous one – if he paid the proper amount of alms on that wealth directly to the poor before departing on his journey. In this manner, Ibn al-Humām privileges a merchant's choice to pay the alms-tax on his own merchandise directly to a qualified recipient rather than to the ruler, even if the ruler and the collectors he appointed are upright. However, if a merchant neglects this duty but nevertheless transports merchandise on a toll road or ships it using a port protected by the ruler, he forfeits his ability to choose.[47]

Of course, if a merchant considers the ruler to be righteous, the merchant may choose to pay the tax to him on the theory that the ruler knows best how to distribute the tax revenue to those in need. It is precisely this freedom – the choice to pay either the ruler or the needy – that is the condition for fulfilling any act of worship, such as prayer, fasting, or the payment of *zakāt*. According to Ibn al-Humām and other Ḥanafī jurists, in order for this payment to be accepted by God, it must be performed voluntarily and without coercion.[48]

As noted, some of the examples discussed by al-Nawawī in his commentary may seem like overly complex scenarios crafted with the aim of training an aspiring judge to resolve legal conundrums. To be sure, these commentarial discussions sometimes have a playful quality. Like Shāfiʿī jurists, however, Ḥanafī jurists recognized that in a theoretical example about a practical scenario, uncertainties may arise about how the alms-tax on merchandise should be interpreted most fairly. To this end, these scenarios represent a sustained attempt to do justice to the myriad circumstances in which a given interpretation of the law reasonably may be applied, and an attempt to avoid a misinterpretation in cases in which there may be reasonable differences of opinion. The examples addressed – such as tax exemptions on a druggist's

46 Johansen, "*Amwāl Ẓāhira* and *Amwāl Bāṭina*," 262.

47 Ibn al-Humām, *Fatḥ al-qadīr*, 2:225-26.

48 Johansen, "*Amwāl Ẓāhira* and *Amwāl Bāṭina*," 256 and n66; on coercion in Ḥanafī law, see further Mairaj Syed, *Coercion and Responsibility in Classical Islamic Thought* (Oxford: Oxford University Press, 2017), 97-128.

glass bottles – suggest that jurists did try to connect theoretical problems to the kinds of everyday items a merchant might handle in real life.

Did the alms-tax on merchandise suffer a death by a thousand cuts in the commentarial genre? It should be clear by now that, framed in this way, such a question misses the point. al-Nawawī and Ibn al-Humām proceed from the premise that the general obligation of *zakāt al-tijāra* and the specific exemptions that arose from that obligation were part and parcel of the same practice. In other words, these exemptions did not erode the law, but were fundamental to those practices that gave integrity to the law: a merchant should not be taxed on the same asset more than once; a merchant's intention should be taken into account in assessing one's assets; and some latitude should be given to merchants about whether to pay alms to the ruler or directly to the needy if one option better serves the moral aims of the alms-tax.

How did these elite discussions play out in more vernacular – if still highly educated – contexts? And how were they applied in the context of late Mamluk Cairo, in a room packed with political officials and merchants of spices, textiles, and other goods?

IV A High Vernacular Translation of the Alms-Tax on Merchandise

Before addressing Ibn Ḥajar's historical account, we must consult one final text to better understand the politics of imposing the alms-tax on merchandise: Ibn al-Ḥājj al-ʿAbdarī's (d. 737/1336) *Madkhal,* a lengthy treatise on public morality, or *ḥisba*. Ibn al-Ḥājj was a Mālikī from the Islamic West but this text was not primarily intended for specialists in Mālikī law, or even high court judges and hadith masters. Rather, it was an attempt to simplify the requirements of the *sharīʿa* for bureaucrats, scribes, merchants, artisans, and other broadly educated audiences less familiar with the fine distinctions of the *sharīʿa* but still seeking to learn how its principles relate to their lives and their communities. To this end, a number of passages in the *Madkhal* shed light on what we might call, for lack of a better of a term, a translation of the law into a high vernacular.

After exhorting merchants who travel across long distances to devise wills before they depart and to utter supplicatory phrases to protect themselves from shipwrecks – among many other practices of travel etiquette – Ibn al-Ḥājj addresses the imposition of the alms-tax on merchandise:

> The alms-tax, in accordance with the *sharīʿa,* is based on rules and conditions. These include a [periodic] visit from the alms-tax collector, [who waits until] the holding period [to collect *zakāt*] has elapsed;

> withholding [from taxes] any wealth in one's possession that in fact belongs to another; having a confirmed estimate of one's own wealth; and so forth. [At present,] nothing that is taken from a person in the name of '*zakāt*' possesses these conditions.
>
> For instance, someone pays '*zakāt*' in the town of Qūṣ, then again in the town of Akhmīm, then again in Cairo, then again in Alexandria. But there is no Muslim [jurist] who advocates taking *zakāt* without a holding period and without considering its proper conditions. In that case, do not pay it even if it is called '*zakāt*.' As Mālik once said: 'We subject ourselves to the meaning [of the law] not to its [mere] pronunciation out loud.
>
> Thus, the essence of what [some tax collectors] call '*zakāt*' is of no consequence – Oh Lord! – except that which is taken from [a person] for the alms-tax, in accordance with the *sharīʿa,* based on its proper conditions.
>
> The learned scholars disagree whether one who pays [a wrongly imposed *zakāt*] will be recompensed [in the Hereafter]. If [such a wrongly imposed tax] is an expenditure for which there is no recompense [in the Hereafter], one must take it upon oneself to return [an increase of wealth] to its rightful owners from among the poor and the needy, as is mentioned in the Qur'an.[49]

Ibn al-Ḥājj's high vernacular discussion resonates with some, though not all, of the seemingly rarified concerns in the legal commentaries. Ibn al-Ḥajj does not address the role of intention in classifying one's taxable assets, despite the fact that the cultivation of a sincere intention is a central theme in other parts of the *Madkhal*. Neither does he address the distinction between 'hidden' and 'visible' wealth. What Ibn al-Ḥājj brings to the fore are the basic rules and conditions attached to the alms-tax: that there be a holding-period, allowances for exemptions, and a verified tax assessment. Ibn al-Ḥājj makes explicit what was only implied in the commentaries of al-Nawawī and Ibn al-Humām: that the conditions, exemptions, and specifications of *zakāt al-tijāra* are not an erosion of the practice but are constituitive of its very essence. Without them, the tax may be called '*zakāt*' but it is not, in Ibn al-Ḥājj's opinion, *zakāt*.[50] The contention that exemptions evade the true sense of the law – a claim found in some

49 al-ʿAbdarī, *al-Madkhal*, 4:72.

50 In a similar anecdote, al-Nuwayrī praised a new taxation policy in 589/1193 that "cut much of what had been taken from merchants and others in [unlawful] taxes (*mukūs*) in the name of *zakāt*." al-Nuwayrī, *Nihāyat al-arab fī funūn al-adab*, 28:296.

of the modern historiography on Islamic commercial law – misses this key point.

Ibn al-Ḥājj addresses the burden on merchants as they travelled from the Red Sea to the Mediterranean, paying an alms-tax on their business-related wealth at each key way-point of the spice trade.[51] That Ibn al-Ḥājj knew the exact routes that traders would have taken – perhaps he collected this information from his own travels for study and pilgrimage, or his relationships with merchants in Cairo – connects his moral exhortation to the world of the spice trade as it was lived and experienced by at least some of his contemporaries.[52] In this case, the corrupt practice that Ibn al-Ḥājj abhors is the taxing of the same wealth multiple times, a point made in both of our samples from the juristic commentaries. In fact, Ibn al-Humām tied the issue directly to mercantile travel from city to city, although his explanation is more abstract than the example given by Ibn al-Ḥājj.

On the question of whether or not a merchant should hand over such a tax to a tax collector appointed by the ruler, Ibn al-Ḥājj is less nuanced than the juristic commentaries we have consulted. Put simply, his answer is: no. In the final paragraph in the passage, Ibn al-Ḥājj seems to concede that refusing to pay a fee called '*zakāt*' after one makes landfall at a port of call is not always an option. However, unlike al-Nawawī, he is not willing to concede that such a payment, even if less than ideal, satisfies one's duty to pay the alms-tax, although he acknowledges that there is a difference of opinion on the matter. Out of an abundance of caution, Ibn al-Ḥājj urges each trader to prepare an account of his wealth on his own and to pay the proper amount of alms directly to the needy in order to fulfill the duty with its proper conditions. Rather than relieving an economic burden, Ibn al-Ḥājj's opposition to the so-called '*zakāt al-tijāra*' would, in effect, lay a heavier burden on the shoulders of the merchants, who must pay their true *zakāt* in addition to paying a so-called '*zakāt*.'

Our prologue has been lengthy, but we are now prepared to examine the legal case of imposing the alms-tax as it was taken up by chief judges in

51 This route was not solely for spices; see n3 above. An administrative and fiscal document from Rasulid Yemen attests to various kinds of customs duties and import fees, including those specifically paid by Kārimī merchants who shuttled spices and other goods along the Red Sea route, but it does not describe these payments as *zakāt*. See Ḥusaynī et al., *A medieval administrative and fiscal treatise from the Yemen*, 62; Vallet, *L'Arabie marchande*, 284.

52 al-Qalqashandī described the late-8th/14th-century and early 9th/15th-century route in *Subḥ al-aʿshā* as having numerous waypoints where traders could be charged fees and taxes in Egypt alone, including Alexandria, ʿAydhāb, Qūṣ, Quṣayr, al-Ṭūr, Suez, and Fustāt. al-Qalqashandī, *Subḥ al-aʿshā,* 3:461, 468-70.

the late Mamluk period. We have familiarized ourselves with the juristic commentaries of the period and we have drawn a little closer to a more vernacular perspective on the case against the alms-tax on merchandise. What reasons, according to Ibn Ḥajar's chronicle, carried the day and defeated the imposition of the tax at the highest court? Equally important, what reasons did Ibn Ḥajar and his colleagues omit, and why?

v The Legal Battle over *Zakāt al-Tijāra*

It was the springtime of 1424, 827 years after the *hijra*, and Egyptian ships were once again arriving in Yemen for the season. Fresh grapes and figs, ripening dates, and ripened apricots and plums filled the markets, and Suhayl's bright light had vanished from the morning sky. Meanwhile, back in Cairo, a controversial case pertinent to the alms-tax on merchandise was under consideration by the chief judges in Cairo, each of whom had been appointed by the sultan to represent each of the four Sunni schools. Ibn Ḥajar al-ʿAsqalānī, a prosperous textile merchant who himself had sailed the Red Sea spice route seeking wealth and knowledge, was serving as the chief judge for the Shāfiʿīs. He later described the controversy in his chronicle.

The local Sharīfs in charge of governing Mecca had been putting political and economic pressure on the Mamluk sultanate by demanding greater tribute from Red Sea traders who stopped in Jeddah for pilgrimage and business on their way to and from Egypt.[53] This pressure, in addition to the steady weakening of Mamluk power through periodic plagues and shortages of food and silver, forced Sultan al-Ashraf Barsbāy (r. 825-841/1422-1438) to look for new sources of revenue.[54] Raising customs duties on Egyptian merchants would have been unwise politically, given that they were already perceived to be high. Instead, the sultan raised customs duties and forced European traders, the best customers at Mamluk controlled ports on the Mediterranean, to purchase pepper from his stock at a price of his choosing, i.e. he enacted a 'forced purchase,' or *ṭarḥ,* that effectively fixed the price and manipulated the supply and de-

53 John L. Meloy, "Imperial Strategy and Political Exigency: The Red Sea Spice Trade and the Mamluk Sultanate in the Fifteenth Century," *Journal of the American Oriental Society* 123:1 (2003): 1-19; idem, *Imperial Power and Maritime Trade*, 131-39.

54 Adel Allouche, *Mamluk economics: a study and translation of al-Maqrīzī's Ighāthah* (Salt Lake City: University of Utah Press, 1994), 13, 17; Eliyahu Ashtor, *A social and economic history of the Near East in the Middle Ages* (Berkeley: University of California Press, 1976), 302, 305; Georg Christ, *Trading Conflicts: Venetian Merchants and Mamluk Officials in Late Medieval Alexandria* (Leiden: Brill, 2012), 32-33.

mand.[55] We get a sense of the Italian perspective from Emanuel Piloti, a Venetian merchant active in Egypt, who complained of extortionate customs duties in Alexandria around this time, "*aussi bien de Sarrasins comme de Crestiens*."[56] And yet, even as this move brought about its own complications, in terms of generating revenue it must have come up short.

At least one of the sultan's advisors, Shams al-Dīn al-Harawī (d. 829/1426), an erstwhile rival of Ibn Ḥajar's, had another idea for raising revenue: a revival of the alms-tax on merchandise. al-Harawī was among the many scholars and bureaucrats who sought refuge in the Mamluk Sultanate after having been exiled from Persia in the politically tumultuous era of Tamerlane.[57] As a newcomer to Cairo, he may have been ignorant of the sultan's predecessor's ill-fated attempt to impose the alms-tax on merchandise in the late 780s/1380s. Around the time al-Harawī was appointed by the sultan, Egyptian merchants were, according to al-Qalqashandī's administrative manual, already obligated to pay the ruler a form of *zakāt* due on silver and gold at a 2.5% rate ("five dirhams for every two hundred dirhams").[58] al-Qalqashandī even specifies that this form of *zakāt* would still be due on those spice traders (*tujjār al-kārim min al-bahār*) who were abroad on a business trip during which a complete holding period (*ḥawl*) elapsed.[59] This tax would have been collected at ports of call, in addition to fees and duties – perhaps as much as ten percent or more – on their commercial goods (*baḍā'iʿ*).[60] Given that *zakāt* was already being collected

55 On 'forced purchases,' also called 'forced sales,' see Meloy, "Imperial Strategy and Political Exigency: The Red Sea Spice Trade and the Mamluk Sultanate in the Fifteenth Century," 4-6; Georg Christ, *Trading Conflicts: Venetian Merchants and Mamluk Officials in Late Medieval Alexandria* (Leiden: Brill, 2012), 235-36.

56 Emmanuel Piloti, *Traité d'Emmanuel Piloti sur le passage en Terre Sainte*, ed. Pierre-Herman Dopp (Paris: Publications de l'Université Lovanium de Léopoldville, 1958), 112-13, 160. On the Venetian perspective, see also Christ, *Trading Conflicts*, 116-18; 210-18; Frederic Lane, *Venice: A Maritime Republic* (Baltimore, MD: Johns Hopkins University Press, 1973), 287-89; Paul Freedman, *Out of the East: Spices and the Medieval Imagination* (New Haven: Yale University Press, 2008), 104-29;186-92.

57 Carl Petry, "Travel Patterns of Medieval Notables in the Near East," *Studia Islamica* 62 (1985): 53-87.

58 al-Qalqashandī, *Subḥ al-aʿshā,* 3:461.

59 Ibid.

60 In the context of Mamluk Egypt, al-Qalqashandī discusses these taxes, which he refers to as *ʿushr* (lit. a tenth), under the rubric of duties and additional taxes (*mukūs*) not based in Islamic law (*ghayr al-sharʿī*) (ibid., 3:468-70). Although several entries in the *Encyclopedia of Islam* assert that *ʿushr* is synonymous with *zakāt* in this period, such an assertion is not borne out in the sources. The fact that the sultan planned to impose *zakāt al-tijāra* in addition to the regularly collected *ʿushr* suggests that there was a distinction between the two. That some Muslim jurists argued that the payment of *zakāt al-tijāra* was fulfilled in paying *ʿushr* on their commercial goods did not alter the fact that those taxes were, in

from traders on silver and gold – assets that occupied a similar legal status to merchandise – al-Harawī may have argued that *zakāt* was due on merchandise *a fortiori*. Moreover, perhaps al-Harawī advised the sultan that the expansion of the alms-tax might be seen in a positive light by shoring up the sultan's religious credentials. Although we do not have any sources or documents that can shed light on why al-Harawī supported this idea, there was plenty of textual evidence in the hadith corpus that mandates the taxing of merchandise for alms, and only a few scholars questioned the legitimacy of such a tax as a general principle.

By contrast, import taxes and customs duties (*mukūs,* sg. *maks*) were viewed less favorably, as the compulsion to pay them derived from local custom and the power of the ruler rather than from the foundational sources of the Islamic tradition. Some merchants, including Ibn Ḥajar, avoided paying such taxes when they could.[61] In a series of hadiths, Muhammad himself – the merchant-*cum*-prophet – was reported to have polemicized against the practice of collecting customs duties; subsequently, the prolific Mamluk-era hadith scholar, Jalāl al-Dīn al-Suyūṭī (d. 911/1505), would bring these hadiths together in a single treatise for quick reference.[62] Perhaps this opposition to *maks* is what persuaded the sultan that a policy to revive the alms-tax on merchandise would be more effective at collecting revenue. However, the sultan imposed the alms-tax on merchandise as an addition to customs duties rather than a replacement for them.

As was the case nearly four decades earlier, the merchants were again outraged when they learned of Barsbāy's plan to revive an alms-tax on merchandise. They lobbied the sultan to ask the chief judges representing each of the four major Sunni law schools to reconsider the policy's lawfulness. The sultan convened an assembly (*majlis*) to decide the matter. The assembly was attended by al-Harawī, Ibn Ḥajar, the other chief judges, as well as notable merchants who had an interest in the outcome of the ruling.

After considering the case, Ibn Ḥajar announced his opinion on the matter to the group in the form of a short *fatwā*:

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essence, a species of *maks* not grounded in the *sharīʿa*. Eric Vallet argues that '*ushr* is not to be confused with *zakāt* in the Rasulid context in Yemen, and the same seems just as likely to be the case in the Egyptian context. Vallet, *L'Arabie marchande*, 284; *EI²,* s.vv. "Zakāt" (Zysow) and "'Ushr" (Satō Tsugitaka).

61 Joel Blecher, "Risk in Commerce and Commentary: The Life of a Merchant-Scholar on the Spice Trade," unpublished paper delivered at Davis Center Seminar, Princeton University, April 13, 2018; al-Sakhāwī, *al-Jawāhir wa'l-durar*, 3:1058.

62 Jalāl al-Dīn al-Suyūṭī, *Dhamm al-maks*, ed. Majdī al-Sayyid (Ṭanṭā: Dār al-Ṣaḥābah li'l-Turāth, 1991), 99-107.

> Regarding the merchants: they hand over customs duties (*mukūs*) to the sultanate many times the amount of the alms-tax. Thus, they are exempt from the alms-tax on [the merchandise that] they possess.
>
> Regarding the alms-tax due on cattle [as well as camels and sheep]: in general, there is little [possibility for] grazing in the lands of Egypt [i.e., herders must pay to feed them out of pocket, canceling out any *zakāt* they might owe]. Regarding the alms-tax due on fruits and vegetables: in general, [crops] are grown by the peasants [on land belonging to] the sultan or the emirs [and their tax obligations are well-known].[63]

Like Ibn Ḥajar, the Ḥanafī chief judge in attendance, Zayn al-Dīn al-Tafahnī, issued a *fatwā* against the tax but on slightly different grounds. According to Ibn Ḥajar, al-Tafahnī stated:

> All the monies taken for the alms-tax are due upon those who possess (*arbāb*) [a taxable increase in wealth] except the alms-tax on merchandise (*zakāt al-tijāra*). Indeed, the Imam appoints a person who follows the straight path to take [*zakāt*] from Muslims a quarter of a tenth, to take [a poll tax] from the protected non-Muslims (*dhimmī*s) half of a tenth, and not to take the alms-tax from Muslims more than once a year.[64]

According to Ibn Ḥajar, the Mālikī and Ḥanbalī chief judges composed similarly argued *fatwā*s, and when the assembly ended, "the burden upon the merchants and others was relieved."[65] Ibn Ḥajar's student, Sakhāwī, reports that this was one of Ibn Ḥajar's court opinions that the merchants celebrated the most.[66] As a textile and pepper merchant, Ibn Ḥajar must have celebrated as well.

Let us begin with what we can reconstruct about the sultan's initial decree, then address the Ḥanafī ruling, working our way backwards to Ibn Ḥajar's own legal opinion.

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63 al-ʿAsqalānī, *Inbāʾ al-ghumr*, 3:327. The precise date of the hearing was Jumāda II 827 (May, 1424). The clarifications in brackets are based on al-Maqrīzī's summary of the same event; see al-Maqrīzī, *Kitāb al-Sulūk li-maʿrifat duwal al-mulūk*, 7:98. al-Qalqashandī likewise mentions that pastoralists would pay land taxes to the sultans and emirs; see al-Qalqashandī, *Subḥ al-aʿshā,* 3:462.

64 al-ʿAsqalānī, *Inbāʾ al-ghumr*, 3:327.

65 Ibid. al-Maqrīzī specifies "textile merchants and others," perhaps because he associated the anecdote with Ibn Ḥajar, whose activity in the textile industry was well-known. al-Maqrīzī, *Kitāb al-Sulūk li-maʿrifat duwal al-mulūk*, 7:98.

66 al-Sakhāwī, *al-Jawāhir waʾl-durar*, 633.

Ibn Ḥajar does not mention the sultan's decree in his chronicle. Based on the details offered in these *fatwā*s, however, we may infer that the sultan's decree was broad ranging in scope. The *fatwā*s address not only the legitimacy of collecting *zakāt* on merchandise, but also the legal status of collecting alms on assessments of livestock and crops, which would have placed an additional tax burden not only upon merchants of means, but also upon those truly marginalized in society: peasants, shepherds, cattle herders, and camel herders. The sultan must have been asking the judges for an authorization to collect *zakāt* across the board. As noted, the textual grounds for such a decree would have been ample but we can only speculate what such grounds might have been in this particular case.

In response, according to Ibn Ḥajar, the Ḥanafī judge argued that there is a distinction between taxes on surplus wealth earned from merchandise and all other kinds of taxes, and that the former is not due to those in authority. Although Ibn Ḥajar does not specify that al-Tafahnī used the technical terms '*amwāl ẓāhira*' or '*amwāl bāṭina*,' our reading of the legal commentaries circulating during this period suggests that he was drawing precisely on the distinction between 'hidden' and 'visible' wealth in order to neutralize the better portion of the sultan's decree. This is notwithstanding al-Qalqashandī's statement that the alms-tax was already being assessed and collected from Egyptian merchants in some form on their silver and gold, often considered a form of 'hidden' wealth, although perhaps he opposed the sultan's collection of those monies as well.[67] However, al-Tafahnī did not dispute that the sultan has the power to appoint a rightly-guided tax collector to collect taxes on 'visible' goods such as livestock and crops. Even so, he urged the sultan to respect the holding period, which might be violated if *zakāt* was collected on an *ad hoc* basis. Double-taxation during a holding-period would amount to a status-demoting indignity, the Ḥanafī judge seemed to suggest, as Muslim merchants would have been taxed at a rate closer to the poll tax of the non-Muslim traders who lived and worked amongst them. In sum, the Ḥanafī *fatwā,* as Ibn Ḥajar reported it, was based on those reasons circulating in the current Ḥanafī curriculum on *zakāt* and surely would have been intelligible to any introductory *madrasa* student.

The arguments advanced by Ibn Ḥajar against an alms-tax on merchandise leaned heavily on the contemporary circumstances of Mamluk economic policies. Ibn Ḥajar did not invoke the distinction between 'hidden' and 'visible' wealth, nor he did he object, in theory, to the sultan's right to collect such a tax – an objection that al-Nawawī's legal commentary would have allowed him to

67 al-Qalqashandī, *Subḥ al-aʿshā,* 3:461.

raise. Rather, the most salient fact for him was that the current customs duties paid by the merchants, which his audience would have viewed as unnecessarily high, should be deducted from the amount of alms-tax they owed.[68] In other words, the sultan was already collecting a *de facto* 2.5% alms-tax on the value of merchandise, and then some. By contrast, the Ḥanafī judge did not mention the collection of customs duties. Perhaps he, like Ibn al-Ḥājj, did not accord any moral or legal status to the collection of tolls, tariffs, and other fees and import taxes.

On the matter of the alms-tax on livestock and crops, Ibn Ḥajar again relied on contemporary circumstances to dismiss the sultan's request. According to Ibn Ḥajar, pastoralists operating in the current environment in Egypt ought to be exempt from the alms-tax, given that the environment is not conducive to grazing in general, and that they would already be burdened with paying to feed their livestock out of pocket. As for the alms tax on crops, Ibn Ḥajar cites the present social situation in which most of the peasants, if they are of any means, are already tilling fields and orchards that belong to the sultanate, and therefore are not liable for an alms-tax that would, in any event, be directed back to the sultan's treasury.[69]

When we step back and compare these two rulings to the range of opinions advanced in the legal commentaries and at least one treatise on public morality, we may also observe what has been omitted from these *fatwā*s. Most glaringly absent is the contention – best articulated by Ibn al-Ḥājj but also strongly suggested in the work of al-Nawawī and Ibn al-Humām – that traders should pay the alms-tax on their business-related wealth directly to the needy to ensure that it reaches the proper recipients. Likewise, the particular exemptions and conditions tied to an individual trader's intention that were discussed in granular detail in the commentaries are, in the chronicle, reduced to a general exemption of paying the alms-tax on merchandise to the ruler as well as the maintenance of a year-long holding period. Even Ibn al-Ḥājj's high vernacular discussion was more specific than these *fatwā*s on the conditions of *zakāt*: he noted the critical importance of a verified tax assessment, and the ability to withhold some business-related assets from taxation if it in fact belonged to another trader.

68 See n60 above.

69 al-Maqrīzī's version offers little clarification, stating simply that the status of the peasants' debt obligations are well known. al-Maqrīzī, *Kitāb al-Sulūk li-ma'rifat duwal al-mulūk*, 7:98. On peasants who work on the land controlled by the sultan and emirs during the Mamluk period, see Sato Tsugitaka, *State and Rural Society in Medieval Islam: Sultans, Muqta's and Fallahun* [*sic*], (Leiden: Brill, 1997), 84-91, 237-39.

VI Conclusion

On what legal basis, then, did the chief judges reportedly deal a fatal blow to Sultan Barsbāy's alms-tax on merchandise? In Ibn Ḥajar's opinion, the sultan's '*zakāt al-tijāra*' would result in double taxation because merchants were already paying exorbitant customs duties at ports of call along the spice route, including in Egypt. Like Ibn Ḥajar, the Ḥanafī chief judge viewed double taxation as a key concern, especially if the tax were collected outside of the annual holding period. The Ḥanafī chief judge probably relied on the traditionally-defined distinction between 'hidden' and 'visible' wealth that exempted merchants from paying the alms-tax to the ruler, although the judge was not reported to have used those technical phrases or to have explicitly linked the withholding of payment on 'hidden' goods to the moral status of the sultan. Perhaps some combination of these issues had carried the day back in 789/1387 as well. Subsequent attempts to impose an alms-tax on merchants in Gujarat in the seventeenth-century seem to have met a similar fate.[70]

The chief judges in this case did not draw on the legal commentary tradition to offer suggestions for how the sultan might bring about an alms-tax on merchandise more in accordance with the norms of the *sharīʿa*. For Ibn Ḥajar, we may speculate, eliminating the duties on customs would have been a good start. For the Ḥanafī judge, inviting merchants to choose to pay the alms-tax to the sultan without coercion and on their own proper timeline might have been the way forward. But it is a comment on the politics of that moment that they were not reported to have offered any such suggestions that might have salvaged the tax. Their aim was to narrow the definition of *zakāt* rather than to develop a new policy that would raise the revenue that the sultan desperately sought.

The two *fatwā*s, when considered side-by-side, also demonstrate the practical relevance of both the traditional explanations embedded in the legal commentaries, which the Ḥanafī judge appealed to in his ruling, as well as contemporary political pressures and realities, which Ibn Ḥajar pointed to in his ruling. According to Ibn Ḥajar's chronicle, both orders of reasons were factors as the chief judges ruled upon the sultan's new tax policy – not exclusively one or the other. Rather than acting in conflict with one another, these two orders of reasons were combined in the same legal forum to preserve a conception of *zakāt* over and against that of the sultan's key advisors.

This case study also teaches us that, when our sources permit, re-reading high vernacular depictions of court rulings alongside more technical genres

70 Jawaid Akhtar, "The Mughal Fiscal System and [the] Merchants of Gujarat," *Proceedings of the Indian History Congress* 68:1 (2007): 358-62.

of *fiqh* may be one way towards a new historiography that considers both textually-transmitted reasons internal to the commentary tradition and those social forces and political pressures external to it to be formative of Islamic commercial law. Such a historiography would open a window not only on how jurists debated the granular details of the law – and as we have seen, jurists were not naive to the realities of commercial life – but also on how broader audiences of the time, those closer to the peripheries of power, may have understood jurists to be debating the law, and which arguments were sufficiently compelling to carry the day when a case was brought to the highest court.

From afar, it would seem an odd reversal: jurists who dedicated their lives to Islamic law at last had an opportunity to leverage their power to influence the sultanate's tax policies, and yet they exercised that power to prevent the sultanate from establishing an institution of tax collection in the name of Islam. The sultan, meanwhile, claimed to put into practice a legal concept that in theory is as fundamental to Islam as prayer but was hamstrung by the standard-bearers of Islam that he appointed to his own court. But that is precisely the point: in order to preserve *zakāt* over and against the customary duties and fees that would have been tolerated if Islamic law had functioned merely as a *lex mercatoria,* the chief judges preferred to see the sultanate fail in its attempt to establish a *zakāt al-tijāra* rather than allow it to proceed outside the traditionally-defined norms. To be sure, the ruling favored the merchants. But the *fatwā*s under consideration in this article and the *fiqh* discourses from which they emerged cannot be considered a capitulation to the merchants' needs, or a coarse absorption of mercantile customs into law. Although the *fatwā*s were, to a certain extent, diplomatically worded, they represented a serious blow to the religious competency of the sultan's closest policy advisors, with material implications for the sultanate's ability to collect the revenue it needed.

In the opinion of the jurists, the controversy over *zakāt al-tijāra* was not one centered on the sacralization of the numerical rates of *zakāt* for their own sake. Rising above any other salient feature of the alms-tax debate – even the purification of wealth by returning a share of it to the poor – it was the moral injunction against the burden of double-taxation that carried the day in the politics of the courtly context described in Ibn Ḥajar's chronicle. By narrowing the scope of *zakāt,* jurists stood for a limit on the sultanate's otherwise arbitrary power to tax Muslims as it wished. In doing so, they alleviated some of the tax burden for spice merchants and camel herders alike. Moreover, the controversies over *zakāt al-tijāra* demonstrate that the moral stakes of *zakāt* had far from vanished from the jurists' attention in the post-classical period. By defining *zakāt* against what they perceived to be defying it, jurists found success in restricting the ruler's authority to reinterpret a central institution of Islamic law on his own terms.

Acknowledgments

I would like to thank the anonymous reviewers who offered invaluable suggestions for improving this essay, as well as Eve Krakowski, Aaron Rock-Singer, David Powers, Lev Weitz, and the working groups of Iza Hussin's "Shari'a in Motion II" workshop at Cambridge, Nancy Khalek's "Hadith: Beyond the Law" workshop at Brown, and the Davis Center Seminar at Princeton led by Angela Creager. This work was made possible in part by the generous support from the American Council of Learned Societies, the National Endowment for the Humanities, the Library of Congress's Kluge Center, the Council of American Overseas Research Centers, George Washington University's Institute for Middle East Studies & Facilitating Funds. Any views expressed in this article do not necessarily represent those of the grant funders listed above and all errors are my own.