MURDER ON THE NILE
HOMICIDE TRIALS IN
19TH CENTURY EGYPTIAN SHARI'A COURTS*

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Introduction

In this paper I intend to investigate the application of the Sharî'a in homicide cases in 19th century Egypt, before the reception of French law codes in 1883.¹ The scope of enforcement of the Sharî'a in the Islamic world before the introduction of Western law is still a matter of controversy. On the one hand there are many Western scholars maintaining that the Sharî'a was merely a theoretical construction, hardly applied in practice except in matters of personal status and waqf's. On the other hand many Muslim authors claim nowadays that Muslim law was fully enforced until colonial rule imposed foreign law codes on the Muslim world.

In order to shed some light on this question I have examined the Fatâwâ al-Mahdiyya fi l-Waqâ'î al-Misriyya (7 vols. Cairo: al-Matba'a al-Azhariyya, 1301-3; henceforth abbreviated as FM) by Muhammad al-'Abbasi al-Mahdi (1243/1827-1315/1897), who was for more than fifty years Hanafite mufti of Egypt (Muftî l-Diyâr al-

¹ This is a revised version of a paper read at the 14th Congress of the Union Européenne d’Arabisants et Islamisants, Budapest, 29 August-3 September 1988.

¹ Baer’s studies on 19th century Ottoman and Egyptian statute law in criminal matters give us some insight in the scope and content of criminal legislation in this period. However, Baer approached the subject from a basically political angle and did hardly pay attention to the question of what laws were actually applied in the courts. Cf. G. Baer, ‘‘Tanzimat in Egypt: The Penal Code,’’ in G. Baer, Studies in the Social History of Modern Egypt (Chicago, 1969), pp. 109-33, and id., ‘‘The Transition from Traditional to Western Criminal Law in Turkey and Egypt’’, Studia Islamica 45 (1977), pp. 139-58.
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Misriyya). Vol. 6 of his collected fatwâ-s, with the title Kitâb al-
Mahâdir wa-l-Sijillât, contains queries from the qâdî-s which include
as a rule the records of the trials. Analysing these records that span
a period from 1266/1849 until 1303/1885 can give us insight in the
working of Egyptian Sharîca justice in the 19th century.

Sharîf’s justice relies heavily on the advice of muftî-s. In Egypt,
as elsewhere, Sharîf’s courts would have a muftî attached to them
who could be consulted by the qâdî on the intricacies of the law. In
the provincial councils (majâlis al-mudîriyya) in Egypt the provincial
muftî (muftî l-mudîriyya) had a seat. There were other muftî-s
attached to administrative bodies, like the Dîwân al-Awqâf and the
Majlis al-Ahkâm. The muftî with the highest authority was the
Muftî l-Sâda al-Hanâfiyya or the Muftî l-Diyâr al-Misriyya (henceforth
referred to as the Muftî), appointed by the Viceroy (Khedive). A
qâdî who was in doubt with regard to some specific point of law
during a process, would first consult the muftî attached to his court.
If the muftî was not certain either, or if the qâdî and the muftî
disagreed, the point would be submitted to the Muftî l-Diyâr al-
Misriyya. Sometimes the qâdî would consult the Muftî directly. The
Muftî’s fatwâ would be read in court in the presence of the parties
and regarded as binding (although officially this became only the
case in 1880). Occasionally the Muftî would issue special instruc-

2 He was Muftî l-Diyâr al-Misriyya from 1264/1847-8 until just before his death
in 1315/1897. From 1287/1870 he combined this function with that of Shaykh al-
Azhar. Cf. GAL S II, 740; Jurjî Zaydân, Tarâjîm mashâhir al-sharq fi l-qarn al-tâsiC
1306), XVII, 12; Gilbert Delanoue, Moralistes et politiques musulmans dans l’Égypte
du XIXe siècle (1798-1882) (Le Caire: IFAO, 1982), pp. 168-84. 3 The Sharîa Courts Ordinance (Lâihat al-Mahâm al-Sharîfyya) of 1856 laid
down that “the qâdî should consult the ‘ulamâ’ and ask their fatwâ-s in difficult
cases and not form his opinion independently as a precaution against errors in
[applying] the rules of the Sharîf.” (art. 21). Text in Filîb Jallâd, Qâmûs al-Iddra
129-31. In the Sharîa Courts Ordinance of 1880 this became obligatory and the
Muftî’s fatwâ-s became binding (art. 22), which reflected previous practice. Text
in Jallâd, Qâmûs, vol. 4, pp. 145-56. See also Al-Fatâwâ al-İslâmîyya min Dâr al-Iftâ?
al-Misriyya, X (Cairo: 1404/1983), pp. 3656-7. The situation was actually more
complicated, due to the emergence of a hierarchical judiciary, with muftî-s
attached to all levels. (See e.g. the decree No. 275 d.d. 5 Rab. II, 1290 that
regulated the function of iftâ?, text in Jallâd, Qâmûs, vol. iv, pp. 136-6). Cases
where capital punishment was demanded by the plaintiffs would be submitted to