In his treatise on religious innovations (bida’), the Mālikī jurist, Abū Bakr al-Ṭurṭūshī (d. 520/1126), establishes the recent origin of ṣalāt al-raghā‘īb, the immensely popular yet highly controversial congregational prayer performed on the first Thursday night of Rajab, by citing the eyewitness testimony of his colleague, one Abū Muḥammad al-Maqdisī. Abū Muḥammad relates that the prayer occurred for the first time in 448[AH], [when] a man from Nablus, who recited Qur’an beautifully, came to Jerusalem and performed the prayer at al-Aqṣá with a few other participants. He came again the next year, and a large group of people prayed with him. The prayer then spread within the [Aqṣá] mosque and became well known both in the mosque and in peoples’ homes, such that “it became established as if it was a religious norm (sunnah) until today.”¹ While we might expect abū Muḥammad’s testimony to conclude with his censure of this clearly post-Prophetic practice, he surprises us with his own behavior. Al-Ṭurṭūshī continues—“And I said to him: ‘But I saw you praying it in the congregation!’ and Abū Muḥammad said, ‘Yes! And may God forgive me for it.’”²

The cognitive dissonance that Abū Muḥammad seems to display (and the intriguing impulse of al-Ṭurṭūshī to include this vignette) might lead one to the cynical suggestion of scholarly hypocrisy. After all, Abū Muḥammad all but acknowledges the sinfulness of participating in a prayer that he went out of his way to perform. Instead, as I will argue, the responses of jurists to the devotional practices that formed the living traditions of their times must be understood both from an analysis of canonical texts related to devotional norms and from an understanding of the multiple roles played by scholars in dynamic and polymorphous Muslim societies.

¹ al-Ṭurṭūshī, al-Ḥawādith wa-al-bida‘, 267.
² Ibid.
II. Background and Argument

This paper takes as its starting point Bernard Weiss’s central idea that jurists consistently upheld the textualist approach to determine the law. Weiss defines textualism specifically as “an approach to the formulation of the law that seeks to ground all law in a closed canon of foundational texts and refuses to accord validity to law that is formulated independently of these texts.” This central idea of Weiss’s *Spirit of Islamic Law* undoubtedly is correct both when it comes to canonical acts of worship (the ʿibadāt, which I would mark with a capital ʿayn), and when it comes to devotional practices more generally (what I would call ʿibadāt with a lower-case ʿayn). Jurists shared a core commitment to anchoring all such practices in the Qur’an, Hadith and the traditions of the early Muslim community.

However, when one looks at the responses of jurists to the controversial yet popular devotional practices of their times, one finds the textualist model to be insufficient. Why do Shāfiʿī jurists permit certain devotional innovations and not others? Why would a Hanbali jurist such as Aḥmad ibn Taymiyyah (d. 728/1328) reject the lawfulness of all devotional innovations yet suggest that practitioners of innovations might deserve a reward? In general, how did jurists deal with the fact that many of the devotional practices that pervaded medieval Muslim societies, including the overwhelming majority of Sufi practices, lacked explicit attestations in the Qur’an and Hadith? Although jurists shared a commitment to determining norms based on canonical texts, they differed in the strategies they used to preserve the normative tradition and its relevance in shaping Muslim religious life.

This study of jurists’ responses to popular devotional practices builds upon a growing body of literature that situates jurists as a set of actors, powerful but not exclusively so, within medieval Islamic societies. This idea begins with Boaz Shoshan’s pioneering study from 1993 on popular culture in medieval Cairo, which illustrated the pervasiveness of rituals that lacked textual bases within medieval Islamic Cairo and pointed to scholarly participation in many of those so-called popular practices. Since Shoshan’s study, other scholars have deconstructed further the dichotomy

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