

# A Contribution to the Discussions on Drugs and *Risāla* Writing in Ottoman Society: A Treatise of Maḥmūd al-Fanārī<sup>1</sup>

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## Abstract

Focusing on a treatise (*risāla*) by the Ottoman scholar Maḥmūd al-Fanārī (d. 1007/1599), I discuss the views of prominent Ḥanafī scholars during the Mamluk and Ottoman periods on the use of drugs, paying special attention to *risāla* writing. Al-Fanārī's treatise *Risāla fī bayān ḥurmat al-ḥashīsh wa-l-afyūn* was written in the second half of the 10th/16th century, the heyday of discussions on the topic in Ottoman society. The author provides evidence in support of prohibiting drug use. Although this *risāla* may have had no effect on the views of other Ḥanafī scholars, it reflects the general tendency of Ḥanafīs in this period. I evaluate the *risāla* from the perspective of *uṣūl al-fiqh*, with special attention to the *shurūḥ* of Mamluk Ḥanafīs and the fatwas of Ottoman scholars.

## Keywords

*risāla*, fatwa, *uṣūl al-fiqh*, Mamluk, Ottoman, drugs, *banj*, *afyon* (*afyūn*), *hashīsh*

## Introduction

A *risāla* (treatise; pl. *rasā'il*) treats a specific issue or a group of similar issues in a relative short format.<sup>2</sup> Scholarly treatises became widespread in the late classical period, i. e., between the 7th/13th and 13th/19th centuries. In this period, many scholars began to write *rasā'il* on specific issues alongside legal commentaries (*sharḥ*; pl. *shurūḥ*) and supercommentaries (*ḥāshiya*; pl. *ḥawāshī*). In this article, I will first present a brief review of the discussions on drugs<sup>3</sup> during the Mamluk

1 The original version of this article was presented at the online conference *The Treatise Literature (rasā'il) as Documentation of Socially Relevant Discussions in Pre-Modern Muslim Societies (14th–19th Centuries)*, organised by the Institut für Islamische Theologie at Universität Osnabrück and held between 25th June and 4th July, 2020. I would like to thank the organisers of the conference and especially Dr. Hakkı Arslan. I also thank Şükrü Özen, Abdurrahman Atçıl and the anonymous referees for their careful reading of the article and their valuable suggestions.

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2 Sayyid Sharīf al-Jurjānī describes the *risāla* format in his *at-Ta'rīfāt* (1403), Beirut 1983, p. 110; at-Tahānawī, *Mawsū'at Kashshāf-iṣṭilāḥāt al-funūn wa-l-'ulūm*, edited by Ali Daḥrūj, 2 vols., Beirut 1996, vol. 1, p. 859.

3 I use "drug" as the equivalent of the Turkish terms *uyuşturucu* in this article, i. e., narcotics such as opium and marijuana, and not for medicinal substances or pharmaceuticals.

and Ottoman eras, before analysing the *Risāla fī bayān ḥurmat al-ḥashīsh wa-l-afyūn*,<sup>4</sup> written by Ottoman scholar and qadī Maḥmūd al-Fanārī (d. 1007/1599) from two perspectives: (1) the use of legal evidence and arguments (i. e., the *uṣūl al-fiqh* perspective) and (2) the function of the *risāla* format in connection with discussions on specific legal issues and *madhāhib*.

## 1 Discussions and *risālas* on Drugs in the Mamluk Period

Drug use has a long history dating back to ancient times. In the Muslim world, herbs and substances that have narcotic effects were known in the early Abbasid period, as evidenced by the work of the physician Abū Bakr ar-Rāzī (d. 313/925). Used to produce medicine, these herbs and substances were discussed in books about medicine and pharmacology. *Banj*<sup>5</sup> in particular was discussed by legal scholars because of its effects on the performance of lawful acts. However, the spread of drug use seems to have begun in the second half of the 6th/12th century, after which writings about drug use started to appear, especially in the Mamluk period.<sup>6</sup>

4 See *Risāla fī bayān ḥurmat al-ḥashīsh wa-l-afyūn*, written in Sha'bān 991/August–September 1583, Süleymaniye Library, Laleli, no. 3675, in a *majmū'a*, ff. 38b–39b. For an earlier mention of this *risāla*, see Franz Rosenthal, *The Herb: Hashīsh versus Medieval Muslim Society*, Leiden 1971, p. 17 f.

5 *Henbane* (*ban otu* in Turkish); but in the sources the word is used for all drugs. The Indian word *bhang* or *bang*, which signifies edible preparations made of cannabis, has an etymological relation with *banj*. See Max Meyerhof, “*Bandj*”, in: EI<sup>2</sup>, s. v. While the term *mukhaddir* is found in classical sources, its plural, *mukhaddirāt*, began to be used as a general term for drugs only in the late 13th/19th century. So, scholars used many words for special types of drugs in the legal sources like *banj*, *ḥashīsh* (cannabis and its product; *hint keneviri* or *kendir* in Turkish refers to cannabis, and *esrar* refers to the drug made from it), *khashkhash* (hemp, opium poppy; *haşhaş* in Turkish), and *afyūn* (opium, made of poppy; *afyon* in Turkish). These plants and drugs were widely known in the central lands of Islam in the pre-Ottoman period.

We find several words for drugs in Ottoman legal sources, e. g. *ḥashīsh*, *banj*, *afyon*, and *esrar*. In addition, there are words referring to products to which drugs have been added, e. g. *barsh* (a narcotic, pleasure-inducing beverage or dope made of ketene leaf and opium), *tiryāk* (theriac, from Greek *thēriakē*; meaning “antidote”; see Necdet Okumuş, “*Panzehir*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/panzehir> (accessed June 23, 2022)), and *ma'jūn* (*majoun*, *majun*, *mācun* is a medicine made of pastry).

Beginning in the 11th/17th century, some Ottoman writers used the word *mukayyifāt* (*mükeyyifat*, or “substances that give pleasure”) to refer to drugs and sometimes also to tobacco and coffee. See Marinos Sariyannis, “*Law and Morality in Ottoman Society: The Case of Narcotic Substances*”, in: Elias Kolovos et al. (eds.), *The Ottoman Empire, The Balkans, The Greek Lands: Toward A Social and Economic History – Studies in Honor of John C. Alexander*, Istanbul 2007, pp. 307–321, here: pp. 310 f.

6 On the history of drugs in the Islamic world, see Tuncay Başoğlu, “*Uyusturucu*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/uyusturucu> (accessed March 11, 2020); Rosenthal, *The Herb*, pp. 41–56; Rudi Matthee, *The Pursuit of Pleasure: Drugs and Stimulants in Iranian History, 1500–1900*, Princeton 2005, esp. chapter 4.

Some sources state that narcotic herbs and the drugs made from them were not commonly known in early Muslim society. Ibn al-Jazzār, for example, says that *hashīsh* and similar drugs appeared only around the 5th/11th century.<sup>7</sup> According to other sources, the discovery and use of *hashīsh* is attributed to Shaykh Ḥaydar (d. 618/1221?), the founding shaykh of the Ḥaydariyya order, and the widespread use of cannabis (*hashīsh*) may be linked to dervish groups like the Ḥaydarīs, Qalandarīs, and Abdāls of Rum.<sup>8</sup> Badr ad-Dīn ad-Dimashqī (d. 894/1489), writing in the Mamluk period, denies that *hashīsh* was discovered by Shaykh Ḥaydar; he claims that *hashīsh* appeared in India first and was later brought to Khurasan.<sup>9</sup> Although drug use in Khurasan may have begun in the 5th or 6th centuries AH, the spread of drugs probably took some time. According to Ibn Taymiyya (d. 728/1328), the rise of *hashīsh* coincides with the rise of Mongol power at the end of the 6th/12th and beginning of the 7th/13th centuries.<sup>10</sup>

It was not until the Mamluk period that drug use became an important topic of discussion among Muslim scholars. Although legal sources occasionally refer to drugs (like *banj*), I have not come across any *fiqh* treatise that examines drug use in detail prior to the Mamluk period.<sup>11</sup>

Drug use was prohibited by Sultan Baybars (r. 658–676/1277–1260), and drug trafficking without formal permission was severely punished. At that time, scholars like Quṭb ad-Dīn Muḥammad b. Aḥmad al-Qastallānī (d. 686/1287)<sup>12</sup> began

7 Cf. ‘Alī b. Muḥammad al-Miṣrī al-Bakrī Ibn al-Jazzār, *Qam’ al-Wāshīn fī dhamm al-barrāshīn*, Abdurrahman Ayyub and Mustafa Anwar Tahir (eds.), in: Cahiers d’études arabes et islamiques, IV (1977), pp. 52–70. See Tahsin Görgün, “İbnü’l-Cezzâr, Ebü’l-Hasan”, in: TDV İslâm Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/ibnul-cezzar-ebul-hasan> (accessed January 1, 2021).

8 Cf. Muḥammad b. Bahâdir az-Zarkashî, *Zahr al-‘arīsh fī tahrīm al-ḥashīsh*, edited by as-Sayyid Aḥmad Faraj, Mansura 1990, p. 90; Ahmet T. Karamustafa, *God’s Unruly Friends: Dervish Groups in the Islamic Later Middle Period: 1200–1550*, Salt Lake City 1994, pp. 19 f., p. 46, pp. 71 ff. On Ḥaydar, see Tahsin Yazıcı, “Ḥaydar, Kutbüddin”, in: TDV İslâm Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/haydar-kutbuddin> (accessed March 11, 2020).

9 See Badr ad-Dīn Abū Bakr b. ‘Abdallāh al-Badrī ad-Dimashqī, *Rāḥat al-arwāḥ*, edited by Danilo Marino, in: *Raconter le haschich dans l’époque mamelouke: étude et édition critique partielle de la Rāḥat al-arwāḥ fī l-ḥaṣīṣ wa-l-rāḥ de Badr al-Dīn Abū l-Tuqā al-Badrī (847–894/1443–1489)*, (PhD thesis, Université Sorbonne Paris Cité; Università degli studi di Napoli L’Orientale, 2015), pp. 11 f.

10 See Ibn Taymiyya, *Majmū’ al-fatāwā*, edited by ‘Abd ar-Rahmān b. Muḥammad b. Qāsim, 35 vols., Medina 1416/1995, vol. 34, pp. 205, 211, 214; idem, *al-Fatāwā al-kubrā*, 6 vols., Beirut 1408/1987, vol. 3, p. 424; idem, *as-Siyāsa ash-shar‘iyya fī islāḥ ar-rā’i wa-r-ra‘iyya*, Bashīr Maḥmūd ‘Uyūn (ed.), Damascus 1405/1985, pp. 119 f.

11 The earliest works mentioned by Franz Rosenthal are from the 7th/13th century; the first two works—one about medicine/*adwīya*, the other a poem—are not *fiqh* works. See Rosenthal, *The Herb*, pp. 5–18. By contrast, *qāt/khat*, which originated in Ethiopia, was known in the Mamluk period, but only became a subject of discussion later. See Ibn Ḥajar al-Haytamī, *Taḥdhīr al-Thiqāt min akl al-kufya wa-l-qāt*, in his *al-Fatāwā al-kubrā al-fiqhiyya*, 4 vols., Cairo 1357/1938, vol. 4, pp. 223–234.

12 Al-Qastallānī was a *muḥaddīth*, Mālikī scholar, and a Sufī shaykh, see Abdülkadir Şenel, “Kastallānī, Muhammed b. Ahmed”, in: TDV İslâm Ansiklopedisi, <https://islamansiklopedisi.org.tr/kastallani-muhammed-b-ahmed> (accessed January 12, 2021). He wrote two treatises: *Takrīm*

to write treatises or issue fatwas about drug use.<sup>13</sup> Similarly, Ibn Taymiyya examined this issue in his *al-Fatāwā* and *as-Siyāsa ash-sharʿiyya*; and Badr ad-Dīn az-Zarkashī (d. 794/1392) wrote *Zahr al-ʿarīsh* on the subject of drugs.<sup>14</sup> Subsequently, al-Aqfahsī (d. 808/1405) wrote *Ikrām man ya ʿish*.

The Mamluk period treatises discuss drug use and their rationale, and most scholars defend the prohibition of drugs, with the exception of ʿUkbarī (d. 690/1291), whose *Sawāniḥ* is more a literary treatise than a *fiqh*-book. Many scholars likened drugs to intoxicant beverages and referred to the Ḥadīth which says, “Every intoxicant is forbidden (*kullu muskirin ḥarām*).”<sup>15</sup> Others, like Shihāb ad-Dīn al-Qarāfī (d. 684/1285), while acknowledging that drugs have narcotizing and disruptive features impacting on the mind (*mufsidatun li-l-ʿaql*), claimed that they should not be likened to intoxicant beverages because their effects are different.<sup>16</sup> This difference of opinion has some consequences for the legal rulings (*aḥkām*) on sub-issues related to drug use.<sup>17</sup>

Although there are two main approaches to drugs, Muslim scholars were not divided into two camps with regard to all the sub-issues. Rather, they adopted different views on different issues and may have distinguished between and among different types of drugs. For example, al-Qarāfī states that drug use should not result in *ḥadd* (fixed) punishments but rather *taʿzīr* (discretionary) punishments. He also held that drugs are not ritually impure (*najis*), and that the prayer of someone who is carrying drugs is considered valid (*ṣaḥīḥ*).<sup>18</sup> Some of the scholars who compare drugs to intoxicant beverages share al-Qarāfī’s views on these issues. However, Ibn Taymiyya criticizes al-Qarāfī without naming him, writing that there is no

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*al-maʿīsha fī taḥrīm al-ḥashīsha* and *Tatmīm at-Takrīm*, both edited by Lozano Camara in his *Estudios y Documentos Sobre la Historia del Canamo y del Hachis en el Islam Medieval*, (PhD thesis, Universidad de Granada, 1993), as well as by ʿAbd al-ʿAzīz b. ʿAbdallah al-Ḥumaydān an-Najdī, in: “Qutb ad-Dīn al-Qasṭallānī wa-kitābāhu”: *Takrīm al-maʿīsha bi-taḥrīm al-ḥashīsha* and *Tatmīm at-Takrīm li-mā fī l-ḥashīsha min at-taḥrīm* (PhD thesis, Zaytuna University, 1991), and Aḥmad Jumʿa ʿAbd al-Ḥamīd, Kuwait 1441/2019. Hasan b. Muḥammad al-ʿUkbarī (d. 690/1291) wrote a treatise titled *as-Sawāniḥ al-adabiyya fī l-madāʾiḥ al-qinnabiyya* in which he responded to the *Takrīm* of al-Qasṭallānī. In return, al-Qasṭallānī wrote his *Tatmīm* in response to al-ʿUkbarī.

13 Al-Qarāfī does not mention anything relating to drug use in his *al-Dhakhīra*, his first or one of his earliest books, but he does discuss the issue in his *al-Furūq*, written after *adh-Dhakhīra* and *al-Iḥkām*. Interestingly, his master ʿAbd al-ʿAzīz b. ʿAbd as-Salām (d. 660/1262) mentions *banj* briefly and only once in his *Qawāʾid al-aḥkām fī maṣāliḥ al-anām*, edited by Tāḥā ʿAbd ar-Raʿūf Saʿd, Cairo 1414/1994, and he does not mention any other drug. See *ibid.*, vol. 1, p. 194. By contrast, an-Nawawī, a contemporary of al-Qarāfī, mentions the rulings on *hashīsh* and *banj* in: *al-Majmūʿ sharḥ al-Muḥadhdhab*, 20 vols., Beirut n. d., vol. 3, p. 8.

14 Franz Rosenthal used *Zahr al-ʿarīsh* in his study of the history of drugs in Muslim society; see Rosenthal, *The Herb*.

15 Cf. Muslim, “*Ashriba*”, Ḥadīth no. 67–75.

16 Cf. al-Qarāfī, *al-Furūq*, 2 vols., Cairo 1928, vol. 1, pp. 216 ff.

17 Az-Zarkashī discusses nearly all related sub-issues in *Zahr al-ʿarīsh*, see esp. pp. 123–139. See also Aḥmad al-Aqfahsī, *Ikrām man ya ʿish bi-taḥrīm al-khamr wa-l-ḥashīsh*, Tanta 1991, pp. 60–67.

18 Cf. al-Qarāfī, *al-Furūq*, vol. 1, pp. 216 ff.

distinction between intoxicant drinks and drugs. Both are *najis*. For this reason: 1) The prayer of those who carry them is invalid (*bāṭil*); 2) drug users should receive the *ḥadd* punishment for intoxicating beverages (even if they consume too little); and 3) deniers of the prohibition (i. e., those who accept them as *ḥalāl*) should be declared unbelievers (*murtadd*). However, Ibn Taymiyya distinguishes between different types of drugs: *banj* is not an intoxicant (*muskir*), and anyone who uses it is subject to *ta'zīr* punishment, but it is *ḥarām* to eat or smoke it (*banj*).<sup>19</sup> Az-Zarkashī, in his treatise on drugs, after mentioning the views of an-Nawawī, Ibn Taymiyya, and al-Qarāfi, rejects the latter's differentiation between intoxicants and drugs and says that the analysis is not based on an accurate inference (*istiqrā' ṣaḥīḥ*).<sup>20</sup> But he does not endorse Ibn Taymiyya's view that those who deny its prohibition are unbelievers.<sup>21</sup>

Prior to the Mamluk period, Ḥanafī scholars had no reason to discuss the issue because there were either no drugs in their lands or they were not widely used, as Ibn al-Humām pointed out.<sup>22</sup> They issued rulings on *banj* and its effects, assessing its use as licit (*mubāḥ*),<sup>23</sup> especially for medical purposes.<sup>24</sup> Basing themselves on this early ruling, some later Ḥanafī scholars treated drugs indecisively,<sup>25</sup> comparing them to *nabīdh*.<sup>26</sup> These scholars transmitted the rulings of early scholars on *banj*, distinguishing between quantities leading to intoxication and those remaining beneath such a threshold. In their view, small quantities used for medical purposes are permissible. However, even when these later Ḥanafī scholars repeated the early rulings on *banj*, there were nuances and hints of change in outlook, for they stressed that using *banj* to the level of intoxication is *ḥarām*. By contrast, in the late-Mamluk period, Ḥanafīs like Badr ad-Dīn al-'Aynī (d. 855/1451) and Ibn al-Humām (d. 861/1457) mentioned *hashīsh*, *afyūn*, and other drugs alongside *banj* and classified the use of these drugs as forbidden, without making any distinction among them.<sup>27</sup> Although they made an exception for medical treatment,

19 Cf. Ibn Taymiyya, *al-Fatāwā al-kubrā*, vol. 3, pp. 419 and 423 ff. and *as-Siyāsa ash-Shar'iyya*, pp. 116–120.

20 Cf. az-Zarkashī, *Zahr al-'arīsh*, pp. 102–113.

21 Cf. *ibid.*, pp. 119 f.

22 Cf. "Li-anna l-mutaqaddimīna lam yatakallamū fihā bi-shay'in li-'adami zuhūri sha'nihā fihim." in: *Faṭḥ al-Qadīr*, 10 vols., Beirut n. d., vol. 3, p. 490.

23 See for example al-Marghīnānī, *al-Hidāya fī sharḥ Bidāyat al-mubtadī*, edited by Talāl Yūsuf, 4 vols., Beirut n. d., vol. 2, p. 355; al-Kāsānī, *Badāi' aṣ-Ṣanā'i'*, 7 vols., Beirut 1406/1986), vol. 3, p. 100, vol. 5, p. 117, vol. 7, p. 40.

24 See Badr ad-Dīn Maḥmūd al-'Aynī, *al-Bināya fī sharḥ al-Hidāya*, 13 vols., Beirut 1420/2000, vol. 6, p. 356.

25 As noted by Michot, referring to Ahmad ar-Rūmī al-Aqḥīṣārī's work. See Ahmad al-Aqḥīṣārī, *Against Smoking: An Ottoman Manifesto*, edited by Yahya Michot, Oxford 1431/2010, pp. 37 f.

26 *Nabīdh* is a non-intoxicating drink made of fermented dates or raisins steeped in water. Over time, the mixture may become slightly intoxicating. The term *nabīdh* is sometimes used as a general designation for an intoxicating drink. See Peter Heine, "Nabīdh", in: *EI<sup>2</sup>*, s. v. vol. 7, p. 840.

27 Cf. al-'Aynī, *al-Bināya*, vol. 6, p. 356, vol. 9, pp. 145 ff., vol. 12, pp. 369 ff.; Ibn al-Humām, *Faṭḥ al-Qadīr*, vol. 3, pp. 490 f. Neither Ḥusām ad-Dīn as-Sighnāqī (d. 714/1314), Jalāl ad-Dīn

they categorically banned these drugs in other cases. Al-‘Aynī said: “It is not proper to issue a fatwa in this age, other than that all [drugs] are forbidden.”<sup>28</sup> And Ibn al-Humām said:

The fatwas of the scholars (*mashāyikh*) of the two *madhhabs*, Shāfi‘īs and Ḥanafīs, are agreed (*it-tafaqa*) on the validity of the *ṭalāq* of a man who loses his sobriety by eating *hashīsh*, that is called cannabis leaf, and they gave fatwas forbidding it after their views had differed on it.<sup>29</sup>

## 2 Renewal of Debates on Drugs among Ottoman Scholars in the 10th/16th Century

Although debates on drugs began in the second half of the 7th/13th century and continued throughout the Mamluk period, it was not until the 10th/16th century that Ottoman scholars focused on the issue, quite possibly due to an upsurge in drug use amongst the population in the central areas of the Ottoman state. Whatever the motives were, increasing number of Ottoman scholars issued fatwas and wrote *risālas* on drug use. *Shaykhulislams* like Ibn Kemal Pasha (d. 940/1534), Çivizāde Muhyiddin Mehmed Efendi (d. 954/1547), and Ebussuud Efendi (d. 982/1574) issued fatwas on drugs. The spread of drug use, facilitated by the opening of many coffeehouses in Istanbul in the 1550s,<sup>30</sup> gave rise to new government policies, and the treatises on the issue were also written at this time. Especially after Ebussuud Efendi had issued fatwas on the subject, many scholars adopted the view that the use of drugs is prohibited. We see this attitude in the *fiqh* books (*kutub*) of at-Timurtāshī (d. 1006/1598), al-Ḥaṣkafī (d. 1088/1677), and Ibn ‘Ābidīn (d. 1252/1836).<sup>31</sup>

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al-Kurlānī al-Khwārizmī (d. 767/1366), nor Akmal ad-Dīn al-Bābartī (d. 786/1384) discuss the issue in detail; they mention only the rulings on *banj*, distinguishing between its use as an intoxicant, which is *harām*, and using it without knowing its effect, or under coercion. See as-Sighnāqī, *an-Nihāya fī sharḥ al-Hidāya*, Süleymaniye Library, Fazıl Ahmet Paşa, no. 621, vol. 1, 390b; al-Khwārizmī, *al-Kijāya fī sharḥ al-Hidāya*, together with *Faḥ al-Qadīr* of Ibn al-Humām and other works, 9 vols., Cairo 1319, vol. 3, p. 346; al-Bābartī, *al-‘Ināya fī sharḥ al-Hidāya*, 10 vols., Beirut n. d., vol. 5, p. 309.

28 Text: “[L]ā yanbaghī an yuflā fī hādihā az-zamāni illā bi-hurmat<sup>in</sup> fī l-kull”, in: Al-‘Aynī, *al-Bināya fī sharḥ al-Hidāya*, vol. 9, p. 145.

29 Ibn al-Humām, *Faḥ al-Qadīr*, vol. 3, p. 490.

30 On coffeehouses and how they became popular in Istanbul, see Ralph Hattox, *Coffee and Coffeehouses: The Origins of a Social Beverage in the Medieval Near East*, Seattle 1991, pp. 72–79.

31 Cf. Ibn ‘Ābidīn, *Radd al-muḥtār ‘alā ad-Durr al-mukhtār*, 6 vols., Beirut 1412/1992, vol. 4, p. 42: “Maṭlab fī l-banj wa-l-afyūn wa-l-ḥashīsha.” On at-Timurtāshī, a Hanafī scholar from Gaza who was Maḥmūd al-Fanārī’s contemporary, see Ahmet Özel, “Timurtaş, Muhammed b. ‘Abdullah”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/timurtasi-muhammed-b-abdullah> (accessed January 19, 2021). On ‘Alā’ ad-Dīn Muḥammad b. ‘Alī al-Ḥaṣkafī ad-Dimashqī, see Ahmet Özel, “Haskefi”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/haskefi> (accessed January 19, 2021). On Ibn ‘Ābidīn, see Ahmet Özel, “İbn Ābidīn, Muhammed Emin”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/ibn-abidin-muhammed-emin> (accessed January 19, 2021).

Ibn Kemal issued a number of fatwas on drug use and he also wrote a *risāla*<sup>32</sup> in which he treated the subject from the perspective of medicine. Although Ibn Kemal makes no mention of legal rulings in the *risāla*, we may assume that he relies on his analysis of the nature of *afyon* in this *risāla* when issuing fatwas. First, he states that eating *esrar* (cannabis) for pleasure is *ḥarām*:

(1) If someone eats *esrar* for pleasure and says that it is *ḥalāl*, what is the shari'a ruling about him? – *Answer*: He must seek forgiveness (=do *istighfār*).<sup>33</sup>

There is no mention of punishment here. Ibn Kemal explains his view more clearly in his other fatwas:

(2) Is *esrar ḥalāl* or *ḥarām*? Could you clarify this? – *Answer*: Its consumption is not *ḥarām* if it does not reach the limit of drunkenness (*hadd-i sekr*).

*Question*: What is the limit of drunkenness? Could you clarify this? – *Answer*: Distortion and deviation in speech and delirious talking (*Ṭaḡyir vazedip hezeyan söylemek*).<sup>34</sup>

(3) Is eating opium *ḥalāl*? – *Answer*: Eating [it] is *ḥalāl*. *Question*: Is eating *esrar* for minimal or extreme pleasure *ḥalāl*? – *Answer*: It is *ḥarām*.<sup>35</sup>

In a fatwa directed against his critics, Ibn Kemal says that Ḥanafī jurists issued fatwas about the permissibility of *esrar*, so it thus is not proper to label a mufti who issues a fatwa stating that *esrar* is *ḥalāl* as a heretic or *zindīq* (unbeliever).<sup>36</sup> Like early Ḥanafī jurists before him, Ibn Kemal did not categorically prohibit the use of *banj* and regarded all plants as permissible to eat or use unless they are processed to make alcoholic beverages. Although he says that using *esrar* and *afyon* for pleasure (*keyif*) is an act necessitating repentance (*tawba*), he also states that drug use that does not lead to drunkenness is not *ḥarām*.

Ebussuud Efendi became *shaykhulislām* in Sha'bān 952/October 1545. He criticised Ibn Kemal and said that his fatwa was misused by the people: The addicts believed *esrar* to be *ḥalāl* based on his fatwa and used the drug accordingly.<sup>37</sup> In line with the stricter government measures, Ebussuud Efendi issued fatwas in which he clearly stated that drugs are prohibited, although, like earlier Ḥanafīs, he distinguished between a quantity that leads to intoxication and one that does not:

(694)<sup>38</sup> *Issue*: If someone eats *esrar* for pleasure, is it *ḥarām*, eating little or much? – *Answer*: It is *ḥarām*.

32 See *Risāla fī ṭabī'at al-afyūn*, edited by Aḥmad Fawwad al-Humayyir, in: Hamza al-Bakrī et al. (eds.), *Majmū' Rasā'il al-Allāme Ibn Kamāl Bāshā*, 8 vols., Istanbul 1439/2018, vol. 3, pp. 87–95.

33 Ahmet İnanır, *İbn Kemal'in Fetvaları Işığında Osmanlı'da İslam Hukuku*, Ankara 2015, p. 226.

34 Ibid.

35 Ibid.

36 Ibid., p. 227.

37 Ibid., p. 402.

38 The numbers in brackets are added by the editor of the fatwas.

(696) *Issue*: If [eating] *esrar* does not lead to intoxication, is it *ḥarām* in Shari'a? – *Answer*: It is not.<sup>39</sup>

(699) *Issue*: If *barsh*, *afyon*, and *ma'jūn* contain *esrar*, is it *ḥarām* to eat them without reaching the limit of inebriation? – *Answer*: Nothing is *ḥalāl* if it is eaten as wicked people and followers of mean desires do.<sup>40</sup>

(701) *Issue*: Zayd makes trade of *afyon* and *esrar*. Are his earnings *ḥalāl*? – *Answer*: It is not *ḥalāl* if he sells *afyon* to addicts rather than to physicians.<sup>41</sup>

(87) *Issue*: Zayd eats *banj* and drinks *boza*,<sup>42</sup> then divorces his wife with three *ṭalāqs* while inebriated. Is his *ṭalāq* valid? – *Answer*: If he cannot distinguish between the earth and the sky, it is not valid.<sup>43</sup>

(261) *Issue*: Zayd, who is an *imām*, consumes *banj*, *barsh*, and *afyon*, overtly and covertly, and he eventually turns into a *bangī* (*banj*-addict) or even a *tiryākī* (opium addict). Is his *imāmah* (ability/competence to function as imam) valid? – *Answer*: It is obligatory to dismiss him from the task.<sup>44</sup>

In his response to a questioner who asked for a fatwa on drugs referring to the earlier fatwa of Ibn Kemal, Ebussuud Efendi stated that “one who sees the use of the drugs as *ḥalāl* is an apostate (*murtadd*).”<sup>45</sup> In those fatwas, Ebussuud Efendi tried to prevent the use of drugs, except for medical treatment, while he sought to deter users from drug consumption through various punishments and deprivations. Taken together, the statements of al-'Aynī and Ibn al-Humām and the fatwas of Ebussuud indicate that they turned a ruling on *banj* in the *madhhab* to a general ruling that prohibits all drug use.<sup>46</sup>

39 For both fatwas, see Ertuğrul Düzdağ, *Şeyhülislam Ebussuud Efendi'nin Fetvalarına Göre Kanuni Devrinde Osmanlı Hayatı = Fetava-yı Ebussuud Efendi*, İstanbul 1998, pp. 229 f. See also Ahmet Akgündüz, *Şeyhü'l-İslām Ebüssü'üd Efendi Fetvâları = Fetâvâ-yı Ebüssü'üd Efendi*, İstanbul 2018, p. 658.

40 Düzdağ, *Ebussuud Efendi'nin Fetvaları*, p. 230; Akgündüz, *Ebüssü'üd Efendi Fetvâları*, p. 660.

41 Düzdağ, *Ebussuud Efendi'nin Fetvaları*, p. 230; cf. Akgündüz, *Ebüssü'üd Efendi Fetvâları*, p. 660.

42 *Boza* is a fermented beverage made from wheat or corn.

43 Düzdağ, *Ebussuud Efendi'nin Fetvaları*, p. 68.

44 *Ibid.*, p. 108 f.; Akgündüz, *Ebüssü'üd Efendi Fetvâları*, p. 74.

45 Düzdağ, *Ebussuud Efendi'nin Fetvaları*, pp. 229 f.; cf. Akgündüz, *Ebüssü'üd Efendi Fetvâları*, p. 659.

46 According to Sariyannis, “legal texts contain no explicit prohibition of narcotic substances.” Sariyannis, “*Law and Morality in Ottoman Society*”, p. 315. As we have seen, later authoritative Hanafi sources like the texts of Ibn al-Humām and al-'Aynī refer clearly to prohibition. The fact that “Ottoman penal law does not mention any narcotic substance at all” does not indicate that it was tolerated at the legal level. *Qānūnnāmes* are not like modern codes, and they are not designed to codify all matters or a matter in all of its aspects, respectively, as Aydın has pointed out. See Mehmet Akif Aydın, *Osmanlı Hukuku: Devlet-i Aliyyenin Temeli*, Ankara 2020, p. 99. The strict prohibition of drug use began in the 10th/16th century, not in 1725, as claimed by Sariyannis. The inconsistencies in the fatwas of Ebussuud may be attributed to his change of mind. We do not know the dates of fatwas. As Sariyannis himself points out, fatwas may differ due to the statements of the person asking for the fatwa; see Sariyannis, “*Law and Morality in Ottoman Society*”, p. 319. As for the absence of cases related to drugs in Ottoman judicial registers: there are records of such cases, as one may see through a simple search at URL: <http://www.kadiscileri.org>, which contains only 100 *sijil daftars* out of thousands. These *sijils* record the cases brought to the court, but they do not record cases judged by *muhtasibs*, treated by *subaşıs* or administrative punishments like removal from office or the exiling of officials.

Alongside these fatwas, many scholars living in Istanbul, Cairo, or other places at the time wrote treatises about drugs: Raḍīy ad-Dīn b. al-Ḥanbalī (d. 971/1563, a Ḥanafī scholar from Aleppo), *Ẓill al-‘arīsh fī man‘ ḥill al-banj wa-l-ḥaṣhīsh*;<sup>47</sup> Ibn Ḥajar al-Haytamī (d. 974/1567, Egyptian Shāfi‘ī scholar), *Tahdhīr ath-thiqāt min akl al-kufta wa-l-qāt*; Dede Cöngī (Ibrahim b. Bahşī, d. 975/1567, a Ḥanafī scholar from Amasya), *Risāla fī tahrīm al-banj*;<sup>48</sup> Ibn al-Jazzār (d. after 984/1576, an Egyptian Shāfi‘ī scholar and Sūfi shaykh), *Qam‘ al-wāshīn fī dhamm al-bar-rāshīn* (mentioned above);<sup>49</sup> Shaykh Sinan ad-Dīn Yūsuf Efendi (d. 1000/1592, a Ḥanafī scholar from Amasya), *Risāla fī ḥurmat al-afyūn*;<sup>50</sup> and Ahmed ar-Rūmī al-Aqḥīṣārī (d. ca. 1041/1631, a Ḥanafī scholar from Cyprus), *Risāla fī d-dukhān*.<sup>51</sup> Except for the latter, all of these treatises were written in the 16th century; subsequently, no additional *rasā‘il* specifically dedicated to drugs were written.<sup>52</sup> In the 11th/17th century and onwards, many treatises were written on coffee (*qahwa*) and tobacco (*tūtūn, dukhān*), and they include rulings and discussions on drugs. Thus, once the illegitimacy of drug use had been generally accepted and this ruling found its way into the *shurūḥ* and fatwa collections, then the mission of *risāla* writing on the issue had been completed.

In the Ottoman legal system, non-Muslims were allowed to own *meyhanes* (bars, taverns), but Muslims who drank alcoholic beverages were subject to severe punishments. While contemporary studies have focused on the use of coffeehouses for

47 See Cevat İzgi, “*İbnü’l-Ḥanbelī, Radiyyüddin*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/ibnul-hanbeli-radiyyuddin> (accessed January 19, 2021). The treatises are in *Majmū‘at Rasā‘il li-Ibn al-Ḥanbalī*, Süleymaniye Library, Şehid Alī Paşa, no. 2718, fols. 1–16.

48 See Ahmet Akgündüz, “*Dede Cöngī*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/dede-congi> (accessed January 19, 2021). On this treatise, see Süleymaniye Library, Şehid Ali Paşa, no. 1192, fols. 44–51.

49 Maḥmūd al-Fanārī quoted sentences from Ibn al-Jazzār’s *Qam‘ al-Wāshīn fī dhamm al-barrāshīn*. For Ibn al-Jazzār, see Tahsin Görgün, “*İbnül-Cezzār, Ebü’l-Ḥasan*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/ibnul-cezzar-ebul-hasan> (accessed February 24, 2024).

50 On Sinan ad-Dīn Yūsuf b. ‘Abdallah al-Amāsī and his treatise, see Taha Yasin Tan, “*Haneḫ Fırū Fıkh Literatüründe Uyuşturucu Maddelerin Hükmü*”: *İbn Kemal ve Ebussuud’un Afyon, Benc ve Haşış Hakkındaki İhtilafları Örneğinde Bir İnceleme* (M.A. thesis, Marmara University, 2020), pp. 157–161. As Tan points out (pp. 8 f.), Yahya Michot published this *risāla* with a French translation in *L’opium et le café*, Beirut 1429/2008, pp. 97–113, and he identified the text as *Tabyīn al-maḥārim* of al-Amāsī in *Against Smoking*, p. 83. In fact, one finds a similar content to *Risāla fī ḥurmat al-afyūn* in *Tabyīn al-maḥārim*. See Sinan ad-Dīn Yūsuf b. ‘Abdallah al-Amāsī, *Tahdhīr al-muslimīn min mi‘at bāb min abwāb al-ḥarām al-musammā Tabyīn al-maḥārim*, edited by al-Sharīf Abū Ḥasan ‘Abdallah b. ‘Abd al-‘Azīz ash-Shabrāwī, Cairo 1432/2011, pp. 108 ff.

51 Other titles mentioned for this *risāla* are *ar-Risāla ad-dukhāniyya* and *Risāla fī ḥukm ad-dukhān wa-l-qahwa wa-l-afyūn wa-l-banj*. This work mainly treats tobacco use but also mentions drugs. See al-Aqḥīṣārī, *Against Smoking* (the Arabic text), pp. 71–82. For al-Aqḥīṣārī, see Yahya Michot, “*Akḥisārī, Ahmed-i Rūmī*”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/akhsari-ahmed-i-rumi> (accessed February 24, 2024).

52 Many people in the 10th/16th century consumed drugs together with coffee and while smoking, as shown in al-Aqḥīṣārī’s treatise or ‘Alawī b. Aḥmad as-Saqqāf’s, *Qam‘ ash-shahwa ‘an tanāwul at-tunbaq wa-l-kufta wa-l-qāt wa-l-qahwa*, in: as-Saqqāf, *Majmū‘at sab‘at kutub mufida*, Cairo 1358/1940, pp. 135–140.

different purposes,<sup>53</sup> whether these punishments had an effect on the spread of coffeehouses is an interesting and unanswered question. Thus, poems comparing the *meyhane* (the place of wine and *raki*) to the *kahvehane* (the place of tobacco and cannabis along with coffee) suggest that coffeehouses were used for smoking and drug use.<sup>54</sup> Some coffeehouses became “nests” of addicts (*tiryākīs*). At the end of the 16th century, tobacco entered Istanbul.<sup>55</sup> In fact, in his fatwas Ebussuud Efendi prohibited coffee,<sup>56</sup> playing chess (which is tolerated if no gambling accompanies it), and the Karagöz and Hacivat shadow plays (which may be seen as *mubāh* in itself). It seems he tried to prevent an environment in which vices flourish. These prohibitions aimed at preventing the use of drugs and a moral decline, but they were also a means to suppress any political opposition that uses coffeehouses. The closure of the coffeehouses where gambling and drug use took place is understandable. Of course, some coffeehouses provided a basis for such “vices”, which the Ottoman legal system and scholars perceived as causes of corruption and degeneration (*fasād fī l-arḍ*). As the author of *Qam‘ al-wāshīn* pointed out, although coffee itself is *ḥalāl*, the addition of *barsh* made its status problematic. Ibn al-Jazzār wrote that although coffee is *ḥalāl*, it becomes *ḥarām* when *barsh* is consumed with it.<sup>57</sup>

Many scholars, poets, historians, and statesmen mentioned drug use.<sup>58</sup> It seems that the problem of drug use continued in the 11th/17th century. Thus, one poem of Qadizāde Mehmed Efendi (d. 1045/1635) describes the problem to Sultan Murad IV (1623–1640) in this way:

As it is harmful to the mind and property, insisting on Smoking, old and young, now all equal,  
know that!

Eat *barsh* and opium although they are like poison and *zaqqūm*

All cities are full of coffeehouses, know that!<sup>59</sup>

53 For example, see the articles in *Osmanlı Kahvehaneleri: Mekan, Sosyalleşme, İktidar*, ed. Ahmet Yaşar, Istanbul 2009.

54 Cf. Abdülkadir Erkal, *Osmanlı Toplumunda ve Edebiyatında Afyon ve Esrar*, Ankara 2016, pp. 97 f.

55 See Katib Çelebi, *Mizānu'l-hak fī İhtiyāri'l-ehak Islām'da Tenkīd ve Tartışma Usūlü*, ed. Mustafa Kara and Süleyman Uludağ, Istanbul 1981, p. 64.

56 Besides drugs, another discussion in the 16th century revolved around coffee. Some scholars did not accept it as *ḥalāl*, a view that held firm until the second half of the century when it was then accepted as such. See Şükrü Özen, “Sağlık Konularında Dinî Hükümün Belirlenmesinde Fakih-Hekim Dayanışması: Kahve Örneği”, in: Nil Sarı et al. (eds.), 38. *Uluslararası Tıp Tarihi Kongresi Bildiri Kitabı, 1–6 Eylül 2002 = Proceedings of the 38th International Congress on the History of Medicine, 1–6 September 2002*, Ankara 2005, vol. 2, pp. 699–735, here: pp. 710 ff.

57 Cf. Ibn al-Jazzār, *Qam‘ al-Wāshīn fī dhamm al-barrāshīn*, p. 68.

58 See Erkal, *Osmanlı Toplumunda ve Edebiyatında Afyon ve Esrar*, pp. 77 ff.

59 Bayram Ürekli, “Dördüncü Murad Devrine Dair Kâdı-Zāde'nin Manzumesi”, in: *Selçuk Üniversitesi Fen-Edebiyat Fakültesi Edebiyat Dergisi*, Konya 11 (1997), pp. 277–300, here: p. 291.

Partly in response to the complaints and demands of the Qadizādelīs<sup>60</sup> and partly because one coffeehouse triggered a great fire in Istanbul, Sultan Murad IV closed all coffeehouses in 1043/1633 and punished addicts (*tiryākīs*) severely. However, the widespread use of drugs continued unabated.

### 3 Maḥmūd al-Fanārī and His *risāla*

Maḥmūd al-Fanārī wrote his *risāla* in the midst of efforts to prevent the spread of drugs and followed the reasoning given by Ebussuud Efendi. Maḥmūd b. Pir Muḥammad al-Fanārī (d. 1007/1599) was an Ottoman Ḥanafī scholar, a member of the al-Fanārī ulama family (i. e., descendants of Molla Fanārī), and a student intern (*mulāzim*) of Taşköprüzāde Ahmed Efendi (d. 968/1561). Maḥmūd al-Fanārī represents the sixth generation of the family. He worked as a teacher (*mudarris*) in Bursa, Kütahya, and Gelibolu, and as a judge (*qadi*) in Maraş, Konya, and Trablus Sham (Tripoli), where he died.<sup>61</sup> He reportedly provided some additions (*ilhākāt*) and notes about dates (*tawārīḥ*) on *Shaqā'iq*, although there are no details about the size and place of these contributions.<sup>62</sup> In addition to the one on drugs, he wrote treatises on belief and infidelity, *ta'zīr* punishment, *taşawwuf*, the virtue of knowledge, and the miraculous journey of the Messenger (*mī'rāj*). He also wrote a partial commentary (*sharḥ*) and a supercommentary (*ḥāshiya*) on the *Mukhtaşar* of al-Qudūrī.<sup>63</sup>

#### 3.1 Dating the *risāla*

At the end of the *risāla*, the author or manuscript copyist mentions that it was written in Sha'bān 991, which corresponds to August–September 1583. Whether the author himself is the transcriber or copyist remains unknown. The *risāla* may have been transcribed by the author himself, dictated to a pupil of his, or copied from a previous copy. As far as I know, only one copy of the *risāla* is currently extant. The existing manuscript appears to be a draft, with some *minhuwāt* (sg. *minhu*, it can be defined as postscript notes and additions on the margins, written

60 For this group, see Semiramis Çavuşoğlu, “Kadizādeliler”, in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/kadizadeliler> (accessed April 26, 2023).

61 On Maḥmūd al-Fanārī, see Nev'izade Atayi, *Hadā'iku'l-hakāik fī tekmileti's-Şakā'ik: Nev'izāde Atāyī'nin Şakā'ik Zeyli*, ed. Suat Donuk, Istanbul 2017, vol. 2, pp. 1133 f.; Mehmed Süreyya, *Sicill-i Osmani*, Latin transliteration: Seyit Ali Kahraman, Istanbul 1996, vol. 4, p. 917; Taha Yasin Tan, “Mahmūd Bin Pīr Mehmed El-Fenārī'nin Risalesi Etrafında Haşîş Benc ve Afyonun Hükümü”, undergraduate thesis, Istanbul 29 Mayıs Üniversitesi, 2018, pp. 25 ff. On the al-Fanārī family, see Tuba Nur Saraçoğlu, “Fenārī Ailesi (Fenārîzâdeliler) ve Aile Vakıflarına Bağlı Yapılar”, in: Tevfik Yücedoğru et al. (ed.), *Uluslararası Molla Fenārî Sempozyumu (4–6 Aralık 2009 Bursa) – Bildiriler = International Symposium on Molla Fanārî (4–6 December 2009 Bursa) – Proceedings*, Bursa 2010, p. 77.

62 See Nev'izade Atayi, *Hadā'ik*, 2 vol., p. 1134.

63 The *sharḥ* is not extant. Each of his other works has at least one extant manuscript in the Süleymaniye and Beyazit Libraries.

by the author himself). In addition, an ownership statement (*qayd at-tamalluk*) mentions al-Fanārī as the owner of the compilation (*majmū'a*) in which the *risāla* is included. These clues suggest that it was the author himself who transcribed this manuscript. However, the handwriting varies in different parts of the *majmū'a*, while the copyist's name mentioned at the end of the *majmū'a* is different from the author of the *risāla*, and the author's handwriting seems different in his earlier works.<sup>64</sup> The treatise was likely written while al-Fanārī was the *mudarris* of the Madrasa of Orhaniye in İznik.<sup>65</sup>

### 3.2 Motive and Sources of the *risāla*

The *risāla* begins with the ruling on drugs that forbids them. Al-Fanārī does not specify the reason or aim of writing this *risāla*. There is no information in the *risāla* as to whether he wrote it in response to a demand or for a special event. It is likely that the *risāla* was written for a kind of qualification examination, demanded by a *kazasker* before the appointment of al-Fanārī to a madrasa position.<sup>66</sup> Alternatively, he may have wanted to support the view that drugs are illegitimate. Or he may have written the *risāla* in response to a question posed by his students or some people of his circle.

The author draws on many sources. Other than Aḥmad al-Qaṣṭallānī's (d. 923/1517) *Mawāhib al-ladūniyya* and Ḥusayn b. Muḥammad al-Diyarbakrī's (d. 990/1582) *Tārīkh al-khamīs*, both sources for the Ḥadīths he mentions, the legal sources used by al-Fanārī fall into three categories.

First, he used *Qam' al-wāshīn*, from which he quotes some passages. Secondly, he consulted several Ḥanafī legal works, i. e., *al-Jawhara* of Abū Bakr al-Ḥaddādī (d. 800/1398),<sup>67</sup> *Faṭḥ al-Qadīr* of Ibn al-Humām and *Mi'rāj ad-dirāya ilā sharḥ al-Hidāya* of al-Kākī (d. 749/1348).<sup>68</sup> All of these scholars lived in Egypt or Yemen in the 14th or 15th centuries.

64 See Süleymaniye, Laleli, no. 3675, f. 47b, the end of the last *risāla*. See also al-Fanārī's handwriting and note at the end of his *Ḥāshiya 'alā (sharḥ li-Maḥmūd al-Fanārī) Mukhtaṣar al-Qudūrī*, Süleymaniye, Reşid Efendi, no. 186, f. 69b.

65 Al-Fanārī was appointed *mudarris* of the Orhaniye in Sha'bān 989/September 1581 and stayed there until at least Safar 992/February 1584. See Nev'izade Atayi, *Hadā'ik*, vol. 2, p. 1134.

66 In fact, al-Fanārī rose to "the rank (*paye*) of Yıldırım Bayezid Medresesi" in Bursa, only three months after writing this *risāla*. There are similar cases in which nominees for an appointment to a position as *mudarris* or *qadī* were subjected to a kind of examination for which they had to write a *risāla* or *hāshiya*. I would like to thank Prof. Dr. Şükrü Özen for drawing my attention to this practice.

67 Al-Ḥaddādī, a Ḥanafī scholar from Zabid, Yemen, wrote a commentary on *al-Mukhtaṣar* of al-Qudūrī (d. 428/1037) with the title *al-Jawhara an-Nayyira*. See Ebubekir Sifil, "Ḥaddād, Ebū Bekir", in: TDV İslām Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/haddad-ebu-bekir> (accessed January 19, 2021).

68 Qiwām ad-Dīn Muḥammad b. Muḥammad al-Khujandī al-Kākī was a Central Asian Ḥanafī scholar and a student of as-Sighnāqī; he settled in Cairo and worked there until his death. See Hüseyin

Thirdly, after the composition of the text, marginal notes mention eleven Ḥanafī texts: *Tanwīr al-abṣār* of at-Timurtāshī, *Sharḥ al-Mabsūṭ* of Khāharzāde,<sup>69</sup> *al-Mabsūṭ* of as-Sarakhsī (Abū Bakr Muḥammad b. Aḥmad, d. 483/1090), *al-Fatāwā al-Bazzāziyya* of Muḥammad b. Muḥammad al-Khwārizmī al-Bazzāzī (d. 827/1424), *Durar al-ḥukkām* of Molla Hüsrev (d. 885/1480), an *uṣūl*-book,<sup>70</sup> *Tabyīn al-ḥaqāʾiq fī sharḥ Kanz ad-daqaʾiq* of ʿUthmān b. Alī az-Zaylaʾī (d. 743/1343),<sup>71</sup> a book by Badr ad-Dīn al-ʿAynī (that is *al-Bināya*, mentioned above), *al-Muḥīṭ* of Raḍīy ad-Dīn as-Sarakhsī (d. 571/1176),<sup>72</sup> *Fatāwā at-Tātārkhāniyya* of ʿĀlim b. al-ʿAlā (d. 786/1384), and *Sharḥ al-Manār* of ʿAbd al-Latif b. Farishta (Ibn Malak, d. after 821/1418). Most of these sources were composed by Ḥanafī scholars of late classical period, i. e., they lived after the 6th/12th century.<sup>73</sup> The reference to Timurtāshī’s book, which was written around the same time, is especially interesting. Al-Fanārī was appointed *qadi* of Trablus Sham after Timurtāshī died. So it is unlikely that al-Fanārī met Timurtāshī there. The latter’s book appears to have reached al-Fanārī after he wrote the *risāla*. Therefore, we can deduce that the notes were added later, while he was a *mudarris* or a *qadi* somewhere other than İznik.<sup>74</sup>

### 3.3 The Content of the *risāla*

This short *risāla*—comprised of only two folios—has three parts. Al-Fanārī begins by writing that opium (*afyon*), *banj*, and cannabis (*ḥashīsh*) are *ḥarām*. Subsequently, he mentions *barsh*, and he defines *afyon* as the milk of opium poppy

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Kayapınar, “*Kākī*”, in: TDV İslâm Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/kaki> (accessed January 19, 2021).

- 69 “Khāharzāde” probably refers to the earlier Khāharzāde (Abū Bakr b. Muḥammad al-Bukhārī, d. 483/1090) and not the later one (Badr ad-Dīn Muḥammad b. Maḥmūd al-Kardarī, d. 651/1253).
- 70 The title of the book is not explicitly mentioned, but the *uṣūl* work in question may be the same source mentioned later on the same page: Ibn Malak’s *Sharḥ ʿalā al-Manār*.
- 71 Az-Zaylaʾī was a Ḥanafī scholar from Zeila (Zaylaʾ), Somalia; he worked in Cairo and was one of the teachers of ʿAbdallāh b. Yūsuf az-Zaylaʾī (d. 762/1360), the author of *Naṣb ar-rāya*. See Necmettin Kızılkaya, “*Zeylaʾi, Osman b. Ali*”, in: TDV İslâm Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/zeylai-osman-b-ali> (accessed January 19, 2021).
- 72 Raḍīy ad-Dīn Muḥammad b. Muḥammad az-Zarakhsī was a Ḥanafī scholar from Merv, Central Asia, a student of Şadr ash-Shahīd ʿUmar b. ʿAbd al-ʿAzīz (d. 536/1141) in Bukhara; he worked as *mudarris* in Aleppo at the time of Nūr ad-Dīn Maḥmūd az-Zankī and wrote his *al-Muḥīṭ* there. See Şükrü Özen, “*Serahsī, Radyıyüddin*”, in: TDV İslâm Ansiklopedisi, URL: <https://islamansiklopedisi.org.tr/serahsi-radyiyyuddin> (accessed January 19, 2021).
- 73 Al-Fanārī mentions other sources like *Sharḥ al-Jāmiʿ aṣ-ṣaghīr* of Qāḍīkhān (al-Ḥasan b. Maṣṣūr, d. 592/1196) but does not use them directly. They are mentioned in the sources from which he quoted.
- 74 Özel says Timurtāshī completed *Tanwīr* in 995/1587. See Özel, “*Timurtaş, Muhammed b. Abdullāh*”. If this date is accurate, then the *risāla* was written before *Tanwīr* and al-Fanārī or a copyist added the notes from it after 995/1587. If *Tanwīr* reached al-Fanārī when he was in İznik, where he wrote the *risāla*, this shows a very rapid transmission of new books among scholars, which seems unlikely.

(*khashkhash*). After stating the ruling, he cites verses of the Qur'ān, Ḥadīths and the consensus (*ijmā'*) of the ulama.

The second part begins with a hypothetical objection: “If someone says: Citing Ḥadīths is not compatible with our *madhhab* unless those Ḥadīths are accompanied by the *ijtihād* of our leading scholars, so it is necessary to include narrations from one of the [legal] books of our leading scholars.”<sup>75</sup> He responds to this objection by saying: “Yes, there are [such rulings] in the acknowledged books of our *madhhab*.” He then quotes the rulings related to the issue from the legal sources mentioned above. On the margin, he adds a long quotation from *Fath al-Qadīr*, after which he mentions the views of Ibn Kemal and Ebussuud Efendi.<sup>76</sup>

The last part discusses the effects drugs have on the body and soul of the user. It appears that the author includes quotations from *Qam' al-wāshīn* and other sources. After that, he adds an epilogue (*khātima*) on the top margin where he defines intoxication (*sukr*).

Fanārī uses six different types of evidence: the Qur'ān, Ḥadīths, *ijmā'*, *qiyās*, narratives from *madhhab* sources, and citations about the moral and material damages caused by drug use. He does not mention *maṣlaḥa* or *mafsada*, although he does use the expressions *yufsid al-'uqūl* (corrupting the minds of users) and *maḍarra dīniyya wa-badaniyya* (religious and bodily damage). He does not limit himself to narrating earlier rulings mentioned in the *madhhab* sources or to legal inference (*takhrīj*) from them on this new issue.

We may group this evidence into three categories:

1) Qur'ān verses, Ḥadīths and consensus (*ijmā'*). Al-Fanārī's first proof is the Ḥadīth which states that “every intoxicant is forbidden.”<sup>77</sup> He says that this Ḥadīth, with its expressed and implied meanings (*manṭūq* and *mafḥūm*), applies to all intoxicating agents. All agents that narcotise or inebriate the mind are forbidden (*ḥarām*), no matter what name is given to them, especially if those agents are harmful to the body.

Al-Fanārī also cites verse 195 of *Sūrat al-Baqara*: “Do not throw [yourselves] with your [own] hands into destruction” and verse 157 of *al-A'rāf*: “(The messenger) ... prohibits for them the evil things (*khabā'ith*)”. He says: “What is more evil and unclean than an agent that destroys the mind? All religions (*milal*) and *shari'as* of the previous messengers agree on preserving it.” He cites another proof from the Ḥadīths for the prohibition: “The Messenger forbade every intoxicant

75 Text: “*Fa-in qāla qā'ilun: Inna l-'amala bi-l-aḥādīthi sh-sharīfati laysa min madhhabinā mā lam yuqāran ilayhā ijtiḥādu aṣḥābinā, fa-lā budda mina n-naqli min kitābin min kutubi a'immatinā.*” See Maḥmūd al-Fanārī, *Risāla fī bayān ḥurmat al-ḥashīsh wa-l-afyūn*, f. 39a.

76 Cf. *ibid.*, f. 39b.

77 Text: “*Kullu muskirin ḥarām.*” See *Risāla*, f. 38b. Also see *Ṣaḥīḥ Muslim*, “Ashriba”, Ḥadīth no. 73; *Sunan Abū Dawūd*, “Ashriba”, bāb no. 5; and *Ṣaḥīḥ al-Bukhārī*, “Ashriba”, bāb no. 4, with a few differences.

(*muskir*) and stimulant (*mufattir*).<sup>78</sup> The word *mufattir* denotes something that enervates and causes languor. According to al-Fanārī, this word is evidence that *hashīsh* and similar drugs (*mukhaddirāt*) are forbidden. Although *hashīsh* is not inebriating, like wine, it stimulates and causes languor.

Previously, Mamluk era scholars had presented these Ḥadīths as evidence for the prohibition of drug use. In addition to them, al-Fanārī mentions another Ḥadīth that he cites from *Qam' al-Wāshīn*: “A sin is [behaviour] that leaves a negative mark on your soul, and you would not want people to know about it.”<sup>79</sup>

Al-Fanārī mentions scholarly consensus (*ijmā'*) twice on the first page. In the first mention, he explains the consensus among wise men (*ijmā' uqalā' al-anām*), while in the second mention he discusses *ijmā'* narrated by Shāfi'ī scholars through quotations from al-Qaṣṭallānī and ad-Diyarbakrī. We may add another type of consensus: verse 157 of *Surat al-A'rāf*, which he mentions when discussing the consensus of all religions (*milla*) and religious laws (*sharā'i*).

2) *Madhhab* rulings. Responding to the hypothetical objection mentioned above, al-Fanārī quotes from some acknowledged Ḥanafī legal books. For example, he cites Ḥaddādī's words in *al-Jawhara*:

Drugs like *afyūn* and *hashīsh* ruin the mind and character, lead the user to immoral behaviors and various evils, and prevent him from performing prayers and the remembrance (*dhikr*) of Allah. However, since the degree of forbiddenness (being *ḥarām*) for drugs is lower than that for intoxicating beverages, one does not apply the *ḥadd* punishment to those who use them, but rather *ta'zīr* punishments.

Similarly, Ibn al-Humām states: “If it (the drug) is used for pleasure and fun and not as medical treatment, a divorce statement (*talāq*) uttered by the user is valid.” Thus, he suggests that using drugs is an evil act. Al-Fanārī also cites rulings from two different Ḥanafī sources about the prohibition of eating *banj*. On the margins of the manuscript, he provides more quotations from other Ḥanafī sources, including the passage from *Fath al-Qadīr* mentioned above.

3) Moral and physical harm. After presenting evidence about the prohibition of drugs, al-Fanārī mentions the harms of *afyūn*: it is harmful to the body of the user, causing their face to grow pale and ruining their temperament; the user seems like a dead person; because the nature of this agent is coldness and dryness, it causes drunkenness, dryness, and tension in the body, giving languor to the joints or causing spasms; and it leads to the accumulation of malodour within the body and to illnesses that cannot be treated in full. Al-Fanārī adds that some authors have identified as many as 120 physical/corporal and moral/religious damages of *hashīsh*, including damage to the mind, absence of manliness, abandonment of the prayers,

78 Al-Fanārī quoted this Ḥadīth from al-Qaṣṭallānī and ad-Diyarbakrī. See *Risāla*, f. 38b. Also, see Aḥmad b. Ḥanbal, *Musnad*, vol. 6, p. 309; *Sunan Abī Dāwūd*, “Ashriba”, bāb no. 5.

79 *Risāla*, f. 38b. Also see *Ṣaḥīḥ Muslim*, “*al-Birr wa-ṣ-ṣila wa-l-adab*”, Ḥadīth no. 14, 15; al-Tirmidhī, “*Zuhd*”, bāb no. 52.

extinction of progeny, vitiligo (*baras*), malodour, laziness, and absentmindedness, all grounds for rejecting testimony.

### 3.4 Evaluating the *risāla* from the Perspective of *uṣūl al-fiqh*

Al-Fanārī's *risāla* is significant from the perspective of *uṣūl al-fiqh*. The evidence that he cites—verses, Ḥadīths and consensus—to support his view on a new issue during a period of *taqlīd* have more implications than their mere literal meaning. According to many 20th-century scholars who follow the reformist discourse and reiterate the historiography of Muḥammad al-Ḥudari Bek (d. 1927),<sup>80</sup> *fiqh* lost its vitality after the closing of the gate of *ijtihād* and the political turmoil caused by the Mongol invasion. Thus, the late classical (*muta'akhhirūn*) period was a period of decline. In fact, however, during the Mamluk and Ottoman periods, *fiqh* did not lose its vitality, and the gate of *ijtihād* remained open.<sup>81</sup> For example, jurists discussed the issue of drugs in detail, without limiting the evidence to the rules of a certain *madhhab* or to legal inference (*takhrīj*). In fact, earlier jurists did not know and could not foresee all the dimensions of this new issue. Thus, it was useless to compare the new issue to previous rulings on *banj*, wine, or *nabīdh* and to then base *takhrīj* exclusively on those rulings. Rather, one had to acquire complete knowledge of the effects of the new drugs and to comprehend new aspects of the issue. In the Mamluk and Ottoman periods, scholars analysed drug use from several perspectives, discussed the evidence for and against in terms of the rules of *uṣūl al-fiqh*, and redefined the issue with new rulings. Thus, what modern studies claim to be the function and retrospective role of *uṣūl al-fiqh* (implying that it has no prospective function in deciding legal issues) is also in question here.

The relationship between Ḥadīth and *madhhab* in determining a ruling or issuing a fatwa is an important subject in the legal literature. Within the limits of this article it is neither possible to discuss the changing use of Ḥadīths by Ḥanafī scholars in the late classical period nor the use of Ḥadīth in Ottoman legal sources. Both of these topics require thorough research. Al-Fanārī's mention of a hypothetical objection (namely, that “applying the Ḥadīths is not consistent with our *madhhab* unless they are accompanied by the *ijtihād* of our leading scholars”) points to two issues we can discuss, however.

First, this hypothetical objection refers to the discussion about the possibility of contradiction of a Ḥadīth with the ruling of a *madhhab*. But it was not only Ḥanafīs who searched for the interpretation of the literal meaning (*ẓāhir*) of a narration (*riwāya*), while paying close attention to legal theory, especially where the literal meaning of that narration was not consistent with the accepted ruling of the *madhhab*. So, the hypothetical objection should not be understood as a rejection

80 M. al-Ḥudari Bek, *Tārīkh at-tashrī' al-islāmī*, Cairo 1427/2006, pp. 281 ff.

81 See also Wael Hallaq, “Was the Gate of *Ijtihad* Closed?”, in: *International Journal of Middle East Studies* 16 (1984) 1, pp. 3–41, here: pp. 11 f. and p. 31.

tion of Ḥadīths in legal issues. In most cases, the disagreement is in fact between two interpretations or between differences in the narration of a Ḥadīth. In the late classical period, al-Nawawī, a Shāfi‘ī, mentions this issue in his *Adab al-Fatwā* (that is a part of *al-Majmū’*): “When someone discovers a Ḥadīth that contradicts a ruling of the *madhhab*, what does he do, bearing in mind the famous maxim of ash-Shāfi‘ī, which says that if a Ḥadīth is *ṣaḥīḥ*, then it is my *madhhab*?” An-Nawawī responds that the maxim should not be understood in an absolute manner, and he places some limits on the use of Ḥadīth. After him, Taqīy ad-Dīn as-Subkī (d. 756/1355) wrote a comprehensive *risāla* on this issue.<sup>82</sup>

Second, one may have argued that al-Fanārī was not capable of performing *ijtihād* and drawing inferences from Ḥadīths. According to the principles of *uṣūl al-fiqh*, if a Ḥadīth is authentic (*ṣaḥīḥ*) and not abrogated, then it is possible to infer new rulings from it through interpretation or analogy, on the condition that the *fiqh* scholar (*faqīh*) is competent. Taking into consideration that such an objection of incompetency to perform *ijtihād* may be directed against him, al-Fanārī quotes statements of Ḥanafī authorities on the issue.

## Conclusion

The *risāla* format had a different meaning and role in the late classical period than the *risālas* of the early classical period, in other words, before the 7th/13th century. In the early classical period, the term *risāla* was used for letters and correspondence, essays, prose texts,<sup>83</sup> and formal letters, as well as reports of state diwans.<sup>84</sup> The kind of *risāla* writing I focus on here flourished from the 7th/13th century onwards, becoming widespread between the 10th/16th and 13th/19th centuries.<sup>85</sup> As Özen has observed, Ottoman scholars wrote *risālas* “on specific subjects. They are first-hand sources for actual historical discussions and events, reflecting the

82 Cf. an-Nawawī, *al-Majmū’*, vol. 1, pp. 63 f.; Taqīy ad-Dīn as-Subkī, *Ma’nā qawl al-Imām al-Muḥṭalibī: Idhā ṣaḥḥ al-ḥadīth fa-huwa madhhabī*, edited by Ali Nayif Biqai, Beirut 1413/1993.

83 Like *diwans* of poems, there were *diwans* of letters for literati. See Ibn an-Nadīm, *al-Fihrist*, edited by Ibrahim Ramadan, Beirut 1417/1997, pp. 150, 152, 154 f., 157, 162 f., 167, 169, 171.

84 On the *risāla* format, especially in early literature, see A. Arazi et al., “*Risāla*”, in: EI<sup>2</sup>, s. v., vol. 8, pp. 532–539.

85 My research into the Mamluk literature on *fiqh* indicates that, during the Ayyubid and Mamluk period, approximately 350 legal treatises were written from a total of more than 2000 legal works (treatises of Ibn Taymiyya and as-Suyūṭī are not included). For details, see the list of works in my book: *al-Fiqh fī al-’ahdayn al-Ayyūbī wa-l-Mamlūkī: Khaṣā’is at-ta’līf wa-sard al-mu’allaḥāt*, Beirut 2022, pp. 179–235. Beginning in the 10th/16th century, a significant part of scholarly writings on legal issues took the form of *risālas*. In his research on the *fiqh* literature written in the Ottoman period (between 1300–1922), Özen found approximately 1250 *risālas* on legal issues among 4500 works related to *fiqh* (including *sharḥs*, *hāshiyas*, fatwa collections, and translations). See Şükrü Özen, “*Osmanlı Hukuk Literatürü: Tespitler ve Teklifler*”, in: Akyıldız et al. (eds.), *Dünden Bugüne Osmanlı Araştırmaları: Tespitler – Problemler – Teklifler*, Ali Istanbul 2007, pp. 97–116, here: p. 105. Özen’s research is limited to Ḥanafīs, and most of the *risālas* of scholars from other *madhhab*s are not included.

cultural and scholarly situation of their time. It is through them that the intellectual areas of interest for the era can be best detected and followed.”<sup>86</sup>

The *risāla* genre of the late classical period provided a format for discussing a single issue (*mas’ala*) or a group of issues related to a topic or subject in detail, independent of other legal issues. Their types are various, and their authors might have different aims and motivations in writing treatises. One prominent aim in the legal treatises was to debate new or socially vibrant issues and to determine an authoritative (*muftā bih*) view of *madhhab* together with *fatwas*. In this respect, I agree with what Samy Ayoub has said on the creative role of Legal treatises written with this aim in the late classical period of Islam: legal treatises “provided a creative space for jurists to reaffirm, restate, or advance a new opinion in the school.”<sup>87</sup> He has pointed out that these treatises were later incorporated into commentaries (*sharḥs*) and supercommentaries (*hāshiyas*) “to provide a restatement of doctrine and to integrate the most updated positions.”<sup>88</sup> As the debates on drugs show, an issue that was new or not addressed before in detail was discussed through treatises and *fatwas*. After these discussions were completed, and points of consensus and disagreement became clear, they found their way into the authoritative texts of *madhhab* like *mukhtaṣars* and commentaries.

The reoccurrence of the debates on drugs in Ottoman scholarly circles seems to stem from the spread of the problem of drug use, which coincided with the need to redefine the indeterminate position of earlier Ḥanafī sources to solve the problem. In fact, we do not have any *risālas* on drugs written by Ḥanafīs before the 16th century. *Fatwas* issued and treatises written on the issue in the 16th century had served to redefine the authoritative view of *madhhab* on drugs among Ottoman Ḥanafī scholars.

The *risāla* genre also allows a scholar to support an idea or criticise others without risking the integrity of the *madhhab* or without being criticised as not possessing the competence to exercise *ijtihād* in his *madhhab*. Al-Fanārī’s *risāla*, which I have analysed here, may have served an additional function, namely establishing the author’s qualification for appointment to a madrasa. If this is indeed the case, then it was written with a different aim to that of determining the *muftā bih* ruling of the *madhhab*. Al-Fanārī’s *risāla* supported government policy and the *fatwas* of Ebussuud Efendi and subsequent *shaykhulislams*. It seems that his *risāla* was not copied or referred to in the later sources. However, it reflects how an Ottoman Ḥanafī scholar approached an issue like drugs, how legal sources were used, and how his view was reasoned at the time of its composition.

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86 Ibid., p. 107.

87 Samy Ayoub, “Creativity in Continuity: Legal Treatises (*Al-Rasā’il Al-Fiqhiyya*) in Islamic Law”, in: *Journal of Islamic Studies* 34 (2023) 3, pp. 305–339, here: p. 305.

88 Ibid., p. 313.