

Christian-Muslim Relations A Bibliographical History

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CONTENTS

Foreword	vii
Abbreviations	xi
Martha Frederiks, <i>Introduction: Christians, Muslims and empires in the 16th century</i>	1
Alan Guenther, <i>The arrival of European Christians in India during the 16th century</i>	15
Works on Christian-Muslim relations 1500-1600	27
Central and Eastern Europe	29
Middle East and North Africa	549
Asia, Africa and South America	743
Index of Names	933
Index of Titles	946

Ebussuud Efendi

Ebussuud ibn Muhammad ibn Mustafa el-İmâd,
Hoca Çelebi

DATE OF BIRTH 30 December 1490
PLACE OF BIRTH Istanbul, Meteris (Mudarris) village
DATE OF DEATH 23 August 1574
PLACE OF DEATH Istanbul, Eyüp District

BIOGRAPHY

Ebussuud Efendi, also known as Hoca Çelebi, was one of the most distinguished and celebrated Ottoman Ḥanafî scholars. He served as a *müderris* (teacher) a *kadı* (judge), a *kazasker* (military judge) and *şeyhülislâm* (head of the Ottoman religious establishment) during the reigns of Süleyman I (r. 1520-66) and his son Selim II (r. 1566-74). Information about the date and place of his birth differs between sources. In an endowment deed, his birthplace is recorded as Iskilip near Amasya (*DİA*, vol. 4, p. 92). However, Uzunçarşılı argues that this was the family residence (*Osmanlı tarihi*, vol. 2, p. 677), and it is more likely that Ebussuud Efendi was born on one of the estates supported by his father's *zâviye* (Sufi lodge) outside Istanbul (Atâî, *Hadâîku'l-hakâik*, vol. 2, p. 183) on 30 December 1490 (Şemseddin Sâmi, *Kamûsü'l-Â'lâm*, Istanbul, 1889-98, vol. 1, p. 722). His first teacher was his father, İskilipli Şeyh Muhyiddin Mehmed Efendi, a close companion of Sultan Bayezid II (r. 1481-1512).

Ebussuud Efendi rose rapidly through the ranks of the *ulema* and was appointed judge of Istanbul in 1533, a reflection of both his erudition and the Ottoman system of patronage. As the *kazasker* of Rumelia (from 21 September 1537) and *şeyhülislâm* (from 29 October 1545) he tackled important administrative issues. The principle of cash endowments that he defended on the basis of custom against the more conservative stand of Imam Mehmed Birgivi (d. 1573), who rejected them as innovations, together with his regulations on land holding and its taxation, earned him a reputation as a jurist who was responsive to social needs and able to find middle ground (Peçevî, *Tarih*, vol. 1, p. 467; Mandaville, 'Usurious piety'; Repp, *Müfti of Istanbul*, pp. 253-6; Imber, *Ebu's-su'ud*, pp. 115-38, 144-6, 270-1; Schacht, 'Abū 'l-Su'ūd').

He was equally diplomatic on the subject of Muslim and non-Muslim co-existence. Although within Islamic law non-Muslims were theoretically subject to sumptuary regulations and faced restrictions on the establishment and repair of their places of worship, and their legal testimony was considered inferior to that of Muslims, Ebussuud Efendi supported a more lenient approach that reflected the multi-religious, multi-cultural Ottoman Empire. Furthermore, his fatwas on everyday life between Muslims and non-Muslims rescinded many social restrictions and placed importance on good neighbourly relations. His erudition and pragmatism provided the sultan with a workable legal system. As both Imber and Repp have argued, he also promoted Sultan Süleyman's claims to universal sovereignty through the office of the caliphate, thereby empowering Süleyman to both interpret and apply the law (Imber, *Ebu's-su'ud*, pp. 65-111; Repp, 'Abū l-Su'ūd'). By empowering the ruler to legislate, on occasion unhindered by the strictures of Islamic norms, he permitted non-Muslim institutions to become incorporated into Muslim society and law, as, for example, in the case of monastic endowments discussed below.

He died in Istanbul, and his funeral was attended by the bureaucratic and learned establishment. He was buried in the courtyard of the school he founded in the environs of Eyüp (Repp, 'Abū l-Su'ūd').

Ebussuud Efendi composed many fatwas that were collected in two main compilations, the *Fetâvâ-yı Ebussuud*, which were copied extensively. In addition, many of his fatwas that had been approved by the sultan became binding on Ottoman judges and were compiled posthumously in a collection known as *Mârûzât*. Ebussuud Efendi also wrote treatises on Sufism and Arabic grammar, and a *tafsîr*, the *Irshād al-'aql al-salîm* (Repp, 'Abū l-Su'ūd'). Perhaps less known are his poems in Persian, Arabic and Turkish, the most famous being *Kasîde-i mûmiyye* (Atâî, *Hadâiku'l-hakâik*, vol. 2, p. 187).

MAIN SOURCES OF INFORMATION

Primary

Nev'îzâde Atâî, *Hadâiku'l-hakâik fî tekmileti's-şakâik*, Istanbul, 1851

İbrahim Peçevî, *Tarih-i Peçevî*, Istanbul, 1866-77, vol. 1, pp. 462-8

Secondary

İsmail Hakkı Uzunçarşılı, *Osmanlı Tarihi. İstanbul'un Fethinden Kanuni Sultan Süleyman'ın ölümüne kadar*, vol. 2, Ankara: Türk Tarih Kurumu, 2011

C. Imber, *Ebu's-su'ud. The Islamic legal tradition*, Edinburgh, 1997

- R.C. Repp, *The müfti of Istanbul. A study in the development of the Ottoman learned hierarchy*, London, 1986
- R.C. Repp, art. 'Abū l-Su'ūd', in *El3*
- J. Schacht, art. 'Abū l-Su'ūd', in *El2*
- A. Akgündüz, art. 'Ebüssuûd Efendi', in *DİA*
- J.E. Mandaville, 'Usurious piety. The cash waqf controversy in the Ottoman Empire', *International Journal of Middle East Studies* 10 (1979) 289-308

WORKS ON CHRISTIAN-MUSLIM RELATIONS

Fetâvâ-yı Ebussuud, 'The legal opinions of Ebussuud'

DATE Before 1574

ORIGINAL LANGUAGE Ottoman Turkish

DESCRIPTION

Ebussuud Efendi's fatwas cover a variety of issues pertaining to the co-existence of Muslims and Christians. Although most are extant in manuscript form, a number are given in German translation in Horster, *Zur Anwendung des islamischen Rechts*, and in English translation in Imber, *Ebu's-su'ud*. In addition, M. Ertuğrul Düzdağ has transcribed 1001 fatwas in *Şeyhülislâm Ebüssuûd Efendi fetvaları*. With regard to issues related to Christians, the various compilations and their copies exhibit slight variations, and information is scattered throughout them: MS Istanbul, Süleymaniye – İsmihan Sultan 223 and 241; and MS Istanbul, Süleymaniye – Şehid Ali Paşa 1067. Specific information on Christians and their duties and responsibilities can be found in MSS 223, fols 103-14, and 1067, fols 95-118.

The renowned pragmatism that Ebussuud Efendi exhibited in his regularisation of Islamic law and the sultans' administrative ordinances is masterfully displayed in his various responses to questions of cohabitation between Muslims and non-Muslims. For example, unlike many classical Ḥanafî jurists, he does not accept conversion to Islam without clear evidence of intention, arguing against the simple utterance of the profession of faith as proof of submission to the Muslim faith (Düzdağ, *Şeyhülislâm Ebüssuûd*, p. 91). Thus, the utterance of the formula of conversion under duress, while intoxicated, or as part of a promise is not sufficient to enforce conversion (223, fol. 313r). Similarly, he argues that a non-Muslim wearing a white turban (exclusively reserved for Muslims) does not signify, or compel conversion to Islam (241, fol. 87r). To understand

the importance of this legal opinion one would only have to look into the *Lives* of neo-martyrs of the Ottoman period, and the entries in the registers of important affairs (Vaporis, *Witnesses for Christ*, pp. 123, 140; Binark, *5 numaralı mühimme defteri*, p. 68, d. 367; Yıldırım, *82 numaralı mühimme defteri*, p. 341, d. 82; Yılmaz, *Üsküdar mahkemesi*, p. 177, d. 286), where non-Muslims are frequently accused of breaching the dress codes, leading to misunderstandings.

On certain aspects of Islamic jurisprudence, Ebussuud followed mainstream opinion. For example, he argued that new converts to Islam must forfeit their inheritance rights (241, fol. 231r). Nevertheless, although conversion entailed the legal requirement to sever social ties as the new convert embraced the community of Muslims, Ebussuud acknowledged that a permanent severance of ties to one's family would be impossible. Thus, in another fatwa he permits new Muslims to give charity to their impoverished Christian family (241, fol. 268v), stressing only that the alms must not be counted as *zakāt* (which is reserved for Muslims). Interestingly enough, the prohibition on inheritance between new converts to Islam and their non-Muslim relatives was not applied with regard to conversion between other faiths. When asked whether a former Jewess who converted to Christianity before marriage should be excluded from inheriting her deceased father's estate, he replies that such conversion will not have alienated the heiress from her birth-right (Düzdağ, *Şeyhülislâm Ebussuûd*, p. 100).

By the 16th century, the increase in the Muslim population in Istanbul and other urban centres led to neighbourhoods of increasingly mixed faiths (H. Inalcik, art. 'Istanbul' in *El2*, pp. 234-5). Ebussuud Efendi's legal opinions reflected the daily practicalities of close interfaith co-existence. Thus, in his response to what should be the punishment for a Muslim who accepted Easter sweets and red eggs offered by a Christian, he answered that no punishment is prescribed for neighbourly relations (Düzdağ, *Şeyhülislâm Ebussuûd*, p. 93).

Although Ebussuud Efendi can be considered a pragmatist, he was still a rather conservative Muslim jurist and, following the traditions of the Ḥanafī school, there is evidence that he aspired, if only in theory, to a religiously segregated society. In a number of his fatwas he permits the compulsory resettlement of Christian households if Muslims move into a predominately non-Muslim neighbourhood (1067, fols 94v, 95r-v, 106r). The expansion and reconstruction of Muslim space is, however, only to be permitted if the Christian owners are reimbursed. Rather than showing antipathy towards non-Muslims, his desire to maintain moral

values and avoid disorder might explain his encouragement to Muslims to disperse Christians who gather once a year in a mixed neighbourhood and who ‘according to their customs [...] dance and are merry’ (1067, fol. 274v). In this specific legal opinion, it is the formulation of the question that is of more interest than Ebussuud’s answer. The questioner asks whether Jews, ‘given their animosity to Christians’, are to be allowed to intervene in a customary gathering that disturbs no one, especially Muslims. Ebussuud ignores the complaint about Jewish intervention and retorts that Jews should not get involved, as Muslims ought to ban this gathering on the basis of ostentatious exhibition that is harmful to Islam (1067, fol. 274v).

Ebussuud Efendi maintains a fairly traditional position with regard to the judicial rights and responsibilities of Christians. For example, the reduced legal capacity of Christians as witnesses is repeated in his legal opinions (241, fol. 156v, 223, fol. 190v). He is, however, aware of the complications that Christian family law can impose upon a Muslim judge, particularly when non-Muslims make use of Islamic courts and legal traditions and practices. Christians applying to the *shari‘a* court for family affairs circumvented the jurisdiction of the church and its canon law, forcing Muslim judges to make court decisions based on Islamic law. The litigants’ choice of judicial forum was entirely their own decision. Jurists were thus faced with an array of questions related to the family affairs of Christians. The *shari‘a* registers abound with cases of Christians registering their marriage contract, obtaining a divorce or settling their inheritance. For Ebussuud Efendi, however, retaining social boundaries and preventing Christians from imitating Muslim practices was important. Thus, in a series of legal opinions he clarifies that divorce between Christians is not effected by the husband pronouncing the Muslim triple divorce formula (1067, fol. 44r), and that a divorced Christian woman does not have to observe the waiting period of three months after divorce before remarriage, as is observed in Islamic law (1067, fol. 72v and fol. 78r). Perhaps the most detailed opinion on the matter is Ebussuud’s response to whether a Christian woman married to a Christian man could claim her advance dower if there is no mention of it in her marriage contract. In his answer, Ebussuud lays down that since canon law – unlike Islamic law – does not make provisions for the payment of an advance dower, in a situation in which the advance dower is not specified in the marriage contract, the woman cannot take an oath to prove her claim (Düzdağ, *Şeyhülislâm Ebussuûd*, p. 99).

Ebussuud Efendi's concern about non-Muslims having recourse to the *shari'a* courts with issues relating to family law is not merely a theoretical matter of adherence to Islamic social codes. It echoes real concern about morality, as judicial, juridical and social boundaries became blurred. An example of this concern is the Christian custom of keeping concubines or of bigamy (Yılmaz, *Üsküdar mahkemesi*, p. 278, d. 566). Even though Christian metropolitans and patriarchs condemned both practices (G. Arampatzoglou, *Photieios library*, Constantinople, 1935, vol. 2, d. 13, p. 129; d. 42, p. 142; d. 70, p. 154), Christians still continued to conduct second marriages in the *shari'a* court, following Islamic law prescriptions. The *kepinion* – as non-religious marriages were called – became such a problem for the church that eventually in the 18th century it was forced to accept as legitimate children born from these unions (*Nomikon procheinon of the bishop of Ioannina Theophilos (1788)*, ed. D. Gkines, Thessaloniki, 1960, pp. 36, 46). Foreseeing the social problems occurring from the adaptation of Muslim marital practices to Christian family life, Ebussuud, when he is asked about Christians keeping concubines and thus in effect becoming bigamous, resorts to traditional punishments to maintain order. He suggests corporal punishment and long imprisonment for culprits (1067, fol. 108r).

Ebussuud Efendi's implicit support for church juridical jurisdiction on family matters extended to issues vital for the survival of the Patriarchate. During the 16th century, an investigation occurred as to whether Constantinople had been conquered by force or by treaty. According to Islamic law, if an area was conquered by force, the inhabitants lost their property rights, a position that would have jeopardised the possessions of non-Muslim residents. According to an anonymous Greek chronicle, *Historia politica et patriarchica Constantinoupoleos* (Bonn, 1850, pp. 157-68), Ottoman officials and the Greek Orthodox Patriarch collaborated and were able to find two elderly Muslim fighters to act as witnesses and assert that the non-Muslim population surrendered. In a later fatwa, Ebussuud repeats the testimony of the witnesses and stresses that, although it was commonly believed that the capital was taken by force, the truth is that the Christian and Jewish population surrendered (1067, fol. 97r).

A final example of Ebussuud Efendi's pragmatism towards the Patriarchate and Christian institutions arises from the affair surrounding the confiscation and repossession of monastic properties in 1568-9. In 1568, Sultan Selim II ordered the confiscation of monastic properties, basing his decision on Ebussuud's legal opinion that public land could be confiscated by the state. This was based on two principles: first, that monastic

endowed land was not held as the freehold of the monasteries, but was public land, and, second, that the remaining movable and immovable properties of monasteries were made into trust in mortmain in violation of Ḥanafī laws on endowments (Kermeli, 'Ebū's Su'ūd's definitions', pp. 150-1). In response to the threat of the monks of Mount Athos to disperse unless their Byzantine tradition of owning property collectively was respected, Ebussuud Efendi devised a legal trick to recognise monasteries as collective legal entities. He categorised monastic endowments as family endowments and permitted the property of deceased monks to pass to the remaining monks in contradiction to the Islamic law of inheritance (1067, fol. 93v; Kermeli, 'Ebū's Su'ūd's definitions', p. 147).

SIGNIFICANCE

The legal opinions of Ebussuud on relations between Muslims and non-Muslims in the Ottoman Empire reflect his prerogatives as a jurist and a consultant to the sultan, and also the societal realities of coexistence in the multi-religious and multicultural empire. As a moralist and a traditionalist, he was an ardent advocate of social segregation and adherence to communal codes prescribed by Islamic law. Nevertheless, the reality of interfaith cohabitation permeates his legal opinions. Thus, he rejects the utterance of the profession of faith as proof of conversion without additional clear intent, contrasting with another jurist, Abdürrahim Efendi, who at the beginning of the 18th century insisted on the conversion of non-Muslims who adopted even the attire of a Muslim (*Fetâvâ-yı Abdürrahim*, Istanbul, 1827, vol. 2, p. 285). Ebussuud's understanding extends to the behaviour of newly converted Muslims to their former non-Muslim relatives. Even though they cannot claim the inheritance of their 'infidel' parents, new Muslims are allowed to help their parents financially. Participating in non-Muslim religious activities might be forbidden, nevertheless he regards accepting gifts of religious or cultural significance from neighbours as part of friendly neighbourly relations, and thus not proscribed.

Ebussuud Efendi's legal opinions do, however, reflect a concern about non-Muslims using Muslim courts rather than those run by their co-religionists in the context of family law. In a number of fatwas he attempts to curb the practice of non-Muslims applying to *sharī'a* courts.

With regard to Muslim-Christian relations, one could argue that Ebussuud Efendi's most important contribution was in the acceptance of the Christian *vakıf* into Ḥanafī jurisprudence on religious endowments. In 1568, he categorised Christian *vakıfs* as family endowments, ending the

controversy about their validity and allowing the monks of a monastery to be considered the heirs of deceased monks.

Ebussuud Efendi's fatwas were cited in numerous court cases and petitions to the sultans well into the 19th century (*Başbakanlık Osmanlı Arşivi* (BOA), A.MKT/34/97/1262; BEO/1050/78680/1315; BEO/2503/187718/1322; BEO/2510/188239/1322; BEO/3587/269003/1327; C.ADL/28/1666/1233; C.ADL/29/1751/ 1171). Lastly, by reiterating the rather flimsy proof that Istanbul was not taken by force but by agreement, he effectively put an end to efforts to deprive the Patriarchate and non-Muslims of their property in the city.

MANUSCRIPTS

- MS Istanbul, Süleymaniye – İsmihan Sultan 223, fol. 304 (1575)
- MS Istanbul, Süleymaniye – İsmihan Sultan 241, fol. 318 (1580)
- MS Istanbul, Süleymaniye – Şehid Ali Paşa 1067, fol. 421 (1587)
- MS Istanbul, Süleymaniye – Sultan Ahmed 95, fol. 463 (1588)

There are two main compilations of Ebussuud Efendi's fatwas. The most comprehensive, based exclusively on his legal opinions, is that by Bozanzâde, MS Istanbul, Süleymaniye – Şehid Ali Paşa 1067, fol. 421 (1587). The most popular in terms of copies made was that compiled by his secretary, Veli ibn Yusuf el-İskilibî, which also includes fatwas by other *şeyhülislâms* such as Kemâlpaşazâde, Çivizâde Mehmed Efendi, Sâdî Çelebi, Ali Cemâlî Efendi with comments in Arabic, imperial orders and historical information on *ulema* debates. The manuscripts bear the names of the owners' collections.

For a detailed analysis of the MSS, see P. Düzenli, 'Şeyhülislâm Ebussuûd Efendi. Bibliyografik bir değerlendirme', *Türkiye Araştırmaları Literatür Dergisi*

EDITIONS & TRANSLATIONS

- Imber, *Ebu's-Su'ud* (a selection of fatwas in English trans.)
- M.E. Düzdağ, *Şeyhülislâm Ebussuûd Efendi fetvaları ışığında 16. asır Türk hayatı*, Istanbul, 1972 (a selection of *fetwās* transliterated from Ottoman into modern Turkish)
- P. Horster, *Zur Anwendung des islamischen Rechts im 16. Jahrhundert*, Stuttgart, 1935 (a selection of fatwas in German trans.)

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